

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 110

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No. \* SR 2023 - \* 016

Amendment No. (req. for Amendments \*)

Filing by The Nasdaq Stock Market LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

|   |                                      |                                     |  |  |  |
|---|--------------------------------------|-------------------------------------|--|--|--|
| Initial * <input checked="" type="checkbox"/> | Amendment * <input type="checkbox"/> | Withdrawal <input type="checkbox"/> | Section 19(b)(2) * <input checked="" type="checkbox"/> | Section 19(b)(3)(A) * <input type="checkbox"/> | Section 19(b)(3)(B) * <input type="checkbox"/> |
|---|--------------------------------------|-------------------------------------|--|--|--|

|                                |   |                                     |
|--------------------------------|---|-------------------------------------|
| Pilot <input type="checkbox"/> | Extension of Time Period for Commission Action * <input type="checkbox"/> | Date Expires * <input type="text"/> |
|--------------------------------|---|-------------------------------------|

Rule

|                                      |                                      |
|--------------------------------------|--------------------------------------|
| <input type="checkbox"/> 19b-4(f)(1) | <input type="checkbox"/> 19b-4(f)(4) |
| <input type="checkbox"/> 19b-4(f)(2) | <input type="checkbox"/> 19b-4(f)(5) |
| <input type="checkbox"/> 19b-4(f)(3) | <input type="checkbox"/> 19b-4(f)(6) |

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010  
Section 806(e)(1) \*

Section 806(e)(2) \*

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934  
Section 3C(b)(2) \*

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

A proposal to list and trade shares of the iShares Bitcoin Trust under Nasdaq Rule 5711(d).

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Jonathan Last Name \* Cayne

Title \* AVP Principal Associate General Counsel

E-mail \* Jonathan.Cayne@nasdaq.com

Telephone \* (301) 978-8492 Fax

**Signature**

Pursuant to the requirements of the Securities Exchange of 1934, The Nasdaq Stock Market LLC has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 06/29/2023

(Title \*)

By John Zecca

EVP and Chief Legal Officer

(Name \*)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

 Date: 2023.06.29 17:11:20 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

**Form 19b-4 Information \***

Add Remove View

SR-NASDAQ-2023-016 19b-4.doc

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

SR-NASDAQ-2023-016 Exhibit 1.doc

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies \***

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2- Notices, Written Comments, Transcripts, Other Communications**

Add Remove View

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

Add Remove View

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

**Partial Amendment**

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934, as amended (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to list and trade shares of the iShares Bitcoin Trust (the “Trust”) under Nasdaq Rule 5711(d) (“Commodity-Based Trust Shares”). The shares of the Trust are referred to herein as the “Shares.”

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”). Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action by Nasdaq is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Jonathan F. Cayne  
Principal Associate General Counsel  
Nasdaq, Inc.  
(301) 978-8493

---

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

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

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

(a) Purpose

The Exchange proposes to list and trade the Shares under Nasdaq Rule 5711(d),<sup>3</sup> which governs the listing and trading of Commodity-Based Trust Shares on the Exchange. iShares Delaware Trust Sponsor LLC, a Delaware limited liability company and an indirect subsidiary of BlackRock, Inc. (“BlackRock”), is the sponsor of the Trust (the “Sponsor”). The Shares will be registered with the SEC by means of the Trust’s registration statement on Form S-1 (the “Registration Statement”).<sup>4</sup>

Description of the Trust

The Shares will be issued by the Trust, a Delaware statutory trust. The Trust will operate pursuant to a trust agreement (the “Trust Agreement”) between the Sponsor, BlackRock Fund Advisors (the “Trustee”) as the trustee of the Trust and will appoint a Delaware Trustee of the Trust (the “Delaware Trustee”) by such time that the Registration Statement is effective. The Trust issues Shares representing fractional undivided beneficial interests in its net assets. The assets of the Trust consist primarily of bitcoin held by a custodian on behalf of the Trust. Coinbase Custody Trust Company, LLC (the “Bitcoin Custodian”), is the custodian for the Trust’s bitcoin holdings; and Bank of New York Mellon is the custodian for the Trust’s cash holdings (the “Cash Custodian” and together with the Bitcoin Custodian, the “Custodians”) and the

---

<sup>3</sup> The Commission approved Nasdaq Rule 5711 in Securities Exchange Act Release No. 66648 (March 23, 2012), 77 FR 19428 (March 30, 2012) (SR-NASDAQ-2012-013).

<sup>4</sup> See Registration Statement on Form S-1, dated June 15, 2023 filed with the Commission by the Sponsor on behalf of the Trust. The descriptions of the Trust contained herein are based, in part, on information in the Registration Statement. The Registration Statement is not yet effective and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

administrator of the Trust (the “Trust Administrator”). Under the Trust Agreement, the Trustee may delegate all or a portion of its duties to any agent, and has delegated the bulk of the day-to-day responsibilities to the Trust Administrator and certain other administrative and record-keeping functions to its affiliates and other agents. The Trust is not an investment company registered under the Investment Company Act of 1940, as amended (the “1940 Act”).

The investment objective of the Trust is to reflect generally the performance of the price of bitcoin. The Trust seeks to reflect such performance before payment of the Trust’s expenses and liabilities. The Shares are intended to constitute a simple means of making an investment similar to an investment in bitcoin rather than by acquiring, holding and trading bitcoin directly on a peer-to-peer or other basis or via a digital asset exchange. The Shares have been designed to remove the obstacles represented by the complexities and operational burdens involved in a direct investment in bitcoin, while at the same time having an intrinsic value that reflects, at any given time, the investment exposure to the bitcoin owned by the Trust at such time, less the Trust’s expenses and liabilities. Although the Shares are not the exact equivalent of a direct investment in bitcoin, they provide investors with an alternative method of achieving investment exposure to bitcoin through the public securities market, which may be more familiar to them.

#### Custody of the Trust’s Bitcoins

An investment in the Shares is backed by bitcoin held by the Bitcoin Custodian on behalf of the Trust. The Bitcoin Custodian will keep custody of all of the Trust’s bitcoin, other than that which is maintained in the Trading Balance with the Prime Broker, in

accounts that are required to be segregated from the assets held by the Bitcoin Custodian as principal and the assets of its other customers (the “Vault Balance”), with any remainder of the Vault Balance held as part of a “hot storage”.<sup>5</sup> The Bitcoin Custodian will keep a substantial portion of the private keys associated with the Trust’s bitcoin in “cold storage”<sup>6</sup> or similarly secure technology (the “Cold Vault Balance”) The hardware, software, systems, and procedures of the Bitcoin Custodian may not be available or cost-effective for many investors to access directly.

#### Net Asset Value

The net asset value of the Trust will be equal to the total assets of the Trust, including but not limited to, all bitcoin and cashless total liabilities of the Trust, each determined by the Trustee pursuant to policies established from time to time by the Trustee or its affiliates or otherwise described herein. The methodology used to calculate an index (the “Index”) price to value bitcoin in determining the net asset value of the Trust may not be deemed consistent with U.S. generally accepted accounting principles (“GAAP”).

The Sponsor has the exclusive authority to determine the Trust’s net asset value,

---

<sup>5</sup> A portion of the Trust’s bitcoin holdings and cash holdings from time to time may be held with the Prime Broker, an affiliate of the Bitcoin Custodian, in the Trading Balance, in connection with in-kind creations and redemptions of Baskets and the sale of bitcoin to pay the Sponsor’s Fee and Trust expenses not assumed by the Sponsor. These periodic holdings held in the Trading Balance with the Prime Broker represent an omnibus claim on the Prime Broker’s bitcoins held on behalf of clients; these holdings exist across a combination of omnibus hot wallets, omnibus cold wallets, or in accounts in the Prime Broker’s name on a trading venue (including third-party venues and the Prime Broker’s own execution venue) where the Prime Broker executes orders to buy and sell bitcoin on behalf of its clients.

<sup>6</sup> The term “cold storage” refers to a safeguarding method by which the private keys corresponding to bitcoins stored on a digital wallet are removed from any computers actively connected to the internet. Cold storage of private keys may involve keeping such wallet on a non-networked computer or electronic device or storing the public key and private keys relating to the digital wallet on a storage device (for example, a USB thumb drive) or printed medium (for example, papyrus or paper) and deleting the digital wallet from all computers.

which it has delegated to the Trustee under the Trust Agreement. The Trustee has delegated to the Trust Administrator the responsibility to calculate the net asset value of the Trust and the NAV, based on a pricing source selected by the Trustee. In determining the Trust's net asset value, the Trust Administrator values the bitcoin held by the Trust based on the Index, unless otherwise determined by the Sponsor in its sole discretion. The CF Benchmarks Index shall constitute the Index, unless the CF Benchmarks Index is not available or the Sponsor in its sole discretion determines not to use the CF Benchmarks Index as the Index. If the CF Benchmarks Index is not available or the Sponsor determines, in its sole discretion, that the CF Benchmarks Index should not be used, the Trust's holdings may be fair valued in accordance with the policy approved by the Sponsor.

The Trust's periodic financial statements may not utilize net asset value or NAV to the extent the methodology used to calculate the Index is deemed not to be consistent with GAAP. For purposes of the Trust's periodic financial statements, the Trust will utilize a pricing source that is consistent with GAAP, as of the financial statement measurement date. The Sponsor will determine in its sole discretion the valuation sources and policies used to prepare the Trust's financial statements in accordance with GAAP.

The Sponsor may declare a suspension of the calculation of the NAV of the Trust under certain circumstances.

#### Net Asset Value Calculation and Index

On each Business Day, as soon as practicable after 4:00 p.m. Eastern Time ("ET"), the Trust Administrator evaluates the bitcoin held by the Trust as reflected by the

CF Benchmarks Index and determines the net asset value of the Trust and the NAV. For purposes of making these calculations, a Business Day means any day other than a day when Nasdaq is closed for regular trading.

The CF Benchmarks Index employed by the Trust is calculated on each Business Day by aggregating the notional value of bitcoin trading activity across major bitcoin spot exchanges. The CF Benchmarks Index is designed based on the IOSCO Principles for Financial Benchmarks. The administrator of the CF Benchmarks Index is CF Benchmarks Ltd. (the “Index Administrator”). The CF Benchmarks Index serves as a once-a-day benchmark rate of the U.S. dollar price of bitcoin (USD/BTC), calculated as of 4:00 p.m. ET. The CF Benchmarks Index aggregates the trade flow of several bitcoin exchanges, during an observation window between 3:00 p.m. and 4:00 p.m. ET into the U.S. dollar price of one bitcoin at 4:00 p.m. ET. Specifically, the CF Benchmarks Index is calculated based on the “Relevant Transactions”<sup>7</sup> of all of its constituent bitcoin exchanges (“Constituent Exchanges”), which are currently Bitstamp, Coinbase, itBit, Kraken, Gemini, and LMAX (the “Constituent Platforms”), and which may change from time to time.

If the CF Benchmarks Index is not available or the Sponsor determines, in its sole discretion, that the CF Benchmarks Index should not be used, the Trust’s holdings may be fair valued in accordance with the policy approved by the Sponsor.

The Trust is intended to provide a way for Shareholders to obtain exposure to bitcoin by investing in the Shares rather than by acquiring, holding and trading bitcoin

---

<sup>7</sup> A “Relevant Transaction” is any cryptocurrency versus U.S. dollar spot trade that occurs during the observation window between 3:00 p.m. and 4:00 p.m. ET on a Constituent Exchange in the BTC/USD pair that is reported and disseminated by a Constituent Exchange through its publicly available API and observed by the Index Administrator.

directly on a peer-to-peer or other basis or via a digital asset exchange. An investment in Shares of the Trust is not the same as an investment directly in bitcoin on a peer-to-peer or other basis or via a digital asset exchange.

#### Creation and Redemption of Shares

The Trust issues and redeems baskets (“Baskets”)<sup>8</sup> on a continuous basis. Baskets are only issued or redeemed in exchange for an amount of bitcoin determined by the Trustee on each day that Nasdaq is open for regular trading. No Shares are issued unless the Bitcoin Custodian or Prime Broker has allocated to the Trust’s account the corresponding amount of bitcoin. The amount of bitcoin necessary for the creation of a Basket, or to be received upon redemption of a Basket, will decrease over the life of the Trust, due to the payment or accrual of fees and other expenses or liabilities payable by the Trust. Baskets may be created or redeemed only by Authorized Participants, who pay BlackRock Investments, LLC (“BRIL”), an affiliate of the Trustee that has been retained by the Trust to perform certain order processing, Authorized Participant communications, and related services in connection with the issuance and redemption of Baskets (“ETF Services”), a transaction fee for each order to create or redeem Baskets.

#### Overview of the Bitcoin Industry

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

---

<sup>8</sup> The Trust issues and redeems Shares only in blocks of 40,000 or integral multiples thereof. A block of 40,000 Shares is called a “Basket.” These transactions take place in exchange for bitcoin. Baskets will be offered continuously at the net asset value per Share (“NAV”) for 40,000 Shares on the day that an order to create a Basket is accepted by the Trust. The Trust may change the number of Shares in a Basket. Only registered broker-dealers that become authorized participants by entering into a contract with the Sponsor and the Trustee (“Authorized Participants”) may purchase or redeem Baskets. Shares will be offered to the public from time to time at varying prices that will reflect the price of bitcoin and the trading price of the Shares on Nasdaq at the time of the offer.

cryptographic protocols. No single entity owns or operates the Bitcoin network, the infrastructure of which is collectively maintained by its 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 Bitcoin 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 exchanges that enable trading in bitcoin or in individual end-user-to-end-user transactions under a barter system.

The Bitcoin network is commonly understood to be decentralized and does not require governmental authorities or financial institution intermediaries to create, transmit or determine the value of bitcoin. Rather, bitcoin is created and allocated by the Bitcoin network protocol through a “mining” process. The value of bitcoin is determined by the supply of and demand for bitcoin-on-bitcoin exchanges or in private end-user-to-end-user transactions.

New bitcoins are created and rewarded to the miners of a block in the Bitcoin blockchain for verifying transactions. The Bitcoin blockchain is a shared 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 Bitcoin blockchain. As each new block records outstanding bitcoin transactions, and outstanding transactions are settled and validated through such recording, the Bitcoin blockchain represents a complete, transparent and unbroken history of all transactions of the Bitcoin network.

#### History of Bitcoin

The Bitcoin network was initially contemplated in a whitepaper that also

described bitcoin and the operating software to govern the Bitcoin network. The whitepaper was purportedly authored by Satoshi Nakamoto. However, no individual with that name has been reliably identified as bitcoin's creator, and the general consensus is that the name is a pseudonym for the actual inventor or inventors. The first bitcoins were created in 2009 after Nakamoto released the Bitcoin network source code (the software and protocol that created and launched the Bitcoin network). The Bitcoin network has been under active development since that time by a loose group of software developers who have come to be known as core developers.

#### Overview of Bitcoin Network Operations

In order to own, transfer or use bitcoin directly on the Bitcoin network (as opposed to through an intermediary, such as an exchange), a person generally must have internet access to connect to the Bitcoin network. Bitcoin transactions may be made directly between end-users without the need for a third-party intermediary. To prevent the possibility of double-spending bitcoin, a user must notify the Bitcoin network of the transaction by broadcasting the transaction data to its network peers. The Bitcoin network provides confirmation against double-spending by memorializing every transaction in the Bitcoin blockchain, which is publicly accessible and transparent. This memorialization and verification against double-spending is accomplished through the Bitcoin network mining process, which adds "blocks" of data, including recent transaction information, to the Bitcoin blockchain.

#### Overview of Bitcoin Transfers

Prior to engaging in bitcoin transactions directly on the Bitcoin network, a user generally must first install on its computer or mobile device a Bitcoin network software

program that will allow the user to generate a private and public key pair associated with a bitcoin address commonly referred to as a “wallet.” The Bitcoin network software program and the bitcoin address also enable the user to connect to the Bitcoin network and transfer bitcoin to, and receive bitcoin from, other users.

Each Bitcoin network address, or wallet, is associated with a unique “public key” and “private key” pair. To receive bitcoin, the bitcoin recipient must provide its public key to the party initiating the transfer. This activity is analogous to a recipient for a transaction in U.S. dollars providing a routing address in wire instructions to the payor so that cash may be wired to the recipient’s account. The payor approves the transfer to the address provided by the recipient by “signing” a transaction that consists of the recipient’s public key with the private key of the address from where the payor is transferring the bitcoin. The recipient, however, does not make public or provide to the sender its related private key.

Neither the recipient nor the sender reveals their private keys in a transaction because the private key authorizes transfer of the funds in that address to other users. Therefore, if a user loses his or her private key, the user may permanently lose access to the bitcoin contained in the associated address. Likewise, bitcoin is irretrievably lost if the private key associated with them is deleted and no backup has been made. When sending bitcoin, a user’s Bitcoin network software program must validate the transaction with the associated private key. The resulting digitally validated transaction is sent by the user’s Bitcoin network software program to the Bitcoin network to allow transaction confirmation.

Some bitcoin transactions are conducted “off-blockchain” and are therefore not

recorded in the Bitcoin blockchain. Some “off-blockchain transactions” involve the transfer of control over, or ownership of, a specific digital wallet holding bitcoin or the reallocation of ownership of certain bitcoin in a digital wallet containing assets owned by multiple persons, such as a digital wallet maintained by a digital assets exchange. In contrast to on-blockchain transactions, which are publicly recorded on the Bitcoin blockchain, information and data regarding off-blockchain transactions are generally not publicly available. Therefore, off-blockchain transactions are not truly bitcoin transactions in that they do not involve the transfer of transaction data on the Bitcoin network and do not reflect a movement of bitcoin between addresses recorded in the Bitcoin blockchain. For these reasons, off-blockchain transactions are subject to risks as any such transfer of bitcoin ownership is not protected by the protocol behind the Bitcoin network or recorded in, and validated through, the blockchain mechanism.

#### Summary of a Bitcoin Transaction

In a bitcoin transaction directly on the Bitcoin network between two parties (as opposed to through an intermediary, such as a custodian), the following circumstances must initially be in place: (i) the party seeking to send bitcoin must have a Bitcoin network public key, and the Bitcoin network must recognize that public key as having sufficient bitcoin for the transaction; (ii) the receiving party must have a Bitcoin network public key; and (iii) the spending party must have internet access with which to send its spending transaction.

The receiving party must provide the spending party with its public key and allow the Bitcoin blockchain to record the sending of bitcoin to that public key. After the provision of a recipient’s Bitcoin network public key, the spending party must enter the

address into its Bitcoin network software program along with the number of bitcoin to be sent. The number of bitcoin to be sent will typically be agreed upon between the two parties based on a set number of bitcoin or an agreed upon conversion of the value of fiat currency to bitcoin. Since every computation on the Bitcoin network requires the payment of bitcoin, including verification and memorialization of bitcoin transfers, there is a transaction fee involved with the transfer, which is based on computation complexity and not on the value of the transfer and is paid by the payor with a fractional number of bitcoin.

After the entry of the Bitcoin network address, the number of bitcoin to be sent and the transaction fees, if any, to be paid, will be transmitted by the spending party. The transmission of the spending transaction results in the creation of a data packet by the spending party's Bitcoin network software program, which is transmitted onto the decentralized Bitcoin network, resulting in the distribution of the information among the software programs of users across the Bitcoin network for eventual inclusion in the Bitcoin blockchain.

As discussed in greater detail below, Bitcoin network miners record transactions when they solve for and add blocks of information to the Bitcoin blockchain. When a miner solves for a block, it creates that block, which includes data relating to (i) the solution to the block, (ii) a reference to the prior block in the Bitcoin blockchain to which the new block is being added and (iii) transactions that have occurred but have not yet been added to the Bitcoin blockchain. The miner becomes aware of outstanding, unrecorded transactions through the data packet transmission and distribution discussed above.

Upon the addition of a block included in the Bitcoin blockchain, the Bitcoin network software program of both the spending party and the receiving party will show confirmation of the transaction on the Bitcoin blockchain and reflect an adjustment to the bitcoin balance in each party's Bitcoin network public key, completing the bitcoin transaction. Once a transaction is confirmed on the Bitcoin blockchain, it is irreversible.

#### Creation of a New Bitcoin

New bitcoins are created through the mining process. The process by which bitcoin is "mined" results in new blocks being added to the Bitcoin blockchain and new bitcoin tokens being issued to the miners. Computers on the Bitcoin network engage in a set of prescribed complex mathematical calculations in order to add a block to the Bitcoin blockchain and thereby confirm bitcoin transactions included in that block's data. The Bitcoin network is designed in such a way that the reward for adding new blocks to the Bitcoin blockchain decreases over time. Once new bitcoin tokens are no longer awarded for adding a new block, miners will only have transaction fees to incentivize them, and as a result, it is expected that miners will need to be better compensated with higher transaction fees to ensure that there is adequate incentive for them to continue mining.

#### Limits on Bitcoin Supply

Under the source code that governs the Bitcoin network, the supply of new bitcoin is mathematically controlled so that the number of bitcoin grows at a limited rate pursuant to a pre-set schedule. The number of bitcoin awarded for solving a new block is automatically halved after every 210,000 blocks are added to the Bitcoin blockchain, approximately every 4 years. Currently, the fixed reward for solving a new block is 6.25 bitcoin per block and this is expected to decrease by half to become 3.125 bitcoin in

approximately early 2024. This deliberately controlled rate of bitcoin creation means that the number of bitcoin in existence will increase at a controlled rate until the number of bitcoin in existence reaches the pre-determined 21 million bitcoin. However, the 21 million supply cap could be changed in a hard fork. A hard fork could change the source code to the Bitcoin network, including the 21 million bitcoin supply cap.

### Background

The Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts, including spot based Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.<sup>9</sup> Prior orders from the Commission have pointed out that in every prior approval order for Commodity-Based Trust Shares, there has been a derivatives market that represents the regulated market of significant size, generally a Commodity Futures Trading Commission regulated futures market.<sup>10</sup> Further to this

---

<sup>9</sup> See Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018). This proposal was subsequently disapproved by the Commission. See Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the “Winklevoss Order”).

<sup>10</sup> See streetTRACKS Gold Shares, Exchange Act Release No. 50603 (Oct. 28, 2004), 69 FR 64614, 64618–19 (Nov. 5, 2004) (SR-NYSE-2004-22) (the “First Gold Approval Order”); iShares COMEX Gold Trust, Exchange Act Release No. 51058 (Jan. 19, 2005), 70 FR 3749, 3751, 3754–55 (Jan. 26, 2005) (SR-Amex-2004-38); iShares Silver Trust, Exchange Act Release No. 53521 (Mar. 20, 2006), 71 FR 14967, 14968, 14973–74 (Mar. 24, 2006) (SR-Amex-2005-072); ETFs Gold Trust, Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993, 22994–95, 22998, 23000 (May 15, 2009) (SR-NYSEArca-2009-40); ETFs Silver Trust, Exchange Act Release No. 59781 (Apr. 17, 2009), 74 FR 18771, 18772, 18775–77 (Apr. 24, 2009) (SR-NYSEArca-2009-28); ETFs Palladium Trust, Exchange Act Release No. 61220 (Dec. 22, 2009), 74 FR 68895, 68896 (Dec. 29, 2009) (SR-NYSEArca-2009-94) (notice of proposed rule change included NYSE Arca’s representation that “[t]he most significant palladium futures exchanges are the NYMEX and the Tokyo Commodity Exchange,” that “NYMEX is the largest exchange in the world for trading precious metals futures and options,” and that NYSE Arca “may obtain trading information via the Intermarket Surveillance Group,” of which NYMEX is a member, Exchange Act Release No. 60971 (Nov. 9, 2009), 74 FR 59283, 59285–86, 59291 (Nov. 17, 2009)); ETFs Platinum Trust, Exchange Act Release No. 61219 (Dec. 22, 2009), 74 FR 68886, 68887–88 (Dec. 29, 2009) (SR-NYSEArca-2009-95) (notice of proposed rule change

---

included NYSE Arca's representation that "[t]he most significant platinum futures exchanges are the NYMEX and the Tokyo Commodity Exchange," that "NYMEX is the largest exchange in the world for trading precious metals futures and options," and that NYSE Arca "may obtain trading information via the Intermarket Surveillance Group," of which NYMEX is a member, Exchange Act Release No. 60970 (Nov. 9, 2009), 74 FR 59319, 59321, 59327 (Nov. 17, 2009)); Sprott Physical Gold Trust, Exchange Act Release No. 61496 (Feb. 4, 2010), 75 FR 6758, 6760 (Feb. 10, 2010) (SR-NYSEArca-2009-113) (notice of proposed rule change included NYSE Arca's representation that the COMEX is one of the "major world gold markets," that NYSE Arca "may obtain trading information via the Intermarket Surveillance Group," and that NYMEX, of which COMEX is a division, is a member of the Intermarket Surveillance Group, Exchange Act Release No. 61236 (Dec. 23, 2009), 75 FR 170, 171, 174 (Jan. 4, 2010)); Sprott Physical Silver Trust, Exchange Act Release No. 63043 (Oct. 5, 2010), 75 FR 62615, 62616, 62619, 62621 (Oct. 12, 2010) (SR-NYSEArca-2010-84); ETFS Precious Metals Basket Trust, Exchange Act Release No. 62692 (Aug. 11, 2010), 75 FR 50789, 50790 (Aug. 17, 2010) (SR-NYSEArca-2010-56) (notice of proposed rule change included NYSE Arca's representation that "the most significant gold, silver, platinum and palladium futures exchanges are the COMEX and the TOCOM" and that NYSE Arca "may obtain trading information via the Intermarket Surveillance Group," of which COMEX is a member, Exchange Act Release No. 62402 (Jun. 29, 2010), 75 FR 39292, 39295, 39298 (July 8, 2010)); ETFS White Metals Basket Trust, Exchange Act Release No. 62875 (Sept. 9, 2010), 75 FR 56156, 56158 (Sept. 15, 2010) (SR-NYSEArca-2010-71) (notice of proposed rule change included NYSE Arca's representation that "the most significant silver, platinum and palladium futures exchanges are the COMEX and the TOCOM" and that NYSE Arca "may obtain trading information via the Intermarket Surveillance Group," of which COMEX is a member, Exchange Act Release No. 62620 (July 30, 2010), 75 FR 47655, 47657, 47660 (Aug. 6, 2010)); ETFS Asian Gold Trust, Exchange Act Release No. 63464 (Dec. 8, 2010), 75 FR 77926, 77928 (Dec. 14, 2010) (SR-NYSEArca-2010-95) (notice of proposed rule change included NYSE Arca's representation that "the most significant gold futures exchanges are the COMEX and the Tokyo Commodity Exchange," that "COMEX is the largest exchange in the world for trading precious metals futures and options," and that NYSE Arca "may obtain trading information via the Intermarket Surveillance Group," of which COMEX is a member, Exchange Act Release No. 63267 (Nov. 8, 2010), 75 FR 69494, 69496, 69500-01 (Nov. 12, 2010)); Sprott Physical Platinum and Palladium Trust, Exchange Act Release No. 68430 (Dec. 13, 2012), 77 FR 75239, 75240-41 (Dec. 19, 2012) (SR-NYSEArca-2012-111) (notice of proposed rule change included NYSE Arca's representation that "[f]utures on platinum and palladium are traded on two major exchanges: The New York Mercantile Exchange ... and Tokyo Commodities Exchange" and that NYSE Arca "may obtain trading information via the Intermarket Surveillance Group," of which COMEX is a member, Exchange Act Release No. 68101 (Oct. 24, 2012), 77 FR 65732, 65733, 65739 (Oct. 30, 2012)); APMEX Physical—1 oz. Gold Redeemable Trust, Exchange Act Release No. 66930 (May 7, 2012), 77 FR 27817, 27818 (May 11, 2012) (SR-NYSEArca-2012-18) (notice of proposed rule change included NYSE Arca's representation that NYSE Arca "may obtain trading information via the Intermarket Surveillance Group," of which COMEX is a member, and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the "major world gold markets," Exchange Act Release No. 66627 (Mar. 20, 2012), 77 FR 17539, 17542-43, 17547 (Mar. 26, 2012)); JPM XF Physical Copper Trust, Exchange Act Release No. 68440 (Dec. 14, 2012), 77 FR 75468, 75469-70, 75472, 75485-86 (Dec. 20, 2012) (SR-NYSEArca-2012-28); iShares Copper Trust, Exchange Act Release No. 68973 (Feb. 22, 2013), 78 FR 13726, 13727, 13729-30, 13739-40 (Feb. 28, 2013) (SR-NYSEArca-2012-66); First Trust Gold Trust, Exchange Act Release No. 70195 (Aug. 14, 2013), 78 FR 51239, 51240 (Aug. 20, 2013) (SR-NYSEArca-2013-61) (notice of proposed rule change included NYSE Arca's representation that FINRA, on behalf of the exchange, may obtain trading information regarding gold futures and options on gold futures from members of the Intermarket Surveillance Group, including COMEX, or from markets "with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement," and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change

point, the Commission’s prior orders have noted that the spot commodities and currency markets for which it has previously approved spot exchange traded products (“ETPs”) are generally unregulated and that the Commission relied on the underlying futures market as the regulated market of significant size that formed the basis for approving the series of Currency and Commodity-Based Trust Shares, including gold, silver, platinum, palladium, copper, and other commodities and currencies. The Commission specifically noted in the Winklevoss Order that the First Gold Approval Order “was based on an assumption that the currency market and the spot gold market were largely unregulated.”<sup>11</sup>

As such, the regulated market of significant size test does not require that the spot bitcoin market be regulated in order for the Commission to approve this proposal, and precedent makes clear that an underlying market for a spot commodity or currency being a regulated market would actually be an exception to the norm. These largely unregulated currency and commodity markets do not provide the same protections as the markets that are subject to the Commission’s oversight, but the Commission has consistently looked to surveillance sharing agreements with the underlying futures market in order to determine whether such products were consistent with the Act. With this in

---

to list and trade shares of the ETFs Gold Trust, in which NYSE Arca represented that COMEX is one of the “major world gold markets,” Exchange Act Release No. 69847 (June 25, 2013), 78 FR 39399, 39400, 39405 (July 1, 2013)); Merk Gold Trust, Exchange Act Release No. 71378 (Jan. 23, 2014), 79 FR 4786, 4786–87 (Jan. 29, 2014) (SR-NYSEArca-2013-137) (notice of proposed rule change included NYSE Arca’s representation that “COMEX is the largest gold futures and options exchange” and that NYSE Arca “may obtain trading information via the Intermarket Surveillance Group,” including with respect to transactions occurring on COMEX pursuant to CME and NYMEX’s membership, or from exchanges “with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement,” Exchange Act Release No. 71038 (Dec. 11, 2013), 78 FR 76367, 76369, 76374 (Dec. 17, 2013)); Long Dollar Gold Trust, Exchange Act Release No. 79518 (Dec. 9, 2016), 81 FR 90876, 90881, 90886, 90888 (Dec. 15, 2016) (SR-NYSEArca-2016-84).

<sup>11</sup> See Winklevoss Order at 37592.

mind, the Bitcoin Futures market, as defined below, is the proper market to consider in determining whether there is a related regulated market of significant size.

Further to this point, the Exchange notes that the Commission has recently approved proposals related to the listing and trading of funds that would primarily hold Bitcoin Futures that are registered under the Securities Act of 1933 instead of the 1940 Act.<sup>12</sup> In the Teucrium Approval, the Commission found the Bitcoin Futures market to be a regulated market of significant size as it relates to Bitcoin Futures, an odd tautological truth that is also inconsistent with prior disapproval orders for ETPs that would hold actual bitcoin instead of derivatives contracts (“Spot Bitcoin ETPs”) that use the exact same pricing methodology as the Bitcoin Futures. As further discussed below, both the Exchange and the Sponsor believe that this proposal and the included analysis are sufficient to establish that the Bitcoin Futures market represents a regulated market of significant size as it relates both to the Bitcoin Futures market and to the spot bitcoin market and that this proposal should be approved.

#### Bitcoin Futures ETFs

The Exchange and Sponsor applaud the Commission for allowing the launch of exchange-traded funds (“ETFs”) registered under the 1940 Act and the recent Bitcoin Futures Approvals that provide exposure to bitcoin primarily through Bitcoin Futures (“Bitcoin Futures ETFs”). Allowing such products to list and trade is a productive first step in providing U.S. investors and traders with transparent, exchange listed tools for expressing a view on bitcoin. The Bitcoin Futures Approvals, however, have created a

---

<sup>12</sup> See Exchange Act Release No. 94620 (April 6, 2022), 87 FR 21676 (April 12, 2022) (the “Teucrium Approval”) and 94853 (May 5, 2022) (collectively, with the Teucrium Approval, the “Bitcoin Futures Approvals”).

logical inconsistency in the application of the standard the Commission applies when considering bitcoin ETP proposals.

As discussed further below, the standard applicable to bitcoin ETPs is whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size in the underlying asset. Previous disapproval orders have made clear that a market that constitutes a regulated market of significant size is generally a futures and/or options market based on the underlying reference asset rather than the spot commodity markets, which are often unregulated.<sup>13</sup> Leaving aside the analysis of that standard until later in this proposal,<sup>14</sup> the Exchange believes that the below rationale that the Commission applied to a Bitcoin Futures ETF should result in the Commission approving this and other Spot Bitcoin ETP proposals:

The CME “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.” Thus, the CME’s surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts, whether that attempt is made by directly trading on the CME bitcoin futures market or indirectly by trading outside of the CME bitcoin futures market. As such, when the CME shares its surveillance information with Arca, the information would assist in detecting and deterring fraudulent or manipulative

---

<sup>13</sup> See Winklevoss Order at 37593, specifically footnote 202, which includes the language from numerous approval orders for which the underlying futures markets formed the basis for approving series of ETPs that hold physical metals, including gold, silver, palladium, platinum, and precious metals more broadly; and 37600, specifically where the Commission provides that “when the spot market is unregulated – the requirement of preventing fraudulent and manipulative acts may possibly be satisfied by showing that the ETP listing market has entered into a surveillance-sharing agreement with a regulated market of significant size in derivatives related to the underlying asset.” As noted above, the Exchange believes that these citations are particularly helpful in making clear that the spot market for a spot commodity ETP need not be “regulated” in order for a spot commodity ETP to be approved by the Commission, and in fact that it’s been the common historical practice of the Commission to rely on such derivatives markets as the regulated market of significant size because such spot commodities markets are largely unregulated.

<sup>14</sup> As further outlined below, both the Exchange and the Sponsor believe that the Bitcoin Futures market represents a regulated market of significant size and that this proposal and others like it should be approved on this basis.

misconduct related to the non cash assets held by the proposed ETP.<sup>15</sup>

Bitcoin Futures pricing is based on pricing from spot bitcoin markets. The statement from the Teucrium Approval that “CME’s surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts...indirectly by trading outside of the CME bitcoin futures market,” makes clear that the Commission believes that CME’s surveillance can capture the effects of trading on the relevant spot markets on the pricing of Bitcoin Futures. If CME is able to detect such attempts at manipulation in the complex and interconnected spot bitcoin market, how would such an ability to detect attempted manipulation and the utility in sharing that information with the listing exchange apply only to Bitcoin Futures ETFs and not Spot Bitcoin ETPs? Stated a different way, given that there is significant trading volume on numerous bitcoin exchanges that are not part of the CME CF Bitcoin Reference Rate and that arbitrage opportunities across bitcoin exchanges means that such trading volume will influence spot bitcoin prices across the market and, despite this, the Commission still believes that CME can detect attempted manipulation of the Bitcoin Futures through “trading outside of the CME bitcoin futures market,” it is clear that such ability would apply equally to both Bitcoin Futures ETFs and Spot Bitcoin ETPs. To take it a step further, such an ability would also seem to be a strong indication that the CME Bitcoin Futures market represents a regulated market of significant size. To be clear, the Exchange agrees with the Commission on this point (and the implications of their conclusions) and notes that the pricing mechanism applicable to the Shares is

---

<sup>15</sup> See Teucrium Approval at 21679.

similar to the CME CF Bitcoin Reference Rate, as further discussed below.

The Exchange also notes that a Bitcoin Futures ETF may also be more susceptible to potential manipulation than a Spot Bitcoin ETP that offers only in-kind creation and redemption because Bitcoin Futures pricing (and thus the value of the underlying holdings of a Bitcoin Futures ETF) is based on a single price derived from spot bitcoin pricing, while shares of a Spot Bitcoin ETP would represent interest in bitcoin directly and authorized participants for a Spot Bitcoin ETP (as proposed herein) would be able to source bitcoin from any exchange and create or redeem with the applicable trust regardless of the price of the underlying index. As such, the Exchange believes that, in addition to the CME Bitcoin Futures market representing a regulated market of significant size as it relates to the spot bitcoin market, in-kind Spot Bitcoin ETPs are likely less susceptible to manipulation than Bitcoin Futures ETFs because of the underlying creation and redemption arbitrage mechanism that will operate in the same manner as it does for all other ETFs.

In addition to potentially being more susceptible to manipulation than a Spot Bitcoin ETP, the structure of Bitcoin Futures ETFs provides negative outcomes for buy and hold investors as compared to a Spot Bitcoin ETP.<sup>16</sup> Specifically, the cost of rolling Bitcoin Futures contracts will cause the Bitcoin Futures ETFs to typically lag the performance of bitcoin itself and, at over a billion dollars in assets under management, would cost U.S. investors significant amounts of money on an annual basis compared to Spot Bitcoin ETPs. Such rolling costs would not be required for Spot Bitcoin ETPs that

---

<sup>16</sup> See e.g., “Bitcoin ETF’s Success Could Come at Fundholders’ Expense,” Wall Street Journal (October 24, 2021), available at: <https://www.wsj.com/articles/bitcoin-etfs-success-could-come-at-fundholders-expense-11635080580>; “Physical Bitcoin ETF Prospects Accelerate,” ETF.com (October 25, 2021), available at: <https://www.etf.com/sections/blog/physical-bitcoin-etf-prospects-shine>.

hold bitcoin. While Bitcoin Futures ETFs represent a useful trading tool, they are clearly a sub-optimal structure for U.S. investors that are looking for long-term exposure to bitcoin that will, based on the calculations above, unnecessarily cost U.S. investors significant amounts of money every year compared to Spot Bitcoin ETPs and the Exchange believes that any proposal to list and trade a Spot Bitcoin ETP should be reviewed by the Commission with this important investor protection context in mind.

Based on the foregoing, the Exchange and Sponsor believe that any objective review of the proposals to list Spot Bitcoin ETPs compared to the Bitcoin Futures ETFs and the Bitcoin Futures Approvals would lead to the conclusion that Spot Bitcoin ETPs should be available to U.S. investors and, as such, this proposal and other comparable proposals to list and trade Spot Bitcoin ETPs should be approved by the Commission. Stated simply, U.S. investors will continue to lose significant amounts of money from holding Bitcoin Futures ETFs as compared to Spot Bitcoin ETPs, losses which could be prevented by the Commission approving Spot Bitcoin ETPs. Additionally, any concerns related to preventing fraudulent and manipulative acts and practices related to Spot Bitcoin ETPs would apply equally to the spot markets underlying the futures contracts held by a Bitcoin Futures ETF. While the 1940 Act does offer certain investor protections, those protections do not relate to mitigating potential manipulation of the holdings of an ETF in a way that warrants distinction between Bitcoin Futures ETFs and Spot Bitcoin ETPs and the SEC has granted approval for a Bitcoin Futures ETP that is not regulated by the 1940 Act.<sup>17</sup> To be clear, both the Exchange and Sponsor believe that the Bitcoin Futures market is a regulated market of significant size and that such

---

<sup>17</sup> See Teucrium Approval.

manipulation concerns are mitigated as described throughout this proposal. After issuing the Bitcoin Futures Approvals which conclude the CME Bitcoin Futures market is a regulated market of significant size as it relates to Bitcoin Futures, the only consistent outcome would be approving Spot Bitcoin ETPs on the basis that the Bitcoin Futures market is also a regulated market of significant size as it relates to the bitcoin spot market. Including in the analysis the significant and preventable losses to U.S. investors that comes with Bitcoin Futures ETFs, disapproving Spot Bitcoin ETPs seems even more arbitrary and capricious. Given the current landscape, approving this proposal (and others like it) and allowing Spot Bitcoin ETPs to be listed and traded alongside Bitcoin Futures ETFs would establish a consistent regulatory approach, provide U.S. investors with choice in product structures for bitcoin exposure, and offer flexibility in the means of gaining exposure to bitcoin through transparent, regulated, U.S. exchange listed vehicles.

#### Spot and Proxy Exposure to Bitcoin

Exposure to bitcoin through an ETP also presents certain advantages for retail investors compared to buying spot bitcoin directly. The most notable advantage from the Sponsor's perspective is the elimination of the need for an individual retail investor to either manage their own private keys or to hold bitcoin through a cryptocurrency exchange that lacks sufficient protections. Typically, retail exchanges hold most, if not all, retail investors' bitcoin in "hot" (Internet connected) storage and do not make any commitments to indemnify retail investors or to observe any particular cybersecurity standard. Meanwhile, a retail investor holding spot bitcoin directly in a self-hosted wallet may suffer from inexperience in private key management (e.g., insufficient password

protection, lost key, etc.), which point of failure could cause them to lose some or all of their bitcoin holdings. Thus, with respect to custody of the Trust's bitcoin assets, the Trust presents advantages from an investment protection standpoint for retail investors compared to owning spot bitcoin directly or via a digital asset exchange.

Finally, some publicly traded companies with mostly unrelated businesses – such as Tesla (a car manufacturer) and MicroStrategy (an enterprise software company) – have announced significant investments in bitcoin. Without access to bitcoin exchange traded products, retail investors seeking investment exposure to bitcoin may end up purchasing shares in these companies in order to gain the exposure to bitcoin that they seek.<sup>18</sup> 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.<sup>19</sup> Such public 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 public companies with respect to risks relating to their bitcoin holdings are generally substantially smaller than the registration

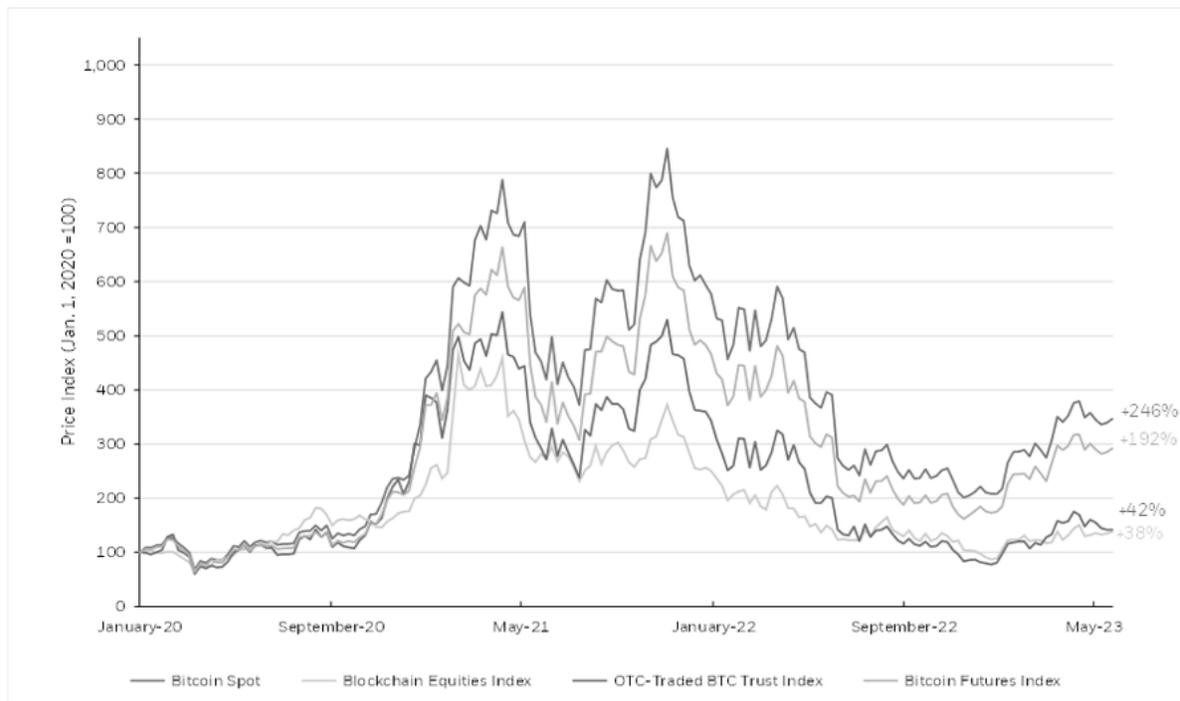
---

<sup>18</sup> 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](https://www.sec.gov/oiea/investor-alerts-and-bulletins/ia_icorelatedclaims).

<sup>19</sup> 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>.

statement of a bitcoin ETP, including the Registration Statement, typically amounting to a few sentences of narrative description and a handful of risk factors.<sup>20</sup> In other words, investors seeking bitcoin exposure through publicly traded companies are gaining only partial exposure to bitcoin and are not fully benefitting from the risk disclosures and associated investor protections that come from the securities registration process.

Analysis of Historical Price Index Returns of Spot Bitcoin vs. Common Alternative Exposure Vehicle



Source: Bitcoin Spot sourced from WSJ.com; Blockchain Equities Index is based on S&P Kensho Global Cryptocurrency & Blockchain Equity Index (Total Return) sourced from S&P Dow Jones; Bitcoin Futures Index is based on the S&P CME Bitcoin Futures Index (Total Return) sourced from S&P Dow Jones; OTC Traded BTC Trust Index is represented by the Grayscale Bitcoin Trust sourced from WSJ.com. Based on weekly data.

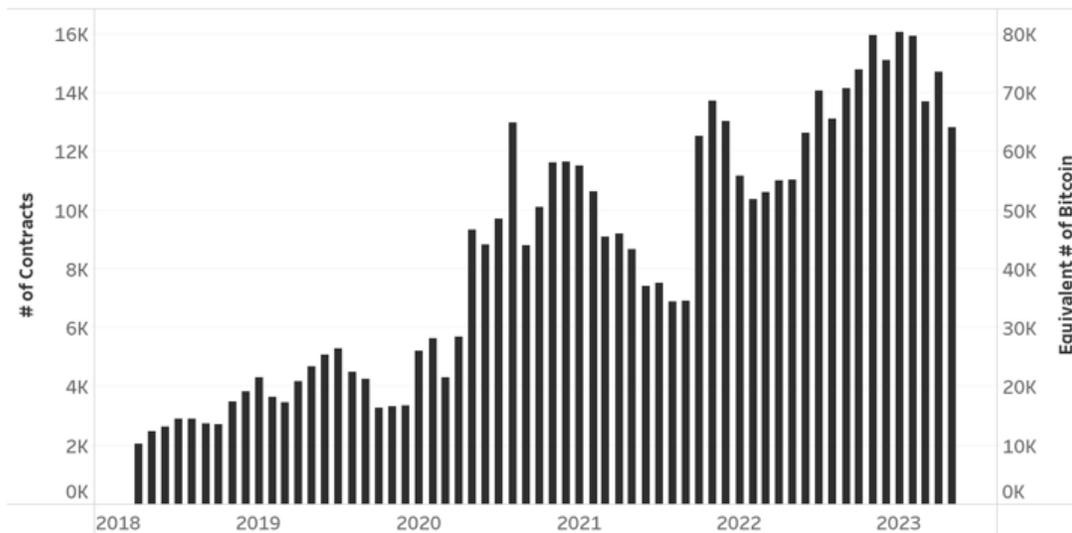
Bitcoin Futures

CME began offering trading in Bitcoin Futures in 2017. Each contract represents

<sup>20</sup> See, e.g., Tesla 10-K for the year ended December 31, 2020, which mentions bitcoin just nine times: [https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/000156459021004599/tsla-10k\\_20201231.htm](https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/000156459021004599/tsla-10k_20201231.htm).

five bitcoin and is based on the CME CF Bitcoin Reference Rate.<sup>21</sup> The contracts trade and settle like other cash settled commodity futures contracts. Nearly every measurable metric related to Bitcoin Futures has generally trended up since launch, although certain notional volume calculations have decreased roughly in line with the decrease in the price of bitcoin. For example, there were 143,215 Bitcoin Futures contracts traded in April 2023 (approximately \$20.7 billion) compared to 193,182 (\$5 billion), 104,713 (\$3.9 billion), 118,714 (\$42.7 billion), and 111,964 (\$23.2 billion) contracts traded in April 2019, April 2020, April 2021, and April 2022, respectively.

### CME Bitcoin Futures Open Interest (OI)



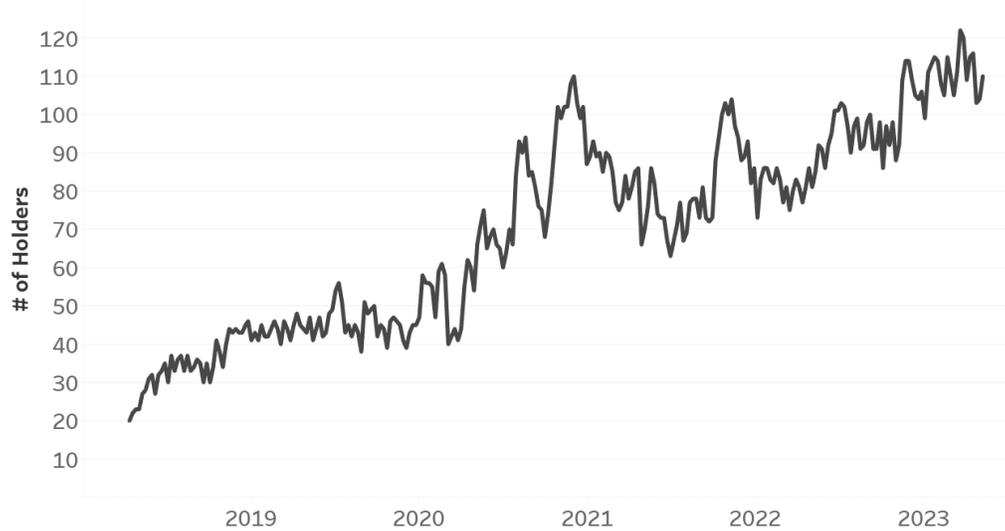
Source: CME, Yahoo Finance 4/30/23.

The number of large open interest holders<sup>22</sup> and unique accounts trading Bitcoin Futures have both increased, even in the face of heightened Bitcoin price volatility.

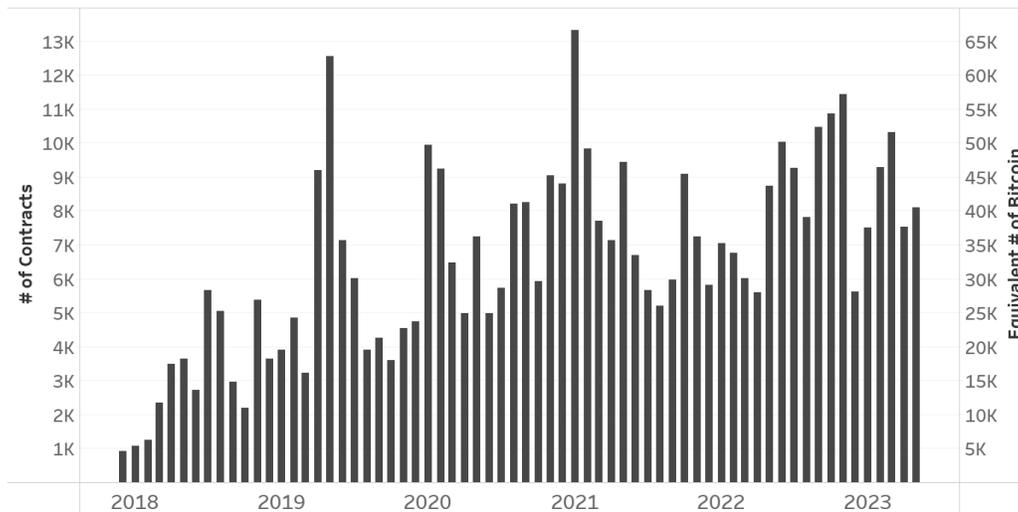
<sup>21</sup> The CME CF Bitcoin Reference Rate is based on a publicly available calculation methodology based on pricing sourced from several crypto exchanges and trading platforms, including Bitstamp, Coinbase, Gemini, itBit, Kraken, and LMAX Digital.

<sup>22</sup> A large open interest holder in Bitcoin Futures is an entity that holds at least 25 contracts, which is the equivalent of 125 bitcoin. At a price of approximately \$29,268.81 per bitcoin on 4/30/2023, more than 100 firms had outstanding positions of greater than \$3.65 million in Bitcoin Futures.

### CME Bitcoin Futures Large Open Interest Holders (LOIH)



### CME Bitcoin Futures Average Daily Volume (ADV)



#### Preventing Fraudulent and Manipulative Practices

In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of Section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange’s rules are designed to prevent fraudulent and manipulative

acts and practices;<sup>23</sup> and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act and that this filing sufficiently demonstrates that the Bitcoin Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

(i) *Designed to Prevent Fraudulent and Manipulative Acts and Practices*

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance sharing agreement in place<sup>24</sup> with a regulated

---

<sup>23</sup> The Exchange believes that bitcoin is resistant to price manipulation and that “other means to prevent fraudulent and manipulative acts and practices” exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin. The fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging. To the extent that there are bitcoin exchanges engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, such pricing does not normally impact prices on other exchange because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin exchange or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

<sup>24</sup> As previously articulated by the Commission, “The standard requires such surveillance-sharing agreements since “they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.” The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable

market of significant size. Both the Exchange and CME are members of ISG.<sup>25</sup> The only remaining issue to be addressed is whether the Bitcoin Futures market constitutes a market of significant size, which both the Exchange and the Sponsor believe that it does. 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 manipulate the ETP, so that a surveillance sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.<sup>26</sup>

The Commission has also recognized that the “regulated market of significant size” standard is not the only means for satisfying Section 6(b)(5) of the act, specifically providing that a listing exchange could demonstrate that “other means to prevent fraudulent and manipulative acts and practices” are sufficient to justify dispensing with the requisite surveillance sharing agreement.<sup>27</sup>

(A) *Reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP*

---

federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.” The Commission has historically held that joint membership in the Intermarket Surveillance Group (“ISG”) constitutes such a surveillance sharing agreement. See Securities Exchange Act Release No. 88284 (February 26, 2020), 85 FR 12595 (March 3, 2020) (SR-NYSEArca-2019-39) (the “Wilshire Phoenix Disapproval”).

<sup>25</sup> For a list of the current members and affiliate members of ISG, see <https://www.isgportal.com/>.

<sup>26</sup> See Wilshire Phoenix Disapproval.

<sup>27</sup> See Winklevoss Order at 37580. The Commission has also specifically noted that it “is not applying a ‘cannot be manipulated’ standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.” Id. at 37582.

Bitcoin Futures represent a growing influence on pricing in the spot bitcoin market as has been laid out above and in other proposals to list and trade Spot Bitcoin ETPs. Pricing in Bitcoin Futures is based on pricing from spot bitcoin markets. As noted above, the statement from the Teucrium Approval that “CME’s surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts...indirectly by trading outside of the CME bitcoin futures market,” makes clear that the Commission believes that CME’s surveillance can capture the effects of trading on the relevant spot markets on the pricing of Bitcoin Futures. While the Commission makes clear in the Teucrium Approval that the analysis only applies to the Bitcoin Futures market as it relates to an ETP that invests in Bitcoin Futures as its only non cash or cash equivalent holding, if CME’s surveillance is sufficient to mitigate concerns related to trading in Bitcoin Futures for which the pricing is based directly on pricing from spot bitcoin markets, it’s not clear how such a conclusion could apply only to ETPs based on Bitcoin Futures and not extend to Spot Bitcoin ETPs.

Additionally, a Bitcoin Futures ETF is actually potentially more susceptible to manipulation than a Spot Bitcoin ETP where the underlying trust offers only in-kind creation and redemption. Specifically, the pricing of Bitcoin Futures is based on prices from spot bitcoin markets, while shares of a Spot Bitcoin ETP would represent an interest in bitcoin directly and authorized participants for a Spot Bitcoin ETP would be able to source bitcoin from any exchange and create or redeem with the applicable trust regardless of the price of the underlying index. Potential manipulation of a Bitcoin

Futures ETF would require manipulation on the spot markets on which the pricing for Bitcoin Futures is based while the in-kind creation and redemption process and fungibility of bitcoin means that a would-be manipulator of a Spot Bitcoin ETP would need to manipulate the price across all bitcoin markets or risk simply providing arbitrage opportunities for authorized participants. Further to this point, this arbitrage opportunity also acts to reduce any incentives to manipulate the price of a Spot Bitcoin ETP because the underlying trust will create and redeem shares at set rates of bitcoin per share without regard to the price that the ETP is trading at in the secondary market or the price of the underlying index. As such, the Exchange believes that part (a) of the significant market test outlined above is satisfied and that common membership in ISG between the Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the Shares.

*(B) Predominant Influence on Prices in Spot and Bitcoin Futures*

The Exchange and Sponsor also believe 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 in-kind creation and redemption process, the spot market arbitrage opportunities that such in-kind creation and redemption process creates, the significant volume in the Bitcoin Futures market, the size of bitcoin's market cap, and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid. According to data from Kaiko, the average daily adjusted volume for spot bitcoin across USD denominated trading pairs from January 1, 2023, to May 31, 2023, was \$6.0 billion. According to data from Kaiko, the aggregate 2% bitcoin market depth on the bid and ask

side for USD denominated trading pairs has been on average 6,875 BTC (approximately \$167.2 million), for the period between January 1, 2023, and May 31st, 2023. More strategic purchases or sales (such as using limit orders and executing through OTC bitcoin trade desks) would likely have less obvious impact on the market – which is consistent with MicroStrategy, Tesla, and Square being able to collectively purchase billions of dollars in bitcoin.

As such, the combination of the in-kind creation and redemption process, the Bitcoin Futures price discovery, the overall size of the bitcoin market, and the ability for market participants, including authorized participants creating and redeeming in-kind with the Trust, to buy or sell large amounts of bitcoin without significant market impact will help prevent the Shares from becoming the predominant force on pricing in either the bitcoin spot or Bitcoin Futures markets, satisfying part (b) of the test outlined above.

*(c) Other Means to Prevent Fraudulent and Manipulative Acts and Practices*  
SSA with Bitcoin Spot Market

The Exchange is also proposing to take additional steps to those described above to supplement its ability to obtain information that would be helpful in detecting, investigating, and deterring fraud and market manipulation in the Commodity-Based Trust Shares.

On June 8, 2023, the Exchange reached an agreement on terms with Coinbase, Inc. (“Coinbase”) to enter into a surveillance-sharing agreement (“Spot BTC SSA”), and the associated term sheet became effective as of June 16, 2023. Based on this agreement on terms, the Exchange and Coinbase will finalize and execute a definitive agreement that the parties expect to be executed prior to allowing trading of the Commodity-Based

Trust Shares. Trading of Bitcoin on Coinbase represents a significant portion of US-based Bitcoin trading. The Sponsor has stated to the Exchange that, based on publicly available data reported by spot bitcoin platforms active in the U.S. market, trading on Coinbase has represented approximately 56% of US-dollar to Bitcoin trading on such U.S.-based platforms out of total YTD volume across these platforms of approximately U.S. \$129 billion, as of June 28, 2023.<sup>28</sup>

The Spot BTC SSA is expected to be a bilateral surveillance-sharing agreement between Nasdaq and Coinbase that is intended to supplement the Exchange's market surveillance program. The Spot BTC SSA is expected to have the hallmarks of a surveillance-sharing agreement between two members of the ISG, which would give the Exchange supplemental access to data regarding spot Bitcoin trades on Coinbase where the Exchange determines it is necessary as part of its surveillance program for the Commodity-Based Trust Shares. This means that the Exchange expects to receive market data for orders and trades from Coinbase, which it will utilize in surveillance of the trading of Commodity-Based Trust Shares. In addition, the Exchange can request further information from Coinbase related to spot bitcoin trading activity on the Coinbase exchange platform, if the Exchange determines that such information would be necessary to detect and investigate potential manipulation in the trading of the Commodity-Based Trust Shares.

#### In-Kind Creation and Redemption

As noted above, the Commission also permits a listing exchange to demonstrate that "other means to prevent fraudulent and manipulative acts and practices" are

---

<sup>28</sup> This analysis is based on the following spot bitcoin platforms: Coinbase, Binance US, Kraken, Bitstamp, Gemini, and itBit.

sufficient to justify dispensing with the requisite surveillance sharing agreement. The Exchange and Sponsor believe that such conditions are present. Consistent with prior points above, offering only in-kind creation and redemption will provide unique protections against potential attempts to manipulate the Shares. While the Sponsor believes that the CF Benchmarks Index which it uses to value the Trust's bitcoin is itself resistant to manipulation based on the methodology further described below, the fact that creations and redemptions are only available in-kind makes the manipulability of the CF Benchmarks Index significantly less important. Specifically, because the Trust will not accept cash to buy bitcoin in order to create new shares or, barring a forced redemption of the Trust or under other extraordinary circumstances, be forced to sell bitcoin to pay cash for redeemed shares, the price that the Sponsor uses to value the Trust's bitcoin is not particularly important.<sup>29</sup> When authorized participants are creating with the Trust, they need to deliver a certain number of bitcoin per share (regardless of the valuation used) and when they're redeeming, they can similarly expect to receive a certain number of bitcoin per share. As such, even if the price used to value the Trust's bitcoin is manipulated (which the Sponsor believes that its methodology is resistant to), the ratio of bitcoin per Share does not change and the Trust will either accept (for creations) or distribute (for redemptions) the same number of bitcoin regardless of the value. This not only mitigates the risk associated with potential manipulation, but also discourages and disincentivizes manipulation of the CF Benchmarks Index because there is little financial incentive to do so.

---

<sup>29</sup> While the CF Benchmarks Index will not be particularly important for the creation and redemption process, it will be used for calculating fees.

### Availability of Information

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the prior business day's NAV; (b) the prior business day's Official Closing Price; (c) calculation of the premium or discount of such Official Closing Price against such NAV; (d) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (e) the prospectus; and (f) other applicable quantitative information. The Trust Administrator will also disseminate the Trust's holdings on a daily basis on the Trust's website. The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during the Regular Market Session. Information about the CF Benchmarks Index, including key elements of how the CF Benchmarks Index is calculated, will be publicly available at <https://www.cfbenchmarks.com/>. Also, an estimated value that reflects an estimated intraday value of the Trust's portfolio (the "Intraday Indicative Value" or "IIV"), will be disseminated.

One or more major market data vendors will provide an IIV per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Market Session (9:30 a.m. to 4:00 p.m. (ET)). The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during the Exchange's Regular Market Session to reflect changes in the value of the Trust's NAV during the trading day.

The IIV disseminated during the Exchange's Regular Market Session should not be viewed as an actual real time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Market Session by one or more major market data vendors. In addition, the IIV will be available through online information services.

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

#### Initial and Continued Listing

The Shares will be subject to Nasdaq Rule 5711(d)(vi), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. The Exchange will obtain a representation that the Trust's NAV will be calculated daily and will be made available to all market participants at the same time. Upon termination of the Trust, the Shares will be removed from listing. The Delaware Trustee, will be a trust company having substantial capital and surplus and the experience and facilities for handling corporate trust business, as required under Nasdaq Rule 5711(d)(vi)(D) and no change will be made to the Delaware Trustee without prior notice to and approval of the Exchange.

As required in Nasdaq Rule 5711(d)(vii), the Exchange notes that any registered market maker ("Market Maker") in the Shares must file with the Exchange, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for trading

the underlying commodity, related futures or options on futures, or any other related derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker in the Shares shall trade in the underlying commodity, related futures or options on futures, or any other related derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by Nasdaq Rule 5711(d). In addition to the existing obligations under Exchange rules regarding the production of books and records, the registered Market Maker in the Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or any limited partner, officer or approved person thereof, registered or non-registered employee affiliated with such entity for its or their own accounts in the underlying commodity, related futures or options on futures, or any other related derivatives, as may be requested by the Exchange.

#### Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Exchange will allow trading in the Shares from 4:00 a.m. to 8:00 p.m. (ET). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. The Shares of the Trust will conform to the initial and continued listing criteria set forth in Nasdaq Rule 5711(d).

#### 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. The Exchange will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including without limitation the conditions specified in Nasdaq Rule 4120(a)(9) and the trading pauses under Nasdaq Rules 4120(a)(11) and (12).

Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the bitcoin underlying the Shares; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

If the IIV or the value of the underlying futures contract is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the value of the underlying futures contract occurs. If the interruption to the dissemination of the IIV or the value of the underlying bitcoin 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.

#### Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.

Trading of Shares on the Exchange will be subject to the Exchange's surveillance procedures for derivative products. The Exchange will require the Trust to represent to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Additionally, on June 8, 2023, the Exchange reached an agreement on terms with Coinbase to enter into a Spot BTC SSA, and the associated term sheet became effective as of June 16, 2023. Based on this agreement on terms, the Exchange and Coinbase will finalize and execute a definitive agreement that the parties expect to be executed prior to allowing trading of the Commodity-Based Trust Shares. Trading of Bitcoin on Coinbase represents a significant portion of US-based Bitcoin trading. The Sponsor has stated to the Exchange that, based on publicly available data reported by spot bitcoin platforms active in the U.S. market, trading on Coinbase has represented approximately 56% of US-dollar to Bitcoin trading on such U.S.-based platforms out of total YTD volume across these platforms of approximately U.S. \$129 billion, as of June 28, 2023.<sup>30</sup>

The Spot BTC SSA is expected to be a bilateral surveillance-sharing agreement between Nasdaq and Coinbase that is intended to supplement the Exchange's market

---

<sup>30</sup> This analysis is based on the following spot bitcoin platforms: Coinbase, Binance US, Kraken, Bitstamp, Gemini, and itBit.

surveillance program. The Spot BTC SSA is expected to have the hallmarks of a surveillance-sharing agreement between two members of the ISG, which would give the Exchange supplemental access to data regarding spot Bitcoin trades on Coinbase where the Exchange determines it is necessary as part of its surveillance program for the Commodity-Based Trust Shares. This means that the Exchange expects to receive market data for orders and trades from Coinbase, which it will utilize in surveillance of the trading of Commodity-Based Trust Shares. In addition, the Exchange can request further information from Coinbase related to spot bitcoin trading activity on the Coinbase exchange platform, if the Exchange determines that such information would be necessary to detect and investigate potential manipulation in the trading of the Commodity-Based Trust Shares.

#### Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Section 10 of Nasdaq General Rule 9, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how information regarding the IIV is disseminated; (4) the risks involved in trading the Shares during the Pre-Market and Post Market Sessions when an updated IIV will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading

information. The Information Circular will also discuss any exemptive, no action and interpretive relief granted by the Commission from any rules under the Act.

Additionally, the Information Circular will reference that the Trust is subject to various fees and expenses described in the Draft Registration Statement. The Information Circular will also disclose the trading hours of the Shares. The Information Circular will disclose that information about the Shares will be publicly available on the Trust's website.

b. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act<sup>31</sup> in general and Section 6(b)(5) of the Act<sup>32</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission has approved numerous series of Trust Issued Receipts,<sup>33</sup> including Commodity-Based Trust Shares,<sup>34</sup> to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of Section 6(b)(5) of the Act, specifically including: (i) the requirement that

---

<sup>31</sup> 15 U.S.C. 78f.

<sup>32</sup> 15 U.S.C. 78f(b)(5).

<sup>33</sup> See Exchange Rule 5720.

<sup>34</sup> Commodity-Based Trust Shares, as described in Exchange Rule 5711(d), are a type of Trust Issued Receipt.

a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act because this filing sufficiently demonstrates that the standard that has previously been articulated by the Commission applicable to Commodity-Based Trust Shares has been met as outlined below.

*Designed to Prevent Fraudulent and Manipulative Acts and Practices*

In order for a proposal to list and trade a series of Commodity-Based Trust Shares to be deemed consistent with the Act, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place with a regulated market of significant size. Both the Exchange and CME are members of ISG.<sup>35</sup> As such, the only remaining issue to be addressed is whether the Bitcoin Futures market constitutes a market of significant size, which the Exchange believes that it does. 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 manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.<sup>36</sup>

The Commission has also recognized that the “regulated market of significant

---

<sup>35</sup> For a list of the current members and affiliate members of ISG, see <https://www.isgportal.com/>.

<sup>36</sup> See Wilshire Phoenix Disapproval.

size” standard is not the only means for satisfying Section 6(b)(5) of the act, specifically providing that a listing exchange could demonstrate that “other means to prevent fraudulent and manipulative acts and practices” are sufficient to justify dispensing with the requisite surveillance-sharing agreement.<sup>37</sup>

*(a) Reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP*

Bitcoin Futures represent a growing influence on pricing in the spot bitcoin market as has been laid out above and in other proposals to list and trade Spot Bitcoin ETPs. Pricing in Bitcoin Futures is based on pricing from spot bitcoin markets. As noted above, the statement from the Teucrium Approval that “CME’s surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts...indirectly by trading outside of the CME bitcoin futures market,” makes clear that the Commission believes that CME’s surveillance can capture the effects of trading on the relevant spot markets on the pricing of Bitcoin Futures. While the Commission makes clear in the Teucrium Approval that the analysis only applies to the Bitcoin Futures market as it relates to an ETP that invests in Bitcoin Futures as its only non-cash or cash equivalent holding, if CME’s surveillance is sufficient to mitigate concerns related to trading in Bitcoin Futures for which the pricing is based directly on pricing from spot bitcoin markets, it’s not clear how such a

---

<sup>37</sup> See Winklevoss Order at 37580. The Commission has also specifically noted that it “is not applying a “cannot be manipulated” standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met. Id. at 37582.

conclusion could apply only to ETPs based on Bitcoin Futures and not extend to Spot Bitcoin ETPs.

Additionally, a Bitcoin Futures ETF is actually potentially more susceptible to manipulation than a Spot Bitcoin ETP where the underlying trust offers only in-kind creation and redemption. Specifically, the pricing of Bitcoin Futures is based on prices from spot bitcoin markets, while shares of a Spot Bitcoin ETP would represent an interest in bitcoin directly and authorized participants for a Spot Bitcoin ETP would be able to source bitcoin from any exchange and create or redeem with the applicable trust regardless of the price of the underlying index. Potential manipulation of a Bitcoin Futures ETF would require manipulation on the spot markets on which the pricing for Bitcoin Futures is based while the in-kind creation and redemption process and fungibility of bitcoin means that a would-be manipulator of a Spot Bitcoin ETP would need to manipulate the price across all bitcoin markets or risk simply providing arbitrage opportunities for authorized participants. Further to this point, this arbitrage opportunity also acts to reduce any incentives to manipulate the price of a Spot Bitcoin ETP because the underlying trust will create and redeem shares at set rates of bitcoin per share without regard to the price that the ETP is trading at in the secondary market or the price of the underlying index. As such, the Exchange believes that part (a) of the significant market test outlined above is satisfied and that common membership in ISG between the Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the Shares.

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

The Exchange and Sponsor also believe 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 in-kind creation and redemption process, the spot market arbitrage opportunities that such in-kind creation and redemption process creates, the significant volume in the Bitcoin Futures market, the size of bitcoin's market cap, and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid. According to data from Messari, the average daily adjusted real volume for spot bitcoin from January 1, 2023, to May 12, 2023 was \$8.5 billion. According to data from Kaiko, the aggregate 1% bitcoin market depth on the bid and ask side has been on average 5,373 bitcoin (approximately \$161 million), for the period between April 26, 2023 and May 12, 2023. More strategic purchases or sales (such as using limit orders and executing through OTC bitcoin trade desks) would likely have less obvious impact on the market – which is consistent with MicroStrategy, Tesla, and Square being able to collectively purchase billions of dollars in bitcoin.

As such, the combination of the in-kind creation and redemption process, the Bitcoin Futures price discovery, the overall size of the bitcoin market, and the ability for market participants, including authorized participants creating and redeeming in-kind with the Trust, to buy or sell large amounts of bitcoin without significant market impact will help prevent the Shares from becoming the predominant force on pricing in either the bitcoin spot or Bitcoin Futures markets, satisfying part (b) of the test outlined above.

(c) *Other Means to Prevent Fraudulent and Manipulative Acts and Practices*

SSA with Bitcoin Spot Market

The Exchange is also proposing to take additional steps to those described above to supplement its ability to obtain information that would be helpful in detecting, investigating, and deterring fraud and market manipulation in the Commodity-Based Trust Shares.

Additionally, on June 8, 2023, the Exchange reached an agreement on terms with Coinbase to enter into a Spot BTC SSA, and the associated term sheet became effective as of June 16, 2023. Based on this agreement on terms, the Exchange and Coinbase will finalize and execute a definitive agreement that the parties expect to be executed prior to allowing trading of the Commodity-Based Trust Shares. Trading of Bitcoin on Coinbase represents a significant portion of US-based Bitcoin trading. The Sponsor has stated to the Exchange that, based on publicly available data reported by spot bitcoin platforms active in the U.S. market, trading on Coinbase has represented approximately 56% of US-dollar to Bitcoin trading on such U.S.-based platforms out of total YTD volume across these platforms of approximately U.S. \$129 billion, as of June 28, 2023.<sup>38</sup>

The Spot BTC SSA is expected to be a bilateral surveillance-sharing agreement between Nasdaq and Coinbase that is intended to supplement the Exchange's market surveillance program. The Spot BTC SSA is expected to have the hallmarks of a surveillance-sharing agreement between two members of the ISG, which would give the Exchange supplemental access to data regarding spot Bitcoin trades on Coinbase where the Exchange determines it is necessary as part of its surveillance program for the Commodity-Based Trust Shares. This means that the Exchange expects to receive market data for orders and trades from Coinbase, which it will utilize in surveillance of

---

<sup>38</sup> This analysis is based on the following spot bitcoin platforms: Coinbase, Binance US, Kraken, Bitstamp, Gemini, and itBit.

the trading of Commodity-Based Trust Shares. In addition, the Exchange can request further information from Coinbase related to spot bitcoin trading activity on the Coinbase exchange platform, if the Exchange determines that such information would be necessary to detect and investigate potential manipulation in the trading of the Commodity-Based Trust Shares.

#### In-Kind Creation and Redemption

As noted above, the Commission also permits a listing exchange to demonstrate that “other means to prevent fraudulent and manipulative acts and practices” are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present. Consistent with prior points above, offering only in-kind creation and redemption will provide unique protections against potential attempts to manipulate the Shares. While the Sponsor believes that the CF Benchmarks Index which it uses to value the Trust’s bitcoin is itself resistant to manipulation based on the methodology further described below, the fact that creations and redemptions are only available in-kind makes the manipulability of the CF Benchmarks Index significantly less important. Specifically, because the Trust will not accept cash to buy bitcoin in order to create new shares or, barring a forced redemption of the Trust or under other extraordinary circumstances, be forced to sell bitcoin to pay cash for redeemed shares, the price that the Sponsor uses to value the Trust’s bitcoin is not particularly important.<sup>39</sup> When authorized participants are creating with the Trust, they need to deliver a certain number of bitcoin per share (regardless of the valuation used) and when they’re redeeming, they can similarly expect to receive a certain number of

---

<sup>39</sup> While the CF Benchmarks Index will not be particularly important for the creation and redemption process, it will be used for calculating fees.

bitcoin per share. As such, even if the price used to value the Trust's bitcoin is manipulated (which the Sponsor believes that its methodology is resistant to), the ratio of bitcoin per Share does not change and the Trust will either accept (for creations) or distribute (for redemptions) the same number of bitcoin regardless of the value. This not only mitigates the risk associated with potential manipulation, but also discourages and disincentivizes manipulation of the CF Benchmarks Index because there is little financial incentive to do so.

The Exchange also believes that reviewing this proposal through the lens of the Bitcoin Futures Approvals would also lead the Commission to approving this proposal. Previous disapproval orders have made clear that a market that constitutes a regulated market of significant size is generally a future and/or options market based on the underlying reference asset rather than the spot commodity markets, which are often unregulated.<sup>40</sup> The Exchange believes that the following excerpt from the Teucrium Approval is particularly informative:

The CME “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.” Thus, the CME's surveillance can reasonably be relied upon to capture the effects on the CME bitcoin

---

<sup>40</sup> See Winklevoss Order at 37593, specifically footnote 202, which includes the language from numerous approval orders for which the underlying futures markets formed the basis for approving series of ETPs that hold physical metals, including gold, silver, palladium, platinum, and precious metals more broadly; and 37600, specifically where the Commission provides that “when the spot market is unregulated – the requirement of preventing fraudulent and manipulative acts may possibly be satisfied by showing that the ETP listing market has entered into a surveillance-sharing agreement with a regulated market of significant size in derivatives related to the underlying asset.” As noted above, the Exchange believes that these citations are particularly helpful in making clear that the spot market for a spot commodity ETP need not be “regulated” in order for a spot commodity ETP to be approved by the Commission, and in fact that it's been the common historical practice of the Commission to rely on such derivatives markets as the regulated market of significant size because such spot commodities markets are largely unregulated.

futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts, whether that attempt is made by directly trading on the CME bitcoin futures market or indirectly by trading outside of the CME bitcoin futures market. As such, when the CME shares its surveillance information with Arca, the information would assist in detecting and deterring fraudulent or manipulative misconduct related to the non-cash assets held by the proposed ETP.<sup>41</sup>

Bitcoin Futures pricing is based on pricing from spot bitcoin markets. The statement from the Teucrium Approval that “CME’s surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts...indirectly by trading outside of the CME bitcoin futures market,” makes clear that the Commission believes that CME’s surveillance can capture the effects of trading on the relevant spot markets on the pricing of Bitcoin Futures. If CME is able to detect such attempts at manipulation in the complex and interconnected spot bitcoin market, how would such an ability to detect attempted manipulation and the utility in sharing that information with the listing exchange apply only to Bitcoin Futures ETFs and not Spot Bitcoin ETPs? Stated a different way, given that there is significant trading volume on numerous bitcoin exchanges that are not part of the CME CF Bitcoin Reference Rate and that arbitrage opportunities across bitcoin exchanges means that such trading volume will influence spot bitcoin prices across the market and, despite this, the Commission still believes that CME can detect attempted manipulation of the Bitcoin Futures through “trading outside of the CME bitcoin futures market,” it is clear that such

---

<sup>41</sup> See Teucrium Approval at 21679.

ability would apply equally to both Bitcoin Futures ETFs and Spot Bitcoin ETPs. To take it a step further, such an ability would also seem to be a strong indication that the CME Bitcoin Futures market represents a regulated market of significant size. To be clear, the Exchange agrees with the Commission on this point (and the implications of their conclusions) and notes that the pricing mechanism applicable to the Shares is similar to the CME CF Bitcoin Reference Rate.

#### Commodity-Based Trust Shares

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5711(d). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series. The Exchange may obtain information regarding trading in the Shares and listed bitcoin derivatives via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the

Exchange has entered into a comprehensive surveillance sharing agreement.

Availability of Information

The Exchange also believes that the proposal promotes market transparency in that a large amount of information is currently available about bitcoin and will be available regarding the Trust and the Shares. In addition to the price transparency of the CF Benchmarks Index, the Trust will provide information regarding the Trust's bitcoin holdings as well as additional data regarding the Trust.

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the prior business day's NAV; (b) the prior business day's Official Closing Price; (c) calculation of the premium or discount of such Official Closing Price against such NAV; (d) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (e) the prospectus; and (f) other applicable quantitative information. The Trust Administrator will also disseminate the Trust's holdings on a daily basis on the Trust's website. The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during the Regular Market Session. Information about the CF Benchmarks Index, including key elements of how the CF Benchmarks Index is calculated, will be publicly available at <https://www.cfbenchmarks.com/>. Also, an estimated value that reflects an estimated intraday value of the Trust's portfolio (the "Intraday Indicative Value" or "IIV"), will be disseminated.

One or more major market data vendors will provide an IIV per Share updated

every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Market Session (9:30 a.m. to 4:00 p.m. (ET)). The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during the Exchange's Regular Market Session to reflect changes in the value of the Trust's NAV during the trading day.

The NAV for the Trust will be calculated by the Trust Administrator once a day and will be disseminated daily to all market participants at the same time. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA.

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters, as well as CF Benchmarks. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the exchanges on which bitcoin are traded. Depth of book information is also available from bitcoin exchanges. The normal trading hours for bitcoin exchanges are 24 hours per day, 365 days per year.

In sum, the Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act, that this filing sufficiently demonstrates that the CME Bitcoin Futures market represents a regulated market of significant size, and that on the whole the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by investor protection issues that would be resolved by approving this proposal.

The Exchange believes that the proposal is, in particular, designed to protect investors and the public interest. Premium and discount volatility, high fees, rolling

costs, insufficient disclosures, and technical hurdles are putting U.S. investor money at risk on a daily basis that could potentially be eliminated through access to a Spot Bitcoin ETP. As such, the Exchange believes that this proposal acts to limit the risk to U.S. investors that are increasingly seeking exposure to bitcoin by providing direct, 1-for-1 exposure to bitcoin in a regulated, transparent, exchange-traded vehicle, specifically by: (i) reducing premium volatility; (ii) reducing management fees through meaningful competition; (iii) providing an alternative to Bitcoin Futures ETFs which will eliminate roll cost; (iv) reducing risks associated with investing in operating companies that are imperfect proxies for bitcoin exposure; and (v) providing an alternative to custodial spot bitcoin. Finally, the Exchange notes that in addition to all of the arguments herein which it believes sufficiently establishes the Bitcoin Futures market as a regulated market of significant size, it is logically inconsistent to find that the CME Bitcoin Futures market is a significant market as it relates to the CME Bitcoin Futures market, but not a significant market as it relates to the bitcoin spot market for the numerous reasons laid out above.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

#### 4. 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 rather will facilitate the listing and trading of additional exchange-traded product that will enhance competition among both market participants and listing venues, to the benefit of investors and the

marketplace.

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

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

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rule of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of proposed rule change for publication in the Federal Register.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2023-016)

June \_\_, 2023

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to List and Trade Shares of The iShares Bitcoin Trust

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 29, 2023, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the iShares Bitcoin Trust (the “Trust”) under Nasdaq Rule 5711(d) (“Commodity-Based Trust Shares”).

The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it

---

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

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

received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to list and trade the Shares under Nasdaq Rule 5711(d),<sup>3</sup> which governs the listing and trading of Commodity-Based Trust Shares on the Exchange. iShares Delaware Trust Sponsor LLC, a Delaware limited liability company and an indirect subsidiary of BlackRock, Inc. ("BlackRock"), is the sponsor of the Trust (the "Sponsor"). The Shares will be registered with the SEC by means of the Trust's registration statement on Form S-1 (the "Registration Statement").<sup>4</sup>

Description of the Trust

The Shares will be issued by the Trust, a Delaware statutory trust. The Trust will operate pursuant to a trust agreement (the "Trust Agreement") between the Sponsor, BlackRock Fund Advisors (the "Trustee") as the trustee of the Trust and will appoint a Delaware Trustee of the Trust (the "Delaware Trustee") by such time that the Registration Statement is effective. The Trust issues Shares representing fractional undivided beneficial interests in its net assets. The assets of the Trust consist primarily of bitcoin held by a custodian on behalf of the Trust. Coinbase Custody Trust Company,

---

<sup>3</sup> The Commission approved Nasdaq Rule 5711 in Securities Exchange Act Release No. 66648 (March 23, 2012), 77 FR 19428 (March 30, 2012) (SR-NASDAQ-2012-013).

<sup>4</sup> See Registration Statement on Form S-1, dated June 15, 2023 filed with the Commission by the Sponsor on behalf of the Trust. The descriptions of the Trust contained herein are based, in part, on information in the Registration Statement. The Registration Statement is not yet effective and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

LLC (the “Bitcoin Custodian”), is the custodian for the Trust’s bitcoin holdings; and Bank of New York Mellon is the custodian for the Trust’s cash holdings (the “Cash Custodian” and together with the Bitcoin Custodian, the “Custodians”) and the administrator of the Trust (the “Trust Administrator”). Under the Trust Agreement, the Trustee may delegate all or a portion of its duties to any agent, and has delegated the bulk of the day-to-day responsibilities to the Trust Administrator and certain other administrative and record-keeping functions to its affiliates and other agents. The Trust is not an investment company registered under the Investment Company Act of 1940, as amended (the “1940 Act”).

The investment objective of the Trust is to reflect generally the performance of the price of bitcoin. The Trust seeks to reflect such performance before payment of the Trust’s expenses and liabilities. The Shares are intended to constitute a simple means of making an investment similar to an investment in bitcoin rather than by acquiring, holding and trading bitcoin directly on a peer-to-peer or other basis or via a digital asset exchange. The Shares have been designed to remove the obstacles represented by the complexities and operational burdens involved in a direct investment in bitcoin, while at the same time having an intrinsic value that reflects, at any given time, the investment exposure to the bitcoin owned by the Trust at such time, less the Trust’s expenses and liabilities. Although the Shares are not the exact equivalent of a direct investment in bitcoin, they provide investors with an alternative method of achieving investment exposure to bitcoin through the public securities market, which may be more familiar to them.

### Custody of the Trust's Bitcoins

An investment in the Shares is backed by bitcoin held by the Bitcoin Custodian on behalf of the Trust. The Bitcoin Custodian will keep custody of all of the Trust's bitcoin, other than that which is maintained in the Trading Balance with the Prime Broker, in accounts that are required to be segregated from the assets held by the Bitcoin Custodian as principal and the assets of its other customers (the "Vault Balance"), with any remainder of the Vault Balance held as part of a "hot storage".<sup>5</sup> The Bitcoin Custodian will keep a substantial portion of the private keys associated with the Trust's bitcoin in "cold storage"<sup>6</sup> or similarly secure technology (the "Cold Vault Balance") The hardware, software, systems, and procedures of the Bitcoin Custodian may not be available or cost-effective for many investors to access directly.

### Net Asset Value

The net asset value of the Trust will be equal to the total assets of the Trust, including but not limited to, all bitcoin and cashless total liabilities of the Trust, each determined by the Trustee pursuant to policies established from time to time by the Trustee or its affiliates or otherwise described herein. The methodology used to calculate

---

<sup>5</sup> A portion of the Trust's bitcoin holdings and cash holdings from time to time may be held with the Prime Broker, an affiliate of the Bitcoin Custodian, in the Trading Balance, in connection with in-kind creations and redemptions of Baskets and the sale of bitcoin to pay the Sponsor's Fee and Trust expenses not assumed by the Sponsor. These periodic holdings held in the Trading Balance with the Prime Broker represent an omnibus claim on the Prime Broker's bitcoins held on behalf of clients; these holdings exist across a combination of omnibus hot wallets, omnibus cold wallets, or in accounts in the Prime Broker's name on a trading venue (including third-party venues and the Prime Broker's own execution venue) where the Prime Broker executes orders to buy and sell bitcoin on behalf of its clients.

<sup>6</sup> The term "cold storage" refers to a safeguarding method by which the private keys corresponding to bitcoins stored on a digital wallet are removed from any computers actively connected to the internet. Cold storage of private keys may involve keeping such wallet on a non-networked computer or electronic device or storing the public key and private keys relating to the digital wallet on a storage device (for example, a USB thumb drive) or printed medium (for example, papyrus or paper) and deleting the digital wallet from all computers.

an index (the “Index”) price to value bitcoin in determining the net asset value of the Trust may not be deemed consistent with U.S. generally accepted accounting principles (“GAAP”).

The Sponsor has the exclusive authority to determine the Trust’s net asset value, which it has delegated to the Trustee under the Trust Agreement. The Trustee has delegated to the Trust Administrator the responsibility to calculate the net asset value of the Trust and the NAV, based on a pricing source selected by the Trustee. In determining the Trust’s net asset value, the Trust Administrator values the bitcoin held by the Trust based on the Index, unless otherwise determined by the Sponsor in its sole discretion. The CF Benchmarks Index shall constitute the Index, unless the CF Benchmarks Index is not available or the Sponsor in its sole discretion determines not to use the CF Benchmarks Index as the Index. If the CF Benchmarks Index is not available or the Sponsor determines, in its sole discretion, that the CF Benchmarks Index should not be used, the Trust’s holdings may be fair valued in accordance with the policy approved by the Sponsor.

The Trust’s periodic financial statements may not utilize net asset value or NAV to the extent the methodology used to calculate the Index is deemed not to be consistent with GAAP. For purposes of the Trust’s periodic financial statements, the Trust will utilize a pricing source that is consistent with GAAP, as of the financial statement measurement date. The Sponsor will determine in its sole discretion the valuation sources and policies used to prepare the Trust's financial statements in accordance with GAAP.

The Sponsor may declare a suspension of the calculation of the NAV of the Trust

under certain circumstances.

Net Asset Value Calculation and Index

On each Business Day, as soon as practicable after 4:00 p.m. Eastern Time (“ET”), the Trust Administrator evaluates the bitcoin held by the Trust as reflected by the CF Benchmarks Index and determines the net asset value of the Trust and the NAV. For purposes of making these calculations, a Business Day means any day other than a day when Nasdaq is closed for regular trading.

The CF Benchmarks Index employed by the Trust is calculated on each Business Day by aggregating the notional value of bitcoin trading activity across major bitcoin spot exchanges. The CF Benchmarks Index is designed based on the IOSCO Principles for Financial Benchmarks. The administrator of the CF Benchmarks Index is CF Benchmarks Ltd. (the “Index Administrator”). The CF Benchmarks Index serves as a once-a-day benchmark rate of the U.S. dollar price of bitcoin (USD/BTC), calculated as of 4:00 p.m. ET. The CF Benchmarks Index aggregates the trade flow of several bitcoin exchanges, during an observation window between 3:00 p.m. and 4:00 p.m. ET into the U.S. dollar price of one bitcoin at 4:00 p.m. ET. Specifically, the CF Benchmarks Index is calculated based on the “Relevant Transactions”<sup>7</sup> of all of its constituent bitcoin exchanges (“Constituent Exchanges”), which are currently Bitstamp, Coinbase, itBit, Kraken, Gemini, and LMAX (the “Constituent Platforms”), and which may change from time to time.

If the CF Benchmarks Index is not available or the Sponsor determines, in its sole

---

<sup>7</sup> A “Relevant Transaction” is any cryptocurrency versus U.S. dollar spot trade that occurs during the observation window between 3:00 p.m. and 4:00 p.m. ET on a Constituent Exchange in the BTC/USD pair that is reported and disseminated by a Constituent Exchange through its publicly available API and observed by the Index Administrator.

discretion, that the CF Benchmarks Index should not be used, the Trust's holdings may be fair valued in accordance with the policy approved by the Sponsor.

The Trust is intended to provide a way for Shareholders to obtain exposure to bitcoin by investing in the Shares rather than by acquiring, holding and trading bitcoin directly on a peer-to-peer or other basis or via a digital asset exchange. An investment in Shares of the Trust is not the same as an investment directly in bitcoin on a peer-to-peer or other basis or via a digital asset exchange.

#### Creation and Redemption of Shares

The Trust issues and redeems baskets ("Baskets")<sup>8</sup> on a continuous basis. Baskets are only issued or redeemed in exchange for an amount of bitcoin determined by the Trustee on each day that Nasdaq is open for regular trading. No Shares are issued unless the Bitcoin Custodian or Prime Broker has allocated to the Trust's account the corresponding amount of bitcoin. The amount of bitcoin necessary for the creation of a Basket, or to be received upon redemption of a Basket, will decrease over the life of the Trust, due to the payment or accrual of fees and other expenses or liabilities payable by the Trust. Baskets may be created or redeemed only by Authorized Participants, who pay BlackRock Investments, LLC ("BRIL"), an affiliate of the Trustee that has been retained by the Trust to perform certain order processing, Authorized Participant communications, and related services in connection with the issuance and redemption of Baskets ("ETF

---

<sup>8</sup> The Trust issues and redeems Shares only in blocks of 40,000 or integral multiples thereof. A block of 40,000 Shares is called a "Basket." These transactions take place in exchange for bitcoin. Baskets will be offered continuously at the net asset value per Share ("NAV") for 40,000 Shares on the day that an order to create a Basket is accepted by the Trust. The Trust may change the number of Shares in a Basket. Only registered broker-dealers that become authorized participants by entering into a contract with the Sponsor and the Trustee ("Authorized Participants") may purchase or redeem Baskets. Shares will be offered to the public from time to time at varying prices that will reflect the price of bitcoin and the trading price of the Shares on Nasdaq at the time of the offer.

Services”), a transaction fee for each order to create or redeem Baskets.

#### Overview of the Bitcoin Industry

Bitcoin is a digital asset that is 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 its 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 Bitcoin 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 exchanges that enable trading in bitcoin or in individual end-user-to-end-user transactions under a barter system.

The Bitcoin network is commonly understood to be decentralized and does not require governmental authorities or financial institution intermediaries to create, transmit or determine the value of bitcoin. Rather, bitcoin is created and allocated by the Bitcoin network protocol through a “mining” process. The value of bitcoin is determined by the supply of and demand for bitcoin-on-bitcoin exchanges or in private end-user-to-end-user transactions.

New bitcoins are created and rewarded to the miners of a block in the Bitcoin blockchain for verifying transactions. The Bitcoin blockchain is a shared 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 Bitcoin blockchain. As each new block records outstanding bitcoin transactions, and outstanding transactions are settled and

validated through such recording, the Bitcoin blockchain represents a complete, transparent and unbroken history of all transactions of the Bitcoin network.

#### History of Bitcoin

The Bitcoin network was initially contemplated in a whitepaper that also described bitcoin and the operating software to govern the Bitcoin network. The whitepaper was purportedly authored by Satoshi Nakamoto. However, no individual with that name has been reliably identified as bitcoin's creator, and the general consensus is that the name is a pseudonym for the actual inventor or inventors. The first bitcoins were created in 2009 after Nakamoto released the Bitcoin network source code (the software and protocol that created and launched the Bitcoin network). The Bitcoin network has been under active development since that time by a loose group of software developers who have come to be known as core developers.

#### Overview of Bitcoin Network Operations

In order to own, transfer or use bitcoin directly on the Bitcoin network (as opposed to through an intermediary, such as an exchange), a person generally must have internet access to connect to the Bitcoin network. Bitcoin transactions may be made directly between end-users without the need for a third-party intermediary. To prevent the possibility of double-spending bitcoin, a user must notify the Bitcoin network of the transaction by broadcasting the transaction data to its network peers. The Bitcoin network provides confirmation against double-spending by memorializing every transaction in the Bitcoin blockchain, which is publicly accessible and transparent. This memorialization and verification against double-spending is accomplished through the Bitcoin network mining process, which adds "blocks" of data, including recent

transaction information, to the Bitcoin blockchain.

### Overview of Bitcoin Transfers

Prior to engaging in bitcoin transactions directly on the Bitcoin network, a user generally must first install on its computer or mobile device a Bitcoin network software program that will allow the user to generate a private and public key pair associated with a bitcoin address commonly referred to as a “wallet.” The Bitcoin network software program and the bitcoin address also enable the user to connect to the Bitcoin network and transfer bitcoin to, and receive bitcoin from, other users.

Each Bitcoin network address, or wallet, is associated with a unique “public key” and “private key” pair. To receive bitcoin, the bitcoin recipient must provide its public key to the party initiating the transfer. This activity is analogous to a recipient for a transaction in U.S. dollars providing a routing address in wire instructions to the payor so that cash may be wired to the recipient’s account. The payor approves the transfer to the address provided by the recipient by “signing” a transaction that consists of the recipient’s public key with the private key of the address from where the payor is transferring the bitcoin. The recipient, however, does not make public or provide to the sender its related private key.

Neither the recipient nor the sender reveals their private keys in a transaction because the private key authorizes transfer of the funds in that address to other users. Therefore, if a user loses his or her private key, the user may permanently lose access to the bitcoin contained in the associated address. Likewise, bitcoin is irretrievably lost if the private key associated with them is deleted and no backup has been made. When sending bitcoin, a user’s Bitcoin network software program must validate the transaction

with the associated private key. The resulting digitally validated transaction is sent by the user's Bitcoin network software program to the Bitcoin network to allow transaction confirmation.

Some bitcoin transactions are conducted "off-blockchain" and are therefore not recorded in the Bitcoin blockchain. Some "off-blockchain transactions" involve the transfer of control over, or ownership of, a specific digital wallet holding bitcoin or the reallocation of ownership of certain bitcoin in a digital wallet containing assets owned by multiple persons, such as a digital wallet maintained by a digital assets exchange. In contrast to on-blockchain transactions, which are publicly recorded on the Bitcoin blockchain, information and data regarding off-blockchain transactions are generally not publicly available. Therefore, off-blockchain transactions are not truly bitcoin transactions in that they do not involve the transfer of transaction data on the Bitcoin network and do not reflect a movement of bitcoin between addresses recorded in the Bitcoin blockchain. For these reasons, off-blockchain transactions are subject to risks as any such transfer of bitcoin ownership is not protected by the protocol behind the Bitcoin network or recorded in, and validated through, the blockchain mechanism.

#### Summary of a Bitcoin Transaction

In a bitcoin transaction directly on the Bitcoin network between two parties (as opposed to through an intermediary, such as a custodian), the following circumstances must initially be in place: (i) the party seeking to send bitcoin must have a Bitcoin network public key, and the Bitcoin network must recognize that public key as having sufficient bitcoin for the transaction; (ii) the receiving party must have a Bitcoin network public key; and (iii) the spending party must have internet access with which to send its

spending transaction.

The receiving party must provide the spending party with its public key and allow the Bitcoin blockchain to record the sending of bitcoin to that public key. After the provision of a recipient's Bitcoin network public key, the spending party must enter the address into its Bitcoin network software program along with the number of bitcoin to be sent. The number of bitcoin to be sent will typically be agreed upon between the two parties based on a set number of bitcoin or an agreed upon conversion of the value of fiat currency to bitcoin. Since every computation on the Bitcoin network requires the payment of bitcoin, including verification and memorialization of bitcoin transfers, there is a transaction fee involved with the transfer, which is based on computation complexity and not on the value of the transfer and is paid by the payor with a fractional number of bitcoin.

After the entry of the Bitcoin network address, the number of bitcoin to be sent and the transaction fees, if any, to be paid, will be transmitted by the spending party. The transmission of the spending transaction results in the creation of a data packet by the spending party's Bitcoin network software program, which is transmitted onto the decentralized Bitcoin network, resulting in the distribution of the information among the software programs of users across the Bitcoin network for eventual inclusion in the Bitcoin blockchain.

As discussed in greater detail below, Bitcoin network miners record transactions when they solve for and add blocks of information to the Bitcoin blockchain. When a miner solves for a block, it creates that block, which includes data relating to (i) the solution to the block, (ii) a reference to the prior block in the Bitcoin blockchain to which

the new block is being added and (iii) transactions that have occurred but have not yet been added to the Bitcoin blockchain. The miner becomes aware of outstanding, unrecorded transactions through the data packet transmission and distribution discussed above.

Upon the addition of a block included in the Bitcoin blockchain, the Bitcoin network software program of both the spending party and the receiving party will show confirmation of the transaction on the Bitcoin blockchain and reflect an adjustment to the bitcoin balance in each party's Bitcoin network public key, completing the bitcoin transaction. Once a transaction is confirmed on the Bitcoin blockchain, it is irreversible.

#### Creation of a New Bitcoin

New bitcoins are created through the mining process. The process by which bitcoin is "mined" results in new blocks being added to the Bitcoin blockchain and new bitcoin tokens being issued to the miners. Computers on the Bitcoin network engage in a set of prescribed complex mathematical calculations in order to add a block to the Bitcoin blockchain and thereby confirm bitcoin transactions included in that block's data. The Bitcoin network is designed in such a way that the reward for adding new blocks to the Bitcoin blockchain decreases over time. Once new bitcoin tokens are no longer awarded for adding a new block, miners will only have transaction fees to incentivize them, and as a result, it is expected that miners will need to be better compensated with higher transaction fees to ensure that there is adequate incentive for them to continue mining.

#### Limits on Bitcoin Supply

Under the source code that governs the Bitcoin network, the supply of new bitcoin is mathematically controlled so that the number of bitcoin grows at a limited rate

pursuant to a pre-set schedule. The number of bitcoin awarded for solving a new block is automatically halved after every 210,000 blocks are added to the Bitcoin blockchain, approximately every 4 years. Currently, the fixed reward for solving a new block is 6.25 bitcoin per block and this is expected to decrease by half to become 3.125 bitcoin in approximately early 2024. This deliberately controlled rate of bitcoin creation means that the number of bitcoin in existence will increase at a controlled rate until the number of bitcoin in existence reaches the pre-determined 21 million bitcoin. However, the 21 million supply cap could be changed in a hard fork. A hard fork could change the source code to the Bitcoin network, including the 21 million bitcoin supply cap.

### Background

The Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts, including spot based Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.<sup>9</sup> Prior orders from the Commission have pointed out that in every prior approval order for Commodity-Based Trust Shares, there has been a derivatives market that represents the regulated market of significant size, generally a Commodity Futures Trading Commission regulated futures market.<sup>10</sup> Further to this

---

<sup>9</sup> See Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018). This proposal was subsequently disapproved by the Commission. See Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the “Winklevoss Order”).

<sup>10</sup> See streetTRACKS Gold Shares, Exchange Act Release No. 50603 (Oct. 28, 2004), 69 FR 64614, 64618–19 (Nov. 5, 2004) (SR-NYSE-2004-22) (the “First Gold Approval Order”); iShares COMEX Gold Trust, Exchange Act Release No. 51058 (Jan. 19, 2005), 70 FR 3749, 3751, 3754–55 (Jan. 26, 2005) (SR-Amex-2004-38); iShares Silver Trust, Exchange Act Release No. 53521 (Mar. 20, 2006), 71 FR 14967, 14968, 14973–74 (Mar. 24, 2006) (SR-Amex-2005-072); ETFS Gold Trust, Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993, 22994–95, 22998, 23000 (May 15, 2009) (SR-NYSEArca-2009-40); ETFS Silver Trust, Exchange Act Release No. 59781 (Apr. 17, 2009), 74 FR 18771, 18772, 18775–77 (Apr. 24, 2009)

---

(SR-NYSEArca-2009-28); ETFs Palladium Trust, Exchange Act Release No. 61220 (Dec. 22, 2009), 74 FR 68895, 68896 (Dec. 29, 2009) (SR-NYSEArca-2009-94) (notice of proposed rule change included NYSE Arca’s representation that “[t]he most significant palladium futures exchanges are the NYMEX and the Tokyo Commodity Exchange,” that “NYMEX is the largest exchange in the world for trading precious metals futures and options,” and that NYSE Arca “may obtain trading information via the Intermarket Surveillance Group,” of which NYMEX is a member, Exchange Act Release No. 60971 (Nov. 9, 2009), 74 FR 59283, 59285–86, 59291 (Nov. 17, 2009)); ETFs Platinum Trust, Exchange Act Release No. 61219 (Dec. 22, 2009), 74 FR 68886, 68887–88 (Dec. 29, 2009) (SR-NYSEArca-2009-95) (notice of proposed rule change included NYSE Arca’s representation that “[t]he most significant platinum futures exchanges are the NYMEX and the Tokyo Commodity Exchange,” that “NYMEX is the largest exchange in the world for trading precious metals futures and options,” and that NYSE Arca “may obtain trading information via the Intermarket Surveillance Group,” of which NYMEX is a member, Exchange Act Release No. 60970 (Nov. 9, 2009), 74 FR 59319, 59321, 59327 (Nov. 17, 2009)); Sprott Physical Gold Trust, Exchange Act Release No. 61496 (Feb. 4, 2010), 75 FR 6758, 6760 (Feb. 10, 2010) (SR-NYSEArca-2009-113) (notice of proposed rule change included NYSE Arca’s representation that the COMEX is one of the “major world gold markets,” that NYSE Arca “may obtain trading information via the Intermarket Surveillance Group,” and that NYMEX, of which COMEX is a division, is a member of the Intermarket Surveillance Group, Exchange Act Release No. 61236 (Dec. 23, 2009), 75 FR 170, 171, 174 (Jan. 4, 2010)); Sprott Physical Silver Trust, Exchange Act Release No. 63043 (Oct. 5, 2010), 75 FR 62615, 62616, 62619, 62621 (Oct. 12, 2010) (SR-NYSEArca-2010-84); ETFs Precious Metals Basket Trust, Exchange Act Release No. 62692 (Aug. 11, 2010), 75 FR 50789, 50790 (Aug. 17, 2010) (SR-NYSEArca-2010-56) (notice of proposed rule change included NYSE Arca’s representation that “the most significant gold, silver, platinum and palladium futures exchanges are the COMEX and the TOCOM” and that NYSE Arca “may obtain trading information via the Intermarket Surveillance Group,” of which COMEX is a member, Exchange Act Release No. 62402 (Jun. 29, 2010), 75 FR 39292, 39295, 39298 (July 8, 2010)); ETFs White Metals Basket Trust, Exchange Act Release No. 62875 (Sept. 9, 2010), 75 FR 56156, 56158 (Sept. 15, 2010) (SR-NYSEArca-2010-71) (notice of proposed rule change included NYSE Arca’s representation that “the most significant silver, platinum and palladium futures exchanges are the COMEX and the TOCOM” and that NYSE Arca “may obtain trading information via the Intermarket Surveillance Group,” of which COMEX is a member, Exchange Act Release No. 62620 (July 30, 2010), 75 FR 47655, 47657, 47660 (Aug. 6, 2010)); ETFs Asian Gold Trust, Exchange Act Release No. 63464 (Dec. 8, 2010), 75 FR 77926, 77928 (Dec. 14, 2010) (SR-NYSEArca-2010-95) (notice of proposed rule change included NYSE Arca’s representation that “the most significant gold futures exchanges are the COMEX and the Tokyo Commodity Exchange,” that “COMEX is the largest exchange in the world for trading precious metals futures and options,” and that NYSE Arca “may obtain trading information via the Intermarket Surveillance Group,” of which COMEX is a member, Exchange Act Release No. 63267 (Nov. 8, 2010), 75 FR 69494, 69496, 69500–01 (Nov. 12, 2010)); Sprott Physical Platinum and Palladium Trust, Exchange Act Release No. 68430 (Dec. 13, 2012), 77 FR 75239, 75240–41 (Dec. 19, 2012) (SR-NYSEArca-2012-111) (notice of proposed rule change included NYSE Arca’s representation that “[f]utures on platinum and palladium are traded on two major exchanges: The New York Mercantile Exchange ... and Tokyo Commodities Exchange” and that NYSE Arca “may obtain trading information via the Intermarket Surveillance Group,” of which COMEX is a member, Exchange Act Release No. 68101 (Oct. 24, 2012), 77 FR 65732, 65733, 65739 (Oct. 30, 2012)); APMEX Physical—1 oz. Gold Redeemable Trust, Exchange Act Release No. 66930 (May 7, 2012), 77 FR 27817, 27818 (May 11, 2012) (SR-NYSEArca-2012-18) (notice of proposed rule change included NYSE Arca’s representation that NYSE Arca “may obtain trading information via the Intermarket Surveillance Group,” of which COMEX is a member, and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFs Gold Trust, in which NYSE Arca represented that COMEX is one of the “major world gold markets,” Exchange Act Release No. 66627 (Mar. 20, 2012), 77 FR 17539, 17542–43, 17547 (Mar. 26, 2012)); JPM XF Physical Copper Trust, Exchange Act Release No. 68440 (Dec. 14, 2012), 77 FR 75468, 75469–

point, the Commission’s prior orders have noted that the spot commodities and currency markets for which it has previously approved spot exchange traded products (“ETPs”) are generally unregulated and that the Commission relied on the underlying futures market as the regulated market of significant size that formed the basis for approving the series of Currency and Commodity-Based Trust Shares, including gold, silver, platinum, palladium, copper, and other commodities and currencies. The Commission specifically noted in the Winklevoss Order that the First Gold Approval Order “was based on an assumption that the currency market and the spot gold market were largely unregulated.”<sup>11</sup>

As such, the regulated market of significant size test does not require that the spot bitcoin market be regulated in order for the Commission to approve this proposal, and precedent makes clear that an underlying market for a spot commodity or currency being a regulated market would actually be an exception to the norm. These largely

---

70, 75472, 75485–86 (Dec. 20, 2012) (SR-NYSEArca-2012-28); iShares Copper Trust, Exchange Act Release No. 68973 (Feb. 22, 2013), 78 FR 13726, 13727, 13729–30, 13739–40 (Feb. 28, 2013) (SR-NYSEArca-2012-66); First Trust Gold Trust, Exchange Act Release No. 70195 (Aug. 14, 2013), 78 FR 51239, 51240 (Aug. 20, 2013) (SR-NYSEArca-2013-61) (notice of proposed rule change included NYSE Arca’s representation that FINRA, on behalf of the exchange, may obtain trading information regarding gold futures and options on gold futures from members of the Intermarket Surveillance Group, including COMEX, or from markets “with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement,” and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFs Gold Trust, in which NYSE Arca represented that COMEX is one of the “major world gold markets,” Exchange Act Release No. 69847 (June 25, 2013), 78 FR 39399, 39400, 39405 (July 1, 2013)); Merk Gold Trust, Exchange Act Release No. 71378 (Jan. 23, 2014), 79 FR 4786, 4786–87 (Jan. 29, 2014) (SR-NYSEArca-2013-137) (notice of proposed rule change included NYSE Arca’s representation that “COMEX is the largest gold futures and options exchange” and that NYSE Arca “may obtain trading information via the Intermarket Surveillance Group,” including with respect to transactions occurring on COMEX pursuant to CME and NYMEX’s membership, or from exchanges “with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement,” Exchange Act Release No. 71038 (Dec. 11, 2013), 78 FR 76367, 76369, 76374 (Dec. 17, 2013)); Long Dollar Gold Trust, Exchange Act Release No. 79518 (Dec. 9, 2016), 81 FR 90876, 90881, 90886, 90888 (Dec. 15, 2016) (SR-NYSEArca-2016-84).

<sup>11</sup> See Winklevoss Order at 37592.

unregulated currency and commodity markets do not provide the same protections as the markets that are subject to the Commission's oversight, but the Commission has consistently looked to surveillance sharing agreements with the underlying futures market in order to determine whether such products were consistent with the Act. With this in mind, the Bitcoin Futures market, as defined below, is the proper market to consider in determining whether there is a related regulated market of significant size.

Further to this point, the Exchange notes that the Commission has recently approved proposals related to the listing and trading of funds that would primarily hold Bitcoin Futures that are registered under the Securities Act of 1933 instead of the 1940 Act.<sup>12</sup> In the Teucrium Approval, the Commission found the Bitcoin Futures market to be a regulated market of significant size as it relates to Bitcoin Futures, an odd tautological truth that is also inconsistent with prior disapproval orders for ETPs that would hold actual bitcoin instead of derivatives contracts ("Spot Bitcoin ETPs") that use the exact same pricing methodology as the Bitcoin Futures. As further discussed below, both the Exchange and the Sponsor believe that this proposal and the included analysis are sufficient to establish that the Bitcoin Futures market represents a regulated market of significant size as it relates both to the Bitcoin Futures market and to the spot bitcoin market and that this proposal should be approved.

#### Bitcoin Futures ETFs

The Exchange and Sponsor applaud the Commission for allowing the launch of exchange-traded funds ("ETFs") registered under the 1940 Act and the recent Bitcoin Futures Approvals that provide exposure to bitcoin primarily through Bitcoin Futures

---

<sup>12</sup> See Exchange Act Release No. 94620 (April 6, 2022), 87 FR 21676 (April 12, 2022) (the "Teucrium Approval") and 94853 (May 5, 2022) (collectively, with the Teucrium Approval, the "Bitcoin Futures Approvals").

(“Bitcoin Futures ETFs”). Allowing such products to list and trade is a productive first step in providing U.S. investors and traders with transparent, exchange listed tools for expressing a view on bitcoin. The Bitcoin Futures Approvals, however, have created a logical inconsistency in the application of the standard the Commission applies when considering bitcoin ETP proposals.

As discussed further below, the standard applicable to bitcoin ETPs is whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size in the underlying asset. Previous disapproval orders have made clear that a market that constitutes a regulated market of significant size is generally a futures and/or options market based on the underlying reference asset rather than the spot commodity markets, which are often unregulated.<sup>13</sup> Leaving aside the analysis of that standard until later in this proposal,<sup>14</sup> the Exchange believes that the below rationale that the Commission applied to a Bitcoin Futures ETF should result in the Commission approving this and other Spot Bitcoin ETP proposals:

The CME “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.” Thus, the CME’s surveillance can reasonably be relied upon to capture the effects on the

---

<sup>13</sup> See Winklevoss Order at 37593, specifically footnote 202, which includes the language from numerous approval orders for which the underlying futures markets formed the basis for approving series of ETPs that hold physical metals, including gold, silver, palladium, platinum, and precious metals more broadly; and 37600, specifically where the Commission provides that “when the spot market is unregulated – the requirement of preventing fraudulent and manipulative acts may possibly be satisfied by showing that the ETP listing market has entered into a surveillance-sharing agreement with a regulated market of significant size in derivatives related to the underlying asset.” As noted above, the Exchange believes that these citations are particularly helpful in making clear that the spot market for a spot commodity ETP need not be “regulated” in order for a spot commodity ETP to be approved by the Commission, and in fact that it’s been the common historical practice of the Commission to rely on such derivatives markets as the regulated market of significant size because such spot commodities markets are largely unregulated.

<sup>14</sup> As further outlined below, both the Exchange and the Sponsor believe that the Bitcoin Futures market represents a regulated market of significant size and that this proposal and others like it should be approved on this basis.

CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts, whether that attempt is made by directly trading on the CME bitcoin futures market or indirectly by trading outside of the CME bitcoin futures market. As such, when the CME shares its surveillance information with Arca, the information would assist in detecting and deterring fraudulent or manipulative misconduct related to the non cash assets held by the proposed ETP.<sup>15</sup>

Bitcoin Futures pricing is based on pricing from spot bitcoin markets. The statement from the Teucrium Approval that “CME’s surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts...indirectly by trading outside of the CME bitcoin futures market,” makes clear that the Commission believes that CME’s surveillance can capture the effects of trading on the relevant spot markets on the pricing of Bitcoin Futures. If CME is able to detect such attempts at manipulation in the complex and interconnected spot bitcoin market, how would such an ability to detect attempted manipulation and the utility in sharing that information with the listing exchange apply only to Bitcoin Futures ETFs and not Spot Bitcoin ETPs? Stated a different way, given that there is significant trading volume on numerous bitcoin exchanges that are not part of the CME CF Bitcoin Reference Rate and that arbitrage opportunities across bitcoin exchanges means that such trading volume will influence spot bitcoin prices across the market and, despite this, the Commission still believes that CME can detect attempted manipulation of the Bitcoin Futures through “trading outside of the CME bitcoin futures market,” it is clear that such ability would apply equally to both Bitcoin Futures ETFs and Spot Bitcoin ETPs. To take it a step further, such an ability would also seem to be a strong indication that the

---

<sup>15</sup> See Teucrium Approval at 21679.

CME Bitcoin Futures market represents a regulated market of significant size. To be clear, the Exchange agrees with the Commission on this point (and the implications of their conclusions) and notes that the pricing mechanism applicable to the Shares is similar to the CME CF Bitcoin Reference Rate, as further discussed below.

The Exchange also notes that a Bitcoin Futures ETF may also be more susceptible to potential manipulation than a Spot Bitcoin ETP that offers only in-kind creation and redemption because Bitcoin Futures pricing (and thus the value of the underlying holdings of a Bitcoin Futures ETF) is based on a single price derived from spot bitcoin pricing, while shares of a Spot Bitcoin ETP would represent interest in bitcoin directly and authorized participants for a Spot Bitcoin ETP (as proposed herein) would be able to source bitcoin from any exchange and create or redeem with the applicable trust regardless of the price of the underlying index. As such, the Exchange believes that, in addition to the CME Bitcoin Futures market representing a regulated market of significant size as it relates to the spot bitcoin market, in-kind Spot Bitcoin ETPs are likely less susceptible to manipulation than Bitcoin Futures ETFs because of the underlying creation and redemption arbitrage mechanism that will operate in the same manner as it does for all other ETFs.

In addition to potentially being more susceptible to manipulation than a Spot Bitcoin ETP, the structure of Bitcoin Futures ETFs provides negative outcomes for buy and hold investors as compared to a Spot Bitcoin ETP.<sup>16</sup> Specifically, the cost of rolling Bitcoin Futures contracts will cause the Bitcoin Futures ETFs to typically lag the

---

<sup>16</sup> See e.g., “Bitcoin ETF’s Success Could Come at Fundholders’ Expense,” Wall Street Journal (October 24, 2021), available at: <https://www.wsj.com/articles/bitcoin-etfs-success-could-come-at-fundholders-expense-11635080580>; “Physical Bitcoin ETF Prospects Accelerate,” ETF.com (October 25, 2021), available at: <https://www.etf.com/sections/blog/physical-bitcoin-etf-prospects-shine>.

performance of bitcoin itself and, at over a billion dollars in assets under management, would cost U.S. investors significant amounts of money on an annual basis compared to Spot Bitcoin ETPs. Such rolling costs would not be required for Spot Bitcoin ETPs that hold bitcoin. While Bitcoin Futures ETFs represent a useful trading tool, they are clearly a sub-optimal structure for U.S. investors that are looking for long-term exposure to bitcoin that will, based on the calculations above, unnecessarily cost U.S. investors significant amounts of money every year compared to Spot Bitcoin ETPs and the Exchange believes that any proposal to list and trade a Spot Bitcoin ETP should be reviewed by the Commission with this important investor protection context in mind.

Based on the foregoing, the Exchange and Sponsor believe that any objective review of the proposals to list Spot Bitcoin ETPs compared to the Bitcoin Futures ETFs and the Bitcoin Futures Approvals would lead to the conclusion that Spot Bitcoin ETPs should be available to U.S. investors and, as such, this proposal and other comparable proposals to list and trade Spot Bitcoin ETPs should be approved by the Commission. Stated simply, U.S. investors will continue to lose significant amounts of money from holding Bitcoin Futures ETFs as compared to Spot Bitcoin ETPs, losses which could be prevented by the Commission approving Spot Bitcoin ETPs. Additionally, any concerns related to preventing fraudulent and manipulative acts and practices related to Spot Bitcoin ETPs would apply equally to the spot markets underlying the futures contracts held by a Bitcoin Futures ETF. While the 1940 Act does offer certain investor protections, those protections do not relate to mitigating potential manipulation of the holdings of an ETF in a way that warrants distinction between Bitcoin Futures ETFs and Spot Bitcoin ETPs and the SEC has granted approval for a Bitcoin Futures ETP that is

not regulated by the 1940 Act.<sup>17</sup> To be clear, both the Exchange and Sponsor believe that the Bitcoin Futures market is a regulated market of significant size and that such manipulation concerns are mitigated as described throughout this proposal. After issuing the Bitcoin Futures Approvals which conclude the CME Bitcoin Futures market is a regulated market of significant size as it relates to Bitcoin Futures, the only consistent outcome would be approving Spot Bitcoin ETPs on the basis that the Bitcoin Futures market is also a regulated market of significant size as it relates to the bitcoin spot market. Including in the analysis the significant and preventable losses to U.S. investors that comes with Bitcoin Futures ETFs, disapproving Spot Bitcoin ETPs seems even more arbitrary and capricious. Given the current landscape, approving this proposal (and others like it) and allowing Spot Bitcoin ETPs to be listed and traded alongside Bitcoin Futures ETFs would establish a consistent regulatory approach, provide U.S. investors with choice in product structures for bitcoin exposure, and offer flexibility in the means of gaining exposure to bitcoin through transparent, regulated, U.S. exchange listed vehicles.

#### Spot and Proxy Exposure to Bitcoin

Exposure to bitcoin through an ETP also presents certain advantages for retail investors compared to buying spot bitcoin directly. The most notable advantage from the Sponsor's perspective is the elimination of the need for an individual retail investor to either manage their own private keys or to hold bitcoin through a cryptocurrency exchange that lacks sufficient protections. Typically, retail exchanges hold most, if not all, retail investors' bitcoin in "hot" (Internet connected) storage and do not make any

---

17

See Teucrium Approval.

commitments to indemnify retail investors or to observe any particular cybersecurity standard. Meanwhile, a retail investor holding spot bitcoin directly in a self-hosted wallet may suffer from inexperience in private key management (e.g., insufficient password protection, lost key, etc.), which point of failure could cause them to lose some or all of their bitcoin holdings. Thus, with respect to custody of the Trust's bitcoin assets, the Trust presents advantages from an investment protection standpoint for retail investors compared to owning spot bitcoin directly or via a digital asset exchange.

Finally, some publicly traded companies with mostly unrelated businesses – such as Tesla (a car manufacturer) and MicroStrategy (an enterprise software company) – have announced significant investments in bitcoin. Without access to bitcoin exchange traded products, retail investors seeking investment exposure to bitcoin may end up purchasing shares in these companies in order to gain the exposure to bitcoin that they seek.<sup>18</sup> 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.<sup>19</sup> Such public companies, however, are imperfect bitcoin proxies and provide investors with partial bitcoin exposure paired with a host of additional risks

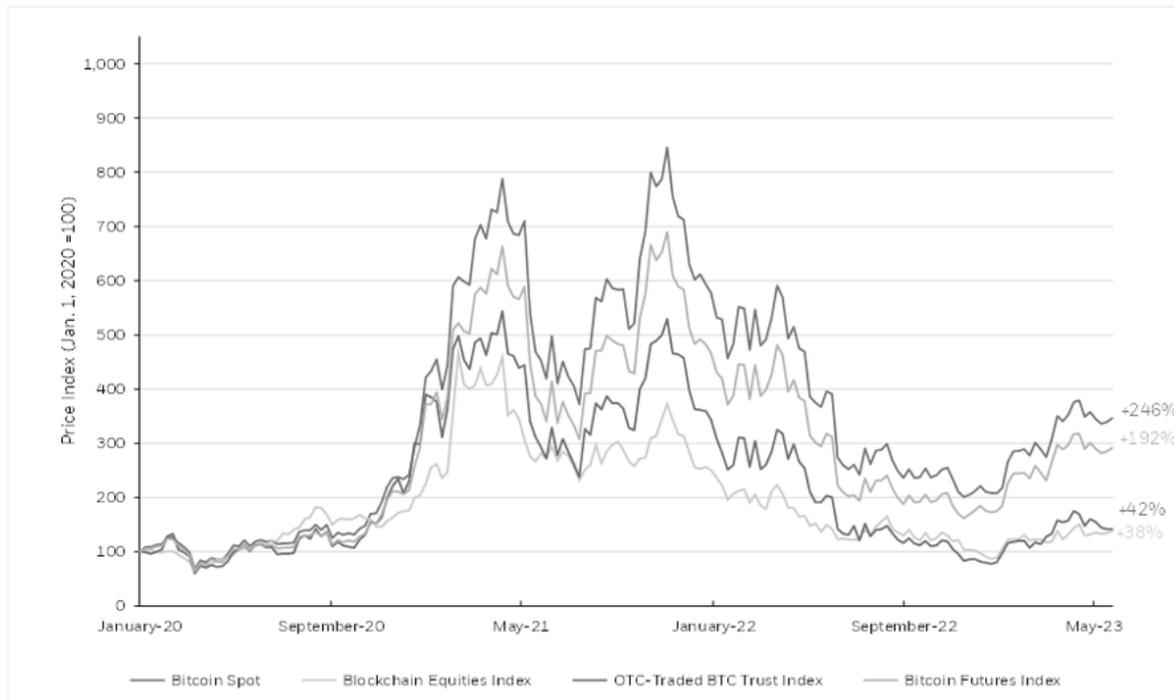
---

<sup>18</sup> 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](https://www.sec.gov/oiea/investor-alerts-and-bulletins/ia_icorelatedclaims).

<sup>19</sup> 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>.

associated with whichever operating company they decide to purchase. Additionally, the disclosures provided by the aforementioned public companies with respect to risks relating to their bitcoin holdings are generally substantially smaller than the registration statement of a bitcoin ETP, including the Registration Statement, typically amounting to a few sentences of narrative description and a handful of risk factors.<sup>20</sup> In other words, investors seeking bitcoin exposure through publicly traded companies are gaining only partial exposure to bitcoin and are not fully benefitting from the risk disclosures and associated investor protections that come from the securities registration process.

Analysis of Historical Price Index Returns of Spot Bitcoin vs. Common Alternative Exposure Vehicle



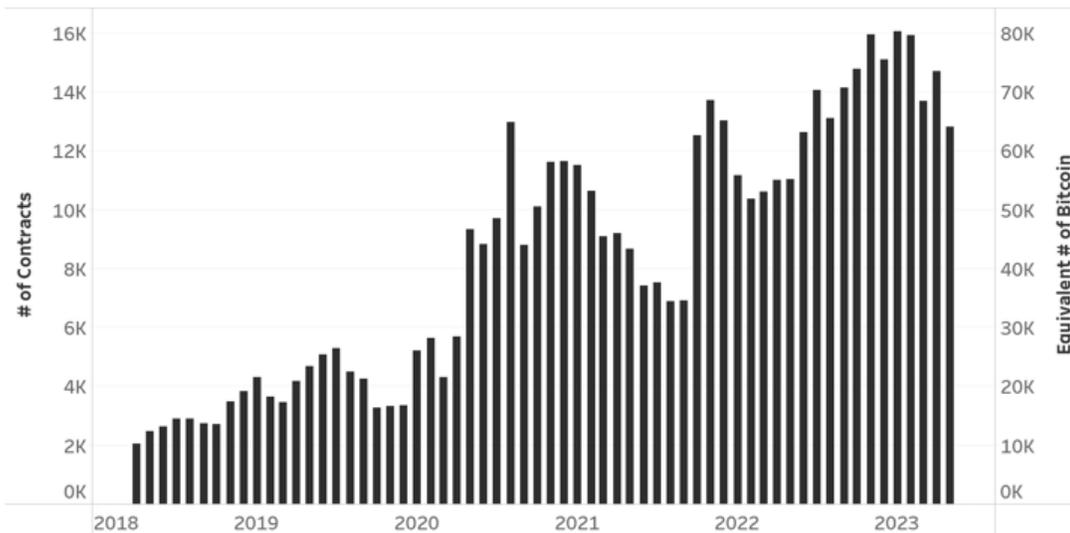
Source: Bitcoin Spot sourced from WSJ.com; Blockchain Equities Index is based on S&P Kensho Global Cryptocurrency & Blockchain Equity Index (Total Return) sourced from S&P Dow Jones; Bitcoin Futures Index is based on the S&P CME Bitcoin Futures Index (Total Return) sourced from S&P Dow Jones; OTC Traded BTC Trust Index is represented by the Grayscale Bitcoin Trust sourced from WSJ.com. Based on weekly data.

<sup>20</sup> See, e.g., Tesla 10-K for the year ended December 31, 2020, which mentions bitcoin just nine times: [https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/000156459021004599/tsla-10k\\_20201231.htm](https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/000156459021004599/tsla-10k_20201231.htm).

Bitcoin Futures

CME began offering trading in Bitcoin Futures in 2017. Each contract represents five bitcoin and is based on the CME CF Bitcoin Reference Rate.<sup>21</sup> The contracts trade and settle like other cash settled commodity futures contracts. Nearly every measurable metric related to Bitcoin Futures has generally trended up since launch, although certain notional volume calculations have decreased roughly in line with the decrease in the price of bitcoin. For example, there were 143,215 Bitcoin Futures contracts traded in April 2023 (approximately \$20.7 billion) compared to 193,182 (\$5 billion), 104,713 (\$3.9 billion), 118,714 (\$42.7 billion), and 111,964 (\$23.2 billion) contracts traded in April 2019, April 2020, April 2021, and April 2022, respectively.

**CME Bitcoin Futures Open Interest (OI)**

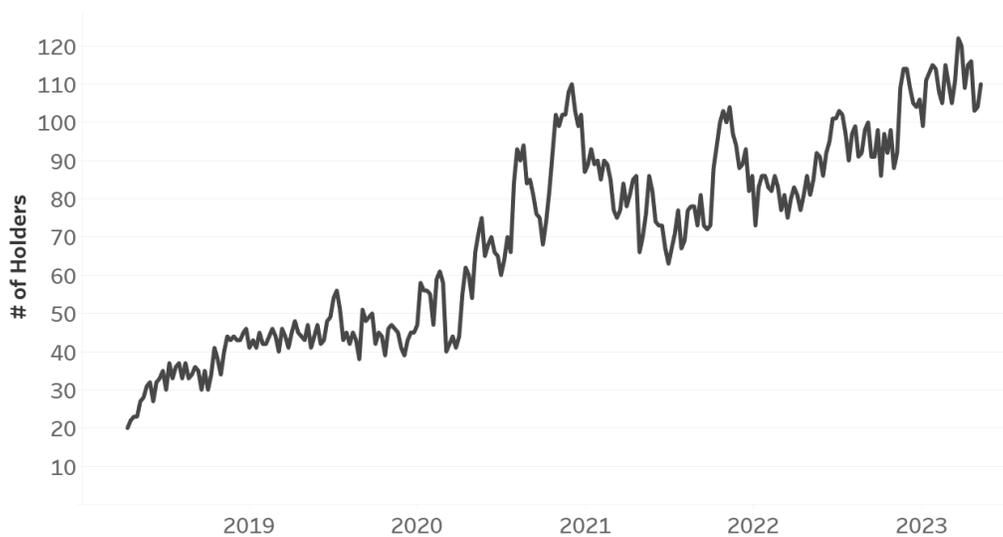


Source: CME, Yahoo Finance 4/30/23.

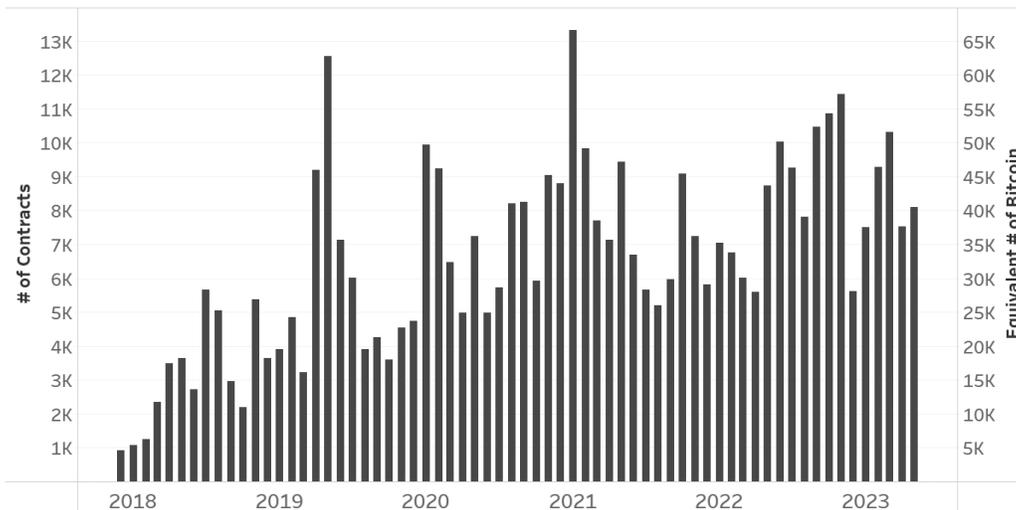
<sup>21</sup> The CME CF Bitcoin Reference Rate is based on a publicly available calculation methodology based on pricing sourced from several crypto exchanges and trading platforms, including Bitstamp, Coinbase, Gemini, itBit, Kraken, and LMAX Digital.

The number of large open interest holders<sup>22</sup> and unique accounts trading Bitcoin Futures have both increased, even in the face of heightened Bitcoin price volatility.

### CME Bitcoin Futures Large Open Interest Holders (LOIH)



### CME Bitcoin Futures Average Daily Volume (ADV)



### Preventing Fraudulent and Manipulative Practices

In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the

<sup>22</sup> A large open interest holder in Bitcoin Futures is an entity that holds at least 25 contracts, which is the equivalent of 125 bitcoin. At a price of approximately \$29,268.81 per bitcoin on 4/30/2023, more than 100 firms had outstanding positions of greater than \$3.65 million in Bitcoin Futures.

requirements of Section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices;<sup>23</sup> and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act and that this filing sufficiently demonstrates that the Bitcoin Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

(i) *Designed to Prevent Fraudulent and Manipulative Acts and Practices*

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance sharing agreement in place<sup>24</sup> with a regulated

---

<sup>23</sup> The Exchange believes that bitcoin is resistant to price manipulation and that “other means to prevent fraudulent and manipulative acts and practices” exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin. The fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging. To the extent that there are bitcoin exchanges engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, such pricing does not normally impact prices on other exchange because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin exchange or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

<sup>24</sup> As previously articulated by the Commission, “The standard requires such surveillance-sharing agreements since “they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.” The

market of significant size. Both the Exchange and CME are members of ISG.<sup>25</sup> The only remaining issue to be addressed is whether the Bitcoin Futures market constitutes a market of significant size, which both the Exchange and the Sponsor believe that it does. 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 manipulate the ETP, so that a surveillance sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.<sup>26</sup>

The Commission has also recognized that the “regulated market of significant size” standard is not the only means for satisfying Section 6(b)(5) of the act, specifically providing that a listing exchange could demonstrate that “other means to prevent fraudulent and manipulative acts and practices” are sufficient to justify dispensing with the requisite surveillance sharing agreement.<sup>27</sup>

---

Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.” The Commission has historically held that joint membership in the Intermarket Surveillance Group (“ISG”) constitutes such a surveillance sharing agreement. See Securities Exchange Act Release No. 88284 (February 26, 2020), 85 FR 12595 (March 3, 2020) (SR-NYSEArca-2019-39) (the “Wilshire Phoenix Disapproval”).

<sup>25</sup> For a list of the current members and affiliate members of ISG, see <https://www.isgportal.com/>.

<sup>26</sup> See Wilshire Phoenix Disapproval.

<sup>27</sup> See Winklevoss Order at 37580. The Commission has also specifically noted that it “is not applying a ‘cannot be manipulated’ standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places

- (A) *Reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP*

Bitcoin Futures represent a growing influence on pricing in the spot bitcoin market as has been laid out above and in other proposals to list and trade Spot Bitcoin ETPs. Pricing in Bitcoin Futures is based on pricing from spot bitcoin markets. As noted above, the statement from the Teucrium Approval that “CME’s surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts...indirectly by trading outside of the CME bitcoin futures market,” makes clear that the Commission believes that CME’s surveillance can capture the effects of trading on the relevant spot markets on the pricing of Bitcoin Futures. While the Commission makes clear in the Teucrium Approval that the analysis only applies to the Bitcoin Futures market as it relates to an ETP that invests in Bitcoin Futures as its only non cash or cash equivalent holding, if CME’s surveillance is sufficient to mitigate concerns related to trading in Bitcoin Futures for which the pricing is based directly on pricing from spot bitcoin markets, it’s not clear how such a conclusion could apply only to ETPs based on Bitcoin Futures and not extend to Spot Bitcoin ETPs.

Additionally, a Bitcoin Futures ETF is actually potentially more susceptible to manipulation than a Spot Bitcoin ETP where the underlying trust offers only in-kind creation and redemption. Specifically, the pricing of Bitcoin Futures is based on prices from spot bitcoin markets, while shares of a Spot Bitcoin ETP would represent an interest

---

the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.” *Id.* at 37582.

in bitcoin directly and authorized participants for a Spot Bitcoin ETP would be able to source bitcoin from any exchange and create or redeem with the applicable trust regardless of the price of the underlying index. Potential manipulation of a Bitcoin Futures ETF would require manipulation on the spot markets on which the pricing for Bitcoin Futures is based while the in-kind creation and redemption process and fungibility of bitcoin means that a would-be manipulator of a Spot Bitcoin ETP would need to manipulate the price across all bitcoin markets or risk simply providing arbitrage opportunities for authorized participants. Further to this point, this arbitrage opportunity also acts to reduce any incentives to manipulate the price of a Spot Bitcoin ETP because the underlying trust will create and redeem shares at set rates of bitcoin per share without regard to the price that the ETP is trading at in the secondary market or the price of the underlying index. As such, the Exchange believes that part (a) of the significant market test outlined above is satisfied and that common membership in ISG between the Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the Shares.

*(B) Predominant Influence on Prices in Spot and Bitcoin Futures*

The Exchange and Sponsor also believe 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 in-kind creation and redemption process, the spot market arbitrage opportunities that such in-kind creation and redemption process creates, the significant volume in the Bitcoin Futures market, the size of bitcoin's market cap, and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid. According

to data from Kaiko, the average daily adjusted volume for spot bitcoin across USD denominated trading pairs from January 1, 2023, to May 31, 2023, was \$6.0 billion. According to data from Kaiko, the aggregate 2% bitcoin market depth on the bid and ask side for USD denominated trading pairs has been on average 6,875 BTC (approximately \$167.2 million), for the period between January 1, 2023, and May 31st, 2023. More strategic purchases or sales (such as using limit orders and executing through OTC bitcoin trade desks) would likely have less obvious impact on the market – which is consistent with MicroStrategy, Tesla, and Square being able to collectively purchase billions of dollars in bitcoin.

As such, the combination of the in-kind creation and redemption process, the Bitcoin Futures price discovery, the overall size of the bitcoin market, and the ability for market participants, including authorized participants creating and redeeming in-kind with the Trust, to buy or sell large amounts of bitcoin without significant market impact will help prevent the Shares from becoming the predominant force on pricing in either the bitcoin spot or Bitcoin Futures markets, satisfying part (b) of the test outlined above.

(c) *Other Means to Prevent Fraudulent and Manipulative Acts and Practices*  
SSA with Bitcoin Spot Market

The Exchange is also proposing to take additional steps to those described above to supplement its ability to obtain information that would be helpful in detecting, investigating, and deterring fraud and market manipulation in the Commodity-Based Trust Shares.

On June 8, 2023, the Exchange reached an agreement on terms with Coinbase, Inc. (“Coinbase”) to enter into a surveillance-sharing agreement (“Spot BTC SSA”), and

the associated term sheet became effective as of June 16, 2023. Based on this agreement on terms, the Exchange and Coinbase will finalize and execute a definitive agreement that the parties expect to be executed prior to allowing trading of the Commodity-Based Trust Shares. Trading of Bitcoin on Coinbase represents a significant portion of US-based Bitcoin trading. The Sponsor has stated to the Exchange that, based on publicly available data reported by spot bitcoin platforms active in the U.S. market, trading on Coinbase has represented approximately 56% of US-dollar to Bitcoin trading on such U.S.-based platforms out of total YTD volume across these platforms of approximately U.S. \$129 billion, as of June 28, 2023.<sup>28</sup>

The Spot BTC SSA is expected to be a bilateral surveillance-sharing agreement between Nasdaq and Coinbase that is intended to supplement the Exchange's market surveillance program. The Spot BTC SSA is expected to have the hallmarks of a surveillance-sharing agreement between two members of the ISG, which would give the Exchange supplemental access to data regarding spot Bitcoin trades on Coinbase where the Exchange determines it is necessary as part of its surveillance program for the Commodity-Based Trust Shares. This means that the Exchange expects to receive market data for orders and trades from Coinbase, which it will utilize in surveillance of the trading of Commodity-Based Trust Shares. In addition, the Exchange can request further information from Coinbase related to spot bitcoin trading activity on the Coinbase exchange platform, if the Exchange determines that such information would be necessary to detect and investigate potential manipulation in the trading of the Commodity-Based Trust Shares.

---

28

This analysis is based on the following spot bitcoin platforms: Coinbase, Binance US, Kraken, Bitstamp, Gemini, and itBit.

### In-Kind Creation and Redemption

As noted above, the Commission also permits a listing exchange to demonstrate that “other means to prevent fraudulent and manipulative acts and practices” are sufficient to justify dispensing with the requisite surveillance sharing agreement. The Exchange and Sponsor believe that such conditions are present. Consistent with prior points above, offering only in-kind creation and redemption will provide unique protections against potential attempts to manipulate the Shares. While the Sponsor believes that the CF Benchmarks Index which it uses to value the Trust’s bitcoin is itself resistant to manipulation based on the methodology further described below, the fact that creations and redemptions are only available in-kind makes the manipulability of the CF Benchmarks Index significantly less important. Specifically, because the Trust will not accept cash to buy bitcoin in order to create new shares or, barring a forced redemption of the Trust or under other extraordinary circumstances, be forced to sell bitcoin to pay cash for redeemed shares, the price that the Sponsor uses to value the Trust’s bitcoin is not particularly important.<sup>29</sup> When authorized participants are creating with the Trust, they need to deliver a certain number of bitcoin per share (regardless of the valuation used) and when they’re redeeming, they can similarly expect to receive a certain number of bitcoin per share. As such, even if the price used to value the Trust’s bitcoin is manipulated (which the Sponsor believes that its methodology is resistant to), the ratio of bitcoin per Share does not change and the Trust will either accept (for creations) or distribute (for redemptions) the same number of bitcoin regardless of the value. This not only mitigates the risk associated with potential manipulation, but also discourages and

---

<sup>29</sup> While the CF Benchmarks Index will not be particularly important for the creation and redemption process, it will be used for calculating fees.

disincentivizes manipulation of the CF Benchmarks Index because there is little financial incentive to do so.

#### Availability of Information

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the prior business day's NAV; (b) the prior business day's Official Closing Price; (c) calculation of the premium or discount of such Official Closing Price against such NAV; (d) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (e) the prospectus; and (f) other applicable quantitative information. The Trust Administrator will also disseminate the Trust's holdings on a daily basis on the Trust's website. The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during the Regular Market Session. Information about the CF Benchmarks Index, including key elements of how the CF Benchmarks Index is calculated, will be publicly available at <https://www.cfbenchmarks.com/>. Also, an estimated value that reflects an estimated intraday value of the Trust's portfolio (the "Intraday Indicative Value" or "IIV"), will be disseminated.

One or more major market data vendors will provide an IIV per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Market Session (9:30 a.m. to 4:00 p.m. (ET)). The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating

that value during the Exchange's Regular Market Session to reflect changes in the value of the Trust's NAV during the trading day.

The IIV disseminated during the Exchange's Regular Market Session should not be viewed as an actual real time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Market Session by one or more major market data vendors. In addition, the IIV will be available through online information services.

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

#### Initial and Continued Listing

The Shares will be subject to Nasdaq Rule 5711(d)(vi), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. The Exchange will obtain a representation that the Trust's NAV will be calculated daily and will be made available to all market participants at the same time. Upon termination of the Trust, the Shares will be removed from listing. The Delaware Trustee, will be a trust company having substantial capital and surplus and the experience and facilities for handling corporate trust business, as required under Nasdaq Rule 5711(d)(vi)(D) and no change will be made to the Delaware Trustee without prior notice to and approval of the Exchange.

As required in Nasdaq Rule 5711(d)(vii), the Exchange notes that any registered market maker (“Market Maker”) in the Shares must file with the Exchange, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for trading the underlying commodity, related futures or options on futures, or any other related derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker in the Shares shall trade in the underlying commodity, related futures or options on futures, or any other related derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by Nasdaq Rule 5711(d). In addition to the existing obligations under Exchange rules regarding the production of books and records, the registered Market Maker in the Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or any limited partner, officer or approved person thereof, registered or non-registered employee affiliated with such entity for its or their own accounts in the underlying commodity, related futures or options on futures, or any other related derivatives, as may be requested by the Exchange.

#### Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange’s existing rules governing the trading of equity securities. The Exchange will allow trading in the Shares from 4:00 a.m. to 8:00 p.m. (ET). The Exchange has appropriate rules to facilitate transactions in the Shares during

all trading sessions. The Shares of the Trust will conform to the initial and continued listing criteria set forth in Nasdaq Rule 5711(d).

#### 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. The Exchange will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including without limitation the conditions specified in Nasdaq Rule 4120(a)(9) and the trading pauses under Nasdaq Rules 4120(a)(11) and (12).

Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the bitcoin underlying the Shares; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

If the IIV or the value of the underlying futures contract is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the value of the underlying futures contract occurs. If the interruption to the dissemination of the IIV or the value of the underlying bitcoin 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.

#### Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of Shares on the Exchange will be subject to the Exchange's surveillance procedures for derivative products. The Exchange will require the Trust to represent to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Additionally, on June 8, 2023, the Exchange reached an agreement on terms with Coinbase to enter into a Spot BTC SSA, and the associated term sheet became effective as of June 16, 2023. Based on this agreement on terms, the Exchange and Coinbase will finalize and execute a definitive agreement that the parties expect to be executed prior to allowing trading of the Commodity-Based Trust Shares. Trading of Bitcoin on Coinbase represents a significant portion of US-based Bitcoin trading. The Sponsor has stated to the Exchange that, based on publicly available data reported by spot bitcoin platforms active in the U.S. market, trading on Coinbase has represented approximately 56% of US-

dollar to Bitcoin trading on such U.S.-based platforms out of total YTD volume across these platforms of approximately U.S. \$129 billion, as of June 28, 2023.<sup>30</sup>

The Spot BTC SSA is expected to be a bilateral surveillance-sharing agreement between Nasdaq and Coinbase that is intended to supplement the Exchange's market surveillance program. The Spot BTC SSA is expected to have the hallmarks of a surveillance-sharing agreement between two members of the ISG, which would give the Exchange supplemental access to data regarding spot Bitcoin trades on Coinbase where the Exchange determines it is necessary as part of its surveillance program for the Commodity-Based Trust Shares. This means that the Exchange expects to receive market data for orders and trades from Coinbase, which it will utilize in surveillance of the trading of Commodity-Based Trust Shares. In addition, the Exchange can request further information from Coinbase related to spot bitcoin trading activity on the Coinbase exchange platform, if the Exchange determines that such information would be necessary to detect and investigate potential manipulation in the trading of the Commodity-Based Trust Shares.

#### Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Section 10 of Nasdaq General Rule 9, which imposes suitability obligations on Nasdaq members with respect to recommending

---

<sup>30</sup> This analysis is based on the following spot bitcoin platforms: Coinbase, Binance US, Kraken, Bitstamp, Gemini, and itBit.

transactions in the Shares to customers; (3) how information regarding the IIV is disseminated; (4) the risks involved in trading the Shares during the Pre-Market and Post Market Sessions when an updated IIV will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information. The Information Circular will also discuss any exemptive, no action and interpretive relief granted by the Commission from any rules under the Act.

Additionally, the Information Circular will reference that the Trust is subject to various fees and expenses described in the Draft Registration Statement. The Information Circular will also disclose the trading hours of the Shares. The Information Circular will disclose that information about the Shares will be publicly available on the Trust's website.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act<sup>31</sup> in general and Section 6(b)(5) of the Act<sup>32</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission has approved numerous series of Trust Issued Receipts,<sup>33</sup>

---

<sup>31</sup> 15 U.S.C. 78f.

<sup>32</sup> 15 U.S.C. 78f(b)(5).

<sup>33</sup> See Exchange Rule 5720.

including Commodity-Based Trust Shares,<sup>34</sup> to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of Section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act because this filing sufficiently demonstrates that the standard that has previously been articulated by the Commission applicable to Commodity-Based Trust Shares has been met as outlined below.

*Designed to Prevent Fraudulent and Manipulative Acts and Practices*

In order for a proposal to list and trade a series of Commodity-Based Trust Shares to be deemed consistent with the Act, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place with a regulated market of significant size. Both the Exchange and CME are members of ISG.<sup>35</sup> As such, the only remaining issue to be addressed is whether the Bitcoin Futures market constitutes a market of significant size, which the Exchange believes that it does. 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 manipulate the ETP, so

---

<sup>34</sup> Commodity-Based Trust Shares, as described in Exchange Rule 5711(d), are a type of Trust Issued Receipt.

<sup>35</sup> For a list of the current members and affiliate members of ISG, see <https://www.isgportal.com/>.

that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.<sup>36</sup>

The Commission has also recognized that the “regulated market of significant size” standard is not the only means for satisfying Section 6(b)(5) of the act, specifically providing that a listing exchange could demonstrate that “other means to prevent fraudulent and manipulative acts and practices” are sufficient to justify dispensing with the requisite surveillance-sharing agreement.<sup>37</sup>

*(a) Reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP*

Bitcoin Futures represent a growing influence on pricing in the spot bitcoin market as has been laid out above and in other proposals to list and trade Spot Bitcoin ETPs. Pricing in Bitcoin Futures is based on pricing from spot bitcoin markets. As noted above, the statement from the Teucrium Approval that “CME’s surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts...indirectly by trading outside of the CME bitcoin futures market,” makes clear that the Commission believes that CME’s surveillance can capture the effects of trading on the relevant spot markets on the pricing of Bitcoin Futures. While the Commission makes clear in the Teucrium Approval that the analysis only applies to the Bitcoin Futures market as it relates to an ETP that invests

---

<sup>36</sup> See Wilshire Phoenix Disapproval.

<sup>37</sup> See Winklevoss Order at 37580. The Commission has also specifically noted that it “is not applying a “cannot be manipulated” standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met. Id. at 37582.

in Bitcoin Futures as its only non-cash or cash equivalent holding, if CME's surveillance is sufficient to mitigate concerns related to trading in Bitcoin Futures for which the pricing is based directly on pricing from spot bitcoin markets, it's not clear how such a conclusion could apply only to ETPs based on Bitcoin Futures and not extend to Spot Bitcoin ETPs.

Additionally, a Bitcoin Futures ETF is actually potentially more susceptible to manipulation than a Spot Bitcoin ETP where the underlying trust offers only in-kind creation and redemption. Specifically, the pricing of Bitcoin Futures is based on prices from spot bitcoin markets, while shares of a Spot Bitcoin ETP would represent an interest in bitcoin directly and authorized participants for a Spot Bitcoin ETP would be able to source bitcoin from any exchange and create or redeem with the applicable trust regardless of the price of the underlying index. Potential manipulation of a Bitcoin Futures ETF would require manipulation on the spot markets on which the pricing for Bitcoin Futures is based while the in-kind creation and redemption process and fungibility of bitcoin means that a would-be manipulator of a Spot Bitcoin ETP would need to manipulate the price across all bitcoin markets or risk simply providing arbitrage opportunities for authorized participants. Further to this point, this arbitrage opportunity also acts to reduce any incentives to manipulate the price of a Spot Bitcoin ETP because the underlying trust will create and redeem shares at set rates of bitcoin per share without regard to the price that the ETP is trading at in the secondary market or the price of the underlying index. As such, the Exchange believes that part (a) of the significant market test outlined above is satisfied and that common membership in ISG between the

Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the Shares.

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

The Exchange and Sponsor also believe 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 in-kind creation and redemption process, the spot market arbitrage opportunities that such in-kind creation and redemption process creates, the significant volume in the Bitcoin Futures market, the size of bitcoin's market cap, and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid. According to data from Messari, the average daily adjusted real volume for spot bitcoin from January 1, 2023, to May 12, 2023 was \$8.5 billion. According to data from Kaiko, the aggregate 1% bitcoin market depth on the bid and ask side has been on average 5,373 bitcoin (approximately \$161 million), for the period between April 26, 2023 and May 12, 2023. More strategic purchases or sales (such as using limit orders and executing through OTC bitcoin trade desks) would likely have less obvious impact on the market – which is consistent with MicroStrategy, Tesla, and Square being able to collectively purchase billions of dollars in bitcoin.

As such, the combination of the in-kind creation and redemption process, the Bitcoin Futures price discovery, the overall size of the bitcoin market, and the ability for market participants, including authorized participants creating and redeeming in-kind with the Trust, to buy or sell large amounts of bitcoin without significant market impact

will help prevent the Shares from becoming the predominant force on pricing in either the bitcoin spot or Bitcoin Futures markets, satisfying part (b) of the test outlined above.

*(c) Other Means to Prevent Fraudulent and Manipulative Acts and Practices*

SSA with Bitcoin Spot Market

The Exchange is also proposing to take additional steps to those described above to supplement its ability to obtain information that would be helpful in detecting, investigating, and deterring fraud and market manipulation in the Commodity-Based Trust Shares.

Additionally, on June 8, 2023, the Exchange reached an agreement on terms with Coinbase to enter into a Spot BTC SSA, and the associated term sheet became effective as of June 16, 2023. Based on this agreement on terms, the Exchange and Coinbase will finalize and execute a definitive agreement that the parties expect to be executed prior to allowing trading of the Commodity-Based Trust Shares. Trading of Bitcoin on Coinbase represents a significant portion of US-based Bitcoin trading. The Sponsor has stated to the Exchange that, based on publicly available data reported by spot bitcoin platforms active in the U.S. market, trading on Coinbase has represented approximately 56% of US-dollar to Bitcoin trading on such U.S.-based platforms out of total YTD volume across these platforms of approximately U.S. \$129 billion, as of June 28, 2023.<sup>38</sup>

The Spot BTC SSA is expected to be a bilateral surveillance-sharing agreement between Nasdaq and Coinbase that is intended to supplement the Exchange's market surveillance program. The Spot BTC SSA is expected to have the hallmarks of a surveillance-sharing agreement between two members of the ISG, which would give the

---

<sup>38</sup> This analysis is based on the following spot bitcoin platforms: Coinbase, Binance US, Kraken, Bitstamp, Gemini, and itBit.

Exchange supplemental access to data regarding spot Bitcoin trades on Coinbase where the Exchange determines it is necessary as part of its surveillance program for the Commodity-Based Trust Shares. This means that the Exchange expects to receive market data for orders and trades from Coinbase, which it will utilize in surveillance of the trading of Commodity-Based Trust Shares. In addition, the Exchange can request further information from Coinbase related to spot bitcoin trading activity on the Coinbase exchange platform, if the Exchange determines that such information would be necessary to detect and investigate potential manipulation in the trading of the Commodity-Based Trust Shares.

#### In-Kind Creation and Redemption

As noted above, the Commission also permits a listing exchange to demonstrate that “other means to prevent fraudulent and manipulative acts and practices” are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present. Consistent with prior points above, offering only in-kind creation and redemption will provide unique protections against potential attempts to manipulate the Shares. While the Sponsor believes that the CF Benchmarks Index which it uses to value the Trust’s bitcoin is itself resistant to manipulation based on the methodology further described below, the fact that creations and redemptions are only available in-kind makes the manipulability of the CF Benchmarks Index significantly less important. Specifically, because the Trust will not accept cash to buy bitcoin in order to create new shares or, barring a forced redemption of the Trust or under other extraordinary circumstances, be forced to sell bitcoin to pay cash for redeemed shares, the price that the Sponsor uses to value the Trust’s bitcoin is not

particularly important.<sup>39</sup> When authorized participants are creating with the Trust, they need to deliver a certain number of bitcoin per share (regardless of the valuation used) and when they're redeeming, they can similarly expect to receive a certain number of bitcoin per share. As such, even if the price used to value the Trust's bitcoin is manipulated (which the Sponsor believes that its methodology is resistant to), the ratio of bitcoin per Share does not change and the Trust will either accept (for creations) or distribute (for redemptions) the same number of bitcoin regardless of the value. This not only mitigates the risk associated with potential manipulation, but also discourages and disincentivizes manipulation of the CF Benchmarks Index because there is little financial incentive to do so.

The Exchange also believes that reviewing this proposal through the lens of the Bitcoin Futures Approvals would also lead the Commission to approving this proposal. Previous disapproval orders have made clear that a market that constitutes a regulated market of significant size is generally a future and/or options market based on the underlying reference asset rather than the spot commodity markets, which are often unregulated.<sup>40</sup> The Exchange believes that the following excerpt from the Teucrium Approval is particular informative:

---

<sup>39</sup> While the CF Benchmarks Index will not be particularly important for the creation and redemption process, it will be used for calculating fees.

<sup>40</sup> See Winklevoss Order at 37593, specifically footnote 202, which includes the language from numerous approval orders for which the underlying futures markets formed the basis for approving series of ETPs that hold physical metals, including gold, silver, palladium, platinum, and precious metals more broadly; and 37600, specifically where the Commission provides that “when the spot market is unregulated – the requirement of preventing fraudulent and manipulative acts may possibly be satisfied by showing that the ETP listing market has entered into a surveillance-sharing agreement with a regulated market of significant size in derivatives related to the underlying asset.” As noted above, the Exchange believes that these citations are particularly helpful in making clear that the spot market for a spot commodity ETP need not be “regulated” in order for a spot commodity ETP to be approved by the Commission, and in fact that it’s been the

The CME “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.” Thus, the CME’s surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts, whether that attempt is made by directly trading on the CME bitcoin futures market or indirectly by trading outside of the CME bitcoin futures market. As such, when the CME shares its surveillance information with Arca, the information would assist in detecting and deterring fraudulent or manipulative misconduct related to the non-cash assets held by the proposed ETP.<sup>41</sup>

Bitcoin Futures pricing is based on pricing from spot bitcoin markets. The statement from the Teucrium Approval that “CME’s surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts...indirectly by trading outside of the CME bitcoin futures market,” makes clear that the Commission believes that CME’s surveillance can capture the effects of trading on the relevant spot markets on the pricing of Bitcoin Futures. If CME is able to detect such attempts at manipulation in the complex and interconnected spot bitcoin market, how would such an ability to detect attempted manipulation and the utility in sharing that information with the listing exchange apply only to Bitcoin Futures ETFs and not Spot Bitcoin ETPs? Stated a different way, given that there is significant

---

common historical practice of the Commission to rely on such derivatives markets as the regulated market of significant size because such spot commodities markets are largely unregulated.

<sup>41</sup> See Teucrium Approval at 21679.

trading volume on numerous bitcoin exchanges that are not part of the CME CF Bitcoin Reference Rate and that arbitrage opportunities across bitcoin exchanges means that such trading volume will influence spot bitcoin prices across the market and, despite this, the Commission still believes that CME can detect attempted manipulation of the Bitcoin Futures through “trading outside of the CME bitcoin futures market,” it is clear that such ability would apply equally to both Bitcoin Futures ETFs and Spot Bitcoin ETPs. To take it a step further, such an ability would also seem to be a strong indication that the CME Bitcoin Futures market represents a regulated market of significant size. To be clear, the Exchange agrees with the Commission on this point (and the implications of their conclusions) and notes that the pricing mechanism applicable to the Shares is similar to the CME CF Bitcoin Reference Rate.

#### Commodity-Based Trust Shares

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5711(d). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange’s surveillance procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for

compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series. The Exchange may obtain information regarding trading in the Shares and listed bitcoin derivatives via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

#### Availability of Information

The Exchange also believes that the proposal promotes market transparency in that a large amount of information is currently available about bitcoin and will be available regarding the Trust and the Shares. In addition to the price transparency of the CF Benchmarks Index, the Trust will provide information regarding the Trust's bitcoin holdings as well as additional data regarding the Trust.

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the prior business day's NAV; (b) the prior business day's Official Closing Price; (c) calculation of the premium or discount of such Official Closing Price against such NAV; (d) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (e) the prospectus; and (f) other applicable quantitative information. The Trust Administrator will also disseminate the Trust's holdings on a daily basis on the Trust's website. The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during the Regular Market Session. Information about the CF Benchmarks Index, including key elements of how the CF

Benchmarks Index is calculated, will be publicly available at <https://www.cfbenchmarks.com/>. Also, an estimated value that reflects an estimated intraday value of the Trust's portfolio (the "Intraday Indicative Value" or "IIV"), will be disseminated.

One or more major market data vendors will provide an IIV per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Market Session (9:30 a.m. to 4:00 p.m. (ET)). The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during the Exchange's Regular Market Session to reflect changes in the value of the Trust's NAV during the trading day.

The NAV for the Trust will be calculated by the Trust Administrator once a day and will be disseminated daily to all market participants at the same time. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA.

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters, as well as CF Benchmarks. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the exchanges on which bitcoin are traded. Depth of book information is also available from bitcoin exchanges. The normal trading hours for bitcoin exchanges are 24 hours per day, 365 days per year.

In sum, the Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act, that this filing sufficiently demonstrates that the CME Bitcoin Futures market represents a regulated market of significant size, and

that on the whole the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by investor protection issues that would be resolved by approving this proposal.

The Exchange believes that the proposal is, in particular, designed to protect investors and the public interest. Premium and discount volatility, high fees, rolling costs, insufficient disclosures, and technical hurdles are putting U.S. investor money at risk on a daily basis that could potentially be eliminated through access to a Spot Bitcoin ETP. As such, the Exchange believes that this proposal acts to limit the risk to U.S. investors that are increasingly seeking exposure to bitcoin by providing direct, 1-for-1 exposure to bitcoin in a regulated, transparent, exchange-traded vehicle, specifically by: (i) reducing premium volatility; (ii) reducing management fees through meaningful competition; (iii) providing an alternative to Bitcoin Futures ETFs which will eliminate roll cost; (iv) reducing risks associated with investing in operating companies that are imperfect proxies for bitcoin exposure; and (v) providing an alternative to custodial spot bitcoin. Finally, the Exchange notes that in addition to all of the arguments herein which it believes sufficiently establishes the Bitcoin Futures market as a regulated market of significant size, it is logically inconsistent to find that the CME Bitcoin Futures market is a significant market as it relates to the CME Bitcoin Futures market, but not a significant market as it relates to the bitcoin spot market for the numerous reasons laid out above.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

**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 rather will facilitate the listing and trading of additional exchange-traded product that will enhance competition among both market participants and listing venues, 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 either solicited or received.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-NASDAQ-2023-016 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NASDAQ-2023-016. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2023-016 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>42</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

---

<sup>42</sup> 17 CFR 200.30-3(a)(12).