



SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-91962; File No. SR-NYSEArca-2021-37]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to List and Trade Shares of the First Trust SkyBridge Bitcoin ETF Trust under NYSE Arca Rule 8.201-E

May 21, 2021.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on May 6, 2021, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “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 list and trade shares of the following under NYSE Arca Rule 8.201-E: First Trust SkyBridge Bitcoin ETF Trust (the “Trust”). The proposed change is available on the Exchange’s website at 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 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

Under NYSE Arca Rule 8.201-E, the Exchange may propose to list and/or trade pursuant to unlisted trading privileges “Commodity-Based Trust Shares.”⁴ The Exchange proposes to list and trade shares of the Trust (the “Shares”) pursuant to NYSE Arca Rule 8.201-E.⁵

The sponsor of the Trust is First Trust Advisors L.P. (the “Sponsor” or “Advisor”). The sub-adviser for the trust is SkyBridge Capital II, LLC (the “Sub-Advisor”). The trustee for the Trust is Delaware Trust Company (the “Trustee”). The Bank of New York Mellon is the transfer agent of the Trust (in such capacity, the “Transfer Agent”) and the administrator of the Trust (in such capacity, the “Administrator”). The bitcoin custodian for the Trust is NYDIG Trust Company LLC (the “Bitcoin Custodian”).

The Trust is a Delaware statutory trust, organized on March 12, 2021, that operates pursuant to a trust agreement between the Advisor and the Trustee (the “Trust Agreement”). The Trust has no fixed termination date.

Background

As discussed in further detail below,⁶ bitcoin is a digital asset based on the decentralized, open source protocol of the peer-to-peer computer network launched in 2009 that governs the creation, movement, and ownership of bitcoin and hosts the public ledger, or “blockchain,” on which all bitcoin transactions are recorded (the “Bitcoin Network” or “Bitcoin”). The decentralized nature of the Bitcoin Network allows parties to transact directly with one another

⁴ Commodity-Based Trust Shares are securities issued by a trust that represent investors’ discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust.

⁵ On March 19, 2021, the Trust filed a registration statement on Form S-1 under the Securities Act of 1933 (15 U.S.C. 77a) (the “Securities Act”) (File No. 333-254529) and amended such registration statement on May 6, 2021 (the “Registration Statement”).

⁶ See “The Bitcoin Industry and Market,” infra.

based on cryptographic proof instead of relying on a trusted third party. The protocol also lays out the rate of issuance of new bitcoin within the Bitcoin Network, a rate that is reduced by half approximately every four years with an eventual hard cap of 21 million. It is generally understood that the combination of these two features – a systemic hard cap of 21 million bitcoin and the ability to transact trustlessly with anyone connected to the Bitcoin Network – gives bitcoin its value.⁷

The first rule filing proposing to list an exchange-traded product to provide exposure to bitcoin in the U.S. was submitted by the Cboe BZX Exchange, Inc. on June 30, 2016.⁸ At that time, blockchain technology, and digital assets that utilized it, were relatively new to the broader public. The market cap of all bitcoin in existence at that time was approximately \$10 billion. No registered offering of digital asset securities or shares in an investment vehicle with exposure to bitcoin or any other cryptocurrency had yet been conducted, and the regulated infrastructure for conducting a digital asset securities offering had not begun to develop.⁹ Similarly, regulated U.S. bitcoin futures contracts did not exist. The Commodity Futures Trading Commission (the “CFTC”) had determined that bitcoin is a commodity,¹⁰ but had not engaged in significant

⁷ For additional information about bitcoin and the Bitcoin Network, see <https://bitcoin.org/en/getting-started>.

⁸ See Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, to List and Trade Shares of the Winklevoss Bitcoin Trust, Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the “Winklevoss II Order”). This proposal was subsequently disapproved by the Commission. See id.

⁹ Digital assets that are securities under U.S. law are referred to throughout this proposal as “digital asset securities.” All other digital assets, including bitcoin, are referred to interchangeably as “cryptocurrencies” or “virtual currencies.” The term “digital assets” refers to all digital assets, including both digital asset securities and cryptocurrencies, together.

¹⁰ See “In the Matter of Coinflip, Inc.” (“Coinflip”) (CFTC Docket 15-29 (September 17, 2015)) (order instituting proceedings pursuant to Sections 6(c) and 6(d) of the CEA, making findings and imposing remedial sanctions), in which the CFTC stated: “Section 1a(9) of the CEA defines ‘commodity’ to include, among other things, ‘all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.’ 7 U.S.C. 1a(9). The definition of a ‘commodity’ is broad. See, e.g., Board of Trade of City of Chicago v. SEC, 677 F.2d 1137, 1142 (7th Cir. 1982). Bitcoin and other

enforcement actions in the space. The New York Department of Financial Services (“NYDFS”) adopted its final BitLicense regulatory framework in 2015, but had only approved four entities to engage in activities relating to virtual currencies (whether through granting a BitLicense or a limited-purpose trust charter) as of June 30, 2016.¹¹ While the first over-the-counter bitcoin fund launched in 2013, public trading was limited and the fund had only \$60 million in assets.¹² There were very few, if any, traditional financial institutions engaged in the space, whether through investment or providing services to digital asset companies. In January 2018, the Staff of the Commission noted in a letter to the Investment Company Institute and SIFMA that it was not aware, at that time, of a single custodian providing fund custodial services for digital assets.¹³

As of the first quarter of 2021, the digital assets financial ecosystem, including bitcoin, has progressed significantly. The development of a regulated market for digital asset securities has significantly evolved, with market participants having conducted registered public offerings of both digital asset securities¹⁴ and shares in investment vehicles holding bitcoin futures.¹⁵

virtual currencies are encompassed in the definition and properly defined as commodities.”

¹¹ A list of virtual currency businesses that are entities regulated by the NYDFS is available on the NYDFS website. See https://www.dfs.ny.gov/apps_and_licensing/virtual_currency_businesses/regulated_entities.

¹² See Bitcoin Investment Trust Form S-1, dated May 27, 2016, available at: <https://www.sec.gov/Archives/edgar/data/1588489/000095012316017801/filename1.htm> (data as of March 31, 2016 according to publicly available filings).

¹³ See Letter from Dalia Blass, Director, Division of Investment Management, U.S. Securities and Exchange Commission to Paul Schott Stevens, President & CEO, Investment Company Institute and Timothy W. Cameron, Asset Management Group – Head, Securities Industry and Financial Markets Association (January 18, 2018), available at: <https://www.sec.gov/divisions/investment/noaction/2018/cryptocurrency-011818.htm>.

¹⁴ See Prospectus Supplement filed pursuant to Rule 424(b)(1) for INX Tokens (Registration No. 333-233363), available at: https://www.sec.gov/Archives/edgar/data/1725882/000121390020023202/ea125858-424b1_inxlimited.htm.

¹⁵ See Prospectus filed by Stone Ridge Trust VI on behalf of NYDIG Bitcoin Strategy Fund Registration, available at:

Additionally, licensed and regulated service providers have emerged to provide fund custodial services for digital assets, among other services. For example, in December 2020, the Commission adopted a conditional no-action position permitting certain special purpose broker-dealers to custody digital asset securities under Rule 15c3-3 under the Exchange Act;¹⁶ in September 2020, the Staff of the Commission released a no-action letter permitting certain broker-dealers to operate a non-custodial Alternative Trading System (“ATS”) for digital asset securities, subject to specified conditions;¹⁷ in October 2019, the Staff of the Commission granted temporary relief from the clearing agency registration requirement to an entity seeking to establish a securities clearance and settlement system based on distributed ledger technology;¹⁸ and multiple transfer agents who provide services for digital asset securities have registered with the Commission.¹⁹

Beyond the Commission’s purview, the regulatory landscape has also changed significantly since 2016, and cryptocurrency markets have grown and evolved as well. The market for bitcoin is approximately 100 times larger, having recently reached a market cap of over \$1 trillion. As of February 27, 2021, bitcoin’s market cap is greater than companies such as

<https://www.sec.gov/Archives/edgar/data/1764894/000119312519309942/d693146d497.htm>.

¹⁶ See Securities Exchange Act Release No. 90788, 86 FR 11627 (February 26, 2021) (File Number S7-25-20) (Custody of Digital Asset Securities by Special Purpose Broker-Dealers).

¹⁷ See Letter from Elizabeth Baird, Deputy Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Kris Dailey, Vice President, Risk Oversight & Operational Regulation, Financial Industry Regulatory Authority (September 25, 2020), available at: <https://www.sec.gov/divisions/marketreg/mr-noaction/2020/finra-ats-role-in-settlement-of-digital-asset-security-trades-09252020.pdf>.

¹⁸ See Letter from Jeffrey S. Mooney, Associate Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Charles G. Cascarilla & Daniel M. Burstein, Paxos Trust Company, LLC (October 28, 2019), available at: <https://www.sec.gov/divisions/marketreg/mr-noaction/2019/paxos-trust-company-102819-17a.pdf>.

¹⁹ See, e.g., Form TA-1/A filed by Tokensoft Transfer Agent LLC (CIK: 0001794142) on January 8, 2021, available at: https://www.sec.gov/Archives/edgar/data/1794142/000179414219000001/xsIFTA1X01/p_rimary_doc.xml.

Facebook, Inc., Berkshire Hathaway Inc., and JP Morgan Chase & Co. The number of verified users at Coinbase, the largest U.S.-based bitcoin exchange, has grown to over 56 million.²⁰ CFTC-regulated bitcoin futures (“Bitcoin Futures”) represented approximately \$28 billion in notional trading volume on the Chicago Mercantile Exchange (the “CME”) in December 2020 compared to \$737 million, \$1.4 billion, and \$3.9 billion in total trading in December 2017, December 2018, and December 2019, respectively. Bitcoin Futures traded over \$1.2 billion per day in December 2020 and represented \$1.6 billion in open interest compared to \$115 million in December 2019.²¹ The CFTC has exercised its regulatory jurisdiction in bringing a number of enforcement actions related to bitcoin and against trading platforms that offer cryptocurrency trading.²² The U.S. Office of the Comptroller of the Currency (the “OCC”) has made clear that federally-chartered banks are able to provide custody services for cryptocurrencies and other digital assets.²³ The OCC recently granted conditional approval of two charter conversions by state-chartered trust companies to national banks, both of which provide cryptocurrency custody

²⁰ See, e.g., “Riding Bitcoin Surge, Coinbase Active Users Grew by 117% in Q1 2021; Revenue Tops \$1.8B” (April 6, 2021), available at: <https://www.coindesk.com/coinbase-q1-earnings-report-monthly-active-users>.

²¹ All statistics and charts included in this proposal with respect to the CME are sourced from <https://www.cmegroup.com/trading/bitcoin-futures.html>. In addition, as further discussed below, the Sponsor believes the CME represents a regulated market of significant size for purposes of addressing the Commission’s concerns about potential manipulation of the bitcoin market.

²² The CFTC’s annual report for Fiscal Year 2020 (which ended on September 30, 2020) noted that the CFTC “continued to aggressively prosecute misconduct involving digital assets that fit within the CEA’s definition of commodity” and “brought a record setting seven cases involving digital assets.” See CFTC FY2020 Division of Enforcement Annual Report, available at: https://www.cftc.gov/media/5321/DOE_FY2020_AnnualReport_120120/download. Additionally, the CFTC filed on October 1, 2020, a civil enforcement action against the owner/operators of the BitMEX trading platform, which was one of the largest bitcoin derivative exchanges. See CFTC Release No. 8270-20 (October 1, 2020), available at: <https://www.cftc.gov/PressRoom/PressReleases/8270-20>.

²³ See OCC News Release 2021-2 (January 4, 2021), available at: <https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-2.html>.

services.²⁴ NYDFS has granted no fewer than twenty-five BitLicenses, including to established public payment companies like PayPal Holdings, Inc. and Square, Inc., and limited purpose trust charters to entities providing cryptocurrency custody services. The U.S. Treasury Financial Crimes Enforcement Network (“FinCEN”) has released extensive guidance regarding the applicability of the Bank Secrecy Act (“BSA”) and implementing regulations to virtual currency businesses,²⁵ and has proposed rules imposing requirements on entities subject to the BSA that are specific to the technological context of virtual currencies.²⁶ In addition, the Treasury’s Office of Foreign Assets Control (“OFAC”) has brought enforcement actions over apparent violations of the sanctions laws in connection with the provision of wallet management services for digital assets.²⁷

In addition to the regulatory developments laid out above, more traditional financial market participants appear to be embracing cryptocurrency: large insurance companies,²⁸

²⁴ See OCC News Release 2021-6 (January 13, 2021), available at: <https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-6.html> and OCC News Release 2021-19 (February 5, 2021), available at: <https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-19.html>.

²⁵ See FinCEN Guidance FIN-2019-G001 (May 9, 2019) (Application of FinCEN’s Regulations to Certain Business Models Involving Convertible Virtual Currencies), available at: <https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf>.

²⁶ See U.S. Department of the Treasury Press Release: “The Financial Crimes Enforcement Network Proposes Rule Aimed at Closing Anti-Money Laundering Regulatory Gaps for Certain Convertible Virtual Currency and Digital Asset Transactions” (December 18, 2020), available at: <https://home.treasury.gov/news/press-releases/sm1216>.

²⁷ See U.S. Department of the Treasury Enforcement Release: “OFAC Enters Into \$98,830 Settlement with BitGo, Inc. for Apparent Violations of Multiple Sanctions Programs Related to Digital Currency Transactions” (December 30, 2020), available at: https://home.treasury.gov/system/files/126/20201230_bitgo.pdf.

²⁸ On December 10, 2020, Massachusetts Mutual Life Insurance Company (MassMutual) announced that it had purchased \$100 million in bitcoin for its general investment account. See MassMutual Press Release “Institutional Bitcoin provider NYDIG announces minority stake purchase by MassMutual” (December 10, 2020), available at: <https://www.massmutual.com/about-us/news-and-press-releases/press-releases/2020/12/institutional-bitcoin-provider-nydig-announces-minority-stake-purchase-by-massmutual>.

investment banks,²⁹ asset managers,³⁰ credit card companies,³¹ university endowments,³² pension funds,³³ and even historically bitcoin skeptical fund managers³⁴ are allocating to bitcoin. The largest over-the-counter bitcoin fund previously filed a Form 10 registration statement, which the Staff of the Commission reviewed and which took effect automatically, and is now a reporting company.³⁵ Established companies like Tesla, Inc.,³⁶ MicroStrategy Incorporated,³⁷

²⁹ See, e.g., “Morgan Stanley to Offer Rich Clients Access to Bitcoin Funds” (March 17, 2021) available at: <https://www.bloomberg.com/news/articles/2021-03-17/morgan-stanley-to-offer-rich-clients-access-to-bitcoin-funds>.

³⁰ See, e.g., “BlackRock’s Rick Rieder says the world’s largest asset manager has ‘started to dabble’ in bitcoin” (February 17, 2021), available at: <https://www.cnbc.com/2021/02/17/blackrock-has-started-to-dabble-in-bitcoin-says-rick-rieder.html> and “Guggenheim’s Scott MinerD Says Bitcoin Should Be Worth \$400,000” (December 16, 2020), available at: <https://www.bloomberg.com/news/articles/2020-12-16/guggenheim-s-scott-minerd-says-bitcoin-should-be-worth-400-000>.

³¹ See, e.g., “Visa Moves to Allow Payment Settlements Using Cryptocurrency” (March 29, 2021), available at: <https://www.reuters.com/business/autos-transportation/exclusive-visa-moves-allow-payment-settlements-using-cryptocurrency-2021-03-29/>.

³² See, e.g., “Harvard and Yale Endowments Among Those Reportedly Buying Crypto” (January 25, 2021), available at: <https://www.bloomberg.com/news/articles/2021-01-26/harvard-and-yale-endowments-among-those-reportedly-buying-crypto>.

³³ See, e.g., “Virginia Police Department Reveals Why its Pension Fund is Betting on Bitcoin” (February 14, 2019), available at: <https://finance.yahoo.com/news/virginia-police-department-reveals-why-194558505.html>.

³⁴ See, e.g., “Bridgewater: Our Thoughts on Bitcoin” (January 28, 2021) available at: <https://www.bridgewater.com/research-and-insights/our-thoughts-on-bitcoin> and “Paul Tudor Jones says he likes bitcoin even more now, rally still in the ‘first inning’” (October 22, 2020), available at: <https://www.cnbc.com/2020/10/22/-paul-tudor-jones-says-he-likes-bitcoin-even-more-now-rally-still-in-the-first-inning.html>.

³⁵ See Letter from Division of Corporation Finance, Office of Real Estate & Construction to Barry E. Silbert, Chief Executive Officer, Grayscale Bitcoin Trust (January 31, 2020), available at: <https://www.sec.gov/Archives/edgar/data/1588489/000000000020000953/filename1.pdf>.

³⁶ See Form 10-K submitted by Tesla, Inc. for the fiscal year ended December 31, 2020 at 23: https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/000156459021004599/tsla-10k_20201231.htm.

³⁷ See Form 10-Q submitted by MicroStrategy Incorporated for the quarterly period ended September 30, 2020 at 8:

and Square, Inc.,³⁸ among others, have recently announced substantial investments in bitcoin in amounts as large as \$1.5 billion (Tesla) and \$425 million (MicroStrategy).

Despite these developments, access for U.S. retail investors to gain exposure to bitcoin via a transparent and regulated exchange-traded vehicle remains limited. As investors and advisors increasingly utilize exchange-traded product (“ETP”) to manage diversified portfolios (including equities, fixed income securities, commodities, and currencies) quickly, easily, relatively inexpensively, tax-efficiently, and without having to hold directly any of the underlying assets, options for bitcoin exposure for U.S. investors remain limited to: (i) investing in over-the-counter bitcoin funds (“OTC Bitcoin Funds”) that are subject to high premium/discount volatility (and high management fees) to the advantage of more sophisticated investors that are able to purchase shares at net asset value (“NAV”) directly with the issuing trust; (ii) facing the technical risk, complexity, and generally high fees associated with buying and storing bitcoin directly; or (iii) purchasing shares of operating companies that they believe will provide proxy exposure to bitcoin with limited disclosure about the associated risks. Meanwhile, investors in many other countries, including Canada, are able to use more traditional exchange listed and traded products to gain exposure to bitcoin, disadvantaging U.S. investors and leaving them with riskier, more expensive, and less regulated means of getting bitcoin exposure.³⁹

https://www.sec.gov/ix?doc=/Archives/edgar/data/1050446/000156459020047995/mstr-10q_20200930.htm.

³⁸ See Form 10-Q submitted by Square, Inc. for the quarterly period ended September 30, 2020 at 51:

<https://www.sec.gov/ix?doc=/Archives/edgar/data/1512673/000151267320000012/sq-20200930.htm>.

³⁹ Securities regulators in a number of other countries have either approved or otherwise allowed the listing and trading of bitcoin ETPs. Specifically, these funds (with their respective approximate AUMs as of April 14, 2021) include the Purpose Bitcoin ETF (\$993,000,000), VanEck Vectors Bitcoin ETN (\$209,000,000), WisdomTree Bitcoin ETP (\$407,000,000), Bitcoin Tracker One (\$1,380,000,000), BTCetc bitcoin ETP (\$1,410,000,000), 21Shares Bitcoin ETP (\$362,000,000), 21Shares Bitcoin Suisse ETP (\$30,000,000), CoinShares Physical Bitcoin ETP (\$396,000,000).

For example, the Purpose Bitcoin ETF, a retail physical bitcoin ETP recently launched in Canada, reportedly reached \$421.8 million in assets under management (“AUM”) in two days, and has achieved \$993 million in assets as of April 14, 2021, demonstrating the demand for a North American market listed bitcoin ETP. The Sponsor believes that the demand for the Purpose Bitcoin ETF is driven primarily by investors’ desire to have a regulated and accessible means of exposure to bitcoin. The Purpose Bitcoin ETF also offers a class of units that is U.S. dollar denominated, which could appeal to U.S. investors. Without an approved bitcoin ETP in the U.S. as a viable alternative, the Sponsor believes U.S. investors will seek to purchase these shares in order to get access to bitcoin exposure, leaving them without the protections of U.S. securities laws. Given the separate regulatory regime and the potential difficulties associated with any international litigation, such an arrangement would create more risk exposure for U.S. investors than they would otherwise have with a U.S. exchange listed ETP. With the addition of more bitcoin ETPs in non-U.S. jurisdictions expected to grow, the Sponsor anticipates that such risks will only continue to grow.

In addition, several funds registered under the Investment Company Act of 1940 (the “1940 Act”) have effective registration statements that contemplate bitcoin exposure through a variety of means, including through investments in bitcoin futures contracts⁴⁰ and through OTC Bitcoin Funds.⁴¹ As of the date of this filing, it is anticipated that other 1940 Act funds will soon begin to pursue bitcoin through other means, including through put options on bitcoin futures contracts and investments in privately offered pooled investment vehicles that invest in bitcoin.⁴²

⁴⁰ See, e.g., Stone Ridge Trust VI (File No. 333-234055); BlackRock Global Allocation Fund, Inc. (File No. 33-22462); and BlackRock Funds V (File No. 333-224371).

⁴¹ See, e.g., Amplify Transformational Data Sharing ETF (File No. 333-207937); and ARK Innovation ETF (File No. 333-191019).

⁴² See Stone Ridge Trust, Post-Effective Amendment No. 74 to Registration Statement on Form N-1A (File No. 333-184477), available at: https://www.sec.gov/Archives/edgar/data/1559992/000119312521072856/d129263d485a_pos.htm.

In previous statements, the Staff of the Commission has acknowledged how such funds can satisfy their concerns regarding custody, valuation, and manipulation.⁴³ The funds that have already invested in bitcoin instruments have no reported issues regarding custody, valuation, or manipulation of the instruments held by these funds. While these funds do offer investors some means of exposure to bitcoin, the current offerings fall short of giving investors an accessible, regulated product that provides concentrated exposure to bitcoin.

OTC Bitcoin Funds and Investor Protection

Recently, U.S. investor exposure to bitcoin through OTC Bitcoin Funds has grown into the tens of billions of dollars. With that growth, so too has grown the potential risk to U.S. investors. As described below, premium and discount volatility, high fees, insufficient disclosures, and technical hurdles are exposing U.S. investors to risks that could potentially be eliminated through access to a bitcoin ETP. The Sponsor understands the Commission's previous focus on potential manipulation of a bitcoin ETP in prior disapproval orders, but believes that such concerns have been sufficiently mitigated and may be outweighed by the growing and quantifiable investor protection concerns related to OTC Bitcoin Funds. Accordingly, the Sponsor believes that this proposal (and other comparable proposals) represents an opportunity for U.S. investors to gain exposure to bitcoin in a regulated and transparent exchange-traded vehicle that limits risks by: (i) reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks associated with investing in operating companies that are imperfect proxies for bitcoin exposure; and (iv) providing an alternative to custodial spot bitcoin.

⁴³ See Dalia Blass, "Keynote Address—2019 ICI Securities Law Developments Conference" (December 3, 2019), available at: <https://www.sec.gov/news/speech/bllass-keynote-address-2019-ici-securities-law-developments-conference>.

OTC Bitcoin Funds and Premium/Discount Volatility

OTC Bitcoin Funds are generally designed to provide exposure to bitcoin in a manner similar to the Shares. However, unlike the Shares, OTC Bitcoin Funds are unable to freely offer creation and redemption in a way that incentivizes market participants to keep their shares trading in line with their NAV⁴⁴ and, as a result, shares of OTC Bitcoin Funds frequently trade at a price that is out of line with the value of their assets held. Historically, OTC Bitcoin Funds have traded at a significant premium to NAV.⁴⁵

Trading at a premium or a discount is not unique to OTC Bitcoin Funds and is not in itself problematic, but the size of such premiums/discounts and volatility thereof highlight the key differences in operations and market structure of OTC Bitcoin Funds as compared to ETPs. Combined with the significant increase in AUM for OTC Bitcoin Funds over the past year, the size and volatility of premiums and discounts for OTC Bitcoin Funds have given rise to significant and quantifiable investor protection issues, as further described below. In fact, the largest OTC Bitcoin Fund has grown to \$35.0 billion in AUM as of February 19, 2021⁴⁶ and has

⁴⁴ Because OTC Bitcoin Funds are not listed on an exchange, they are also not subject to the same transparency and regulatory oversight by a listing exchange as the Shares would be. In the case of the Trust, the existence of a surveillance-sharing agreement between the Exchange and the Bitcoin Futures market results in increased investor protections as compared to OTC Bitcoin Funds.

⁴⁵ The inability to trade in line with NAV may at some point result in OTC Bitcoin Funds trading at a discount to their NAV, which has occurred more recently with respect to one prominent OTC Bitcoin Fund. While that has not historically been the case, and it is not clear whether such discounts will continue, such a prolonged, significant discount scenario would give rise to nearly identical potential issues related to trading at a premium.

⁴⁶ Compare to an AUM of approximately \$2.6 billion on February 26, 2020, the date on which the Commission issued the most recent disapproval order for a bitcoin ETP. See Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, to Amend NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) and to List and Trade Shares of the United States Bitcoin and Treasury Investment Trust Under NYSE Arca Rule 8.201-E, Securities Exchange Act Release No. 88284 (February 26, 2020), 85 FR 12595 (March 3, 2020) (SR-NYSEArca-2019-39) (the “Wilshire Phoenix Order”). While the price of one bitcoin has increased approximately 400% in the intervening period, the total AUM has increased by approximately 1240%, indicating that the increase in AUM is attributable to more than just price appreciation in bitcoin.

historically traded at a premium of between roughly five and forty percent, though it has seen premiums at times above one hundred percent.⁴⁷ Recently, however, it has traded at a discount. As of March 24, 2021, the discount was approximately 14%,⁴⁸ representing around \$4.9 billion less in market value than the bitcoin actually held by the fund. If premium/discount numbers move back to the middle of its historical range to a 20% premium (which historically could occur at any time and overnight), it would represent a swing of approximately \$11.9 billion in value unrelated to the value of bitcoin held by the fund and if the premium returns to the upper end of its typical range, that number increases to \$18.9 billion. These numbers are only associated with a single OTC Bitcoin Fund – as more and more OTC Bitcoin Funds come to market and more investor assets flood into them to get access to bitcoin exposure, the potential dollars at risk will only increase.

The risks associated with volatile premiums/discounts for OTC Bitcoin Funds raise significant investor protection issues in several ways. First, investors may be buying shares of a fund for a price that is not reflective of the per share value of the fund's underlying assets. Even operating within the normal premium range, it is possible for an investor to buy shares of an OTC Bitcoin Fund only to have those shares quickly lose 10% or more in dollar value without any movement of the price of bitcoin. That is to say – the price of bitcoin could have stayed exactly the same from market close on one day to market open the next, yet the value of the shares held by the investor decreased only because of the fluctuation of the premium/discount. As more investment vehicles, including mutual funds and ETFs, seek to gain exposure to bitcoin, the easiest option for a buy and hold strategy is often an OTC Bitcoin Fund, meaning that even

⁴⁷ See “Traders Piling Into Overvalued Crypto Funds Risk a Painful Exit” (February 4, 2021), available at: <https://www.bloomberg.com/news/articles/2021-02-04/bitcoin-one-big-risk-when-investing-in-crypto-funds>.

⁴⁸ This discount is compared to another OTC Bitcoin Product which had a premium of over 60% on the same day, with a premium of over 200% a few days earlier.

investors that do not directly buy OTC Bitcoin Funds can be disadvantaged by extreme premiums (or discounts) and premium volatility.

The second issue is related to the first and explains how the premium in OTC Bitcoin Funds essentially creates a transfer of value from retail investors to more sophisticated investors. Generally speaking, only accredited investors are able to purchase shares from the issuing fund, which means that they are able to purchase shares directly with the fund at NAV (in exchange for either cash or bitcoin) without having to pay the premium or sell into the discount. While there are often minimum holding periods for shares required by law, an investor that is allowed to purchase directly from the fund is able to hedge their bitcoin exposure as needed to satisfy the holding requirements and collect on the premium or discount opportunity.

As noted above, the existence of a premium or discount and the premium/discount collection opportunity is not unique to OTC Bitcoin Funds and does not in itself warrant the approval of an exchange traded product.⁴⁹ What makes this situation unique is that such significant and persistent premiums and discounts can exist in a product with over \$35 billion in assets under management,⁵⁰ that billions of retail investor dollars are constantly under threat of premium/discount volatility,⁵¹ and that premium/discount volatility is generally captured by more sophisticated investors on a riskless basis. While the Sponsor appreciates the Commission's focus on potential manipulation of a bitcoin ETP in prior disapproval orders and

⁴⁹ For example, similar premiums/discounts and premium/discount volatility exist for other non-bitcoin cryptocurrency related over-the-counter funds, but the size and investor interest in those funds does not give rise to the same investor protection concerns that exist for OTC Bitcoin Funds.

⁵⁰ At \$35 billion in AUM, the largest OTC Bitcoin Fund would be among the top 40 largest out of roughly 2,400 U.S. listed ETPs.

⁵¹ In two recent incidents, the premium dropped from 28.28% to 12.29% from the close on 3/19/20 to the close on 3/20/20 and from 38.40% to 21.05% from the close on 5/13/19 to the close on 5/14/19. Similarly, over the period of 12/21/20 to 1/21/20, the premium went from 40.18% to 2.79%. While the price of bitcoin appreciated significantly during this period and NAV per share increased by 41.25%, the price per share increased by only 3.58%.

believes those concerns are adequately addressed in this filing, the Sponsor submits that current circumstances warrant that the Commission also consider the direct, quantifiable investor protection issue in determining whether to approve this proposal, particularly when the Trust, as a bitcoin ETP, is designed to reduce the likelihood of significant and prolonged premiums and discounts with its open-ended nature as well as the ability of market participants (i.e., market makers and authorized participants) to create and redeem on a daily basis. Furthermore, the risk of manipulation of a bitcoin ETP is also present in and potentially magnified by OTC Bitcoin Funds.

Spot and Proxy Exposure

Exposure to bitcoin through an ETP also presents certain advantages for retail investors compared to buying spot bitcoin directly. The most notable advantage is the use of the Bitcoin Custodian to custody the Trust's bitcoin assets. The Sponsor has carefully selected the Bitcoin Custodian, a third-party custodian that carries insurance covering both hot and cold storage and is chartered as a limited purpose trust company under the New York Banking Law,⁵² due to its manner of holding the Trust's bitcoin. Among other things, the Bitcoin Custodian will use "cold" (offline) storage to hold private keys and meet a certain degree of cybersecurity measures and operational best practices.⁵³ By contrast, an individual retail investor holding bitcoin

⁵² New York state trust companies are subject to rigorous oversight similar to other types of entities, such as nationally chartered banking entities, that hold customer assets. Like national banks, they must obtain specific approval of their primary regulator for the exercise of their fiduciary powers. Moreover, limited purpose trust companies engaged in the custody of digital assets are subject to even more stringent requirements than national banks which, following initial approval of trust powers, generally can exercise those powers broadly without further approval of the OCC. In contrast, NYDFS requires in their approval orders that limited purpose trust companies obtain separate approval for all material changes in business.

⁵³ In addition to enforcing specific regulatory reporting requirements, NYDFS consistently exercises its broad authority to examine trust companies for compliance with law, risk management and general safety and soundness considerations, including to assess items such as the internal controls, client records and segregation of assets topics that are typically important to the ability of an entity to act as a qualified custodian. In this regard, the Bitcoin Custodian is subject to annual examination, with specific attention to its internal controls and risk management systems.

through a cryptocurrency exchange lacks these protections. Typically, retail exchanges hold most, if not all, retail investors' bitcoin in "hot" (Internet-connected) storage and do not make any commitments to indemnify retail investors or to observe any particular cybersecurity standard. Meanwhile, a retail investor holding spot bitcoin directly in a self-hosted wallet may suffer from inexperience in private key management (e.g., insufficient password protection, lost key, etc.), which could cause them to lose some or all of their bitcoin holdings. In the Bitcoin Custodian, the Trust has engaged a regulated and licensed entity highly experienced in bitcoin custody, with dedicated, trained employees and procedures to manage the private keys to the Trust's bitcoin, and which is accountable for failures.⁵⁴ In addition, retail investors will be able to hold the Shares in traditional brokerage accounts which provide SIPC protection if a brokerage firm fails. Thus, with respect to custody of the Trust's bitcoin assets, the Trust presents advantages from an investment protection standpoint for retail investors compared to owning spot bitcoin directly.

Finally, as described in the Background section above, a number of operating companies engaged in unrelated businesses – such as Tesla (a car manufacturer) and MicroStrategy (an enterprise software company) – have recently announced investments as large as \$1.5 billion in bitcoin.⁵⁵ Without access to bitcoin exchange-traded products, retail investors seeking investment exposure to bitcoin may end up purchasing shares in these companies in order to gain the exposure to bitcoin that they seek.⁵⁶ In fact, mainstream financial news networks have

⁵⁴ The Sponsor notes that the Sub-Advisor of the Trust advises a 1940 Act-registered fund that invests substantially in a private bitcoin fund to which NYDIG Trust Company LLC serves as bitcoin custodian. Pursuant to that investment, the Sub-Advisor has previously conducted substantial due diligence on the capabilities of the Bitcoin Custodian. See SkyBridge Multi-Adviser Hedge Fund Portfolios LLC (File No. 333-232584).

⁵⁵ See notes 35-37 [sic], supra. MicroStrategy recently completed a \$900 million convertible note offering for the purpose of acquiring bitcoin. See https://www.microstrategy.com/en/investor-relations/press/microstrategy-announces-pricing-of-offering-of-convertible-senior-notes_02-17-2021.

⁵⁶ In August 2017, the Commission's Office of Investor Education and Advocacy warned investors about situations where companies were publicly announcing events relating to digital coins or tokens in an effort to affect the price of the company's publicly traded

written a number of articles providing investors with guidance for obtaining bitcoin exposure through publicly traded companies (such as MicroStrategy, Tesla, and bitcoin mining companies, among others) instead of dealing with the complications associated with buying spot bitcoin in the absence of a bitcoin ETP.⁵⁷ Such operating companies, however, are imperfect bitcoin proxies and provide investors with partial bitcoin exposure paired with a host of additional risks associated with whichever operating company they decide to purchase. Additionally, the disclosures provided by the aforementioned operating companies with respect to risks relating to their bitcoin holdings are generally substantially smaller than the registration statement of a bitcoin ETP, including the Registration Statement, typically amounting to a few sentences of narrative description and a handful of risk factors.⁵⁸ In other words, investors seeking bitcoin exposure through publicly traded companies are gaining only partial exposure to bitcoin, without the full benefit of the risk disclosures and associated investor protections that come from the securities registration process.

Bitcoin Futures

CME began offering trading in Bitcoin Futures in 2017. Each contract represents five bitcoin and is based on the CME CF Bitcoin Reference Rate (the “CME CF BRR”).⁵⁹ The

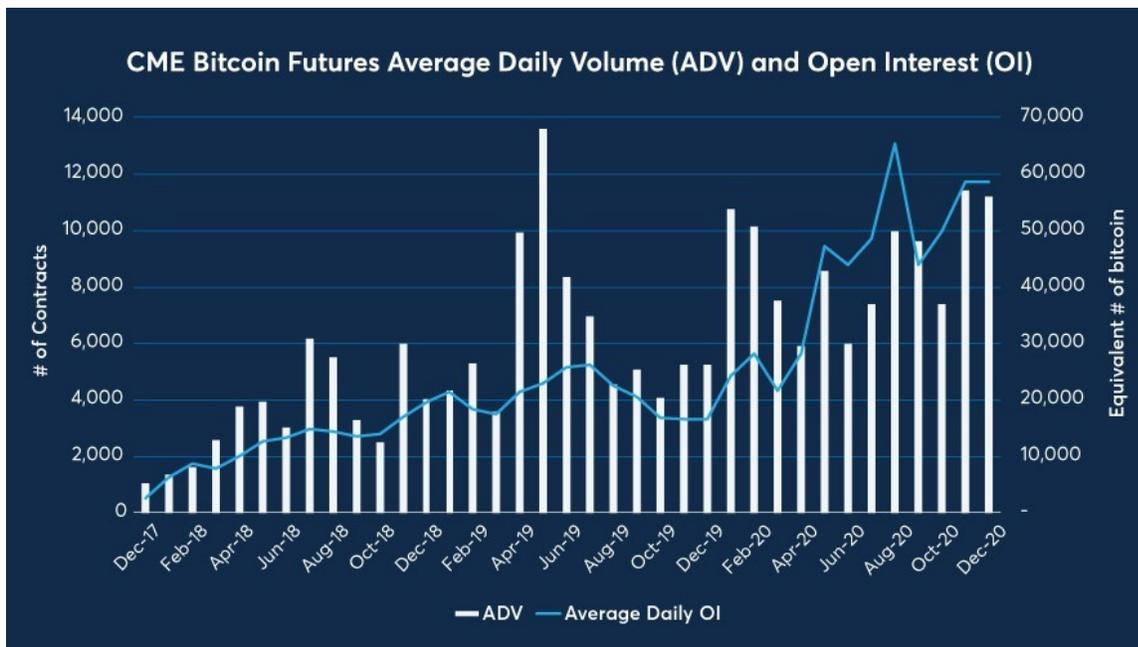
common stock. See
https://www.sec.gov/oiea/investor-alerts-and-bulletins/ia_ico-relatedclaims

⁵⁷ See, e.g., “7 public companies with exposure to bitcoin” (February 8, 2021) available at: <https://finance.yahoo.com/news/7-public-companies-with-exposure-to-bitcoin-154201525.html>; and “Want to get in the crypto trade without holding bitcoin yourself? Here are some investing ideas” (February 19, 2021) available at: <https://www.cnbc.com/2021/02/19/ways-to-invest-in-bitcoin-without-holding-the-cryptocurrency-yourself-.html>.

⁵⁸ See, e.g., Tesla 10-K for the year ended December 31, 2020, which mentions bitcoin just nine times:
https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/000156459021004599/tsla-10k_20201231.htm.

⁵⁹ According to CME, the CME CF Bitcoin Reference Rate aggregates the trade flow of major bitcoin spot exchanges during a specific calculation window into a once-a-day reference rate of the U.S. dollar price of bitcoin. Calculation rules are geared toward maximum transparency and real-time replicability in underlying spot markets, including Bitstamp, Coinbase, Gemini, itBit, and Kraken. For additional information, refer to

contracts trade and settle like other cash-settled commodity futures contracts. Nearly every measurable metric related to Bitcoin Futures has trended consistently up since launch and/or accelerated upward in the past year. For example, there was approximately \$28 billion in trading in Bitcoin Futures in December 2020 compared to \$737 million, \$1.4 billion, and \$3.9 billion in total trading in December 2017, December 2018, and December 2019, respectively. Bitcoin Futures traded over \$1.2 billion per day on the CME in December 2020 and represented \$1.6 billion in open interest compared to \$115 million in December 2019. This general upward trend in trading volume and open interest is captured in the following chart.



Similarly, the number of large open interest holders⁶⁰ has continued to increase even as the price of bitcoin has risen, as have the number of unique accounts trading Bitcoin Futures.

<https://www.cmegroup.com/trading/cryptocurrency-indices/cf-bitcoin-reference-rate.html?redirect=/trading/cf-bitcoin-reference-rate.html>.

⁶⁰ A large open interest holder in Bitcoin Futures is an entity that holds at least 25 contracts, which is the equivalent of 125 bitcoin. At a price of approximately \$30,000 per bitcoin on 12/31/20, more than 80 firms had outstanding positions of greater than \$3.8 million in Bitcoin Futures.

Operation of the Trust

According to the Registration Statement, the Trust will hold only bitcoins and is expected from time to time to issue Creation Units (as defined below) in exchange for deposits of bitcoins and to distribute bitcoins in connection with redemptions of Creation Units. The Shares represent units of fractional undivided beneficial interest in, and ownership of, the Trust.

The activities of the Trust will be limited to (1) issuing Creation Units in exchange for bitcoins deposited by the Authorized Participants (as defined below) with the Bitcoin Custodian as consideration, (2) transferring actual bitcoins as necessary to cover the Advisor's investment management fee and selling bitcoins as necessary to pay Trust expenses, (3) transferring actual bitcoins in exchange for Creation Units surrendered for redemption by the Authorized Participants, (4) causing the Advisor to sell bitcoins on the termination of the Trust, and (5) engaging in all administrative and custodial procedures necessary to accomplish such activities in accordance with the provisions of the Trust Agreement.

The Trust will not be actively managed. It will not engage in any activities designed to obtain a profit from, or to ameliorate losses caused by, changes in the market prices of bitcoins.

Investment Objective

According to the Registration Statement, the investment objective of the Trust is for the Shares to reflect the performance of the value of bitcoin less the Trust's liabilities and expenses. The Trust will not seek to reflect the performance of any benchmark or index. In order to pursue its investment objective, the Trust will seek to purchase and sell such number of bitcoin so that the total value of the bitcoin held by the Trust is as close to 100% of the net assets of the Trust, as is reasonably practicable to achieve.

The Bitcoin Industry and Market

Bitcoin

Bitcoin is the digital asset that is native to, and created and transmitted through the operations of, the peer-to-peer Bitcoin Network, a decentralized network of computers that

operates on cryptographic protocols. No single entity owns or operates the Bitcoin Network, the infrastructure of which is collectively maintained by a decentralized user base. The Bitcoin Network allows people to exchange tokens of value, called bitcoin, which are recorded on a public transaction ledger known as the Blockchain. Bitcoin can be used to pay for goods and services, or it can be converted to fiat currencies, such as the U.S. dollar, at rates determined on bitcoin trading platforms or in individual end-user-to-end-user transactions under a barter system. Although nascent in use, bitcoin may be used as a medium of exchange, unit of account or store of value.

The Bitcoin Network is decentralized and does not require governmental authorities or financial institution intermediaries to create, transmit, or determine the value of bitcoin. In addition, no party may easily censor transactions on the Bitcoin Network. As a result, the Bitcoin Network is often referred to as decentralized and censorship resistant.

The value of bitcoin is determined by the supply of and demand for bitcoin. New bitcoin are created and rewarded to the parties providing the Bitcoin Network's infrastructure ("miners") in exchange for their expending computational power to verify transactions and add them to the Blockchain. The Blockchain is effectively a decentralized database that includes all blocks that have been solved by miners, and it is updated to include new blocks as they are solved. Each bitcoin transaction is broadcast to the Bitcoin Network and, when included in a block, recorded in the Blockchain. As each new block records outstanding bitcoin transactions, and outstanding transactions are settled and validated through such recording, the Blockchain represents a complete, transparent, and unbroken history of all transactions of the Bitcoin Network.

Bitcoin Network

The first step in directly using the Bitcoin Network for transactions is to download specialized software referred to as a "bitcoin wallet." A user's bitcoin wallet can run on a computer or smartphone and can be used both to send and to receive bitcoin. Within a bitcoin wallet, a user can generate one or more unique "bitcoin addresses," which are conceptually

similar to bank account numbers. After establishing a bitcoin address, a user can send or receive bitcoin from his or her bitcoin address to another user's address. Sending bitcoin from one bitcoin address to another is similar in concept to sending a bank wire from one person's bank account to another person's bank account, provided, however, that such transactions are not managed by an intermediary and erroneous transactions generally may not be reversed or remedied once sent.

The amount of bitcoin associated with each bitcoin address, as well as each bitcoin transaction to or from such address, is transparently reflected in the Blockchain and can be viewed by websites that operate as "blockchain explorers." Copies of the Blockchain exist on thousands of computers on the Bitcoin Network. A user's bitcoin wallet will either contain a copy of the blockchain or be able to connect with another computer that holds a copy of the blockchain. The innovative design of the Bitcoin Network protocol allows each Bitcoin user to trust that their copy of the Blockchain will generally be updated consistent with each other user's copy.

When a Bitcoin user wishes to transfer bitcoin to another user, the sender must first have the recipient's Bitcoin address. The sender then uses his or her Bitcoin wallet software to create a proposed transaction to be added to the Blockchain. The proposal would reduce the amount of bitcoin allocated to the sender's address and increase the amount allocated recipient's address, in each case by the amount of bitcoin desired to be transferred. The proposal is completely digital in nature, similar to a file on a computer, and it can be sent to other computers participating in the Bitcoin Network; however, the use of "unspent transaction outputs" that are verified cryptographically prevents the ability to duplicate or counterfeit bitcoin.

Bitcoin Transactions

A bitcoin transaction contains the sender's bitcoin address, the recipient's bitcoin address, the amount of bitcoin to be sent, a transaction fee, and the sender's digital signature. Bitcoin transactions are secured by cryptography known as public-private key cryptography,

represented by the bitcoin addresses and digital signature in a transaction's data file. Each Bitcoin Network address, or wallet, is associated with a unique "public key" and "private key" pair, both of which are lengthy alphanumeric codes, derived together and possessing a unique relationship.

The public key is visible to the public and analogous to the Bitcoin Network address. The private key is a secret and may be used to digitally sign a transaction in a way that proves the transaction has been signed by the holder of the public-private key pair, without having to reveal the private key. A user's private key must be kept in accordance with appropriate controls and procedures to ensure it is used only for legitimate and intended transactions. If an unauthorized third person learns of a user's private key, that third person could forge the user's digital signature and send the user's bitcoin to any arbitrary bitcoin address, thereby stealing the user's bitcoin. Similarly, if a user loses his private key and cannot restore such access (e.g., through a backup), the user may permanently lose access to the bitcoin contained in the associated address.

The Bitcoin Network incorporates a system to prevent double-spending of a single bitcoin. To prevent the possibility of double-spending a single bitcoin, each validated transaction is recorded, time stamped and publicly displayed in a "block" in the Blockchain, which is publicly available. Thus, the Bitcoin Network provides confirmation against double-spending by memorializing every transaction in the Blockchain, which is publicly accessible and downloaded in part or in whole by all users of the Bitcoin Network software program. Any user may validate, through their Bitcoin wallet or a blockchain explorer, that each transaction in the Bitcoin Network was authorized by the holder of the applicable private key, and Bitcoin Network mining software consistent with reference software requirements typically validates each such transaction before including it in the Blockchain. This cryptographic security ensures that bitcoin transactions may not generally be counterfeited, although it does not

protect against the “real world” theft or coercion of use of a Bitcoin user’s private key, including the hacking of a Bitcoin user’s computer or a service provider’s systems.

A Bitcoin transaction between two parties is settled when recorded in a block added to the Blockchain. Validation of a block is achieved by confirming the cryptographic hash value included in the block’s solution and by the block’s addition to the longest confirmed Blockchain on the Bitcoin Network. For a transaction, inclusion in a block on the Blockchain constitutes a “confirmation” of a Bitcoin transaction. As each block contains a reference to the immediately preceding block, additional blocks appended to and incorporated into the Blockchain constitute additional confirmations of the transactions in such prior blocks, and a transaction included in a block for the first time is confirmed once against double-spending. The layered confirmation process makes changing historical blocks (and reversing transactions) exponentially more difficult the further back one goes in the Blockchain.

To undo past transactions in a block recorded on the Blockchain, a malicious actor would have to exert tremendous computer power in re-solving each block in the Blockchain starting with and after the target block and broadcasting all such blocks to the Bitcoin Network. The Bitcoin Network is generally programmed to consider the longest Blockchain containing solved and valid blocks to be the most accurate Blockchain. In order to undo multiple layers of confirmation and alter the Blockchain, a malicious actor must re-solve all of the old blocks sought to be regenerated and be able to continuously add new blocks to the Blockchain at a speed that would have to outpace that of all of the other miners on the Bitcoin Network, who would be continuously solving for and adding new blocks to the Blockchain.

Custody of the Trust’s Bitcoins

According to the Registration Statement, all bitcoins exist and are stored on the Blockchain, the decentralized transaction ledger of the Bitcoin Network. The Blockchain records most transactions (including mining of new bitcoins) for all bitcoins in existence, and in doing so verifies the location of each bitcoin (or fraction thereof) in a particular digital wallet.

The Trust's Bitcoin Account⁶¹ will be maintained by the Bitcoin Custodian, and cold storage mechanisms are used for the Vault Account by the Bitcoin Custodian. Each digital wallet of the Trust may be accessed using its corresponding private key. The Bitcoin Custodian's custodial operations will maintain custody of the private keys that have been deposited in cold storage at its various vaulting premises. The locations of the vaulting premises may change regularly and will be kept confidential by the Bitcoin Custodian for security purposes.

The term "cold storage" refers to a safeguarding method by which the private keys corresponding to bitcoins stored on a digital wallet are removed from any computers actively connected to the internet. Cold storage of private keys may involve keeping such wallet on a non-networked computer or electronic device or storing the public key and private keys relating to the digital wallet on a storage device (for example, a USB thumb drive) or printed medium (for example, papyrus or paper) and deleting the digital wallet from all computers. A digital wallet may receive deposits of bitcoins but may not send bitcoins without use of the bitcoins' corresponding private keys. In order to send bitcoin from a digital wallet in which the private keys are kept in cold storage, either the private keys must be retrieved from cold storage and entered them into a bitcoin software program to sign the transaction, or the unsigned transaction must be sent to the "cold" server in which the private keys are held for signature by the private keys. At that point, the user of the digital wallet can transfer its bitcoins.

The Trust's Bitcoin Custodian will custody of all of the Trust's bitcoin. Custody of bitcoin typically involves the generation, storage, and utilization of private keys. These private keys are used to effect transfer transactions, i.e., transfers of bitcoin from an address associated with the private key to another address. While private keys must be used to send bitcoin, private

⁶¹ According to the Registration Statement, the "Bitcoin Account" is defined as the Vault Account and Wallet Account and any associated subaccounts of either. The "Vault Account" is defined as one or more cold storage accounts in the name of the Advisor and of the Trust held for the safekeeping of the Trust's bitcoins. The "Wallet Account" is defined as one or more wallets in the name of the Advisor and of the Trust held for deposit and withdrawal of bitcoins.

keys do not need to be used or shared in order to receive a bitcoin transfer; every private key has an associated public key, and an address derived from that public key that can be freely shared, to which counterparties can transfer bitcoin. The Bitcoin Network has a public ledger, meaning that anybody with access to the address can see the balance of digital assets in that address.

The Bitcoin Custodian will carefully consider the design of the physical, operational, and cryptographic systems for secure storage of the Trust's private keys in an effort to lower the risk of loss or theft.

The Bitcoin Custodian will use a multi-factor security system under which actions by multiple individuals working together are required to access the private keys necessary to transfer such digital assets and ensure the Trust's exclusive ownership. The multifactor security system generates private keys using a FIPS 140-2-certified random number generator to ensure the keys' uniqueness.

Before these keys are used, the Bitcoin Custodian will validate that the public addresses associated with these keys have no associated digital asset balances. The software used for key generation and verification will be tested by the Bitcoin Custodian and reviewed by third-party advisors from the security community with specific expertise in computer security and applied cryptography. The private keys will be stored in an encrypted manner using a FIPS 140-2-certified security module held in redundant secure, geographically dispersed locations with high levels of physical security, including robust physical barriers to entry, electronic surveillance, and continuously roving patrols. The operational procedures of these facilities and of the Bitcoin Custodian will be reviewed by third-party advisors with specific expertise in physical security. The devices that store the keys will never be connected to the internet or any other public or private distributed network (colloquially known as "cold storage"). Only specific individuals will be authorized to participate in the custody process, and no individual acting alone will be able to access or use any of the private keys. In addition, no combination of the executive officers of the Advisor, the Sub-Advisor, or the investment professionals managing the

Trust, acting alone or together, will be able to access or use any of the private keys that hold the Trust's bitcoin.

The Trust may engage third-party custodians or vendors besides the Bitcoin Custodian to provide custody and security services for all or a portion of its bitcoin and/or cash, and the Advisor will pay the custody fees and any other expenses associated with any such third-party custodian or vendor.

The Bitcoin Custodian will be authorized to accept, on behalf of the Trust, deposits of bitcoins from Authorized Participant Self-Administered Accounts (as defined below) held with the Bitcoin Custodian and transfer such bitcoins into the Bitcoin Account. Deposits of bitcoins will be immediately available to the Trust to the extent such bitcoins have not already been transferred to the Vault Account. Generally, bitcoins transferred to the Bitcoin Account will be directly deposited into digital wallets for which the keys are already in cold storage.

The process of accessing and withdrawing bitcoins from the Trust for a redemption of a Creation Unit will follow the same general procedure as depositing bitcoins with the Trust for a creation of a Creation Unit, only in reverse.

The Trust generally will not hold cash or cash equivalents. However, the Trust may hold cash and cash equivalents on a temporary basis to pay extraordinary expenses. The Trust has entered into a cash custody agreement with the Bank of New York Mellon under which the Bank of New York Mellon acts as custodian of the Trust's cash and cash equivalents.

Calculation of the Trust's NAV

According to the Registration Statement, the net asset value ("NAV") of the Trust will be determined in accordance with Generally Accepted Accounting Principles ("GAAP") as the total value of bitcoin held by the Trust, plus any cash or other assets, less any liabilities including accrued but unpaid expenses. The NAV per Share will be determined by dividing the NAV of the Trust by the number of Shares outstanding.

The NAV of the Trust will be determined as of 4:00 p.m. Eastern time (“E.T.”) on each Business Day.⁶² The Trust’s daily activities will generally not be reflected in the NAV determined for the Business Day on which the transactions are effected (the trade date), but rather on the following Business Day.

According to the Registration Statement, under normal circumstances, the Trust will use the CF Bitcoin US Settlement Price (the “Reference Rate”) to calculate the Trust’s NAV. The Reference Rate is not affiliated with the Sponsor and was created and is administered by CF Benchmarks Ltd. (the “BRR Administrator”), an independent entity, to facilitate financial products based on bitcoin. The Reference Rate is designed based on the IOSCO Principals for Financial Benchmarks and serves as a once-a-day benchmark rate of the U.S. dollar price of bitcoin (USD/BTC), calculated as of 4:00 p.m. E.T. The Reference Rate is based on materially the same methodology (except calculation time) as the CME CF BRR, which was first introduced on November 14, 2016 and is the rate on which bitcoin futures contracts are cash-settled in U.S. dollars at the CME. The Reference Rate aggregates the trade flow of several bitcoin exchanges, during an observation window between 3:00 p.m. and 4:00 p.m. E.T. into the U.S. dollar price of one bitcoin at 4:00 p.m. E.T. The current constituent bitcoin exchanges of the Reference Rate are Bitstamp, Coinbase, Gemini, itBit, and Kraken (the “Constituent Platforms”).

The Reference Rate is calculated based on the “Relevant Transactions” (as defined below) of all Constituent Platforms, as follows:⁶³

1. All Relevant Transactions are added to a joint list, recording the trade price and size for each transaction.
2. The list is partitioned into a number of equally-sized time intervals.

⁶² “Business Day” is defined as each day that the Shares trade on the Exchange.

⁶³ See <https://docs-cfbenchmarks.s3.amazonaws.com/CME+CF+Reference+Rates+Methodology.pdf>

3. For each partition separately, the volume-weighted median⁶⁴ trade price is calculated from the trade prices and sizes of all Relevant Transactions, i.e., across all Constituent Platforms.
4. The Reference Rate is then determined by the equally-weighted average of the volume-weighted medians of all partitions.

The Reference Rate does not include any futures prices in its methodology. A “Relevant Transaction” is any cryptocurrency versus U.S. dollar spot trade that occurs during the observation window between 3:00 p.m. and 4:00 p.m. E.T. on a Constituent Platform in the BTC/USD pair that is reported and disseminated by a Constituent Platform through its publicly available API and observed by the Benchmark Administrator, CF Benchmarks Ltd.

If the Reference Rate is unavailable, the Trust’s bitcoin will be valued as determined in good faith pursuant to policies and procedures approved by the Advisor’s valuation committee (“fair value pricing”). In these circumstances, the Trust will determine fair value in a manner that seeks to reflect the market value of the investment at the time of valuation based on consideration of any information or factors the Advisor’s valuation committee deems appropriate, as further described below. The Advisor’s valuation committee will be responsible for overseeing the implementation of the Trust’s valuation procedures and fair value determinations. For purposes of determining the fair value of bitcoin, the valuation committee may consider, without limitation: (i) indications or quotes from brokers; (ii) valuations provided by a third-party pricing agent; (iii) internal models that take into consideration different factors determined to be relevant by the Advisor; or (iv) any combination of the above.

The Advisor has adopted a policy pursuant to which the Trust will value its assets other than bitcoin and liabilities. Under this policy, the Advisor will use fair value standards according to GAAP. Generally, the fair value of an asset that is traded on a market is measured by

⁶⁴ A volume-weighted median differs from a standard median in that a weighting factor, in this case trade size, is factored into the calculation.

reference to the orderly transactions on an active market. Among all active markets with orderly transactions, the market that is used to determine the fair value of an asset is the principal market (with exceptions described in more detail below), which is either the market on which the Trust actually transacts, or if there is sufficient evidence, the market with the most trading volume and level of activity for the asset. Where there is no active market with orderly transactions for an asset, the Advisor's valuation committee will follow policies and procedures described in more detail below to determine the fair value.

While the Trust will publish its NAV every day the Exchange is open, the Trust's operations will not rely to any significant extent on its valuation procedures. The Trust's only regular recurring expense is the Investment Management Fee, which is both calculated by reference to and paid in bitcoin. Payment for Creation Units by Authorized Participants may only be made in-kind in bitcoin, and redemption proceeds are similarly only paid in bitcoin. While the Trust may from time to time incur certain extraordinary, non-recurring expenses that must be paid in U.S. Dollars or other fiat currency, such events would only impact the amount of bitcoin represented by a Share of the Trust. Accordingly, while other proposed bitcoin ETPs rely on a benchmark or other reference rate to value their assets and liabilities and determine the amount of cash necessary to purchase or redeem Creation Units (or their equivalent), the Trust will not rely on any such conversion rate, as it is designed to transact only in bitcoin in nearly all circumstances. The Trust's calculation of its NAV is intended to assist investors in valuing their Shares, and the Trust's ability to transact only in bitcoin further insulates the Trust from activities designed to manipulate the price of the bitcoin held by the Trust.

The Structure and Operation of the Trust Satisfies Commission Requirements for Bitcoin-Based Exchange Traded Products

In disapproving prior proposals to list and trade shares of various bitcoin trusts and bitcoin-based trust issued receipts, the Commission noted that such proposals did not adequately demonstrate that they were designed to prevent fraudulent and manipulative acts and practices

and to protect investors and the public interest, consistent with Section 6(b)(5) of the Act.⁶⁵ The Commission does not apply a “cannot be manipulated” standard, but instead seeks to examine whether a proposal meets the requirements of the Act.⁶⁶ The Commission has explained that a proposal could satisfy the requirements of the Act in the first instance by demonstrating that the listing exchange has entered into a comprehensive surveillance-sharing agreement (“CSSA”) with a regulated market of significant size relating to the underlying assets.⁶⁷ The Commission has also recognized that a listing exchange would not necessarily need to enter into a CSSA with a regulated significant market if the underlying commodity market inherently possessed a unique resistance to manipulation beyond the protections that are utilized by traditional commodity or securities markets or if the listing exchange could demonstrate that there were sufficient “other means to prevent fraudulent and manipulative acts and practices.”⁶⁸

⁶⁵ See, e.g., Order Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, to BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, To List and Trade Shares Issued by the Winklevoss Bitcoin Trust, Securities Exchange Act Release No. 80206 (March 10, 2017), 82 FR 14076 (March 16, 2017) (SR-BatsBZX-2016-30) (the “Winklevoss I Order”); the Winklevoss II Order; Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the Bitwise Bitcoin ETF Trust Under NYSE Arca Rule 8.201-E, Securities Exchange Act Release No. 87267 (October 9, 2019), 84 FR 55382 (October 16, 2019) (SR-NYSEArca-2019-01) (the “Bitwise Order”); the Wilshire Phoenix Order; Order Disapproving a Proposed Rule Change to List and Trade the Shares of the ProShares Bitcoin ETF and the ProShares Short Bitcoin ETF, Securities Exchange Act Release No. 83904 (August 22, 2018), 83 FR 43934 (August 28, 2018) (SR-NYSEArca-2017-139); Order Disapproving a Proposed Rule Change Relating to Listing and Trading of the Direxion Daily Bitcoin Bear 1X Shares, Direxion Daily Bitcoin 1.25X Bull Shares, Direxion Daily Bitcoin 1.5X Bull Shares, Direxion Daily Bitcoin 2X Bull Shares, and Direxion Daily Bitcoin 2X Bear Shares Under NYSE Arca Rule 8.200-E, Securities Exchange Act Release No. 83912 (August 22, 2018), 83 FR 43912 (August 28, 2018) (SR-NYSEArca-2018-02); Order Disapproving a Proposed Rule Change to List and Trade the Shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF, Securities Exchange Act Release No. 83913 (August 22, 2018), 83 FR 43923 (August 28, 2018) (SR-CboeBZX-2018-01) (the “GraniteShares Order”).

⁶⁶ See Winklevoss II Order, 84 FR 37582.

⁶⁷ See Wilshire Phoenix Order, 85 FR 12596-97.

⁶⁸ See Winklevoss II Order, 84 FR 37580, 37582-91; Bitwise Order, 84 FR 55383, 55385-406; Wilshire Phoenix Order, 85 FR 12597.

As described below, the Sponsor believes the structure and operation of the Trust are designed to prevent fraudulent and manipulative acts and practices, to protect investors and the public interest, and to respond to the specific concerns that the Commission has identified with respect to potential fraud and manipulation in the context of a bitcoin ETP. Further, as the Commission has previously acknowledged, trading in a bitcoin-based ETP on a national securities exchange, as compared to trading in an unregulated bitcoin spot market, may provide additional protection to investors.⁶⁹ The Sponsor also believes that listing of the Trust's Shares on the Exchange will provide investors with such an opportunity to obtain exposure to bitcoin within a regulated environment.

Surveillance Sharing Agreements with a Market of Significant Size

1. The Presence of Surveillance Sharing Agreements

In previous orders rejecting the listing of Bitcoin ETFs, the Commission noted its concerns that the bitcoin market could be subject to manipulation.⁷⁰ In these orders, the Commission cited numerous precedents⁷¹ in which listing proposals were approved based on

⁶⁹ See GraniteShares Order, 83 FR 43931. See also Hester M. Peirce, U.S. Sec. Exch. Comm'n, Dissent of Commissioner Hester M. Peirce to Release No. 34-83723 (July 26, 2018), available at: <https://www.sec.gov/news/public-statement/peirce-dissent-34-83723> ("An ETP based on bitcoin would offer investors indirect exposure to bitcoin through a product that trades on a regulated securities market and in a manner that eliminates some of the frictions and worries of buying and holding bitcoin directly. If we were to approve the ETP at issue here, investors could choose whether to buy it or avoid it.").

⁷⁰ See Winklevoss I Order and Winklevoss II Order. The Sponsor represents that some of the concerns raised are that a significant portion of bitcoin trading occurs on unregulated platforms and that there is a concentration of a significant number of bitcoin in the hands of a small number of holders. However, these facts are not unique to bitcoin and are true of a number of commodity and other markets. For instance, some gold bullion trading takes place on unregulated OTC markets and a significant percentage of gold is held by a relative few (according to estimates of the World Gold Council, approximately 22% of total above ground gold stocks are held by private investors and 17% are held by foreign governments; by comparison, 13.61% of bitcoin are held by the 86 largest bitcoin addresses, some of which are known to be cold storage addresses of large centralized cryptocurrency trading platforms). See <https://www.gold.org/goldhub/data/above-ground-stocks> for gold data cited in this note and <https://bitinfocharts.com/top-100-richest-bitcoin-addresses.html> for Bitcoin data.

⁷¹ For an extensive listing of such precedents, see Winklevoss I Order, 82 FR 14083 n. 96.

findings that the particular market was either inherently resistant to manipulation or that the listing exchange had entered into a surveillance sharing agreement with a market of significant size.⁷² The Commission noted that, for commodity-trust ETPs “there has been in every case at least one significant, regulated market for trading futures in the underlying commodity—whether gold, silver, platinum, palladium or copper—and the ETP listing exchange has entered into surveillance-sharing agreements with, or held Intermarket Surveillance Group (the “ISG”) membership in common with, that market.”⁷³

The CME⁷⁴ is a member of the ISG, the purpose of which is “to provide a framework for the sharing of information and the coordination of regulatory efforts among exchanges trading securities and related products to address potential intermarket manipulations and trading abuses.”⁷⁵ Membership of a relevant futures exchange in ISG is sufficient to meet the surveillance-sharing requirement.⁷⁶

The Commission has previously noted that the existence of a surveillance-sharing agreement by itself is not sufficient for purposes of meeting the requirements of Section 6(b)(5);

⁷² The Exchange to date has not entered into surveillance sharing agreements with any cryptocurrency platform. However, the CME, which calculates the CME CF BRR, and which has offered contracts for bitcoin futures products since 2017, is, as noted below, a member of the ISG. In addition, each Constituent Platform has entered into a data sharing agreement with CME. See <https://docs-cfbenchmarks.s3.amazonaws.com/CME+CF+Constituent+Exchanges+Criteria.pdf>.

⁷³ See Winklevoss II Order, 84 FR 37594.

⁷⁴ The CME is regulated by the CFTC, which has broad reaching anti-fraud and anti-manipulation authority including with respect to the bitcoin market since bitcoin has been designated as a commodity by the CFTC. See A CFTC Primer on Virtual Currencies (October 17, 2017), available at: https://www.cftc.gov/sites/default/files/idc/groups/public/documents/file/labcftc_primer_currencies100417.pdf (the “CFTC Primer on Virtual Currencies”) (“The CFTC’s jurisdiction is implicated when a virtual currency is used in a derivatives contract or if there is fraud or manipulation involving a virtual currency traded in interstate commerce.”). See also 7 U.S.C. 7(d)(3) (“The board of trade shall list on the contract market only contracts that are not readily susceptible to manipulation.”).

⁷⁵ See <https://isgportal.org/overview>.

⁷⁶ See, e.g., Winklevoss II Order, 84 FR 37594.

the surveillance-sharing agreement must be with a market of significant size.⁷⁷ The Commission has also provided an example of how it interprets the terms “significant market” and “market of significant size,” though that definition is meant to be illustrative and not exclusive: “the terms ‘significant market’ and ‘market of significant size’...include a market (or group of markets) as to which (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP so that a surveillance sharing agreement would assist the ETP listing market in detecting and deterring misconduct and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.”⁷⁸

For the following reasons, the Sponsor maintains that the CME, either alone as the sole market for bitcoin futures or as a group of markets together with the Constituent Platforms, is a “market of significant size” that satisfies both elements of the example provided by the Commission.

(a) Reasonable Likelihood That a Person Manipulating the ETP Would Have to Trade on the Market

The first element of a “significant market” or “market of significant size” is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market (or group of markets) to successfully manipulate the ETP, such that a surveillance sharing agreement would assist the ETP listing market in detecting and deterring misconduct. The Commission has stated that establishing a lead-lag relationship between the bitcoin futures market and the spot market is central to understanding whether it is reasonably likely that a would-be manipulator of the ETP would need to trade on the bitcoin futures market to

⁷⁷ See, e.g., *id.* at 37589–90.

⁷⁸ *Id.* at 37594; see also GraniteShares Order, 83 FR 43930 n. 85 and accompanying text.

successfully manipulate prices on those spot platforms that feed into the proposed ETP's pricing mechanism.⁷⁹

The Sponsor believes that the CME meets the first element in several ways. First, it is the primary market for bitcoin futures, and compares favorably with other markets that were deemed to be markets of significant size in precedents. One particularly salient group of precedents are prior orders approving the listing of ETPs that invest in gold bullion, since the gold market exhibits a number of similarities with the market for bitcoin. The Sponsor maintains that, like bitcoin, the primary markets for gold bullion are unstructured OTC markets⁸⁰ and the futures market.

Specifically, the Sponsor notes that the CME is similarly situated to the COMEX division of NYMEX with respect to gold ETPs.⁸¹ As with the OTC gold market, it is not possible to enter into an information sharing agreement with the OTC bitcoin market.⁸² When the Commission has approved the listing of gold ETPs and other commodity-trust ETPs, rather than requiring

⁷⁹ See Wilshire Phoenix Order, 85 FR 12612.

⁸⁰ “The OTC market has no formal structure and no open-outcry meeting place.” Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 1 and No. 2 Thereto to the Proposed Rule Change by the New York Stock Exchange, Inc. Regarding Listing and Trading of streetTRACKS® Gold Shares, Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR-NYSE-2004-22) (the “streetTRACKS Order”).

⁸¹ Other applicants have made similar arguments in their respective filings. See Notice of Filing of Proposed Rule Change To List and Trade Shares of SolidX Bitcoin Shares Issued by the VanEck SolidX Bitcoin Trust, Under BZX Rule 14.11(e)(4), Commodity-Based Trust, Securities Exchange Act Release No. 85119 (February 13, 2019), 84 FR 5140 (February 20, 2019) (SRCboeBZX-2019-004), n. 11.

⁸² “It is not possible, however, to enter into an information sharing agreement with the OTC gold market.” streetTRACKS Order, 69 FR 64619. See also Order Granting Approval of Proposed Rule Change and Amendment Nos. 2, 3 and 4 and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 5 by the American Stock Exchange LLC Relating to the Listing and Trading of the iShares® COMEX Gold Trust, Securities Exchange Act Release No. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR-Amex-2004-38); Notice of Filing of Proposed Rule Change Relating to Listing and Trading of Shares of ETFS Palladium Trust, Securities Exchange Act Release No. 60971 (November 9, 2009), 74 FR 59283 (November 17, 2009) (SRNYSEArca-2009-94).

surveillance sharing agreements with the relevant OTC markets, it has recognized surveillance sharing agreements between the listing exchange and “regulated markets for trading futures on the underlying commodity,”⁸³ given the understanding that the manipulation of the market for a commodity often involves the futures market for that commodity.⁸⁴

The Sponsor also believes that the CME meets the first element because its Bitcoin Futures are cash settled by reference to a final settlement price based on the CME CF BRR. Anyone attempting to manipulate the CME CF BRR would need to place numerous large sized trades on any of the Constituent Platforms that are used to calculate the CME CF BRR,⁸⁵ and the resulting manipulative trading patterns would be detectable by the BRR Administrator and the CME.⁸⁶ In addition, any platform that is accepted by the CME to become part of the constituent trading platforms that are used to calculate the CME CF BRR, including the Constituent Platforms, (1) must enter into a data sharing agreement with the CME, (2) must cooperate with inquiries and investigations of regulators and the BRR Administrator and (3) must submit each of its clients to its Know-Your-Customer procedures.⁸⁷ As a result, the CME and the Exchange would be able, in the case of any suspicious trades, to discover all material trade information, including the identities of the customers placing the trades.

⁸³ See Winklevoss II Order, 84 FR 37591.

⁸⁴ See, e.g., Frank Easterbrook, Monopoly, Manipulation, and the Regulation of Futures Markets, 59 J. of Bus. S103, S103-S127 (1986); William D. Harrington, The Manipulation of Commodity Futures Prices, 55 St. Johns L. Rev. 240, 240-275 (2012); Robert C. Lower, Disruptions of the Futures Market: A Comment on Dealing With Market Manipulation, 8 Yale J. on Reg. 391, 391-402 (1991).

⁸⁵ Because the CME CF BRR is based solely on the price data from the Constituent Platforms, manipulating the CME CF BRR must necessarily entail manipulating the price data at one or more Constituent Platforms.

⁸⁶ The BRR Calculation Agent receives trading data from the Constituent Platforms through its Automatic Programming Interface. See CME-CF Practice Standards, available at: <https://www.cfbenchmarks.com/indices/BRR>.

⁸⁷ See <https://docs-cfbenchmarks.s3.amazonaws.com/CME+CF+Constituent+Exchanges+Criteria.pdf>.

The Sponsor also maintains that any would-be manipulator of bitcoin prices would be reasonably likely to do so through the Bitcoin Futures market in order to take advantage of the leverage inherent in trading futures contracts. The inherent leverage in Bitcoin Futures would allow a potential manipulator to attempt a manipulation scheme with far less upfront capital than it would need to achieve the same results in the spot market. As the spot bitcoin market has grown tremendously since the issuance of the Wilshire Phoenix Order, it would be critical for a would-be manipulator to efficiently use its capital to have the desired effect, and a would-be manipulator would certainly recognize that the chances of successfully deploying its scheme are increased exponentially if it can affect the Bitcoin Futures market (and thus the bitcoin spot market) by posting only the minimum margin required the Bitcoin Futures exchange.⁸⁸ Accordingly, because the Bitcoin Futures market is in effect the “cheapest” route to manipulate bitcoin, it is highly likely such manipulators would attempt to do so there rather than any spot market.

Finally, the Sponsor maintains that a would-be manipulator of bitcoin would be required to execute trades on multiple exchanges simultaneously in order to successfully move the global price of bitcoin due to the decentralized nature of the Bitcoin Network. The Sponsor thus believes that bitcoin manipulators would be much more likely to attempt to manipulate a limited number of futures markets rather than attempt simultaneous executions on potentially dozens of different exchanges. Even if a would-be manipulator does attempt to manipulate bitcoin across platforms, such a scheme would also necessarily include some attempt to manipulate the price of bitcoin futures, including the CME.

(b) Predominant Influence on Prices in Spot and Bitcoin Futures

The second feature of a “significant market” or “market of significant size” in the Commission’s example is that the market is one in which it is unlikely that trading in the ETP

⁸⁸ As of April 12, 2021, the initial margin required in connection with CME Bitcoin Futures for the April 2021 contract ranges from 42% to 38%.

would be the predominant influence on prices in that market. The Sponsor believes that trading in the Shares would not be the predominant force on prices in the Bitcoin Futures market (or spot market) for a number of reasons, including the significant volume in the Bitcoin Futures market, the size of bitcoin’s market cap (approximately \$1 trillion), and the significant liquidity available in the spot market.

Since the Wilshire Phoenix Order was issued, there has been significant growth in Bitcoin Futures across each of trading volumes and open interest as reflected in the chart below:

CHICAGO MERCANTILE EXCHANGE BITCOIN FUTURES		
	<u>February 26, 2020</u>	<u>April 7, 2021</u>
Trading Volume	\$433,000,000	\$4,321,000,000
Open Interest	\$238,000,000	\$2,582,000,000

The growth of the Bitcoin Futures has coincided with similar growth in the bitcoin spot market. The market for Bitcoin Futures is rapidly approaching the size of markets for other commodity interests, including interests in metals, agricultural and petroleum products. Accordingly, as the Bitcoin Futures market continues to develop and more closely resemble other commodity futures markets, it can be reasonably expected that the relationship between the Bitcoin Futures market and bitcoin spot market will behave similarly to other future/spot market relationships, including periods where a lead-lag relationship between the Bitcoin Futures market and bitcoin spot market exists.

In addition, the spot market for bitcoin is also very liquid. According to data from CoinRoutes from February 2021, the cost to buy or sell \$5 million worth of bitcoin averages roughly 10 basis points with a market impact of 30 basis points.⁸⁹ For a \$10 million market order, the cost to buy or sell is roughly 20 basis points with a market impact of 50 basis points.

⁸⁹ These statistics are based on samples of bitcoin liquidity in USD (excluding stablecoins or Euro liquidity) based on executable quotes on Coinbase Pro, Gemini, Bitstamp, Kraken, LMAX Exchange, BinanceUS, and OKCoin during February 2021.

Stated another way, a market participant could enter a market buy or sell order for \$10 million of bitcoin and only move the market 0.5%. More strategic purchases or sales (such as using limit orders and executing through OTC bitcoin trade desks) would likely have less obvious impact on the market – which is consistent with MicroStrategy, Tesla, and Square being able to collectively purchase billions of dollars in bitcoin. The Sponsor believes that the combination of Bitcoin Futures’ important role in price discovery, the overall size of the bitcoin market, and the ability of market participants, including authorized participants creating and redeeming in-kind with the Trust, to buy or sell large amounts of bitcoin without significant market impact will help prevent the Shares from becoming the predominant force on pricing in either the bitcoin spot or Bitcoin Futures markets.

The results from a study conducted by CF Benchmarks simulating to determine the extent of “slippage” (i.e., the difference between the expected price of a trade and the price at which the trade was actually executed) offer further evidence that trading in the Shares is unlikely to be the predominant influence in the bitcoin spot market.⁹⁰ The CF Benchmarks Analysis simulated the purchase of 50 bitcoins a day for 686 days (an amount chosen specifically to replicate hypothetical trades by an ETP) and found that the maximum amount of slippage on a particular day was 0.3%, with the remainder of values between 0% and 0.15%. Thus, according to CF Benchmarks, the slippage in this study could be described as having been largely negligible or, at most, minor during the observation period.

Other Means to Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that “other means to prevent fraudulent and manipulative acts and practices” are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Sponsor believes that the

⁹⁰ See CF Benchmarks, “An Analysis of the Suitability of the CME CF BRR for the Creation of Regulated Financial Products,” December 2020 (the “CF Benchmarks Analysis”), available at: <https://docsend.com/view/kizk7rarzaba6jxf>.

significant liquidity in the spot market and the impact of market orders on the overall price of bitcoin have made attempts to move the price of bitcoin increasingly expensive over the past year, curtailing potential fraud or manipulation in connection with bitcoin pricing. In January 2020, for example, the cost to buy or sell \$5 million worth of bitcoin averaged roughly 30 basis points (compared to 10 basis points in February 2021) with a market impact of 50 basis points (compared to 30 basis points in February 2021).⁹¹ For a \$10 million market order, the cost to buy or sell was roughly 50 basis points (compared to 20 basis points in February 2021) with a market impact of 80 basis points (compared to 50 basis points in February 2021). As the liquidity in the bitcoin spot market increases, it follows that the impact of \$5 million and \$10 million orders will continue to decrease the overall impact in spot price.

Additionally, the Sponsor believes that offering only in-kind creation and redemption will provide unique protections against potential attempts to manipulate the Shares. While the Sponsor believes that the Reference Rate used to value the Trust's bitcoin is itself resistant to manipulation based on the methodology described above, the fact that creations and redemptions are only available in-kind makes the manipulability of the Reference Rate significantly less important. Specifically, because the Trust will not accept cash to buy bitcoin in order to create or redeem Shares, the price that the Sponsor uses to value the Trust's bitcoin is not particularly important.⁹² When authorized participants create Shares with the Trust, they need to deliver a certain number of bitcoin per Share (regardless of the valuation used) and when they redeem Shares, they can similarly expect to receive a certain number of bitcoin per Share. As a result, even if the price used to value the Trust's bitcoin has been manipulated (which the Sponsor believes is unlikely given the resistance afforded by the independent Reference Rate

⁹¹ These statistics are based on samples of bitcoin liquidity in USD (excluding stablecoins or Euro liquidity) based on executable quotes on Coinbase Pro, Gemini, Bitstamp, Kraken, LMAX Exchange, BinanceUS, and OKCoin during February 2021.

⁹² The Investment Management Fee, which is the Trust's only normal recurring expense is both paid and calculated in bitcoin.

methodology), the ratio of bitcoin per Share does not change and the Trust will either accept (for creations) or distribute (for redemptions) the same number of bitcoin regardless of the value. This structure not only mitigates the risk associated with potential manipulation, but also discourages and disincentivizes manipulation of the Reference Rate because there is little financial incentive to do so.

Creation and Redemption of Shares

According to the Registration Statement, the Trust will issue and redeem Shares on an ongoing basis in one or more Creation Units. A Creation Unit will consist of a block of 50,000 Shares. The creation and redemption of Creation Units will be effected in in-kind transactions based on the quantity of bitcoin attributable to each Share.

The quantity of bitcoin required to create each Creation Unit (the “Creation Unit Deposit”) may change from day to day. On each day that the Exchange is open for regular trading, the Administrator will determine the quantity of bitcoin constituting the Creation Unit Deposit and may make adjustments as appropriate to reflect accrued expenses. Each Business Day, the Administrator will communicate the final Creation Unit Deposit for that same Business Day and an estimated Creation Unit Deposit for the next Business Day.

The number of outstanding Shares is expected to increase and decrease from time to time as a result of the creation and redemption of Creation Units. The creation and redemption of Creation Units require the delivery to the Trust, or the distribution by the Trust, of the number of bitcoins represented by the Creation Units being created or redeemed. The creation and redemption of a Creation Unit will be made only in exchange for the delivery to the Trust, or the distribution by the Trust, of the number of whole and fractional bitcoins represented by each Creation Unit being created or redeemed, the number of which is determined by dividing the number of bitcoins owned by the Trust at 4:00 p.m. E.T on the trade date of a creation or redemption order, as adjusted for the number of whole and fractional bitcoins constituting

accrued but unpaid fees and expenses of the Trust, by the number of Shares outstanding at such time and multiplying such quotient by 50,000.

Authorized Participants are the only persons that may place orders to create and redeem Creation Units. An Authorized Participant must (i) be a registered broker-dealer, (ii) enter into a Participant Agreement with the Advisor and the Bitcoin Custodian, and (iii) own a bitcoin wallet address that is recognized by the Bitcoin Custodian as belonging to the Authorized Participant (an “Authorized Participant Self-Administered Account”). Authorized Participants may act for their own accounts or as agents for broker-dealers, custodians, and other securities market participants that wish to create or redeem Creation Units. Shareholders who are not Authorized Participants will only be able to redeem their Common Shares through an Authorized Participant.

Creation Procedures

On any Business Day, an Authorized Participant may place an order with the Transfer Agent to create one or more Creation Units. Purchase orders must be placed prior to 4:00 p.m. E.T. or the close of regular trading on the Exchange, whichever is earlier. The day on which a valid order is received by the Transfer Agent is considered the purchase order date.

By placing a purchase order, an Authorized Participant agrees to facilitate the deposit of bitcoin with the Trust. The total deposit of bitcoin required to create each Creation Unit is an amount of bitcoin that is in the same proportion to the total assets of the Trust (net of accrued but unpaid fees and expenses) on the date the purchase order is properly received as the number of Shares to be created under the purchase order is to the total number of Shares outstanding on the date the order is received.

Following an Authorized Participant’s purchase order, the Bitcoin Account must be credited with the required bitcoin by the end of the Business Day following the purchase order date. Upon receipt of the bitcoin deposit amount in the Trust’s Bitcoin Account, the Bitcoin Custodian will notify the Transfer Agent, the Authorized Participant, and the Advisor that the

bitcoin has been deposited. The Transfer Agent will then direct the Depository Trust Company (“DTC”) to credit the number of Shares created to the Authorized Participant’s DTC account.

Redemption Procedures

According to the Registration Statement, on any Business Day, an Authorized Participant may place an order with the Transfer Agent to redeem one or more Creation Units. Authorized Participants may only redeem Creation Units and cannot redeem any Shares in an amount less than a Creation Unit. Redemption orders must be placed prior to 4:00 p.m. E.T. or the close of regular trading on the Exchange, whichever is earlier. A redemption order will be effective on the date it is received by the Transfer Agent (“Redemption Order Date”).

The redemption distribution from the Trust consists of a transfer of bitcoin to the redeeming Authorized Participant corresponding to the number of Shares being redeemed. The redemption distribution due from the Trust will be delivered once the Transfer Agent notifies the Bitcoin Custodian and the Advisor that the Authorized Participant has delivered the Shares represented by the Creation Units to be redeemed to the Transfer Agent’s DTC account. If the Transfer Agent’s DTC account has not been credited with all of the Shares of the Creation Units to be redeemed, the redemption distribution will be delayed until such time as the Transfer Agent confirms receipt of all such Shares.

Once the Transfer Agent notifies the Bitcoin Custodian and the Advisor that the Shares have been received in the Transfer Agent’s DTC account, the Advisor will instruct the Bitcoin Custodian to transfer the redemption distribution from the Trust’s Bitcoin Account to the Authorized Participant.

The redemption distribution from the Trust will consist of a transfer to the redeeming Authorized Participant of an amount of bitcoin that is determined in the same manner as the determination of Creation Unit Deposits, as discussed above. The redemption distribution due from the Trust will be delivered to the Authorized Participant on the first Business Day following the Redemption Order Date if, by 9:00 a.m. E.T. on such Business Day, the Transfer

Agent's DTC account has been credited with the Creation Units to be redeemed. If the Transfer Agent's DTC account has not been credited with all of the Creation Units to be redeemed by such time, the redemption distribution will also be delayed.

Availability of Information

The Trust's website (<https://www.ftportfolios.com>) will include quantitative information on a per Share basis updated on a daily basis, including (i) the current NAV per Share daily and the prior business day's NAV and the reported closing price; (ii) the mid-point of the bid-ask price⁹³ in relation to the NAV as of the time the NAV is calculated ("Bid-Ask Price") and a calculation of the premium or discount of such price against such NAV; and (iii) 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 (or for the life of the Trust, if shorter). In addition, on each business day the Trust's website will provide pricing information for the Shares.

The Trust's website, as well as one or more major market data vendors, will provide an intra-day indicative value ("IIV") per Share updated every 15 seconds, as calculated by the Exchange or a third party financial data provider during the Exchange's Core Trading Session (9:30 a.m. to 4:00 p.m., E.T.).⁹⁴ The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during the NYSE Arca Core Trading Session to reflect changes in the value of the Trust's NAV during the trading day.

The IIV disseminated during the NYSE Arca Core Trading Session should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during

⁹³ The bid-ask price of the Trust is determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day NAV.

⁹⁴ The IIV on a per Share basis disseminated during the Core Trading Session should not be viewed as a real-time update of the NAV, which is calculated once a day.

the NYSE Arca Core Trading Session by one or more major market data vendors. In addition, the IIV will be available through on-line information services.

The NAV for the Trust will be calculated by the Sponsor once a day and will be disseminated daily to all market participants at the same time. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (“CTA”).

Quotation and last sale information for bitcoin will be widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters. In addition, the complete real-time price (and volume) data for bitcoin is available by subscription from Reuters and Bloomberg. The spot price of bitcoin is available on a 24-hour basis from major market data vendors, including Bloomberg and Reuters. Information relating to trading, including price and volume information, in bitcoin will be available from major market data vendors and from the exchanges on which bitcoin are traded. The normal trading hours for bitcoin exchanges are 24-hours per day, 365-days per year.

The Sponsor will publish the NAV per Share on the Trust’s website as soon as practicable after its determination. The Trust will provide website disclosure of its NAV daily. The website disclosure of the Trust’s NAV will occur at the same time as the disclosure by the Sponsor of the NAV to Authorized Participants so that all market participants are provided such information at the same time. Therefore, the same information will be provided on the public website as well as in electronic files provided to Authorized Participants. Accordingly, each investor will have access to the current NAV of the Trust through the Trust’s website, as well as from one or more major market data vendors.

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. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m., E.T. in accordance with

NYSE Arca Rule 7.34-E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6-E, the minimum price variation (“MPV”) for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00, for which the MPV for order entry is \$0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.201-E. The trading of the Shares will be subject to NYSE Arca Rule 8.201-E(g), which sets forth certain restrictions on Equity Trading Permit Holders (“ETP Holders”) acting as registered Market Makers in Commodity-Based Trust Shares to facilitate surveillance. The Exchange represents that, for initial and continued listing, the Trust will be in compliance with Rule 10A-3⁹⁵ under the Act, as provided by NYSE Arca Rule 5.3-E. A minimum of 100,000 Shares of the Trust will be outstanding at the commencement of trading on the Exchange.

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 of the Trust.⁹⁶ Trading in Shares of the Trust will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

The Exchange may halt trading during the day in which an interruption to the dissemination of the IIV occurs. If the interruption to the dissemination of the IIV persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

⁹⁵ 17 CFR 240.10A-3.

⁹⁶ See NYSE Arca Rule 7.12-E.

Surveillance

The Exchange represents that trading in the Shares of the Trust 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 applicable federal securities laws.⁹⁷ 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.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA.⁹⁸ The Exchange is also able to obtain information regarding trading in the Shares in connection with such ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market.

⁹⁷ FINRA conducts 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.

⁹⁸ For a list of the current members of ISG, see www.isgportal.org. The Exchange notes that not all components of the Trust may trade on markets that are members of ISG or with which the Exchange has in place a CSSA.

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

All statements and representations made in this filing regarding (a) the description of the portfolios of the Trust, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange.

The Sponsor has represented to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5-E(m).

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.⁹⁹

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 in NYSE Arca Rule 8.201-E. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate

⁹⁹ 15 U.S.C. 78f(b)(5).

as needed regarding trading in the Shares with other markets that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets. In addition, the Exchange may obtain information regarding trading in the Shares from markets that are members of ISG or with which the Exchange has in place a CSSA. Also, pursuant to NYSE Arca Rule 8.201-E(g), the Exchange is able to obtain information regarding trading in the Shares and the underlying bitcoin or any bitcoin derivative through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades through ETP Holders which they effect on any relevant market.

The Exchange also believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest because investing in the Trust will provide investors with exposure to bitcoin in a manner that is more efficient and convenient than the purchase of stand-alone bitcoin, while also mitigating some of the volatility risk typically associated with the purchase of stand-alone bitcoin. As discussed above, the Trust will use the Reference Rate to determine the value of its bitcoin assets and its NAV. While bitcoin is listed and traded on a number of markets and platforms, the Reference Rate is determined exclusively based on its Constituent Platforms, and therefore, use of the Reference Rate would mitigate the effects of potential manipulation of the bitcoin market. Additionally, the capital necessary to maintain a significant presence on any Constituent Platform would make manipulation of the Reference Rate unlikely. Bitcoin trades in a well-arbitrated and distributed market. The linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin on any Constituent Platform would likely require overcoming the liquidity supply of such arbitrageurs who are potentially eliminating any cross-market pricing differences. The proposed rule change is also designed to prevent fraudulent and manipulative acts and practices based on the function of the CME, either alone as the sole market for bitcoin futures or as a group of markets together

with the Constituent Platforms, as a “market of significant size” consistent with the Commission’s guidance with respect to surveillance sharing agreements. As discussed above, the CME is the primary market for bitcoin futures, is designed to detect and resist potentially manipulative trading activity, and, as a member of ISG, can provide the Exchange with information to assist in detecting and deterring potential fraud or manipulation.

The proposed rule change is also designed to promote just and equitable principles of trade and to protect investors and the public interest in that there is a considerable amount of bitcoin price and market information available on public websites and through professional and subscription services. Investors may obtain, on a 24-hour basis, bitcoin pricing information based on the spot price for bitcoin from various financial information service providers. The closing price and settlement prices of bitcoin are readily available from the bitcoin exchanges and other publicly available websites. In addition, such prices are published in public sources, or on-line information services such as Bloomberg and Reuters. The NAV per Share will be calculated daily and made available to all market participants at the same time. The Trust will provide website disclosure of its NAV daily. One or more major market data vendors will disseminate for the Trust on a daily basis information with respect to the most recent NAV per Share and Shares outstanding. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The IIV will be widely disseminated on a per Share basis every 15 seconds during the NYSE Arca Core Trading Session (normally 9:30 a.m., E.T., to 4:00 p.m., E.T.) by one or more major market data vendors. In addition, the IIV will be available on the Trust’s website and through on-line information services. The Exchange represents that the Exchange may halt trading during the day in which an interruption to the dissemination of the IIV occurs. If the interruption to the dissemination of the IIV persists past the trading day in

which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

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 an additional type of exchange-traded product 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 and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a CSSA. In addition, as noted above, investors will have ready access to information regarding the Trust's NAV, IIV, 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 purposes of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of exchange-traded product, which 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

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

Within 45 days of the date of publication of this notice in the Federal Register or 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 self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the 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. Please include File Number SR-NYSEArca-2021-37 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-NYSEArca-2021-37. 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-NYSEArca-2021-37 and should be submitted on or before **[INSERT DATE 21 DAYS FROM DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰⁰

J. Matthew DeLesDernier,

Assistant Secretary.

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¹⁰⁰ 17 CFR 200.30-3(a)(12).