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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- 92573; File No. SR-NYSEArca-2021-53)]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of a Proposed Rule Change to List and Trade Shares of Teucrium Bitcoin Futures Fund under NYSE Arca Rule 8.200-E

August 5, 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 July 23, 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 the shares of the following under NYSE Arca Rule 8.200-E, Commentary .02 ("Trust Issued Receipts"): Teucrium Bitcoin Futures Fund.Teucrium Bitcoin Futures Fund [sic]. 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.

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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

The Exchange proposes to list and trade shares ("Shares") of the following under NYSE Arca Rule 8.200-E, Commentary .02, which governs the listing and trading of Trust Issued Receipts: Teucrium Bitcoin Futures Fund (the "Fund").[4]

The Fund is a series of Teucrium Commodity Trust (the "Trust"), a Delaware statutory trust.[5] The Fund is managed and controlled by Teucrium Trading, LLC ("Sponsor"). The Sponsor is registered as a commodity pool operator ("CPO") and a commodity trading adviser ("CTA") with the Commodity Futures Trading Commission ("CFTC") and is a member of the National Futures Association ("NFA").

The Fund's Investment Objective and Strategy

According to the Registration Statement, the CME currently offers two Bitcoin futures contracts, one contract representing 5 Bitcoin ("BTC Contracts") and another contract representing 0.10 Bitcoin ("MBT Contracts"). BTC Contracts began trading on the CME Globex trading platform on December 15, 2017 under the ticker symbol "BTC" and are cash-settled in U.S. dollars. MBT Contracts began trading on the CME Globex trading platform on May 3, 2021 under the ticker symbol "MBT" and are also cash-settled in U.S. dollars.[6]

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4 Commentary .02 to NYSE Arca Rule 8.200-E applies to Trust Issued Receipts that invest in "Financial Instruments." The term "Financial Instruments," as defined in Commentary .02(b)(4) to NYSE Arca Rule 8.200-E, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars, and floors; and swap agreements.

5 On May 20, 2021, the Trust filed with the Commission a registration statement on Form S-1 under the Securities Act of 1933 (15 U.S.C. 77a) ("Securities Act") relating to the Fund (File No. 333-256339) (the "Registration Statement"). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement.

6 The daily settlements in MBT are derived directly from the settlements in BTC for each contract listing. See https://www.cmegroup.com/confluence/display/EPICSANDBOX/Bitcoin#Bitcoin-NormalDailySettlementProcedure.1.

BTC Contracts and MBT Contracts each trade six consecutive monthly contracts plus two additional December contract months (if the 6 consecutive months include December, only one additional December contract month is listed). Because BTC Contracts and MBT Contracts are exchange-listed, they allow investors to gain exposure to Bitcoin without having to hold the underlying cryptocurrency. Like a futures contract on a commodity or stock index, BTC Contracts and MBT Contracts allow investors to hedge investment positions or speculate on the future price of Bitcoin.

According to the Registration Statement, the investment objective of the Fund is to have the daily changes in the net asset value ("NAV") of the Fund's shares ("Shares") reflect the daily changes in the price of a specified benchmark (the "Benchmark"). The Benchmark is the average of the closing settlement prices for the first to expire and second to expire BTC Contracts listed on the Chicago Mercantile Exchange, Inc. ("CME"). The first to expire and second to expire BTC Contracts and MBT Contracts are referred to as the Bitcoin Futures Contracts. Under normal market conditions,[7] the Fund will invest in Bitcoin Futures Contracts and in cash and cash equivalents.[8]

According to the Registration Statement, the Fund seeks to maintain its holdings in Bitcoin Futures Contracts with a roughly constant expiration profile. Therefore, the Fund's positions will be changed or "rolled" on a regular basis in order to track the changing nature of the Benchmark by closing out first to expire contracts prior to settlement that are no longer part of the Benchmark, and then entering into second to expire contracts. Accordingly, the Fund will never carry futures positions all the way to cash settlement – the Fund will price only off of the

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7 The term "normal market conditions" includes, but is not limited to, the absence of: trading halts in the applicable financial markets generally; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as a natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. See NYSE Arca Rule 8.600-E(c)(5).

8 The term "cash equivalents" includes short term Treasury bills, money market funds, demand deposit accounts and commercial paper.

daily settlement prices of the Bitcoin Futures Contracts.[9] To achieve this, the Fund will roll its futures holdings prior to cash settlement of the expiring contract.

In seeking to achieve the Fund's investment objective, the Sponsor will employ a "neutral" investment strategy that is intended to track the changes in the Benchmark regardless of whether the Benchmark goes up or goes down. The Fund will endeavor to trade in Bitcoin Futures Contracts so that the Fund's average daily tracking error against the Benchmark will be less than 10 percent over any period of 30 trading days. The Fund's "neutral" investment strategy is designed to permit investors generally to purchase and sell the Fund's Shares for the purpose of investing in the Bitcoin Futures Contracts (as discussed below). Such investors may include participants in the Bitcoin market seeking to hedge the risk of losses in their Bitcoin-related transactions, as well as investors seeking price exposure to the Bitcoin market.

According to the Registration Statement, one factor determining the total return from investing in futures contracts is the price relationship between soon to expire contracts and later to expire contracts. If the futures market is in a state of backwardation (i.e., when the price of BTC Contracts and MBT Contracts in the future is expected to be less than the current price), the Fund will buy later to expire contracts for a lower price than the sooner to expire contracts that it sells. Hypothetically, and assuming no changes to either prevailing BTC Contracts and MBT Contracts' prices or the price relationship between soon to expire contracts and later to expire contracts, the value of a contract will rise as it approaches expiration. Over time, if backwardation remained constant, the performance of a portfolio would continue to be affected. If the futures market is in contango, the Fund will buy later to expire contracts for a higher price than the sooner to expire contracts that it sells. Hypothetically, and assuming no other changes to either prevailing BTC Contracts and MBT Contracts' prices or the price relationship between

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9 As discussed in more detail below, the CME determines the daily settlements for Bitcoin futures based on trading activity on CME Globex between 14:59:00 and 15:00:00 Central Time (CT), which is the "settlement period."

the spot price, soon to expire contracts and later to expire contracts, the value of a contract will fall as it approaches expiration. Over time, if contango remained constant, the performance of a portfolio would continue to be affected. Frequently, whether contango or backwardation exists is a function, among other factors, of the prevailing market conditions of the underlying market and government policy.

Summary of the Application

The CME is a regulated futures exchange with the requisite oversight, controls, and regulatory scrutiny necessary to maintain, promote, and effectuate fair and transparent trading of its listed products, including the BTC Contracts and MBT Contracts. The BTC Contracts and MBT Contracts are highly liquid, financially-settled instrument with no ownership interests of any kind in actual Bitcoin. The unique risks currently posed by the trading and/or storage of Bitcoins are not posed by BTC Contracts and MBT Contracts. As proposed, the Fund would solely hold BTC Contracts and MBT Contracts, and as such, would be an investment product similar to any other exchange-traded product ("ETP") whose component holdings are futures contracts traded on a regulated exchange. The Sponsor believes that investors would be afforded all of the protections that exchanges provide, including bilateral surveillance agreements between the listing exchange of the ETP and the listing exchange of the ETP's futures-based components.

According to the Registration Statement, the Fund will be a liquid, transparent investment product separate and apart from any other Bitcoin related product, including actual Bitcoin traded in any other venue. An ETP whose holdings consists exclusively of BTC Contracts and MBT Contracts would have all the benefits enjoyed by investors currently holding approved and listed futures-based ETPs without the risks associated with ETPs that hold actual Bitcoin. A futures-based Bitcoin ETP will fulfill investor demand for a highly regulated product that provides exposure to the price of Bitcoin without certain risks associated with holding actual Bitcoin.

The Bitcoin and Bitcoin Futures Markets Have Progressed and Matured Significantly

According to the Registration Statement, and as discussed in further detail below, 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 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 with anyone connected to the Bitcoin Network – gives Bitcoin its value.[10]

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.[11] 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.[12] Similarly, regulated

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10 For additional information about Bitcoin and the Bitcoin Network, see https://bitcoin.org/en/gettingstarted.

11 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.

12 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.

U.S. Bitcoin futures contracts did not exist. The Commodity Futures Trading Commission (the "CFTC") had determined that Bitcoin is a commodity,[13] but had not engaged in significant 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.[14] While the first over-the-counter Bitcoin fund launched in 2013, public trading was limited and the fund had only $60 million in assets.[15] 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.[16]

As of the first quarter of 2021, the digital assets financial ecosystem, including Bitcoin, has progressed and matured significantly. The development of a regulated market for digital

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

14 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.

15 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).

16 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.

asset securities has significantly evolved, with market participants having conducted registered public offerings of both digital asset securities[17] and shares in investment vehicles holding Bitcoin futures.[18] 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.[19] 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.[20] 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;[21] and multiple transfer agents who provide services for digital asset securities have registered with the Commission.[22]

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17 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.

18 See Prospectus filed by Stone Ridge Trust VI on behalf of NYDIG Bitcoin Strategy Fund Registration, available at: https://www.sec.gov/Archives/edgar/data/1764894/000119312519309942/d693146d497.htm.

19 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).

20 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.

21 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.

22 See, e.g., Form TA-1/A filed by Tokensoft Transfer Agent LLC (CIK: 0001794142) on January 8, 2021, available at:

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. On February 27, 2021, Bitcoin's market cap was greater than companies such as 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.[23] CFTC-regulated Bitcoin futures ("Bitcoin Futures") represented approximately $28 billion in notional trading volume on 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.[24] 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.[25] The U.S. Office of the Comptroller of the Currency (the "OCC") has made clear that federally-chartered banks are able

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https://www.sec.gov/Archives/edgar/data/1794142/000179414219000001/xslFTA1X01/primary_doc.xml.

23 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.

24 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.

25 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 (October1, 2020), available at: https://www.cftc.gov/PressRoom/PressReleases/8270-20.

to provide custody services for cryptocurrencies and other digital assets.[26] The OCC recently granted conditional approval of two charter conversions by state-chartered trust companies to national banks, both of which provide cryptocurrency custody services.[27] 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,[28] and has proposed rules imposing requirements on entities subject to the BSA that are specific to the technological context of virtual currencies.[29] 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.[30]

In addition to the regulatory developments noted above, more traditional financial market participants appear to be embracing cryptocurrency: large insurance companies,[31] investment

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26 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.

27 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.

28 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.

29 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.

30 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.

31 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

banks,[32] asset managers,[33] credit card companies,[34] university endowments,[35] pension funds,[36] and even historically Bitcoin skeptical fund managers[37] 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.[38] Established companies like Tesla, Inc.,[39] MicroStrategy Incorporated,[40] and Square,

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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.

32 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.

33 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.

34 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/.

35 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.

36 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.

37 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.

38 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.

39 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.

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

Inc.,[41] among others, have recently announced substantial investments in Bitcoin in amounts as large as $1.5 billion (Tesla) and $425 million (MicroStrategy).

The Sponsor maintains that 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 ETPs 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 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.[42]

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,

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https://www.sec.gov/ix?doc=/Archives/edgar/data/1050446/00015645902004799 5/mstr-10q_20200930.htm.

41 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/1512673/00015126732000001 2/sq-20200930.htm.

42 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).

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 [sic]. The Purpose Bitcoin ETF also offers a class of units that is U.S. dollar Bitcoin 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 contracts[43] and through OTC Bitcoin Funds.[44] 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 options on Bitcoin futures contracts and investments in privately offered pooled investment vehicles that invest in Bitcoin.[45] In previous statements, the Staff of the Commission has acknowledged how such funds can satisfy their concerns regarding custody, valuation, and manipulation.[46] 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 Sponsor believes the current offerings fall short of giving investors an accessible, regulated product that provides concentrated exposure to Bitcoin and Bitcoin prices.

OTC Bitcoin Funds and Investor Protection

The Sponsor notes that 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 futures-based ETP. Investor protection concerns remain

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43 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).

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

45 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/d129263d485apos.htm.

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

and are growing related to OTC Bitcoin Funds. The Sponsor understands the Commission's previous focus in prior disapproval orders on potential manipulation of a Bitcoin ETP holding actual Bitcoin, but believes that such concerns have been sufficiently mitigated by the use of futures contracts in the proposed ETP. Accordingly, the Sponsor believes that the Fund represents an opportunity for U.S. investors to gain price exposure to Bitcoin futures contracts 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) avoiding regulatory concerns regarding custody and valuation posed by ETFs and ETPs that invest directly in Bitcoin rather than in Bitcoin futures contracts.

<u>OTC Bitcoin Funds and Premium/Discount Volatility</u>

According to the Sponsor, 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 NAV[47] 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.[48]

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

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47 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 Fund, the existence of an information sharing agreement between the Exchange and the CME results in increased investor protections as compared to OTC Bitcoin Funds.

48 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.

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, 2021[49] and has historically traded at a premium of between roughly five and forty percent, though it has seen premiums at times above one hundred percent.[50] Recently, however, it has traded at a discount. As of March 24, 2021, the discount was approximately 14%,[51] 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 Sponsor believes that the risks associated with volatile premiums/discounts for OTC

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49 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-NYSE Arca-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.

50 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.

51 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.

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 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.[52] What is unique is that such significant and persistent premiums and discounts can exist in a product with over $35 billion in assets under

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[52] 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.

management,[53] that billions of retail investor dollars are constantly under threat of premium/discount volatility,[54] 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 believes those concerns are adequately addressed in this filing, the Sponsor believes that the Commission should 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.

Spot and Proxy Exposure

According to the Sponsor, exposure to Bitcoin through a Bitcoin futures-based ETP like the Fund also presents certain advantages for retail investors compared to buying spot Bitcoin directly. The most notable advantage is that, as discussed below, the BTC Contracts and MBT Contracts in which the Fund will invest do not require special, potentially complex and untested, custody procedures. Unlike physical Bitcoin ETPs, the Fund will not be required to use a Bitcoin custodian because it will not be holding Bitcoin. By contrast, an individual retail investor holding Bitcoin through a cryptocurrency exchange lacks these protections. 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 addition, retail investors

53 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.

54 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%.

will be able to hold the Shares in traditional brokerage accounts which provide SIPC protection if a brokerage firm fails.

Finally, as described 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 a Bitcoin ETP, 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 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 Sponsor's Registration Statement, typically amounting to a few sentences of narrative description and a

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55 See notes 39-41, 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-notes02-17-2021.

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

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.

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.

<u>The Bitcoin Futures Market Has Developed Alongside the Bitcoin Spot Market into a Strong and Viable Marketplace that Stands On Its Own</u>

As noted above, CME began offering trading in BTC Contracts in 2017, and in MBT Contracts in 2021. Each of the contract's final cash settlement is based on the CME CF Bitcoin Reference Rate (the "CME CF BRR").[59] The contracts trade and settle like other cash-settled commodity futures contracts. According to the Sponsor, trading in CME Bitcoin futures contracts has increased significantly, in particular with respect to BTC Contracts. Nearly every measurable metric related to BTC Contracts has trended consistently up since launch and/or accelerated upward in the past year. For example, there was approximately $28 billion in trading in BTC Contracts 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. BTC Contracts 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. This general upward trend in trading volume and open interest is captured in the following chart.

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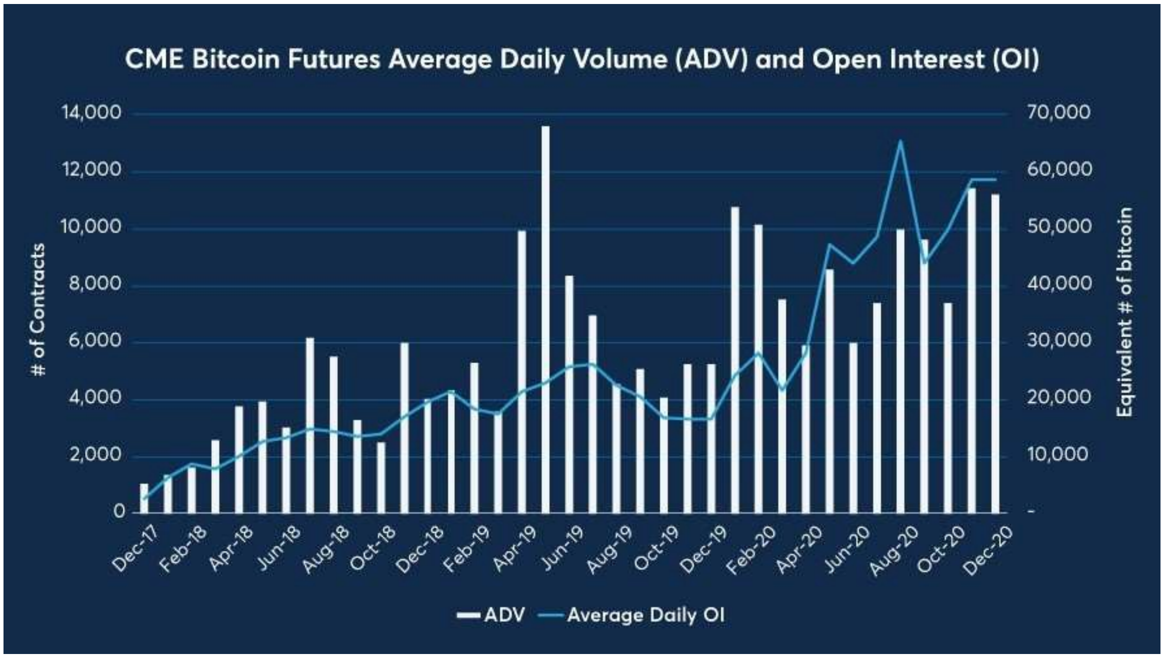
58 <u>See</u>, <u>e.g.</u>, Tesla 10-K for the year ended December 31, 2020, which mentions Bitcoin just nine times: https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/000156459021004599/tsla-10k_20201231.htm.

59 According to the CME, the CME CF BRR 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 https://www.cmegroup.com/trading/cryptocurrency-indices/cf-bitcoin-reference-rate.html?redirect=/trading/cf-bitcoin-reference-rate.html.



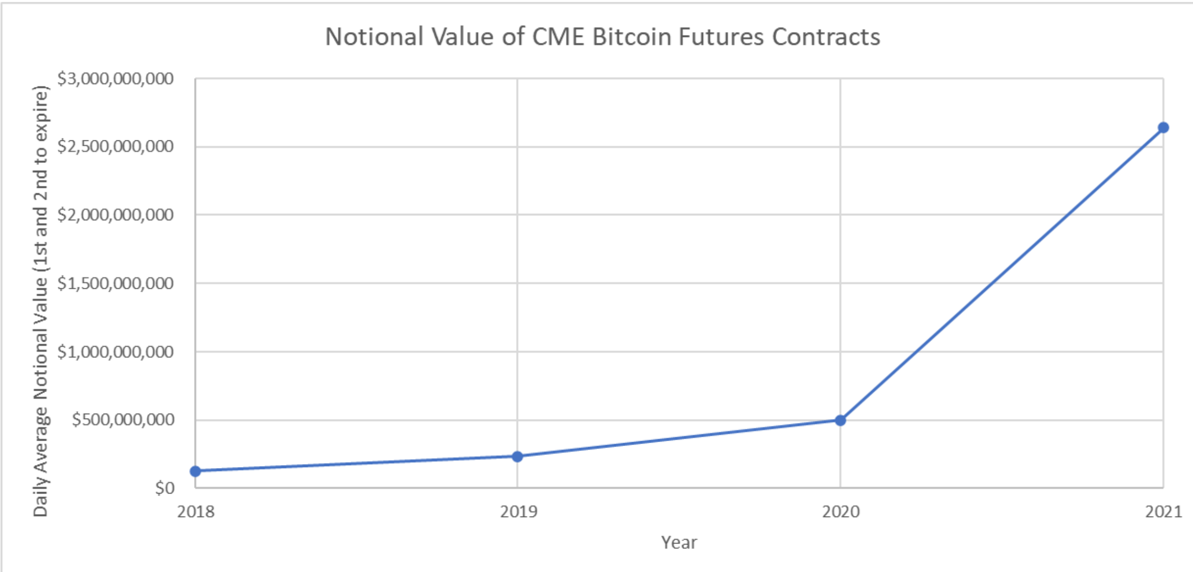
Similarly, the number of large open interest holders[60] has continued to increase even as the price of Bitcoin has risen, as have the number of unique accounts trading Bitcoin Futures.

As it pertains specifically to the Bitcoin Futures Contracts in which the Fund will invest, the statistics are equally as profound. The following table and chart, calculated by the Sponsor, sets forth the approximate daily notional average volume for the Bitcoin Futures Contracts together, followed by the daily average volume (in number of contracts) for each of the Bitcoin Futures Contracts, the first to expire and the second to expire.

	Daily Notional Average Volume for Bitcoin Futures Contracts (in $)	First-to-Expire Bitcoin Futures Contract	Second-to Expire Bitcoin Futures Contract
2018	$126,000,000	3,200	400
2019	$234,000,000	5,400	700

60 A large open interest holder in BTC Contracts 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 BTC Contracts.

2020	$500,000,000	7,100	1,300
2021	$2,640,000,000	8,800	2,400



Note: The 2021 daily average notional value is for the period from January 1, 2021 through June 1, 2021.

The Bitcoin Industry and Market Transactions

According to the Registration Statement, 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.

According to the Registration Statement, 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.

<u>The Fund Will Not Transact in Bitcoin and Will Not Be Required To Retain a Bitcoin Custodian</u>

The Sponsor notes that individual users, institutional investors and investment funds that want to provide exposure to Bitcoin by investing directly in Bitcoin, and therefore must transact in Bitcoin, must use the Bitcoin Network to download specialized software referred to as a "Bitcoin wallet." This wallet may be used to send and receive Bitcoin through users' unique "Bitcoin addresses." The amount of Bitcoin associated with each Bitcoin address, as well as each Bitcoin transaction to or from such address, is captured on the Blockchain. 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 private key is a secret and 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.

According to the Registration Statement, institutional purchasers of Bitcoin, including other Bitcoin funds that provide exposure to Bitcoin by investing directly in Bitcoin, generally maintain their Bitcoin account with a Bitcoin custodian. Bitcoin custodians are financial institutions that have implemented a series of specialized security precautions, including holding Bitcoin in "cold storage," to try to ensure the safety of an account holder's Bitcoin. These Bitcoin custodians must carefully consider the design of the physical, operational, and cryptographic systems for secure storage of private keys in an effort to lower the risk of loss or theft, and many 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 exclusive ownership.

The nature of the Bitcoin Futures Contracts that the Fund will hold is such that the Fund will not be required to use a Bitcoin custodian. According to the Registration Statement, the Fund will deposit an initial margin amount to initiate an open position in futures contracts. A margin deposit is like a cash performance bond. It helps assure the trader's performance of the futures contracts that he or she purchases or sells. Futures contracts are marked to market at the end of each trading day and the margin required with respect to such contracts is adjusted accordingly. The remainder of the Fund's assets will be held in cash and cash equivalents at the Fund custodian or other financial institutions. The Fund will only hold Bitcoin Futures Contracts described above. Accordingly, the Fund will not need a Bitcoin custodian because it will never hold actual Bitcoin and the risks posed by transacting and holding actual Bitcoin will be irrelevant to Fund investors.

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.[61] The Commission does not apply a "cannot be manipulated" standard, but instead seeks to examine whether a proposal meets the requirements of the Act.[62] 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.[63] 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

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61 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").

62 See Winklevoss II Order, 83 FR at 37582.

63 See Wilshire Phoenix Order, 85 FR at 12596-97.

means to prevent fraudulent and manipulative acts and practices."[64]

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 or Bitcoin futures 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.[65] 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.[66] In these orders, the

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64 See Winklevoss II Order, 83 FR at 37580, 37582-91; Bitwise Order, 84 FR at 55383, 55385-406; Wilshire Phoenix Order, 85 FR at 12597.

65 See GraniteShares Order, 83 FR at 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.").

66 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.

Commission cited numerous precedents[67] in which listing proposals were approved based on 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.[68] 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."[69]

The CME[70] 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."[71] Membership of a relevant futures exchange in ISG is sufficient to meet the surveillance-sharing requirement.[72]

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

68 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.

69 See Winklevoss II Order, 83 FR at 37594.

70 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_primercurrencies100417.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.").

71 See https://isgportal.org/overview.

72 See, e.g., Winklevoss II Order, 83 FR at 37594.

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); the surveillance-sharing agreement must be with a market of significant size.[73] 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 it is unlikely that trading in the ETP would be the predominant influence on prices in that market."[74]

For the following reasons, the Sponsor maintains that the CME, as the leading market for Bitcoin futures 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 Bitcoin Futures 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 successfully manipulate prices on those spot platforms that feed into the proposed ETP's pricing

73 See, e.g., id. at 37589–90.

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

mechanism.[75]

The Sponsor believes that the CME meets the first element in several ways. First, the CME Bitcoin futures is the primary Bitcoin price discovery market, and compares favorably with other markets that were deemed to be markets of significant size in precedents.[76] There are various prior orders approving the listing of commodity and commodity futures-based ETPs whose OTC markets and futures markets exhibit a number of similarities with Bitcoin markets. The Sponsor maintains that, like Bitcoin, the primary price discovery mechanism for other commodities are the futures markets in those commodities.[77]

Specifically, the Sponsor notes that as with many OTC commodities markets, it is not possible to enter into an information sharing agreement with the OTC Bitcoin market.[78] When the Commission has approved the listing of other commodity-trust ETPs, rather than requiring 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

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75 See Wilshire Phoenix Order, 85 FR at 12612.

76 See https://www.wilshirephoenix.com/efficient-price-discovery-in-the-bitcoin-markets/?email=giovanni.vicioso@cmegroup.com. See also https://www.sciencedirect.com/science/article/abs/pii/S0165176518304440?via%3Dihub.

77 "The OTC market has no formal structure and no open-outcry meeting place." See Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR-NYSE-2004-22) (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) (the "streetTRACKS Order").

78 "It is not possible, however, to enter into an information sharing agreement with the OTC gold market." streetTRACKS Order, 69 FR at 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) (SR-NYSEArca-2009-94).

the underlying commodity,"[79] given the understanding that the manipulation of the market for a commodity often involves the futures market for that commodity.[80]

The Sponsor also believes that the CME meets the first element because, due to the unique structure of the Fund, it is unlikely that price manipulation or fraud on the trading platforms for Bitcoin will have a measurable impact on the NAV of the Fund. In this regard, the Sponsor notes that the Fund will only hold first and second to expire Bitcoin Futures Contacts along with cash and cash equivalents and will not hold Bitcoin. Unlike other exchange traded products that propose to calculate daily NAV based on the CME CF Bitcoin Real-Time Index (BRTI),[81] which is in turn based on price feeds from certain designated spot market exchanges, the Fund will never directly price off of the CME CF BRR. This is because the Fund will roll its futures holdings prior to settlement of the expiring contract and intends to never carry futures positions all the way to cash settlement (the only date that the BTC Contracts and MBT Contracts settle to the CME CF BRR). The Fund will only price off of Bitcoin Futures Contracts VWAP daily settlement price.[82]

Because the Fund calculates daily NAV based on Bitcoin Futures Contracts' settlement prices and does not calculate NAV based directly on the underlying spot Bitcoin market, the Sponsor believes that the only practicable way for a bad actor to manipulate the NAV of the Fund is through manipulating the first and second to expire Bitcoin Futures Contracts; there is

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79 See Winklevoss II Order, 83 FR at 37591.

80 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).

81 See e.g., 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, Securities Exchange Act Release No. 91962 (May 21, 2021, 86 FR 28646 (May 27, 2021) (SR-NYSEArca-2021-37).

82 For an explanation of how the CME VWAP closing price for Bitcoin futures contracts is calculated, see https://www.cmegroup.com/confluence/display/EPICSANDBOX/Bitcoin.

simply no material connection between those two futures contracts and the underlying Bitcoin spot market. The Sponsor believes that the market for BTC Contracts and MBT Contracts stands alone within the overall global Bitcoin ecosphere; BTC Contracts and MBT Contracts are now of such size and scale that Bitcoin futures prices are not specifically materially influenced by other Bitcoin markets.

The Sponsor notes that this lack of connection between the Bitcoin Futures Contracts and underlying spot trading platforms makes it unnecessary and not beneficial to try to establish a "lead-lag" relationship between the two. The Sponsor respectfully notes that while thousands of pages of studies have been devoted to trying to demonstrate whether the Bitcoin spot market "leads" the Bitcoin futures market, or vice versa, no listing exchanges to date have been able to bear the burden of proof of satisfactorily establishing through such a "lead-lag" analysis that it is "reasonably likely" that a person who is attempting to manipulate the price of a Bitcoin fund's shares would need to trade in the underlying spot market. As discussed above, the structure of the Fund makes such an exercise unnecessary and irrelevant.

The Sponsor also notes in this regard that in the Winklevoss II Order, the SEC stated that "[c]onsistent with the discussion of 'significant market' described above, the Commission has not previously, and does not now, require that an ETP listing exchange be able to enter into a surveillance-sharing agreement with each regulated spot or derivatives market relating to an underlying asset, provided that the market or markets with which there is such an agreement constitute a "significant market." As discussed above, the Sponsor believes that the Bitcoin futures market is a "significant market" and that any bad actor trying to manipulate the price of the Fund would necessarily have to manipulate the Bitcoin futures market.

Additionally, the SEC stated in the Winklevoss II Order that "[a]nd where, as here, a listing exchange fails to establish that other means to prevent fraudulent and manipulative acts and practices will be sufficient, the listing exchange must enter into a surveillance-sharing agreement with a regulated market of significant size because '[s]uch agreements provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'"[83] The SEC attributed the quote to a 1998 release, but nowhere does that release say that the surveillance agreement has to be with a "market of significant size." The release merely states that "[t]he SRO also must have a surveillance program adequate to monitor for abuses in the trading of the new derivative securities product, including trading in the underlying security or securities."

For the reasons discussed, the Sponsor believes that the surveillance agreement already in place between the Exchange and the CME is "adequate to monitor" for abuses in the trading of the Fund's shares, given the significant likelihood that a person attempting to manipulate the price of the shares of the Fund would have to manipulate the prices of the Bitcoin Futures Contracts. In short, in the context of the Sponsor's unique product design and particularly in light of the profound growth in the CME futures market since inception, and in particular over the past 6-9 months, the Sponsor believes it is entirely appropriate to apply the initial standard from the 1998 release. Importantly, however, to the extent the SEC believes it is necessary to hew to the "markets of significant size" standard, that standard does not necessarily lead to the two-part "reasonably likely" standard. In this regard, the Winklevoss II Order stated that "[i]n light of the history and purpose of looking to surveillance-sharing agreements, with respect to markets for assets underlying an ETP or for derivatives on those assets, the Commission interprets the terms 'significant market' and 'market of significant size' to 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

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[83] See Winklevoss II Order, 83 FR at 37580 (citing to Amendment to Rule Filing Requirements for Self-Regulatory Organizations Regarding New Derivative Securities Products, Exchange Act Release No. 40761 (Dec. 8, 1998), 63 FR 70952, 70954, 70959 (Dec. 22, 1998) (File No. S7-13-98) ("NDSP Adopting Release").

influence on prices in that market. <u>This definition is illustrative and not exclusive. There could be other types of "significant markets" and "markets of significant size," but this definition is an example that will provide guidance to market participants</u>."[84]

The Sponsor notes that, as discussed above, it sees no difference between gold futures (or wheat or other futures) versus Bitcoin futures as acceptable stand-alone components of a futures-based ETP. Stated another way: Bitcoin futures have grown in size to such a degree that they cannot be effectively or precisely manipulated by trading in other Bitcoin interests; neither can gold, or wheat, or other futures. The Sponsor believes that data discussed above regarding the recent growth in the Bitcoin futures market clearly establishes that the CME Bitcoin futures markets generally are a market of significant size and there is a clear trend in year-over-year growth. Indeed, the current size and volume of the CME Bitcoin futures market is already more than adequate – and still growing in size – to make its own trading activity the primary, if not the lone determinant, of its valuation. The CME has its own surveillance systems in place to combat manipulation of all futures contracts, and the CME must follow rules and other protective protocols applicable as a "Designated Contracts Market" or "DCM," which are designed to detect anomalies and prevent fraudulent and/or manipulative activities.[85] In short, if

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84 <u>See</u> Winklevoss II Order, 83 FR at 37594 (emphasis added); NDSP Adopting Release.

85 CME's Department of Market Regulation comprehensively surveils futures market conditions and price movements on a real-time and ongoing basis in order to detect and prevent price distortions, including price distortions caused by manipulative efforts.

To reduce the potential threat of price distortions and manipulation, CME's Market Regulation Department also implements trader position limits and accountability limits that are linked to the size of the futures contract's underlying market during the expiration month of trading.

Position limits supplement the reporting of large trader positions (25 contracts or more) to CME's Market Regulation Department and the Commodity Futures Trading Commission ("CFTC") on a daily basis.

CME's market surveillance program and its related self-regulatory responsibilities are implemented pursuant to the Commodity Exchange Act and CFTC regulations thereunder.

manipulation is going to happen, it will fall under one of two regulated exchanges (CME and NYSE Arca).

The Sponsor also maintains that any would-be manipulator of Bitcoin prices would be reasonably likely to have to do so through the CME 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 materially if it can affect the Bitcoin futures market (and thus the Bitcoin spot market) by utilizing the inherent leverage in futures markets.[86] Accordingly, it is highly likely such manipulators would attempt to do so in the CME Bitcoin Futures market 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 impact 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 prices

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The relevant requirements require CME to (i) only list contracts that are not readily susceptible to manipulation, (ii) prevent market disruptions, and (iii) establish tailored position limits or position accountability rules for each futures contract.

The above self-regulatory framework is administered under the CFTC's market oversight mandate which also includes direct enforcement jurisdiction over manipulative activity in a futures contract's underlying market.

86 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%.

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 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 and size of the CME Bitcoin futures market and the significant liquidity available in the spot market.[87]

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		
	February 26, 2020	April 7, 2021
Trading Volume	$433,000,000	$4,321,000,000
Open Interest	$238,000,000	$2,582,000,000

The Sponsor believes that the growth of CME Bitcoin Futures market 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

87 A 12,500 share CU create or redeem at $50 per share and CME contract value of $200,000 only prompts buying of a little over 3 contracts. 10 CU = 31 contracts, 100 Cu create 310 contracts compared to YTD avg daily trade volume of 8800 1st to expire and 2450 2nd to expire.

other future/spot market relationships, where the spot market may have no relationship to the futures market.

The Sponsor believes that the 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. 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).[88] 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. Accordingly, to the extent that the spot market can be used to move the CME Bitcoin futures market (which the Sponsor does not believe is the case), this would make it even more likely that a person attempting to manipulate the price of the shares of the Fund would have to do so by manipulating the CME Bitcoin futures market.

Settlement of BTC Contracts and MBT Contracts

According to the Registration Statement, each BTC Contract and MBT Contract settles daily to the BTC Contract volume-weighted average price ("VWAP") of all trades that occur between 2:59 p.m. and 3:00 p.m. Central Time, the settlement period, rounded to the nearest tradable tick.[89]

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88 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.

89 VWAP is calculated based first on Tier 1 (if there are trades during the settlement period); then Tier 2 (if there are no trades during the settlement period); and then Tier 3 (in the absence of any trade activity or bid/ask in a given contract month during the current trading day, as follows:

Tier 1: Each contract month settles to its VWAP of all trades that occur between 14:59:00 and 15:00:00 CT, the settlement period, rounded to the nearest tradable tick. If

BTC Contracts and MBT Contracts each expire on the last Friday of the contract month and are settled with cash. The final settlement value is based on the CME CF BRR at 4:00 p.m. London time on the expiration day of the futures contract.

As proposed, the Fund will rollover its soon to expire Bitcoin Futures Contracts to extend the expiration or maturity of its position forward by closing the initial contract holdings and opening a new longer-term contract holding for the same underlying asset at the then-current market price. The Fund does not intend to hold any Bitcoin futures positions into cash settlement.

Net Asset Value

According to the Registration Statement, the Fund's NAV per Share will be calculated by taking the current market value of its total assets, subtracting any liabilities, and dividing that total by the number of Shares.

The Administrator of the Fund will calculate the NAV once each trading day, as of the earlier of the close of the New York Stock Exchange or 4:00 p.m. Eastern Standard Time (EST).

According to the Registration Statement, to determine the value of Bitcoin Futures Contracts, the Fund's Administrator will use the Bitcoin Futures Contract settlement price on the exchange on which the contract is traded, except that the "fair value" of Bitcoin Futures

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the VWAP is exactly in the middle of two tradable ticks, then the settlement will be the tradable price that is closer to the contract's prior day settlement price.

Tier 2: If no trades occur on CME Globex between 14:59:00 and 15:00:00 CT, the settlement period, then the last trade (or the contract's settlement price from the previous day in the absence of a last trade price) is used to determine whether to settle to the bid or the ask during this period.

a. If the last trade price is outside of the bid/ask spread, then the contract month settles to the nearest bid or ask price.

b. If the last trade price is within the bid/ask spread, or if a bid/ask spread is not available, then the contract month settles to the last trade price.

Tier 3: In the absence of any trade activity or bid/ask in a given contract month during the current trading day, the daily settlement price will be determined by applying the net change from the preceding contract month to the given contract month's prior daily settlement price.

Contracts (as described in more detail below) may be used when Bitcoin Futures Contracts close at their price fluctuation limit for the day. The Fund's Administrator will determine the value of Fund investments as of the earlier of the close of the New York Stock Exchange or 4:00 p.m. EST. The Fund's NAV will include any unrealized profit or loss on open Bitcoin futures contacts and any other credit or debit accruing to the Fund but unpaid or not received by the Fund.

According to the Registration Statement, the fair value of the Fund's holdings will be determined by the Fund's Sponsor in good faith and in a manner that assesses the future Bitcoin market value based on a consideration of all available facts and all available information on the valuation date. When a Bitcoin Futures Contract has closed at its price fluctuation limit, the fair value determination will attempt to estimate the price at which such Bitcoin Futures Contract would be trading in the absence of the price fluctuation limit (either above such limit when an upward limit has been reached or below such limit when a downward limit has been reached). Typically, this estimate will be made primarily by reference to exchange traded instruments at 4:00 p.m. EST on settlement day. The fair value of BTC Contracts and MBT Contracts may not reflect such security's market value or the amount that the Fund might reasonably expect to receive for the BTC Contracts and MBT Contracts upon its current sale.

<u>Indicative Fund Value</u>

According to the Registration Statement, in order to provide updated information relating to the Fund for use by investors and market professionals, ICE Data Indices, LLC will calculate an updated Indicative Fund Value ("IFV"). The IFV will be calculated by using the prior day's closing NAV per Share of the Fund as a base and will be updated throughout the Core Trading Session of 9:30 a.m. E.T. to 4:00 p.m. E.T. to reflect changes in the value of the Fund's holdings during the trading day.

The IFV will be disseminated on a per Share basis every 15 seconds during the Exchange's Core Trading Session and be widely disseminated by one or more major market data vendors during the Exchange's Core Trading Session.[90]

Creation and Redemption of Shares

According to the Registration Statement, the Shares issued by the Fund may only be purchased by Authorized Purchasers and only in blocks of 12,500 Shares called "Creation Baskets." The amount of the purchase payment for a Creation Basket is equal to the total NAV of Shares in the Creation Basket. Similarly, only Authorized Purchasers may redeem Shares and only in blocks of 12,500 Shares called "Redemption Baskets." The amount of the redemption proceeds for a Redemption Basket is equal to the total NAV of Shares in the Redemption Basket. The purchase price for Creation Baskets and the redemption price for Redemption Baskets are the actual NAV calculated at the end of the business day when a request for a purchase or redemption is received by the Fund.

"Authorized Purchasers" will be the only persons that may place orders to create and redeem Creation Baskets. Authorized Purchasers must be (1) either registered broker-dealers or other securities market participants, such as banks and other financial institutions, that are not required to register as broker-dealers to engage in securities transactions, and (2) DTC Participants. An Authorized Purchaser is an entity that has entered into an Authorized Purchaser Agreement with the Sponsor.

Creation Procedures

According to the Registration Statement, on any "Business Day," an Authorized Purchaser may place an order with the Transfer Agent to create one or more Creation Baskets. For purposes of processing both purchase and redemption orders, a "Business Day" means any day other than a day when the CME or the New York Stock Exchange is closed for regular trading. Purchase orders for Creation Baskets must be placed by 3:00 p.m. EST or one hour prior to the close of trading on the New York Stock Exchange, whichever is earlier. The day on

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[90] Several major market data vendors display and/or make widely available IFVs taken from the Consolidated Tape Association ("CTA") or other data feeds.

which the Distributor receives a valid purchase order is referred to as the purchase order date. If the purchase order is received after the applicable cut-off time, the purchase order date will be the next Business Day. Purchase orders are irrevocable.

By placing a purchase order, an Authorized Purchaser agrees to deposit cash with the Custodian.

Redemption Procedures

According to the Registration Statement, the procedures by which an Authorized Purchaser can redeem one or more Creation Baskets will mirror the procedures for the creation of Creation Baskets. On any Business Day, an Authorized Purchaser may place an order with the Transfer Agent to redeem one or more Creation Baskets.

The redemption procedures allow Authorized Purchasers to redeem Creation Baskets. Individual shareholders may not redeem directly from the Fund. By placing a redemption order, an Authorized Purchaser agrees to deliver the Creation Baskets to be redeemed through DTC's book entry system to the Fund by the end of the next Business Day following the effective date of the redemption order or by the end of such later business day.

Determination of Redemption Distribution

According to the Registration Statement, the redemption distribution from the Fund will consist of an amount of cash, cash equivalents and/or exchange listed Bitcoin futures that is in the same proportion to the total assets of the Fund on the date that the order to redeem is properly received as the number of Shares to be redeemed under the redemption order is in proportion to the total number of Shares outstanding on the date the order is received.

Delivery of Redemption Distribution

According to the Registration Statement, an Authorized Purchaser who places a purchase order will transfer to the Custodian the required amount of cash, cash equivalents and/or Bitcoin futures by the end of the next business day following the purchase order date or by the end of such later business day, not to exceed three business days after the purchase order date, as agreed to between the Authorized Purchaser and the Custodian when the purchase order is placed (the "Purchase Settlement Date"). Upon receipt of the deposit amount, the Custodian will direct DTC to credit the number of Creation Baskets ordered to the Authorized Purchaser's DTC account on the Purchase Settlement Date.

Availability of Information

The NAV for the Fund's Shares will be disseminated daily to all market participants at the same time. The intraday, closing prices, and settlement prices of the Bitcoin Futures Contracts will be readily available from the applicable futures exchange websites, automated quotation systems, published or other public sources, or major market data vendors.

Complete real-time data for the Bitcoin Futures Contracts will be available by subscription through on-line information services. ICE Futures U.S. and CME also provide delayed futures and options on futures information on current and past trading sessions and market news free of charge on their respective websites. The specific contract specifications for Bitcoin Futures Contracts will also be available on such websites, as well as other financial informational sources. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. Quotation information for cash equivalents and commodity futures may be obtained from brokers and dealers who make markets in such instruments. Intra-day price and closing price level information for the Benchmark will be available from major market data vendors. The Benchmark value will be disseminated once every 15 seconds. The IFV will be available through on-line information services.

In addition, the Fund's website, www.teucrium.com, will display the applicable end of day closing NAV. The daily holdings of the Fund will be available on the Fund's website. The Fund's website will also include a form of the prospectus for the Fund that may be downloaded. The website will include the Shares' ticker and CUSIP information along with additional quantitative information updated on a daily basis, including: (1) the prior Business Day's reported NAV and closing price and a calculation of the premium and discount of the closing price or mid-point of the bid/ask spread at the time of NAV calculation (the “Bid/Ask Price”) against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters. The website disclosure of portfolio holdings will be made daily and will include, as applicable, (i) the name, quantity, price, and market value of the Fund’s holdings, (ii) the counterparty to and value of forward contracts and any other financial instruments tracking the Benchmark, and (iii) the total cash and cash equivalents held in the Fund’s portfolio, if applicable.

The Fund’s website will be publicly available at the time of the public offering of the Shares and accessible at no charge.

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 Fund.[91] Trading in Shares of the Fund 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 IFV or the value of the Benchmark occurs. The Benchmark value will be disseminated once every 15 seconds. If the interruption to the dissemination of the IFV, or to the value of the Benchmark 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.

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91 See NYSE Arca Rule 7.12-E.

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 a.m. to 8 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 8.200-E. The trading of the Shares will be subject to NYSE Arca Rule 8.200-E, Commentary .02(e), which sets forth certain restrictions on Equity Trading Permit ("ETP") Holders acting as registered Market Makers in Trust Issued Receipts to facilitate surveillance. With respect to the application of Rule 10A-3[92] under the Act, the Trust will rely on the exception contained in Rule 10A-3(c)(7).[93] A minimum of 50,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

Surveillance

The Exchange represents that trading in the Shares of the Fund will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable

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92 17 CFR 240.10A-3.

93 See Rule 10A-3(c)(7), 17 CFR 240.10A-3(c)(7) (stating that a listed issuer is not subject to the requirements of Rule 10A-3 if the issuer is organized as an unincorporated association that does not have a board of directors and the activities of the issuer are limited to passively owning or holding securities or other assets on behalf of or for the benefit of the holders of the listed securities).

federal securities laws.[94] 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 and the Fund's holdings 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 and the Fund's holdings from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the Fund's holdings from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. The Exchange is also able to obtain information regarding trading in the Shares, the physical commodities underlying the futures contracts through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market. The Exchange can obtain market surveillance information, including customer identity information, with respect to transactions (including transactions in futures contracts) occurring on US futures exchanges, which are members of the ISG. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

The Fund will only hold Bitcoin Futures Contracts that are listed on an exchange that is a

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94 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.

member of the ISG or is a market with which the Exchange has a CSSA.[95]

All statements and representations made in this filing regarding (a) the description of the portfolios of the Funds or Benchmark, (b) limitations on portfolio holdings or the Benchmark, 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 issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund 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)[96] 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.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.200-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 as needed regarding trading in the Shares and

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

96 15 U.S.C. 78f(b)(5).

the Fund's holdings 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 and the Fund's holdings from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the Fund's holdings from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. The Exchange is also able to obtain information regarding trading in the Shares and the Fund's holdings through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market. The Exchange can obtain market surveillance information, including customer identity information, with respect to transactions (including transactions in Bitcoin Futures Contracts) occurring on US futures exchanges, which are members of the ISG. The intraday, closing prices, and settlement prices of the Bitcoin Futures Contracts will be readily available from the applicable futures exchange websites, automated quotation systems, published or other public sources, or major market data vendors website or on-line information services.

Complete real-time data for the Bitcoin Futures Contracts will be available by subscription from on-line information services. ICE Futures U.S. and CME also provide delayed futures information on current and past trading sessions and market news free of charge on the Fund's website. The specific contract specifications for Bitcoin Futures Contracts will also be available on such websites, as well as other financial informational sources. Information regarding options will be available from the applicable exchanges or major market data vendors. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The IFV will be disseminated on a per Share basis every 15 seconds during the Exchange's Core Trading Session and be widely disseminated by one or more major market data vendors during the NYSE Arca Core Trading Session. The Fund's website will also include a form of the prospectus for the Fund that may be downloaded. The website will include the Share's ticker and CUSIP information along with additional quantitative information updated on a daily basis, including, for the Fund: (1) the prior business day's reported NAV and closing price and a calculation of the premium and discount of the closing price or mid-point of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters. The website disclosure of portfolio holdings will be made daily and will include, as applicable, (i) the name, quantity, price, and market value of Bitcoin Futures Contracts, (ii) the counterparty to and value of forward contracts, and (iii) other financial instruments, if any, and the characteristics of such instruments and cash equivalents, and amount of cash held in the Fund's portfolio, if applicable.

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

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 Trust Issued Receipts based on Bitcoin 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 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of Trust Issued Receipts based on Bitcoin and that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

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-2021-53 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-2021-53. 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-2021-53 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[97]

Jill M. Peterson,
Assistant Secretary.

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97 17 CFR 200.30-3(a)(12).