

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 103

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

File No. \* SR 2023 - \* 038

Amendment No. (req. for Amendments \*) 2

Filing by Cboe BZX Exchange, Inc.

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

Initial * <input type="checkbox"/>	Amendment * <input checked="" 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 \*).

### 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 \*  Last Name \*

Title \*

E-mail \*

Telephone \*  Fax

### Signature

Pursuant to the requirements of the Securities Exchange of 1934, Cboe BZX Exchange, Inc. has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date

(Title \*)

By

(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.

*Kyle Murray*  Date: 2024.01.05  
11:33:16 -06'00'

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

23-038 (Invesco Bitcoin ETF) 19b-4 A

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

23-038 (Invesco Bitcoin ETF) Exhibit 1

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.

**Item 1. Text of the Proposed Rule Change**

(a) Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Exchange Act” or the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> Cboe BZX Exchange, Inc. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change to list and trade shares of the Invesco Galaxy Bitcoin ETF (the “Trust”),<sup>3</sup> under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The shares of the Trust are referred to herein as the “Shares.”

(b) Not applicable.

(c) Not applicable.

**Item 2. Procedures of the Self-Regulatory Organization**

(a) The Exchange’s President (or designee) pursuant to delegated authority approved the proposed rule change on June 20, 2023.

(b) Please refer questions and comments on the proposed rule change to Pat Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7467, or Kyle Murray, Vice President, Associate General Counsel (913) 815-7121, Cboe BZX Exchange, Inc., 433 West Van Buren Street, Chicago, Illinois 60607.

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

---

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

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

<sup>3</sup> The Trust was formed as a Delaware statutory trust on December 17, 2020 and is operated as a grantor trust for U.S. federal tax purposes. The Trust has no fixed termination date.

(a) Purpose

This Amendment No. 2 to SR-CboeBZX-2023-038 amends and replaces in its entirety the proposal as originally submitted on June 30, 2023, and as amended by Amendment No. 1 on July 11, 2023. The Exchange submits this Amendment No. 2 in order to clarify certain points and add additional details to the proposal.

The Exchange proposes to list and trade the Shares under BZX Rule 14.11(e)(4),<sup>4</sup> which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.<sup>5</sup> Invesco Capital Management LLC is the sponsor of the Trust (“Sponsor”). The Shares will be registered with the Commission by means of the Trust’s registration statement on Form S-1 (the “Registration Statement”).<sup>6</sup>

As further discussed below, 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>7</sup> Prior orders from the Commission have pointed out that in every prior approval order for Commodity-Based

---

<sup>4</sup> The Commission approved BZX Rule 14.11(e)(4) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR-BATS-2011-018).

<sup>5</sup> Any of the statements or representations regarding the index composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, intraday indicative values, and, or the applicability of Exchange listing rules specified in this filing to list a series of Other Securities (collectively, “Continued Listing Representations”) shall constitute continued listing requirements for the Shares listed on the Exchange.

<sup>6</sup> See Pre-Effective Amendment No. 4 to Form S-1 Registration Statement filed on December 29, 2023 (Registration No. 333-255175). 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.

<sup>7</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”).

Trust Shares,<sup>8</sup> there has been a derivatives market that represents the regulated market of significant size, generally a Commodity Futures Trading Commission (the “CFTC”) regulated futures market.<sup>9</sup> Further to this point, the Commission’s prior orders have

---

<sup>8</sup> See Exchange Rule 14.11(f)(1).

<sup>9</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

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<sup>10</sup> and Commodity-Based Trust Shares, including gold, silver, platinum, palladium, copper, and

---

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)); APMEEX 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 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>10</sup> See Exchange Rule 14.11(e)(5).

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 mind, the Chicago Mercantile Exchange (“CME”) bitcoin futures (“Bitcoin Futures”) market 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 approved proposals related to the listing and trading of funds that would primarily hold CME Bitcoin Futures that are registered under the Securities Act of 1933.<sup>12</sup> In the Teucrium Approval, the Commission found the CME Bitcoin Futures market to be a regulated market of significant size as it relates to CME Bitcoin Futures, an odd tautological truth that is also inconsistent with prior disapproval orders for ETPs that would hold actual

---

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

<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 instead of derivatives contracts (“Spot Bitcoin ETPs”) that use the exact same pricing methodology as the CME 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 CME Bitcoin Futures market represents a regulated market of significant size as it relates both to the CME Bitcoin Futures market and to the spot bitcoin market and that this proposal should be approved.

Finally, as discussed in greater detail below, by using professional custodians and other service providers, the Trust provides investors interested in exposure to bitcoin with important protections that are not always available to investors that invest directly in bitcoin, including protection against insolvency, cyber attacks, and other risks. If U.S. investors had access to vehicles such as the Trust for their bitcoin investments, instead of directing their bitcoin investments into loosely regulated offshore vehicles (such as loosely regulated centralized trading platforms that have since faced bankruptcy proceedings or other insolvencies), then countless investors would have protected their principal investments in bitcoin and thus benefited.

#### Background

Bitcoin is a digital asset based on the decentralized, open source protocol of the peer-to-peer computer network launched in 2009 that governs the creation, movement, and ownership of bitcoin and hosts the public ledger, or “blockchain,” on which all bitcoin transactions are recorded (the “Bitcoin Network” or “Bitcoin”). The decentralized nature of the Bitcoin Network allows parties to transact directly with one another based on cryptographic proof instead of relying on a trusted third party. The protocol also lays out the rate of issuance of new bitcoin within the Bitcoin Network, a rate that is reduced



by half approximately every four years with an eventual hard cap of 21 million. It's generally understood that the combination of these two features – a systemic hard cap of 21 million bitcoin and the ability to transact trustlessly with anyone connected to the Bitcoin Network – gives bitcoin its value. The first rule filing proposing to list an ETP to provide exposure to bitcoin in the U.S. was submitted by the Exchange on June 30, 2016.<sup>13</sup> At that time, blockchain technology, and digital assets that utilized it, were relatively new to the broader public. The market cap of all bitcoin in existence at that time was approximately \$10 billion. No registered offering of digital asset securities or shares in an investment vehicle with exposure to bitcoin or any other cryptocurrency had yet been conducted, and the regulated infrastructure for conducting a digital asset securities offering had not begun to develop.<sup>14</sup> Similarly, regulated U.S. Bitcoin Futures contracts did not exist. The CFTC had determined that bitcoin is a commodity,<sup>15</sup> but had not engaged in significant enforcement actions in the space. The New York Department of Financial Services (“NYDFS”) adopted its final “BitLicense” regulatory framework in 2015, but had only approved four entities to engage in activities relating to virtual currencies (whether through granting a BitLicense or a limited-purpose trust charter) as

---

<sup>13</sup> See Winklevoss Order.

<sup>14</sup> Digital assets that are securities under U.S. law are referred to throughout this proposal as “digital asset securities.” All other digital assets, including bitcoin, are referred to interchangeably as “cryptocurrencies” or “virtual currencies.” The term “digital assets” refers to all digital assets, including both digital asset securities and cryptocurrencies, together.

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

of June 30, 2016.<sup>16</sup> While the first over-the-counter bitcoin fund launched in 2013, public trading was limited and the fund had only \$60 million in assets.<sup>17</sup> There were very few, if any, traditional financial institutions engaged in the space, whether through investment or providing services to digital asset companies. In January 2018, the staff of the Commission noted in a letter to the Investment Company Institute (“ICI”) and Securities Industry and Financial Markets Association (“SIFMA”) that it was not aware, at that time, of a single custodian providing fund custodial services for digital assets.<sup>18</sup> Fast forward to today and the digital assets financial ecosystem, including bitcoin, has progressed significantly. The development of a regulated market for digital asset securities has significantly evolved, with market participants having conducted registered public offerings of both digital asset securities<sup>19</sup> and shares in investment vehicles holding Bitcoin Futures.<sup>20</sup> Additionally, licensed and regulated service providers have emerged to provide fund custodial services for digital assets, among other services,

---

<sup>16</sup> A list of virtual currency businesses that are entities regulated by the NYDFS is available on the NYDFS website. See [https://www.dfs.ny.gov/apps\\_and\\_licensing/virtual\\_currency\\_businesses/regulated\\_entities](https://www.dfs.ny.gov/apps_and_licensing/virtual_currency_businesses/regulated_entities).

<sup>17</sup> Data as of March 31, 2016 according to publicly available filings. See bitcoin Investment Trust Form S-1, dated May 27, 2016, available: <https://www.sec.gov/Archives/edgar/data/1588489/000095012316017801/filename1.htm>.

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

<sup>19</sup> See Prospectus supplement filed pursuant to Rule 424(b)(1) for INX Tokens (Registration No. 333-233363), available at: [https://www.sec.gov/Archives/edgar/data/1725882/000121390020023202/ea125858-424b1\\_inxlimited.htm](https://www.sec.gov/Archives/edgar/data/1725882/000121390020023202/ea125858-424b1_inxlimited.htm).

<sup>20</sup> See Prospectus filed by Stone Ridge Trust VI on behalf of NYDIG bitcoin Strategy Fund Registration, available at: <https://www.sec.gov/Archives/edgar/data/1764894/000119312519309942/d693146d497.htm>.

including the Custodian.<sup>21</sup> For example, in February 2023, the Commission proposed to amend Rule 206(4)-2 under the Advisers Act of 1940 (the “custody rule”) to expand the scope beyond client funds and securities to include all crypto assets, among other assets;<sup>22</sup> in May 2021, the staff of the Commission released a statement permitting open-end mutual funds to invest in cash-settled Bitcoin Futures; in December 2020, the Commission adopted a conditional no-action position permitting certain special purpose broker-dealers to custody digital asset securities under Rule 15c3-3 under the Exchange Act (the “Custody Statement”);<sup>23</sup> in September 2020, the staff of the Commission released a no-action letter permitting certain broker-dealers to operate a non-custodial Alternative Trading System (“ATS”) for digital asset securities, subject to specified conditions;<sup>24</sup> in October 2019, the staff of the Commission granted temporary relief from the clearing agency registration requirement to an entity seeking to establish a securities clearance and settlement system based on distributed ledger technology,<sup>25</sup> and multiple transfer agents who provide services for digital asset securities registered with the Commission.<sup>26</sup>

---

<sup>21</sup> The “Custodian” is Coinbase Trust Company, LLC.

<sup>22</sup> See Investment Advisers Act Release No. 6240 88 FR 14672 (March 9, 2023) (Safeguarding Advisory Client Assets).

<sup>23</sup> See Securities Exchange Act Release No. 90788, 86 FR 11627 (February 26, 2021) (File Number S7-25-20) (Custody of Digital Asset Securities by Special Purpose Broker-Dealers).

<sup>24</sup> See letter from Elizabeth Baird, Deputy Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Kris Dailey, Vice President, Risk Oversight & Operational Regulation, Financial Industry Regulatory Authority (September 25, 2020), available at: <https://www.sec.gov/divisions/marketreg/mr-noaction/2020/finra-ats-role-in-settlement-of-digital-asset-security-trades-09252020.pdf>.

<sup>25</sup> See letter from Jeffrey S. Mooney, Associate Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Charles G. Casarilla & Daniel M. Burstein, Paxos Trust Company, LLC (October 28, 2019), available at: <https://www.sec.gov/divisions/marketreg/mr-noaction/2019/paxos-trust-company-102819-17a.pdf>.

<sup>26</sup> See, e.g., Form TA-1/A filed by Tokensoft Transfer Agent LLC (CIK: 0001794142) on January 8, 2021, available at:

Outside the Commission's purview, the regulatory landscape has changed significantly since 2016, and cryptocurrency markets have grown and evolved as well. The market for bitcoin is approximately 100 times larger, having at one point reached a market cap of over \$1 trillion.<sup>27</sup> According to the CME Bitcoin Futures Report, from February 13, 2023 through March 27, 2023, CFTC regulated Bitcoin Futures represented between \$750 million and \$3.2 billion in notional trading volume on the CME Bitcoin Futures market on a daily basis.<sup>28</sup> Open interest was over \$1.4 billion for the entirety of the period and at one point was over \$2 billion. ETPs that primarily hold CME Bitcoin Futures have raised over \$1 billion dollars in assets. The CFTC has exercised its regulatory jurisdiction in bringing a number of enforcement actions related to bitcoin and against trading platforms that offer cryptocurrency trading.<sup>29</sup> As of February 14, 2023 the NYDFS has granted no fewer than thirty-four BitLicenses,<sup>30</sup> including to established public payment companies like PayPal Holdings, Inc. and Square, Inc., and limited purpose trust charters to entities providing cryptocurrency custody services. In addition,

---

[https://www.sec.gov/Archives/edgar/data/1794142/000179414219000001/xslFTA1X01/primary\\_doc.xml](https://www.sec.gov/Archives/edgar/data/1794142/000179414219000001/xslFTA1X01/primary_doc.xml).

<sup>27</sup> As of December 1, 2021, the total market cap of all bitcoin in circulation was approximately \$1.08 trillion.

<sup>28</sup> Data sourced from the CME Bitcoin Futures Report: 30 March, 2023, available at: <https://www.cmegroup.com/markets/cryptocurrencies/bitcoin/bitcoin.volume.htm>.

<sup>29</sup> The CFTC's annual report for Fiscal Year 2022 (which ended on September 30, 2022) noted that the CFTC completed the fiscal year with 18 enforcement filings related to digital assets. "Digital asset actions included manipulation, a \$1.7 billion fraudulent scheme, and a decentralized autonomous organization (DAO) failing to register as a SEF or FCM or to seek DCM designation." See CFTC FY 2022 Agency Financial Report, available at: <https://www.cftc.gov/media/7941/2022afr/download>. Additionally, the CFTC filed on March 27, 2023, a civil enforcement action against the owner/operators of the Binance centralized digital asset trading platform, which is one of the largest bitcoin derivative exchanges. See CFTC Release No. 8680-23 (March 27, 2023), available at: <https://www.cftc.gov/PressRoom/PressReleases/8680-23>.

<sup>30</sup> See [https://www.dfs.ny.gov/virtual\\_currency\\_businesses](https://www.dfs.ny.gov/virtual_currency_businesses).

the Treasury's Office of Foreign Assets Control (“OFAC”) has brought enforcement actions over apparent violations of the sanctions laws in connection with the provision of wallet management services for digital assets.<sup>31</sup>

In addition to the regulatory developments laid out above, more traditional financial market participants become more active in cryptocurrency: large insurance companies, asset managers, university endowments, pension funds, and even historically bitcoin skeptical fund managers have allocated to bitcoin. As noted in the Financial Stability Oversight Council (“FSOC”) Report on Digital Asset Financial Stability Risks and Regulation, “[i]ndustry surveys suggest that the scale of these investments grew quickly during the boom in crypto-asset markets through late 2021. In June 2022, PwC estimated that the number of crypto-specialist hedge funds was more than 300 globally, with \$4.1 billion in assets under management. In addition, in a survey PwC found that 38 percent of surveyed traditional hedge funds were currently investing in ‘digital assets,’ compared to 21 percent the year prior.”<sup>32</sup> The largest over-the-counter bitcoin fund previously filed a Form 10 registration statement, which the staff of the Commission

---

<sup>31</sup> See U.S. Department of the Treasury Enforcement Release: “OFAC Enters Into \$98,830 Settlement with BitGo, Inc. for Apparent Violations of Multiple Sanctions Programs Related to Digital Currency Transactions” (December 30, 2020) available at: [https://home.treasury.gov/system/files/126/20201230\\_bitgo.pdf](https://home.treasury.gov/system/files/126/20201230_bitgo.pdf). See also U.S. Department of the Treasury Enforcement Release: “Treasury Announces Two Enforcement Actions for over \$24M and \$29M Against Virtual Currency Exchange, Bittrex, Inc.” (October 11, 2022) available at: <https://home.treasury.gov/news/press-releases/jy1006>. See also U.S. Department of Treasury Enforcement Release “OFAC Settles with Virtual Currency Exchange Kraken for \$362,158.70 Related to Apparent Violations of the Iranian Transactions and Sanctions Regulations” (November 28, 2022) available at: [https://home.treasury.gov/system/files/126/20221128\\_kraken.pdf](https://home.treasury.gov/system/files/126/20221128_kraken.pdf).

<sup>32</sup> See the FSOC “Report on Digital Asset Financial Stability Risks and Regulation 2022” (October 3, 2022) (at footnote 26) at <https://home.treasury.gov/system/files/261/FSOC-Digital-Assets-Report-2022.pdf>.

reviewed and which took effect automatically, and is now a reporting company.<sup>33</sup>

Established companies like Tesla, Inc., MicroStrategy Incorporated, and Square, Inc., among others, have announced substantial investments in bitcoin in amounts as large as \$1.5 billion (Tesla) and \$425 million (MicroStrategy). The foregoing examples demonstrate that bitcoin has gained mainstream usage and recognition.

Despite these developments, access for U.S. retail investors to gain exposure to bitcoin via a transparent and U.S. regulated, U.S. exchange-traded vehicle remains limited. Instead current options include: (i) facing the counter-party risk, legal uncertainty, technical risk, and complexity associated with accessing spot bitcoin; (ii) over-the-counter bitcoin funds (“OTC Bitcoin Funds”) with high management fees and potentially volatile premiums and discounts;<sup>34</sup> (iii) purchasing shares of operating companies that they believe will provide proxy exposure to bitcoin with limited disclosure about the associated risks;<sup>35</sup> or (iv) purchasing Bitcoin Futures exchange-

---

<sup>33</sup> See Letter from Division of Corporation Finance, Office of Real Estate & Construction to Barry E. Silbert, Chief Executive Officer, Grayscale bitcoin Trust (January 31, 2020) <https://www.sec.gov/Archives/edgar/data/1588489/000000000020000953/filename1.pdf>

<sup>34</sup> The premium and discount for OTC Bitcoin Funds is known to move rapidly. For example, over the period of 12/21/20 to 1/21/21, the premium for the largest OTC Bitcoin Fund went from 40.18% to 2.79%. While the price of bitcoin appreciated significantly during this period and NAV per share increased by 41.25%, the price per share increased by only 3.58%. This means that investors are buying shares of a fund that experiences significant volatility in its premium and discount outside of the fluctuations in price of the underlying asset. Even operating within the normal premium and discount range, it’s possible for an investor to buy shares of an OTC Bitcoin Fund only to have those shares quickly lose 10% or more in dollar value excluding any movement of the price of bitcoin. That is to say – the price of bitcoin could have stayed exactly the same from market close on one day to market open the next, yet the value of the shares held by the investor decreased only because of the fluctuation of the premium. As more investment vehicles, including mutual funds and ETFs, seek to gain exposure to bitcoin, the easiest option for a buy and hold strategy for such vehicles is often an OTC Bitcoin Fund, meaning that even investors that do not directly buy OTC Bitcoin Funds can be disadvantaged by extreme premiums (or discounts) and premium volatility.

<sup>35</sup> A number of operating companies engaged in unrelated businesses – such as Tesla (a car manufacturer) and MicroStrategy (an enterprise software company) – have announced investments as large as \$5.3 billion in bitcoin. Without access to bitcoin exchange-traded products, retail investors seeking investment exposure to bitcoin may end up purchasing shares in these

traded funds (“ETFs”), as defined below, which represent a sub-optimal structure for long-term investors that will cost them significant amounts of money every year compared to Spot Bitcoin ETPs, as further discussed below. Meanwhile, investors in many other countries, including Canada and Brazil, are able to use more traditional exchange listed and traded products (including ETFs holding physical bitcoin) to gain exposure to bitcoin. Similarly, investors in Switzerland and across Europe have access to Exchange Traded Products which trade on regulated exchanges and provide exposure to a broad array of spot crypto assets. U.S. investors, by contrast, are left with fewer and more risky means of getting bitcoin exposure, as described above.<sup>36</sup>

To this point, the lack of a Spot Bitcoin ETP exposes U.S. investor assets to significant risk because investors that would otherwise seek crypto asset exposure through a Spot Bitcoin ETP are forced to find alternative exposure through generally riskier means. For instance, many U.S. investors that held their digital assets in accounts at FTX,<sup>37</sup> Celsius Network LLC,<sup>38</sup> BlockFi Inc.<sup>39</sup> and Voyager Digital Holdings, Inc.<sup>40</sup>

---

companies in order to gain the exposure to bitcoin that they seek. 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. 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>.

<sup>36</sup> The Exchange notes that the list of countries above is not exhaustive and that securities regulators in a number of additional countries have either approved or otherwise allowed the listing and trading of Spot Bitcoin ETPs.

<sup>37</sup> See FTX Trading Ltd., et al., Case No. 22-11068.

<sup>38</sup> See Celsius Network LLC, et al., Case No. 22-10964.

<sup>39</sup> See BlockFi Inc., Case No. 22-19361.

<sup>40</sup> See Voyager Digital Holdings, Inc., et al., Case No. 22-10943.

have become unsecured creditors in the insolvencies of those entities. If a Spot Bitcoin ETP was available, it is likely that at least a portion of the billions of dollars tied up in those proceedings would still reside in the brokerage accounts of U.S. investors, having instead been invested in a transparent, regulated, and well-understood structure – a Spot Bitcoin ETP. To this point, approval of a Spot Bitcoin ETP would represent a major win for the protection of U.S. investors in the crypto asset space. As further described below, the Trust, like all other series of Commodity-Based Trust Shares, is designed to protect investors against the risk of losses through fraud and insolvency that arise by holding digital assets, including bitcoin, on centralized platforms.

Additionally, investors in other countries, specifically Canada, generally pay lower fees than U.S. retail investors that invest in OTC Bitcoin Funds due to the fee pressure that results from increased competition among available bitcoin investment options. Without an approved and regulated Spot Bitcoin ETP in the U.S. as a viable alternative, U.S. investors could seek to purchase shares of non-U.S. bitcoin vehicles in order to get access to bitcoin exposure. Given the separate regulatory regime and the potential difficulties associated with any international litigation, such an arrangement would create more risk exposure for U.S. investors than they would otherwise have with a U.S. exchange listed ETP. In addition to the benefits to U.S. investors articulated throughout this proposal, approving this proposal (and others like it) would provide U.S. ETFs and mutual funds with a U.S.-listed and regulated product to provide such access rather than relying on either flawed products or products listed and primarily regulated in other countries.

#### Bitcoin Futures ETFs



The Exchange and Sponsor applaud the Commission for allowing the launch of ETFs registered under the Investment Company Act of 1940, as amended (the “1940 Act”) and the Bitcoin Futures Approvals that provide exposure to bitcoin primarily through CME 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 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>41</sup> Leaving aside the analysis of that standard until later in this proposal,<sup>42</sup> the Exchange believes that the

---

<sup>41</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>42</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.

following rationale 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 misconduct related to the non-cash assets held by the proposed ETP.<sup>43</sup>

CME 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 CME Bitcoin Futures. This was further acknowledged in the “Grayscale lawsuit”<sup>44</sup> when Judge Rao stated “...the Commission in the Teucrium order recognizes that the futures prices are influenced by the spot prices, and the Commission concludes in approving futures ETPs that any fraud on the spot market can be adequately addressed by the fact that the futures market is a regulated one...” The Exchange agrees with the Commission on this point

---

<sup>43</sup> See Teucrium Approval at 21679.

<sup>44</sup> Grayscale Investments, LLC v. Securities and Exchange Commission, et al., Case No. 22-1142.

and notes that the pricing mechanism applicable to the Shares is similar to that of the CME Bitcoin Futures.

The structure of Bitcoin Futures ETFs provides negative outcomes for buy and hold investors as compared to a Spot Bitcoin ETP.<sup>45</sup> Specifically, the cost of rolling CME Bitcoin Futures contracts will cause the Bitcoin Futures ETFs to lag the performance of bitcoin itself and 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. Further, Bitcoin Futures ETFs could potentially hit CME position limits, which would force a Bitcoin Futures ETF to invest in non-futures assets for bitcoin exposure and cause potential investor confusion and lack of certainty about what such Bitcoin Futures ETFs are actually holding to try to get exposure to bitcoin, not to mention completely changing the risk profile associated with such an ETF. 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

---

<sup>45</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?nopaging=1&\\_cf\\_chl\\_jschl\\_tk\\_\\_=pmd\\_JsK.fjXz9eAQW9zol0qpzhXDrrlpIVdoCloLXbLjl44-1635476946-0-gqNtZGzNAPCjenBszQql](https://www.etf.com/sections/blog/physical-bitcoin-etf-prospects-shine?nopaging=1&_cf_chl_jschl_tk__=pmd_JsK.fjXz9eAQW9zol0qpzhXDrrlpIVdoCloLXbLjl44-1635476946-0-gqNtZGzNAPCjenBszQql).

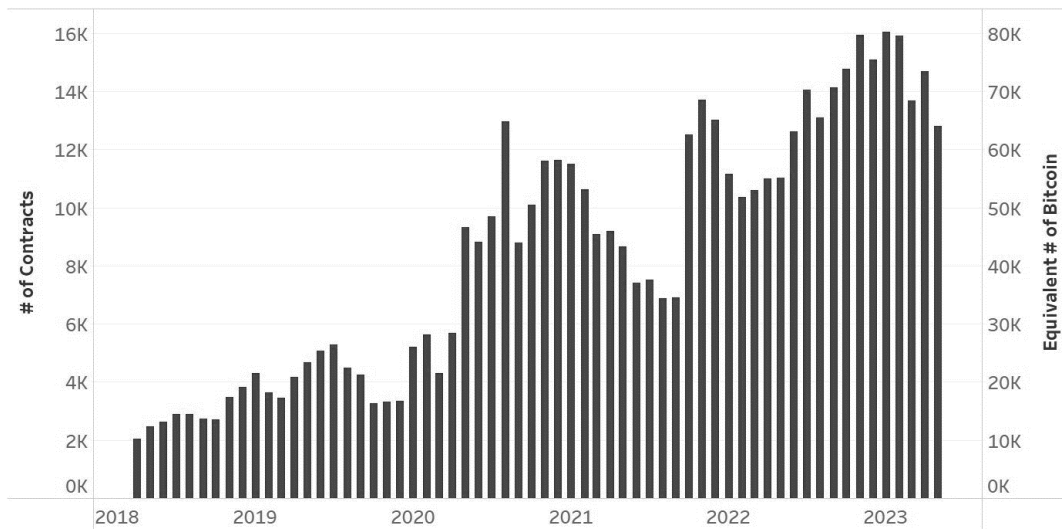
and the Bitcoin Futures Approvals would lead to the conclusion that Spot Bitcoin ETPs should be available to U.S. investors and, as such, this proposal and other comparable proposals to list and trade Spot Bitcoin ETPs should be approved by the Commission. Stated simply, U.S. investors will continue 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. Both the Exchange and Sponsor believe that the CME Bitcoin Futures market is a regulated market of significant size and that such manipulation concerns are mitigated, as described extensively below. After allowing and approving the listing and trading of Bitcoin Futures ETFs that hold primarily CME Bitcoin Futures, however, the only consistent outcome would be approving Spot Bitcoin ETPs on the basis that the CME Bitcoin Futures market is a regulated market of significant size.

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.

#### 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>46</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.<sup>47</sup>

### CME Bitcoin Futures Open Interest (OI)

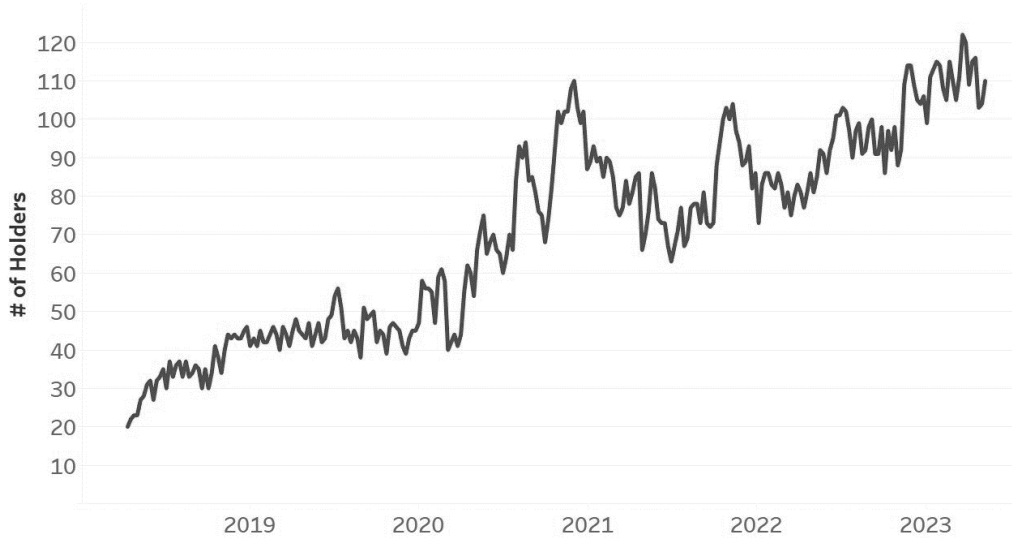


<sup>46</sup> The CME CF Bitcoin Reference Rate is based on a publicly available calculation methodology based on pricing sourced from several crypto trading platforms, including Bitstamp, Coinbase, Gemini, itBit, Kraken, and LMAX Digital.

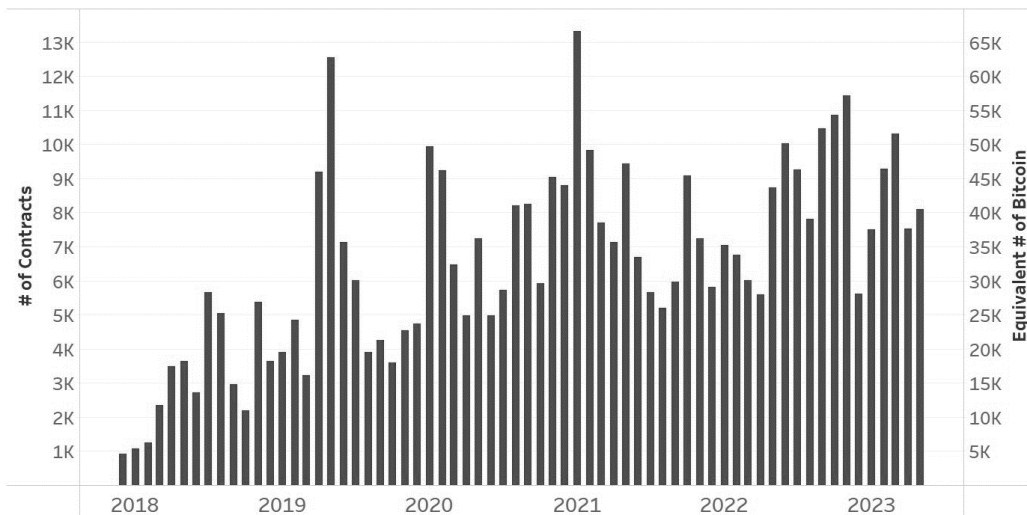
<sup>47</sup> Source: CME, Yahoo Finance 4/30/23.

The number of large open interest holders<sup>48</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)



<sup>48</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.

The Sponsor further believes that publicly available research, including research done as part of rule filings proposing to list and trade shares of Spot Bitcoin ETPs, corroborates the overall trend outlined above and supports the thesis that the Bitcoin Futures pricing leads the spot market and, thus, a person attempting to manipulate the Shares would also have to trade on that market to manipulate the ETP. Specifically, the Sponsor believes that such research indicates that Bitcoin Futures lead the bitcoin spot market in price formation.<sup>49</sup>

#### Section 6(b)(5) and the Applicable Standards

The Commission has approved numerous series of Trust Issued Receipts,<sup>50</sup> including Commodity-Based Trust Shares,<sup>51</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

---

<sup>49</sup> See Exchange Act Releases No. 94080 (January 27, 2022), 87 FR 5527 (April 12, 2022) (specifically "Amendment No. 1 to the Proposed Rule Change To List and Trade Shares of the Wise Origin Bitcoin Trust Under BZX Rule 14.11(3)(4), Commodity-Based Trust Shares"); 94982 (May 25, 2022), 87 FR 33250 (June 1, 2022); 94844 (May 4, 2022), 87 FR 28043 (May 10, 2022); and 93445 (October 28, 2021), 86 FR 60695 (November 3, 2021). See also Hu, Y., Hou, Y. and Oxley, L. (2019). "What role do futures markets play in Bitcoin pricing? Causality, cointegration and price discovery from a time-varying perspective" (available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7481826/>). This academic research paper concludes that "There exist no episodes where the Bitcoin spot markets dominates the price discovery processes with regard to Bitcoin futures. This points to a conclusion that the price formation originates solely in the Bitcoin futures market. We can, therefore, conclude that the Bitcoin futures markets dominate the dynamic price discovery process based upon time-varying information share measures. Overall, price discovery seems to occur in the Bitcoin futures markets rather than the underlying spot market based upon a time-varying perspective."

<sup>50</sup> See Exchange Rule 14.11(f).

<sup>51</sup> Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

acts and practices;<sup>52</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 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 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>53</sup> with a regulated

---

<sup>52</sup> As the Exchange has stated in a number of other public documents, it continues to believe 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 trading platforms 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 trading platforms 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 trading platform 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>53</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,



market of significant size. Both the Exchange and CME are members of the Intermarket Surveillance Group (“ISG”).<sup>54</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>55</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>56</sup>

---

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>54</sup> For a list of the current members and affiliate members of ISG, see [www.isgportal.com](http://www.isgportal.com).

<sup>55</sup> See Wilshire Phoenix Disapproval.

<sup>56</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) *Manipulation of the ETP*

According to the research and analysis presented above, the Bitcoin Futures market is the leading market for bitcoin price formation. Where Bitcoin Futures lead the price in the spot market such that a potential manipulator of the bitcoin spot market (beyond just the constituents of the Index<sup>57</sup>) would have to participate in the Bitcoin Futures market, it follows that a potential manipulator of the Shares would similarly have to transact in the Bitcoin Futures market because the Index is based on spot prices. 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 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.

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

---

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.

<sup>57</sup> As further described below, the "Index" for the Fund is the Bloomberg Galaxy Bitcoin Index.

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.

*(ii) Designed to Protect Investors and the Public Interest*

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past several years, U.S. investor exposure to bitcoin through OTC Bitcoin Funds has grown into the tens of billions of dollars, including through Bitcoin Futures ETFs. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors through roll costs for Bitcoin Futures ETFs and premium/discount volatility and management fees for OTC Bitcoin Funds. The Exchange believes that the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, such concerns are now outweighed by investor protection concerns. As such, the Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to bitcoin in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks and costs associated with investing in Bitcoin Futures ETFs and operating companies that are imperfect proxies for bitcoin exposure; and (iv) providing an alternative to custodial spot bitcoin.

Invesco Galaxy Bitcoin ETF

Delaware Trust Company is the trustee (“Trustee”). The Bank of New York Mellon will be the administrator (“Administrator”) and transfer agent (“Transfer Agent”). As noted above, Coinbase Custody Trust Company, LLC, is the Custodian and will be responsible for custody of the Trust’s bitcoin. The Bank of New York Mellon (the “Cash Custodian”) will act as custodian of the Trust’s cash and cash equivalents.<sup>58</sup>

According to the Registration Statement, each Share will represent a fractional undivided beneficial interest and ownership in the Trust. The Trust’s assets will consist only of bitcoin, cash, and cash equivalents.

According to the Registration Statement, the Trust is neither an investment company registered under the Investment Company Act of 1940, as amended,<sup>59</sup> nor a commodity pool for purposes of the Commodity Exchange Act (“CEA”), and neither the Trust nor the Sponsor is subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the Shares.

When the Trust sells or redeems its Shares, it will do so in cash transactions in blocks of 5,000 Shares (a “Creation Basket”) at the Trust’s net asset value (“NAV”). Authorized participants will deliver, or facilitate the delivery of, cash to the Trust’s account with the Cash Custodian (which will then be used to purchase bitcoin for the Trust) in exchange for Shares when they purchase Shares, and the Trust, through the Cash Custodian, will deliver cash to such authorized participants when they redeem Shares with the Trust. A third party will use cash to buy and deliver bitcoin to create Shares or withdraw and sell bitcoin for cash to redeem Shares, on behalf of the Trust.

---

<sup>58</sup> Cash equivalents are short-term instruments with maturities of less than 3 months.

<sup>59</sup> 15 U.S.C. 80a-1.

Authorized participants may then offer Shares to the public at prices that depend on various factors, including the supply and demand for Shares, the value of the Trust's assets, and market conditions at the time of a transaction. Shareholders who buy or sell Shares during the day from their broker may do so at a premium or discount relative to the NAV of the Shares of the Trust.

#### Investment Objective

According to the Registration Statement and as further described below, the investment objective of the Trust is to reflect the performance as measured using Lukka Prime Bitcoin Reference Rate (the "Index"), less the Trust's expenses and other liabilities. In seeking to achieve its investment objective, the Trust will hold only bitcoin, cash, and cash equivalents. The Trust will value its Shares daily based on the value of the Index as of 4:00 p.m. ET, which is calculated based on the fair market value price for bitcoin, reflecting the execution price of bitcoin on its principal market as determined by Lukka Inc., an independent third-party digital asset company (the "Index Provider"). The Trust will process all creations and redemptions in cash transactions with authorized participants. The Trust is not actively managed.

#### The Index

As described in the Registration Statement, the Fund will use the Index to calculate the Trust's NAV. The Index is designed to provide an estimated fair market value for bitcoin. In determining the value of bitcoin, the Index Provider applies a five-step weighting process for identifying the principal trading platform for bitcoin and the last price on that trading platform. Currently, the Index includes the following trading platforms: Binance, Bitfinex, Bitflyer, Bitstamp, Coinbase Pro, Crypto.com, Gemini,

HitBTC, Huobi, Kraken, KuCoin, OKEx and Poloniex. In identifying the principal trading platform for bitcoin, the Index Provider considers a variety of different criteria, including the trading platforms' oversight and governance frameworks, microstructure efficiency (i.e., effective bid-ask spread), trading volume, data transparency and data integrity. A "base exchange score" ("BES") that takes into account this criteria is assigned to each Index pricing source in order to select the most appropriate primary trading platform and then an executed trading platform price is determined at 4:00 p.m. ET., although the Index Provider performs this calculation every second each day.

Step 1: Assign each trading platform for bitcoin and U.S. Dollars a BES reflecting static trading platform characteristics such as oversight, microstructure and technology.

Step 2: Adjust the BES based on the relative monthly volume each trading platform services. This new score is the Volume Adjusted Score (“VAS”).

Step 3: Decay the adjusted score based on the time passed since last trade on trading platform, assessing the level of activity in the market by considering the frequency (volume) of trades. The decay factor reflects the time since the last trade on the trading platform. This is the final Decayed Volume Adjusted Score (“DVAS”), which reflects the freshness of data by tracking most recent trades.

Step 4: Rank the trading platforms by the DVAS score and designate the highest-ranking trading platform as the principal market for that point in time – the principal market is the trading platform with highest DVAS.

Step 5: An executed trading platform price is used to represent the fair market value at 4:00 p.m. ET.

Index data and the description of the Index are based on information made publicly available by the Index Provider on its website at <https://lukka.tech>.

#### Net Asset Value

The Trust’s NAV is calculated by (1) taking the current market value of its bitcoin (calculated by the Index Provider) and any other assets; (2) subtracting any liabilities (including accrued by unpaid expenses); and (3) dividing that total by the total number of outstanding Shares. The Administrator calculates the NAV of the Trust on each day that the Exchange is open for regular trading, using the execution price of bitcoin on the principal market selected by the Index Provider as of 4:00 p.m. ET. However, NAVs are

not officially struck until later in the day (often by 5:30 p.m. ET and almost always by 8:00 p.m. ET).

The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time.

In the event that the Index is unavailable or if the Sponsor or Administrator determines that the price provided by the Index does not reflect an accurate bitcoin price, the Sponsor's pricing team will evaluate the prices of other similar benchmarks in an effort to ensure that the Trust's NAV is determined based on consistent, accurate pricing that the Sponsor believes is reflective of the value of the Trust's bitcoin, and also a transparent index methodology and process. The pricing team will recommend the price to be used to the Sponsor's valuation committee who will then review the recommendation and approve it for use by the Trust if found appropriate.<sup>60</sup>

#### Availability of Information

In addition to the price transparency of the 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 current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price<sup>61</sup> in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying

---

<sup>60</sup> Such alternative method will only be employed on an ad hoc basis. Any permanent change to the calculation of the NAV would require a proposed rule change under Rule 19b-4.

<sup>61</sup> As defined in Rule 11.23(a)(3), the term "BZX Official Closing Price" shall mean the price disseminated to the consolidated tape as the market center closing trade.



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); (d) the prospectus; and (e) other applicable quantitative information. The Trust will also disseminate its holdings on a daily basis on its website. The aforementioned information will be published as of the close of business available on the Sponsor's website at [www.invesco.com/etfs](http://www.invesco.com/etfs), or any successor thereto.

The Intraday Indicative Value ("IIV") will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the most recently reported price of bitcoin as reported by the Index Provider or another reporting service. The IIV disseminated during Regular Trading Hours 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 may differ from the NAV due to the differences in the time window of trades used to calculate each price. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours by one or more major market data vendors. In addition, the IIV will be available through the facilities of the consolidated tape association (CTA) and Consolidated Quotation System (CQS) high speed lines. In addition, the IIV will be available through on-line information services such as Bloomberg and Reuters.

The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours.

As noted above, the Index is designed to provide an estimated fair market value for bitcoin. Information about the Index and Index value, including key elements of how the Index is calculated, will be publicly available at <https://lukka.tech>.

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

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association ("CTA").

#### The Bitcoin Custodian

The Custodian carefully considers the design of the physical, operational and cryptographic systems for secure storage of the Trust's private keys in an effort to lower the risk of loss or theft. The Custodian utilizes a variety of security measures to ensure that private keys necessary to transfer digital assets remain uncompromised and that the Trust maintains exclusive ownership of its assets. The operational procedures of the Custodian are reviewed by third-party advisors with specific expertise in physical

security. The devices that store the keys will never be connected to the internet or any other public or private distributed network—this is colloquially known as “cold storage.” Only specific individuals are authorized to participate in the custody process, and no individual acting alone will be able to access or use any of the private keys. In addition, no combination of the executive officers of the Sponsor or the investment professionals managing the Trust, acting alone or together, will be able to access or use any of the private keys that hold the Trust’s bitcoin.

#### Creation and Redemption of Shares

When the Trust sells or redeems its Shares, it will do so in cash transactions in blocks of 5,000 Shares that are based on the quantity of bitcoin attributable to each Share of the Trust (e.g., a Creation Basket) at the Trust’s NAV. According to the Registration Statement, on any business day, an authorized participant may place an order to create one or more Creation Baskets. Purchase orders must be placed by 4:00 p.m. Eastern Time, or the close of regular trading on the Exchange, whichever is earlier. The day on which an order is received is considered the purchase order date. The total deposit of cash required is an amount of cash sufficient to purchase such amount of bitcoin, the amount of which is equal to the combined NAV of the number of Shares included in the Creation Baskets being created determined as of 4:00 ET on the date the order to purchase is properly received. The Administrator determines the required deposit for a given day by multiplying the NAV per share by the number of Shares in each Creation Basket (5,000) and dividing the product by that day's bitcoin price as determined by the Index. The procedures by which an authorized participant can redeem one or more Creation Baskets mirror the procedures for the creation of Creation Baskets.

The authorized participants will deliver only cash to create shares and will receive only cash when redeeming shares. Further, authorized participants will not directly or indirectly purchase, hold, deliver, or receive bitcoin as part of the creation or redemption process or otherwise direct the Trust or a third party with respect to purchasing, holding, delivering, or receiving bitcoin as part of the creation or redemption process.

The Trust will create shares by receiving bitcoin from a third party that is not the authorized participant and the Trust (through an execution agent that is acting in an agency capacity)—not the authorized participant—is responsible for selecting the third party to deliver the bitcoin. Further, the third party will not be acting as an agent of the authorized participant with respect to the delivery of the bitcoin to the Trust or acting at the direction of the authorized participant with respect to the delivery of the bitcoin to the Trust. The Trust will redeem shares by delivering bitcoin to a third party that is not the authorized participant and the Trust—not the authorized participant—is responsible for selecting the third party to receive the bitcoin. Further, the third party will not be acting as an agent of the authorized participant with respect to the receipt of the bitcoin from the Trust or acting at the direction of the authorized participant with respect to the receipt of the bitcoin from the Trust.

A third party, that is unaffiliated with the Trust and the Sponsor, will use cash to buy and deliver bitcoin to create Shares or withdraw and sell bitcoin for cash to redeem Shares, on behalf of the Trust.

The Sponsor will maintain ownership and control of bitcoin in a manner consistent with good delivery requirements for spot commodity transactions.

**Rule 14.11(e)(4) – Commodity-Based Trust Shares**

The Shares will be subject to BZX Rule 14.11(e)(4), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. The Exchange represents that, for initial and continued listing, the Trust must be in compliance with Rule 10A-3 under the Act. A minimum of 100,000 Shares will be outstanding at the commencement of listing on the Exchange. The Exchange will obtain a representation that the Trust's NAV will be calculated daily and the NAV and information about the assets of the Trust will be made available to all market participants at the same time. The Exchange notes that, as defined in Rule 14.11(e)(4)(C)(i), the Shares will be: (a) issued by a trust that holds (1) a specified commodity<sup>62</sup> deposited with the trust, or (2) a specified commodity and, in addition to such specified commodity, cash; (b) issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity and/or cash; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity and/or cash.

Upon termination of the Trust, the Shares will be removed from listing. The Trustee, Delaware Trust Company, is a trust company having substantial capital and surplus and the experience and facilities for handling corporate trust business, as required under Rule 14.11(e)(4)(E)(iv)(a) and that no change will be made to the trustee without prior notice to and approval of the Exchange. The Exchange also notes that, pursuant to Rule 14.11(e)(4)(F), neither the Exchange nor any agent of the Exchange shall have any

---

<sup>62</sup> For purposes of Rule 14.11(e)(4), the term commodity takes on the definition of the term as provided in the Commodity Exchange Act. As noted above, the CFTC has opined that bitcoin is a commodity as defined in Section 1a(9) of the Commodity Exchange Act. See Coinflip.

liability for damages, claims, losses or expenses caused by any errors, omissions or delays in calculating or disseminating any underlying commodity value, the current value of the underlying commodity required to be deposited to the Trust in connection with issuance of Commodity-Based Trust Shares; resulting from any negligent act or omission by the Exchange, or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange, its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in an underlying commodity. Finally, as required in Rule 14.11(e)(4)(G), 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 in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity 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 this Rule. In addition to the existing obligations under Exchange rules regarding the production of books and records (see, e.g., Rule 4.2), the registered Market Maker in Commodity-Based Trust Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such

entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, as may be requested by the Exchange.

The Exchange is able to obtain information regarding trading in the Shares and the underlying bitcoin, Bitcoin Futures contracts, options on Bitcoin Futures, or any other bitcoin derivative through members acting as registered Market Makers, in connection with their proprietary or customer trades.

As a general matter, the Exchange has regulatory jurisdiction over its members, and their associated persons. The Exchange also has regulatory jurisdiction over any person or entity controlling a member, as well as a subsidiary or affiliate of a member that is in the securities business. A subsidiary or affiliate of a member organization that does business only in commodities would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

#### 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 BZX Rule 11.18. 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. Trading in the Shares also will be subject to Rule 14.11(e)(4)(E)(ii), which sets forth circumstances under which trading in the Shares may be halted.

If the IIV or the value of the Index 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 Index occurs. If the interruption to the dissemination of the IIV or the value of the Index 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.

#### 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. BZX will allow trading in the Shares during all trading sessions on the Exchange. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a) the minimum price variation for quoting and entry of orders in securities traded on the Exchange is \$0.01 where the price is greater than \$1.00 per share or \$0.0001 where the price is less than \$1.00 per share. The Shares of the Trust will conform to the initial and continued listing criteria set forth in BZX Rule 14.11(e)(4).

#### Surveillance



The Exchange represents 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. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

The Exchange, or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and Bitcoin Futures with other markets and other entities that are members of the ISG, and the Exchange, or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and Bitcoin Futures from such markets and other entities.<sup>63</sup> The Exchange may obtain information regarding trading in the Shares and Bitcoin Futures via 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.

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

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

---

<sup>63</sup> For a list of the current members and affiliate members of ISG, see [www.isgportal.com](http://www.isgportal.com).

are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

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: (i) the procedures for the creation and redemption of Baskets (and that the Shares are not individually redeemable); (ii) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (iii) how information regarding the IIV and the Trust's NAV are disseminated; (iv) the risks involved in trading the Shares outside of Regular Trading Hours<sup>64</sup> when an updated IIV will not be calculated or publicly disseminated; (v) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (vi) trading information. The Information Circular will also reference the fact that there is no regulated source of last sale information regarding bitcoin, that the Commission has no jurisdiction over the trading of bitcoin as a commodity, and that the CFTC has regulatory jurisdiction over the trading of Bitcoin Futures contracts and options on Bitcoin Futures contracts.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Shares. Members purchasing the Shares for resale to investors will deliver a prospectus to

---

<sup>64</sup> Regular Trading Hours is the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

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

(b) Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act<sup>65</sup> in general and Section 6(b)(5) of the Act<sup>66</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, including Commodity-Based Trust Shares, 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;<sup>67</sup> and (ii) the requirement that an exchange proposal be designed, in

---

<sup>65</sup> 15 U.S.C. 78f.

<sup>66</sup> 15 U.S.C. 78f(b)(5).

<sup>67</sup> As the Exchange has stated in a number of other public documents, it continues to believe 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 trading platforms 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 trading platform because

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 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 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>68</sup> with a regulated market of significant size. Both the Exchange and CME are members of ISG. The only

---

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 trading platform 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>68</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 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 ISG constitutes such a surveillance sharing agreement. See Wilshire Phoenix Disapproval).

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>69</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>70</sup>

(a) *Manipulation of the ETP*

According to the research and analysis presented above, the Bitcoin Futures market is the leading market for bitcoin price formation. Where Bitcoin Futures lead the price in the spot market such that a potential manipulator of the bitcoin spot market (beyond just the constituents of the Index) would have to participate in the Bitcoin Futures market, it follows that a potential manipulator of the Shares would similarly have

---

<sup>69</sup> Id.

<sup>70</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.

to transact in the Bitcoin Futures market because the Index is based on spot prices. 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 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.

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

As noted above, the Commission also permits a listing exchange to demonstrate that "other means to prevent fraudulent and manipulative acts and practices" are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present.

*(ii) Designed to Protect Investors and the Public Interest*

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past several years, U.S. investor exposure to bitcoin through OTC Bitcoin Funds has grown into the tens of billions of dollars, including through Bitcoin Futures ETFs. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors through roll costs for Bitcoin Futures ETFs and

premium/discount volatility and management fees for OTC Bitcoin Funds. The Exchange believes that the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, such concerns are now outweighed by investor protection concerns. As such, the Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to bitcoin in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks and costs associated with investing in Bitcoin Futures ETFs and operating companies that are imperfect proxies for bitcoin exposure; and (iv) providing an alternative to custodial spot bitcoin.

#### 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 Exchange Rule 14.11(e)(4). 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 Exchange Rule 14.12. 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 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 current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price<sup>71</sup> in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) 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

---

<sup>71</sup> As defined in Rule 11.23(a)(3), the term "BZX Official Closing Price" shall mean the price disseminated to the consolidated tape as the market center closing trade.



quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The Trust will also disseminate its holdings on a daily basis on its website. The aforementioned information will be published as of the close of business available on the Sponsor's website at [www.invesco.com/etfs](http://www.invesco.com/etfs), or any successor thereto.

The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the most recently reported price of bitcoin as reported by the Index Provider or another reporting service. The IIV disseminated during Regular Trading Hours 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 may differ from the NAV due to the differences in the time window of trades used to calculate each price. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours by one or more major market data vendors. In addition, the IIV will be available through the facilities of the consolidated tape association (CTA) and Consolidated Quotation System (CQS) high speed lines. In addition, the IIV will be available through on-line information services such as Bloomberg and Reuters.

The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours.

As noted above, the Index is designed to provide an estimated fair market value for bitcoin. Information about the Index and Index value, including key elements of how the Index is calculated, will be publicly available at <https://lukka.tech>.

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

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA.

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. The investor protection issues for U.S. investors has grown significantly over the last several years, through roll costs for Bitcoin Futures ETFs and premium/discount volatility and management fees for OTC Bitcoin Funds. As discussed throughout, this growth investor protection concerns need to be reevaluated and

rebalanced with the prevention of fraudulent and manipulative acts and practices concerns that previous disapproval orders have relied upon. Finally, the Exchange notes that in addition to all of the arguments herein which it believes sufficiently establish the CME 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.

**Item 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 an additional exchange-traded product that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

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

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

**Item 6. Extension of Time Period for Commission Action**

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

**Item 11. Exhibits**

Exhibit 1. Completed Notice of Proposed Rule Change for publication in the Federal Register.

Exhibit 2 – 5: Not applicable.

EXHIBIT 1

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CboeBZX-2023-038]

[Insert date]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change to List and Trade Shares of the Invesco Galaxy Bitcoin ETF (the “Trust”), under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on [insert date], Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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**

Cboe BZX Exchange, Inc. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change to list and trade shares of the Invesco Galaxy Bitcoin ETF (the “Trust”),<sup>3</sup> under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares.

---

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

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

<sup>3</sup> The Trust was formed as a Delaware statutory trust on December 17, 2020 and is operated as a grantor trust for U.S. federal tax purposes. The Trust has no fixed termination date.

The text of the proposed rule change is also available on the Exchange's website ([http://markets.cboe.com/us/equities/regulation/rule\\_filings/bzx/](http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/)), at the Exchange's Office of the Secretary, 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 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

This Amendment No. 2 to SR-CboeBZX-2023-038 amends and replaces in its entirety the proposal as originally submitted on June 30, 2023, and as amended by Amendment No. 1 on July 11, 2023. The Exchange submits this Amendment No. 2 in order to clarify certain points and add additional details to the proposal.

The Exchange proposes to list and trade the Shares under BZX Rule 14.11(e)(4),<sup>4</sup> which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.<sup>5</sup> Invesco Capital Management LLC is the sponsor of the Trust ("Sponsor").

---

<sup>4</sup> The Commission approved BZX Rule 14.11(e)(4) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR-BATS-2011-018).

<sup>5</sup> Any of the statements or representations regarding the index composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, intraday indicative values, and, or the applicability of Exchange listing rules specified in this filing to list a series of Other Securities (collectively, "Continued Listing Representations") shall constitute continued listing requirements for the Shares listed on the Exchange.

The Shares will be registered with the Commission by means of the Trust's registration statement on Form S-1 (the "Registration Statement").<sup>6</sup>

As further discussed below, 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>7</sup> Prior orders from the Commission have pointed out that in every prior approval order for Commodity-Based Trust Shares,<sup>8</sup> there has been a derivatives market that represents the regulated market of significant size, generally a Commodity Futures Trading Commission (the "CFTC") regulated futures market.<sup>9</sup> Further to this point, the Commission's prior orders have

---

<sup>6</sup> See Pre-Effective Amendment No. 4 to Form S-1 Registration Statement filed on December 29, 2023 (Registration No. 333-255175). 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.

<sup>7</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>8</sup> See Exchange Rule 14.11(f)(1).

<sup>9</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 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.



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<sup>10</sup> 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 mind, the Chicago Mercantile Exchange (“CME”) bitcoin futures (“Bitcoin Futures”) market is the proper

---

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>10</sup> See Exchange Rule 14.11(e)(5).

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

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 approved proposals related to the listing and trading of funds that would primarily hold CME Bitcoin Futures that are registered under the Securities Act of 1933.<sup>12</sup> In the Teucrium Approval, the Commission found the CME Bitcoin Futures market to be a regulated market of significant size as it relates to CME 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 CME 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 CME Bitcoin Futures market represents a regulated market of significant size as it relates both to the CME Bitcoin Futures market and to the spot bitcoin market and that this proposal should be approved.

Finally, as discussed in greater detail below, by using professional custodians and other service providers, the Trust provides investors interested in exposure to bitcoin with important protections that are not always available to investors that invest directly in bitcoin, including protection against insolvency, cyber attacks, and other risks. If U.S. investors had access to vehicles such as the Trust for their bitcoin investments, instead of directing their bitcoin investments into loosely regulated offshore vehicles (such as loosely regulated centralized trading platforms that have since faced bankruptcy

---

<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”).

proceedings or other insolvencies), then countless investors would have protected their principal investments in bitcoin and thus benefited.

### Background

Bitcoin is a digital asset based on the decentralized, open source protocol of the peer-to-peer computer network launched in 2009 that governs the creation, movement, and ownership of bitcoin and hosts the public ledger, or “blockchain,” on which all bitcoin transactions are recorded (the “Bitcoin Network” or “Bitcoin”). The decentralized nature of the Bitcoin Network allows parties to transact directly with one another based on cryptographic proof instead of relying on a trusted third party. The protocol also lays out the rate of issuance of new bitcoin within the Bitcoin Network, a rate that is reduced by half approximately every four years with an eventual hard cap of 21 million. It’s generally understood that the combination of these two features – a systemic hard cap of 21 million bitcoin and the ability to transact trustlessly with anyone connected to the Bitcoin Network – gives bitcoin its value. The first rule filing proposing to list an ETP to provide exposure to bitcoin in the U.S. was submitted by the Exchange on June 30, 2016.<sup>13</sup> At that time, blockchain technology, and digital assets that utilized it, were relatively new to the broader public. The market cap of all bitcoin in existence at that time was approximately \$10 billion. No registered offering of digital asset securities or shares in an investment vehicle with exposure to bitcoin or any other cryptocurrency had yet been conducted, and the regulated infrastructure for conducting a digital asset securities offering had not begun to develop.<sup>14</sup> Similarly, regulated U.S. Bitcoin Futures

---

<sup>13</sup> See Winklevoss Order.

<sup>14</sup> Digital assets that are securities under U.S. law are referred to throughout this proposal as “digital asset securities.” All other digital assets, including bitcoin, are referred to interchangeably as

contracts did not exist. The CFTC had determined that bitcoin is a commodity,<sup>15</sup> but had not engaged in significant enforcement actions in the space. The New York Department of Financial Services (“NYDFS”) adopted its final “BitLicense” regulatory framework in 2015, but had only approved four entities to engage in activities relating to virtual currencies (whether through granting a BitLicense or a limited-purpose trust charter) as of June 30, 2016.<sup>16</sup> While the first over-the-counter bitcoin fund launched in 2013, public trading was limited and the fund had only \$60 million in assets.<sup>17</sup> There were very few, if any, traditional financial institutions engaged in the space, whether through investment or providing services to digital asset companies. In January 2018, the staff of the Commission noted in a letter to the Investment Company Institute (“ICI”) and Securities Industry and Financial Markets Association (“SIFMA”) that it was not aware, at that time, of a single custodian providing fund custodial services for digital assets.<sup>18</sup> Fast forward to today and the digital assets financial ecosystem, including bitcoin, has

---

“cryptocurrencies” or “virtual currencies.” The term “digital assets” refers to all digital assets, including both digital asset securities and cryptocurrencies, together.

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

<sup>16</sup> A list of virtual currency businesses that are entities regulated by the NYDFS is available on the NYDFS website. See [https://www.dfs.ny.gov/apps\\_and\\_licensing/virtual\\_currency\\_businesses/regulated\\_entities](https://www.dfs.ny.gov/apps_and_licensing/virtual_currency_businesses/regulated_entities).

<sup>17</sup> Data as of March 31, 2016 according to publicly available filings. See bitcoin Investment Trust Form S-1, dated May 27, 2016, available: <https://www.sec.gov/Archives/edgar/data/1588489/000095012316017801/filename1.htm>.

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

progressed significantly. The development of a regulated market for digital asset securities has significantly evolved, with market participants having conducted registered public offerings of both digital asset securities<sup>19</sup> and shares in investment vehicles holding Bitcoin Futures.<sup>20</sup> Additionally, licensed and regulated service providers have emerged to provide fund custodial services for digital assets, among other services, including the Custodian.<sup>21</sup> For example, in February 2023, the Commission proposed to amend Rule 206(4)-2 under the Advisers Act of 1940 (the “custody rule”) to expand the scope beyond client funds and securities to include all crypto assets, among other assets;<sup>22</sup> in May 2021, the staff of the Commission released a statement permitting open-end mutual funds to invest in cash-settled Bitcoin Futures; in December 2020, the Commission adopted a conditional no-action position permitting certain special purpose broker-dealers to custody digital asset securities under Rule 15c3-3 under the Exchange Act (the “Custody Statement”);<sup>23</sup> in September 2020, the staff of the Commission released a no-action letter permitting certain broker-dealers to operate a non-custodial Alternative Trading System (“ATS”) for digital asset securities, subject to specified conditions;<sup>24</sup> in October 2019, the staff of the Commission granted temporary relief from

---

<sup>19</sup> See Prospectus supplement filed pursuant to Rule 424(b)(1) for INX Tokens (Registration No. 333-233363), available at: [https://www.sec.gov/Archives/edgar/data/1725882/000121390020023202/ea125858-424b1\\_inxlimited.htm](https://www.sec.gov/Archives/edgar/data/1725882/000121390020023202/ea125858-424b1_inxlimited.htm).

<sup>20</sup> See Prospectus filed by Stone Ridge Trust VI on behalf of NYDIG bitcoin Strategy Fund Registration, available at: <https://www.sec.gov/Archives/edgar/data/1764894/000119312519309942/d693146d497.htm>.

<sup>21</sup> The “Custodian” is Coinbase Trust Company, LLC.

<sup>22</sup> See Investment Advisers Act Release No. 6240 88 FR 14672 (March 9, 2023) (Safeguarding Advisory Client Assets).

<sup>23</sup> See Securities Exchange Act Release No. 90788, 86 FR 11627 (February 26, 2021) (File Number S7-25-20) (Custody of Digital Asset Securities by Special Purpose Broker-Dealers).

<sup>24</sup> See letter from Elizabeth Baird, Deputy Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Kris Dailey, Vice President, Risk Oversight &

the clearing agency registration requirement to an entity seeking to establish a securities clearance and settlement system based on distributed ledger technology,<sup>25</sup> and multiple transfer agents who provide services for digital asset securities registered with the Commission.<sup>26</sup>

Outside the Commission's purview, the regulatory landscape has changed significantly since 2016, and cryptocurrency markets have grown and evolved as well. The market for bitcoin is approximately 100 times larger, having at one point reached a market cap of over \$1 trillion.<sup>27</sup> According to the CME Bitcoin Futures Report, from February 13, 2023 through March 27, 2023, CFTC regulated Bitcoin Futures represented between \$750 million and \$3.2 billion in notional trading volume on the CME Bitcoin Futures market on a daily basis.<sup>28</sup> Open interest was over \$1.4 billion for the entirety of the period and at one point was over \$2 billion. ETPs that primarily hold CME Bitcoin Futures have raised over \$1 billion dollars in assets. The CFTC has exercised its regulatory jurisdiction in bringing a number of enforcement actions related to bitcoin and

---

Operational Regulation, Financial Industry Regulatory Authority (September 25, 2020), available at: <https://www.sec.gov/divisions/marketreg/mr-noaction/2020/finra-ats-role-in-settlement-of-digital-asset-security-trades-09252020.pdf>.

<sup>25</sup> See letter from Jeffrey S. Mooney, Associate Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Charles G. Cascarilla & Daniel M. Burstein, Paxos Trust Company, LLC (October 28, 2019), available at: <https://www.sec.gov/divisions/marketreg/mr-noaction/2019/paxos-trust-company-102819-17a.pdf>.

<sup>26</sup> See, e.g., Form TA-1/A filed by Tokensoft Transfer Agent LLC (CIK: 0001794142) on January 8, 2021, available at: [https://www.sec.gov/Archives/edgar/data/1794142/000179414219000001/xslFTA1X01/primary\\_doc.xml](https://www.sec.gov/Archives/edgar/data/1794142/000179414219000001/xslFTA1X01/primary_doc.xml).

<sup>27</sup> As of December 1, 2021, the total market cap of all bitcoin in circulation was approximately \$1.08 trillion.

<sup>28</sup> Data sourced from the CME Bitcoin Futures Report: 30 March, 2023, available at: <https://www.cmegroup.com/markets/cryptocurrencies/bitcoin/bitcoin.volume.htm>.

against trading platforms that offer cryptocurrency trading.<sup>29</sup> As of February 14, 2023 the NYDFS has granted no fewer than thirty-four BitLicenses,<sup>30</sup> including to established public payment companies like PayPal Holdings, Inc. and Square, Inc., and limited purpose trust charters to entities providing cryptocurrency custody services. In addition, the Treasury's Office of Foreign Assets Control (“OFAC”) has brought enforcement actions over apparent violations of the sanctions laws in connection with the provision of wallet management services for digital assets.<sup>31</sup>

In addition to the regulatory developments laid out above, more traditional financial market participants become more active in cryptocurrency: large insurance companies, asset managers, university endowments, pension funds, and even historically bitcoin skeptical fund managers have allocated to bitcoin. As noted in the Financial Stability Oversight Council (“FSOC”) Report on Digital Asset Financial Stability Risks and Regulation, “[i]ndustry surveys suggest that the scale of these investments grew

---

<sup>29</sup> The CFTC’s annual report for Fiscal Year 2022 (which ended on September 30, 2022) noted that the CFTC completed the fiscal year with 18 enforcement filings related to digital assets. “Digital asset actions included manipulation, a \$1.7 billion fraudulent scheme, and a decentralized autonomous organization (DAO) failing to register as a SEF or FCM or to seek DCM designation.” See CFTC FY 2022 Agency Financial Report, [available at: https://www.cftc.gov/media/7941/2022afr/download](https://www.cftc.gov/media/7941/2022afr/download). Additionally, the CFTC filed on March 27, 2023, a civil enforcement action against the owner/operators of the Binance centralized digital asset trading platform, which is one of the largest bitcoin derivative exchanges. See CFTC Release No. 8680-23 (March 27, 2023), [available at: https://www.cftc.gov/PressRoom/PressReleases/8680-23](https://www.cftc.gov/PressRoom/PressReleases/8680-23).

<sup>30</sup> See [https://www.dfs.ny.gov/virtual\\_currency\\_businesses](https://www.dfs.ny.gov/virtual_currency_businesses).

<sup>31</sup> See U.S. Department of the Treasury Enforcement Release: “OFAC Enters Into \$98,830 Settlement with BitGo, Inc. for Apparent Violations of Multiple Sanctions Programs Related to Digital Currency Transactions” (December 30, 2020) [available at: https://home.treasury.gov/system/files/126/20201230\\_bitgo.pdf](https://home.treasury.gov/system/files/126/20201230_bitgo.pdf). See also U.S. Department of the Treasury Enforcement Release: “Treasury Announces Two Enforcement Actions for over \$24M and \$29M Against Virtual Currency Exchange, Bittrex, Inc.” (October 11, 2022) [available at: https://home.treasury.gov/news/press-releases/jy1006](https://home.treasury.gov/news/press-releases/jy1006). See also U.S. Department of Treasury Enforcement Release “OFAC Settles with Virtual Currency Exchange Kraken for \$362,158.70 Related to Apparent Violations of the Iranian Transactions and Sanctions Regulations” (November 28, 2022) [available at: https://home.treasury.gov/system/files/126/20221128\\_kraken.pdf](https://home.treasury.gov/system/files/126/20221128_kraken.pdf).

quickly during the boom in crypto-asset markets through late 2021. In June 2022, PwC estimated that the number of crypto-specialist hedge funds was more than 300 globally, with \$4.1 billion in assets under management. In addition, in a survey PwC found that 38 percent of surveyed traditional hedge funds were currently investing in ‘digital assets,’ compared to 21 percent the year prior.”<sup>32</sup> The largest over-the-counter bitcoin fund previously filed a Form 10 registration statement, which the staff of the Commission reviewed and which took effect automatically, and is now a reporting company.<sup>33</sup> Established companies like Tesla, Inc., MicroStrategy Incorporated, and Square, Inc., among others, have announced substantial investments in bitcoin in amounts as large as \$1.5 billion (Tesla) and \$425 million (MicroStrategy). The foregoing examples demonstrate that bitcoin has gained mainstream usage and recognition.

Despite these developments, access for U.S. retail investors to gain exposure to bitcoin via a transparent and U.S. regulated, U.S. exchange-traded vehicle remains limited. Instead current options include: (i) facing the counter-party risk, legal uncertainty, technical risk, and complexity associated with accessing spot bitcoin; (ii) over-the-counter bitcoin funds (“OTC Bitcoin Funds”) with high management fees and potentially volatile premiums and discounts;<sup>34</sup> (iii) purchasing shares of operating

---

<sup>32</sup> See the FSOC “Report on Digital Asset Financial Stability Risks and Regulation 2022” (October 3, 2022) (at footnote 26) at <https://home.treasury.gov/system/files/261/FSOC-Digital-Assets-Report-2022.pdf>.

<sup>33</sup> See Letter from Division of Corporation Finance, Office of Real Estate & Construction to Barry E. Silbert, Chief Executive Officer, Grayscale bitcoin Trust (January 31, 2020) <https://www.sec.gov/Archives/edgar/data/1588489/000000000020000953/filename1.pdf>

<sup>34</sup> The premium and discount for OTC Bitcoin Funds is known to move rapidly. For example, over the period of 12/21/20 to 1/21/21, the premium for the largest OTC Bitcoin Fund went from 40.18% to 2.79%. While the price of bitcoin appreciated significantly during this period and NAV per share increased by 41.25%, the price per share increased by only 3.58%. This means that investors are buying shares of a fund that experiences significant volatility in its premium and discount outside of the fluctuations in price of the underlying asset. Even operating within the normal premium and discount range, it’s possible for an investor to buy shares of an OTC Bitcoin



companies that they believe will provide proxy exposure to bitcoin with limited disclosure about the associated risks;<sup>35</sup> or (iv) purchasing Bitcoin Futures exchange-traded funds (“ETFs”), as defined below, which represent a sub-optimal structure for long-term investors that will cost them significant amounts of money every year compared to Spot Bitcoin ETPs, as further discussed below. Meanwhile, investors in many other countries, including Canada and Brazil, are able to use more traditional exchange listed and traded products (including ETFs holding physical bitcoin) to gain exposure to bitcoin. Similarly, investors in Switzerland and across Europe have access to Exchange Traded Products which trade on regulated exchanges and provide exposure to a broad array of spot crypto assets. U.S. investors, by contrast, are left with fewer and more risky means of getting bitcoin exposure, as described above.<sup>36</sup>

---

Fund only to have those shares quickly lose 10% or more in dollar value excluding any movement of the price of bitcoin. That is to say – the price of bitcoin could have stayed exactly the same from market close on one day to market open the next, yet the value of the shares held by the investor decreased only because of the fluctuation of the premium. As more investment vehicles, including mutual funds and ETFs, seek to gain exposure to bitcoin, the easiest option for a buy and hold strategy for such vehicles is often an OTC Bitcoin Fund, meaning that even investors that do not directly buy OTC Bitcoin Funds can be disadvantaged by extreme premiums (or discounts) and premium volatility.

<sup>35</sup> A number of operating companies engaged in unrelated businesses – such as Tesla (a car manufacturer) and MicroStrategy (an enterprise software company) – have announced investments as large as \$5.3 billion 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. 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. 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>.

<sup>36</sup> The Exchange notes that the list of countries above is not exhaustive and that securities regulators in a number of additional countries have either approved or otherwise allowed the listing and trading of Spot Bitcoin ETPs.

To this point, the lack of a Spot Bitcoin ETP exposes U.S. investor assets to significant risk because investors that would otherwise seek crypto asset exposure through a Spot Bitcoin ETP are forced to find alternative exposure through generally riskier means. For instance, many U.S. investors that held their digital assets in accounts at FTX,<sup>37</sup> Celsius Network LLC,<sup>38</sup> BlockFi Inc.<sup>39</sup> and Voyager Digital Holdings, Inc.<sup>40</sup> have become unsecured creditors in the insolvencies of those entities. If a Spot Bitcoin ETP was available, it is likely that at least a portion of the billions of dollars tied up in those proceedings would still reside in the brokerage accounts of U.S. investors, having instead been invested in a transparent, regulated, and well-understood structure – a Spot Bitcoin ETP. To this point, approval of a Spot Bitcoin ETP would represent a major win for the protection of U.S. investors in the crypto asset space. As further described below, the Trust, like all other series of Commodity-Based Trust Shares, is designed to protect investors against the risk of losses through fraud and insolvency that arise by holding digital assets, including bitcoin, on centralized platforms.

Additionally, investors in other countries, specifically Canada, generally pay lower fees than U.S. retail investors that invest in OTC Bitcoin Funds due to the fee pressure that results from increased competition among available bitcoin investment options. Without an approved and regulated Spot Bitcoin ETP in the U.S. as a viable alternative, U.S. investors could seek to purchase shares of non-U.S. bitcoin vehicles in order to get access to bitcoin exposure. Given the separate regulatory regime and the

---

<sup>37</sup> See FTX Trading Ltd., et al., Case No. 22-11068.

<sup>38</sup> See Celsius Network LLC, et al., Case No. 22-10964.

<sup>39</sup> See BlockFi Inc., Case No. 22-19361.

<sup>40</sup> See Voyager Digital Holdings, Inc., et al., Case No. 22-10943.

potential difficulties associated with any international litigation, such an arrangement would create more risk exposure for U.S. investors than they would otherwise have with a U.S. exchange listed ETP. In addition to the benefits to U.S. investors articulated throughout this proposal, approving this proposal (and others like it) would provide U.S. ETFs and mutual funds with a U.S.-listed and regulated product to provide such access rather than relying on either flawed products or products listed and primarily regulated in other countries.

#### Bitcoin Futures ETFs

The Exchange and Sponsor applaud the Commission for allowing the launch of ETFs registered under the Investment Company Act of 1940, as amended (the “1940 Act”) and the Bitcoin Futures Approvals that provide exposure to bitcoin primarily through CME 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 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>41</sup> Leaving aside the

---

<sup>41</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

analysis of that standard until later in this proposal,<sup>42</sup> the Exchange believes that the following rationale 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 misconduct related to the non-cash assets held by the proposed ETP.<sup>43</sup>

CME 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 CME Bitcoin Futures.

---

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>42</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.

<sup>43</sup> See Teucrium Approval at 21679.

This was further acknowledged in the “Grayscale lawsuit”<sup>44</sup> when Judge Rao stated “...the Commission in the Teucrium order recognizes that the futures prices are influenced by the spot prices, and the Commission concludes in approving futures ETPs that any fraud on the spot market can be adequately addressed by the fact that the futures market is a regulated one...” The Exchange agrees with the Commission on this point and notes that the pricing mechanism applicable to the Shares is similar to that of the CME Bitcoin Futures.

The structure of Bitcoin Futures ETFs provides negative outcomes for buy and hold investors as compared to a Spot Bitcoin ETP.<sup>45</sup> Specifically, the cost of rolling CME Bitcoin Futures contracts will cause the Bitcoin Futures ETFs to lag the performance of bitcoin itself and 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. Further, Bitcoin Futures ETFs could potentially hit CME position limits, which would force a Bitcoin Futures ETF to invest in non-futures assets for bitcoin exposure and cause potential investor confusion and lack of certainty about what such Bitcoin Futures ETFs are actually holding to try to get exposure to bitcoin, not to mention completely changing the risk profile associated with such an ETF. 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,

---

<sup>44</sup> Grayscale Investments, LLC v. Securities and Exchange Commission, et al., Case No. 22-1142.

<sup>45</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?nopaging=1&\\_cf\\_chl\\_jschl\\_tk\\_\\_=pmd\\_JsK.fjXz9eAQW9zol0qpzhXDrrlpIVdoCloLXbLjl44-1635476946-0-gqNtZGzNApCjenBszQql](https://www.etf.com/sections/blog/physical-bitcoin-etf-prospects-shine?nopaging=1&_cf_chl_jschl_tk__=pmd_JsK.fjXz9eAQW9zol0qpzhXDrrlpIVdoCloLXbLjl44-1635476946-0-gqNtZGzNApCjenBszQql).

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. Both the Exchange and Sponsor believe that the CME Bitcoin Futures market is a regulated market of significant size and that such manipulation concerns are mitigated, as described extensively below. After allowing and approving the listing and trading of Bitcoin Futures ETFs that hold primarily CME Bitcoin Futures, however, the only consistent outcome would be approving Spot Bitcoin ETPs on the basis that the CME Bitcoin Futures market is a regulated market of significant size.

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.

### Bitcoin Futures

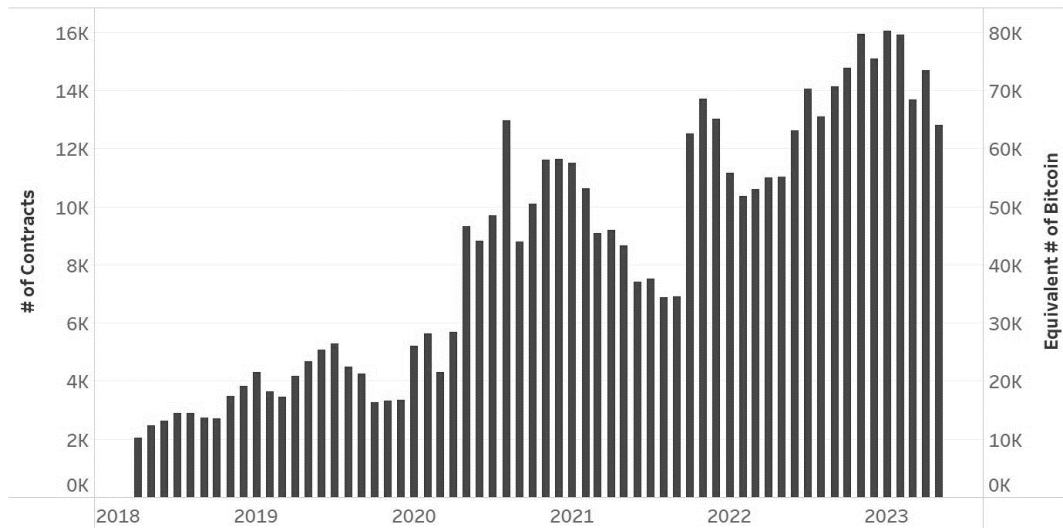
CME began offering trading in Bitcoin Futures in 2017. Each contract represents five bitcoin and is based on the CME CF Bitcoin Reference Rate.<sup>46</sup> The contracts trade and settle like other cash-settled commodity futures contracts. Nearly every measurable metric related to Bitcoin Futures has 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.<sup>47</sup>

---

<sup>46</sup> The CME CF Bitcoin Reference Rate is based on a publicly available calculation methodology based on pricing sourced from several crypto trading platforms, including Bitstamp, Coinbase, Gemini, itBit, Kraken, and LMAX Digital.

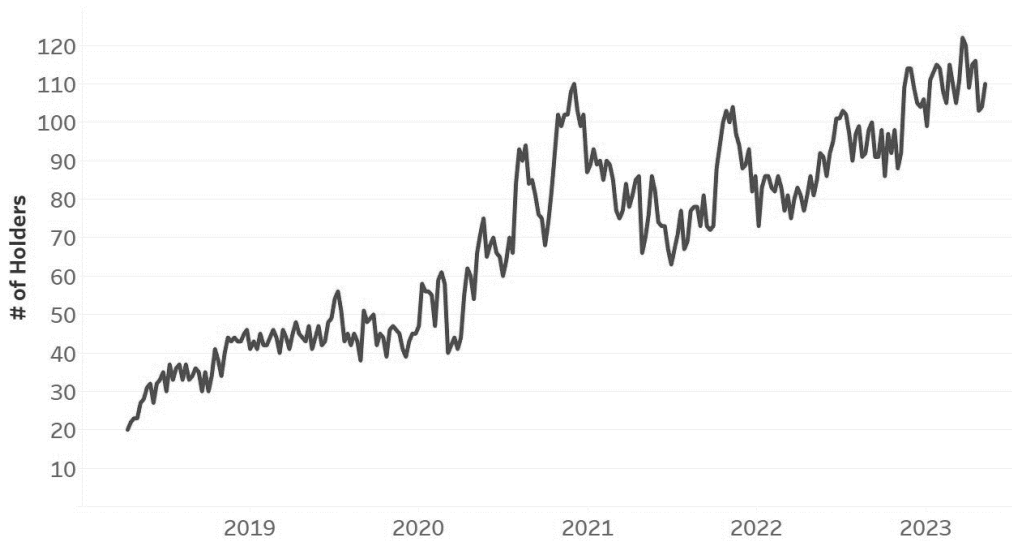
<sup>47</sup> Source: CME, Yahoo Finance 4/30/23.

### CME Bitcoin Futures Open Interest (OI)



The number of large open interest holders<sup>48</sup> and unique accounts trading Bitcoin Futures have both increased, even in the face of heightened bitcoin price volatility.

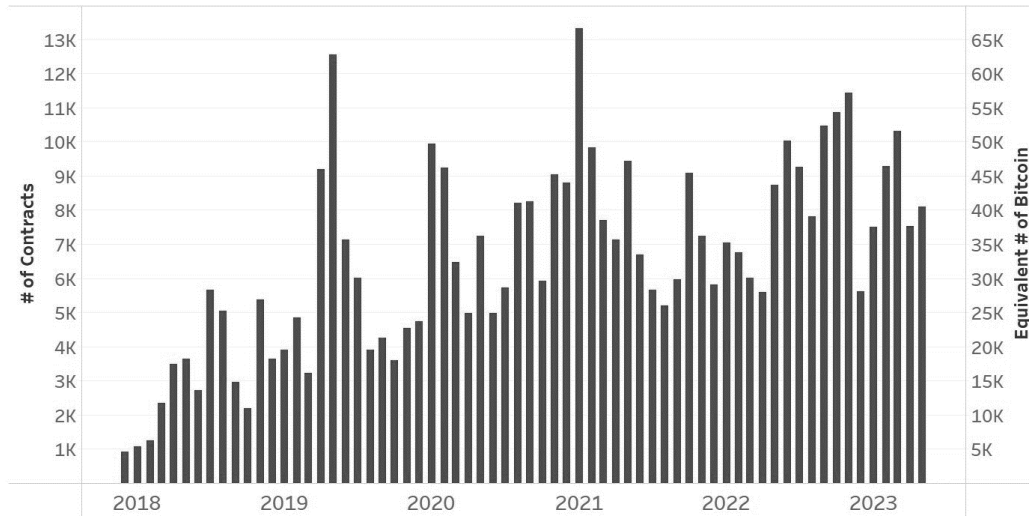
### CME Bitcoin Futures Large Open Interest Holders (LOIH)



<sup>48</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 Average Daily Volume (ADV)



The Sponsor further believes that publicly available research, including research done as part of rule filings proposing to list and trade shares of Spot Bitcoin ETPs, corroborates the overall trend outlined above and supports the thesis that the Bitcoin Futures pricing leads the spot market and, thus, a person attempting to manipulate the Shares would also have to trade on that market to manipulate the ETP. Specifically, the Sponsor believes that such research indicates that Bitcoin Futures lead the bitcoin spot market in price formation.<sup>49</sup>

<sup>49</sup> See Exchange Act Releases No. 94080 (January 27, 2022), 87 FR 5527 (April 12, 2022) (specifically “Amendment No. 1 to the Proposed Rule Change To List and Trade Shares of the Wise Origin Bitcoin Trust Under BZX Rule 14.11(3)(4), Commodity-Based Trust Shares”); 94982 (May 25, 2022), 87 FR 33250 (June 1, 2022); 94844 (May 4, 2022), 87 FR 28043 (May 10, 2022); and 93445 (October 28, 2021), 86 FR 60695 (November 3, 2021). See also Hu, Y., Hou, Y. and Oxley, L. (2019). “What role do futures markets play in Bitcoin pricing? Causality, cointegration and price discovery from a time-varying perspective” (available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7481826/>). This academic research paper concludes that “There exist no episodes where the Bitcoin spot markets dominates the price discovery processes with regard to Bitcoin futures. This points to a conclusion that the price formation originates solely in the Bitcoin futures market. We can, therefore, conclude that the Bitcoin futures markets dominate the dynamic price discovery process based upon time-varying information share measures. Overall, price discovery seems to occur in the Bitcoin futures markets rather than the underlying spot market based upon a time-varying perspective.”

Section 6(b)(5) and the Applicable Standards

The Commission has approved numerous series of Trust Issued Receipts,<sup>50</sup> including Commodity-Based Trust Shares,<sup>51</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;<sup>52</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 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

---

<sup>50</sup> See Exchange Rule 14.11(f).

<sup>51</sup> Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

<sup>52</sup> As the Exchange has stated in a number of other public documents, it continues to believe 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 trading platforms 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 trading platforms 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 trading platform 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.

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>53</sup> with a regulated market of significant size. Both the Exchange and CME are members of the Intermarket Surveillance Group (“ISG”).<sup>54</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

---

<sup>53</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 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>54</sup> For a list of the current members and affiliate members of ISG, see [www.isgportal.com](http://www.isgportal.com).

unlikely that trading in the ETP would be the predominant influence on prices in that market.<sup>55</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>56</sup>

*(a) Manipulation of the ETP*

According to the research and analysis presented above, the Bitcoin Futures market is the leading market for bitcoin price formation. Where Bitcoin Futures lead the price in the spot market such that a potential manipulator of the bitcoin spot market (beyond just the constituents of the Index<sup>57</sup>) would have to participate in the Bitcoin Futures market, it follows that a potential manipulator of the Shares would similarly have to transact in the Bitcoin Futures market because the Index is based on spot prices. 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*

---

<sup>55</sup> See Wilshire Phoenix Disapproval.

<sup>56</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.

<sup>57</sup> As further described below, the “Index” for the Fund is the Bloomberg Galaxy Bitcoin Index.

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 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.

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

As noted above, the Commission also permits a listing exchange to demonstrate that "other means to prevent fraudulent and manipulative acts and practices" are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present.

*(ii) Designed to Protect Investors and the Public Interest*

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past several years, U.S. investor exposure to bitcoin through OTC Bitcoin Funds has grown into the tens of billions of dollars, including through Bitcoin Futures ETFs. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors through roll costs for Bitcoin Futures ETFs and premium/discount volatility and management fees for OTC Bitcoin Funds. The Exchange believes that the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, such concerns are now outweighed by investor protection concerns. As such, the Exchange believes that

approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to bitcoin in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks and costs associated with investing in Bitcoin Futures ETFs and operating companies that are imperfect proxies for bitcoin exposure; and (iv) providing an alternative to custodial spot bitcoin.

#### Invesco Galaxy Bitcoin ETF

Delaware Trust Company is the trustee (“Trustee”). The Bank of New York Mellon will be the administrator (“Administrator”) and transfer agent (“Transfer Agent”). As noted above, Coinbase Custody Trust Company, LLC, is the Custodian and will be responsible for custody of the Trust’s bitcoin. The Bank of New York Mellon (the “Cash Custodian”) will act as custodian of the Trust’s cash and cash equivalents.<sup>58</sup>

According to the Registration Statement, each Share will represent a fractional undivided beneficial interest and ownership in the Trust. The Trust’s assets will consist only of bitcoin, cash, and cash equivalents.

According to the Registration Statement, the Trust is neither an investment company registered under the Investment Company Act of 1940, as amended,<sup>59</sup> nor a commodity pool for purposes of the Commodity Exchange Act (“CEA”), and neither the Trust nor the Sponsor is subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the Shares.

---

<sup>58</sup> Cash equivalents are short-term instruments with maturities of less than 3 months.

<sup>59</sup> 15 U.S.C. 80a-1.

When the Trust sells or redeems its Shares, it will do so in cash transactions in blocks of 5,000 Shares (a “Creation Basket”) at the Trust’s net asset value (“NAV”). Authorized participants will deliver, or facilitate the delivery of, cash to the Trust’s account with the Cash Custodian (which will then be used to purchase bitcoin for the Trust) in exchange for Shares when they purchase Shares, and the Trust, through the Cash Custodian, will deliver cash to such authorized participants when they redeem Shares with the Trust. A third party will use cash to buy and deliver bitcoin to create Shares or withdraw and sell bitcoin for cash to redeem Shares, on behalf of the Trust. Authorized participants may then offer Shares to the public at prices that depend on various factors, including the supply and demand for Shares, the value of the Trust’s assets, and market conditions at the time of a transaction. Shareholders who buy or sell Shares during the day from their broker may do so at a premium or discount relative to the NAV of the Shares of the Trust.

#### Investment Objective

According to the Registration Statement and as further described below, the investment objective of the Trust is to reflect the performance as measured using Lukka Prime Bitcoin Reference Rate (the “Index”), less the Trust’s expenses and other liabilities. In seeking to achieve its investment objective, the Trust will hold only bitcoin, cash, and cash equivalents. The Trust will value its Shares daily based on the value of the Index as of 4:00 p.m. ET, which is calculated based on the fair market value price for bitcoin, reflecting the execution price of bitcoin on its principal market as determined by Lukka Inc., an independent third-party digital asset company (the “Index Provider”). The

Trust will process all creations and redemptions in cash transactions with authorized participants. The Trust is not actively managed.

#### The Index

As described in the Registration Statement, the Fund will use the Index to calculate the Trust's NAV. The Index is designed to provide an estimated fair market value for bitcoin. In determining the value of bitcoin, the Index Provider applies a five-step weighting process for identifying the principal trading platform for bitcoin and the last price on that trading platform. Currently, the Index includes the following trading platforms: Binance, Bitfinex, Bitflyer, Bitstamp, Coinbase Pro, Crypto.com, Gemini, HitBTC, Huobi, Kraken, KuCoin, OKEx and Poloniex. In identifying the principal trading platform for bitcoin, the Index Provider considers a variety of different criteria, including the trading platforms' oversight and governance frameworks, microstructure efficiency (i.e., effective bid-ask spread), trading volume, data transparency and data integrity. A "base exchange score" ("BES") that takes into account this criteria is assigned to each Index pricing source in order to select the most appropriate primary trading platform and then an executed trading platform price is determined at 4:00 p.m. ET., although the Index Provider performs this calculation every second each day.



Step 1: Assign each trading platform for bitcoin and U.S. Dollars a BES reflecting static trading platform characteristics such as oversight, microstructure and technology.

Step 2: Adjust the BES based on the relative monthly volume each trading platform services. This new score is the Volume Adjusted Score (“VAS”).

Step 3: Decay the adjusted score based on the time passed since last trade on trading platform, assessing the level of activity in the market by considering the frequency (volume) of trades. The decay factor reflects the time since the last trade on the trading platform. This is the final Decayed Volume Adjusted Score (“DVAS”), which reflects the freshness of data by tracking most recent trades.

Step 4: Rank the trading platforms by the DVAS score and designate the highest-ranking trading platform as the principal market for that point in time – the principal market is the trading platform with highest DVAS.

Step 5: An executed trading platform price is used to represent the fair market value at 4:00 p.m. ET.

Index data and the description of the Index are based on information made publicly available by the Index Provider on its website at <https://lukka.tech>.

#### Net Asset Value

The Trust’s NAV is calculated by (1) taking the current market value of its bitcoin (calculated by the Index Provider) and any other assets; (2) subtracting any liabilities (including accrued by unpaid expenses); and (3) dividing that total by the total number of outstanding Shares. The Administrator calculates the NAV of the Trust on each day that the Exchange is open for regular trading, using the execution price of bitcoin on the principal market selected by the Index Provider as of 4:00 p.m. ET. However, NAVs are

not officially struck until later in the day (often by 5:30 p.m. ET and almost always by 8:00 p.m. ET).

The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time.

In the event that the Index is unavailable or if the Sponsor or Administrator determines that the price provided by the Index does not reflect an accurate bitcoin price, the Sponsor's pricing team will evaluate the prices of other similar benchmarks in an effort to ensure that the Trust's NAV is determined based on consistent, accurate pricing that the Sponsor believes is reflective of the value of the Trust's bitcoin, and also a transparent index methodology and process. The pricing team will recommend the price to be used to the Sponsor's valuation committee who will then review the recommendation and approve it for use by the Trust if found appropriate.<sup>60</sup>

#### Availability of Information

In addition to the price transparency of the 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 current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price<sup>61</sup> in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying

---

<sup>60</sup> Such alternative method will only be employed on an ad hoc basis. Any permanent change to the calculation of the NAV would require a proposed rule change under Rule 19b-4.

<sup>61</sup> As defined in Rule 11.23(a)(3), the term "BZX Official Closing Price" shall mean the price disseminated to the consolidated tape as the market center closing trade.

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); (d) the prospectus; and (e) other applicable quantitative information. The Trust will also disseminate its holdings on a daily basis on its website. The aforementioned information will be published as of the close of business available on the Sponsor's website at [www.invesco.com/etfs](http://www.invesco.com/etfs), or any successor thereto.

The Intraday Indicative Value ("IIV") will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the most recently reported price of bitcoin as reported by the Index Provider or another reporting service. The IIV disseminated during Regular Trading Hours 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 may differ from the NAV due to the differences in the time window of trades used to calculate each price. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours by one or more major market data vendors. In addition, the IIV will be available through the facilities of the consolidated tape association (CTA) and Consolidated Quotation System (CQS) high speed lines. In addition, the IIV will be available through on-line information services such as Bloomberg and Reuters.

The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours.

As noted above, the Index is designed to provide an estimated fair market value for bitcoin. Information about the Index and Index value, including key elements of how the Index is calculated, will be publicly available at <https://lukka.tech>.

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

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association ("CTA").

#### The Bitcoin Custodian

The Custodian carefully considers the design of the physical, operational and cryptographic systems for secure storage of the Trust's private keys in an effort to lower the risk of loss or theft. The Custodian utilizes a variety of security measures to ensure that private keys necessary to transfer digital assets remain uncompromised and that the Trust maintains exclusive ownership of its assets. The operational procedures of the Custodian are reviewed by third-party advisors with specific expertise in physical

security. The devices that store the keys will never be connected to the internet or any other public or private distributed network—this is colloquially known as “cold storage.” Only specific individuals are authorized to participate in the custody process, and no individual acting alone will be able to access or use any of the private keys. In addition, no combination of the executive officers of the Sponsor or the investment professionals managing the Trust, acting alone or together, will be able to access or use any of the private keys that hold the Trust’s bitcoin.

#### Creation and Redemption of Shares

When the Trust sells or redeems its Shares, it will do so in cash transactions in blocks of 5,000 Shares that are based on the quantity of bitcoin attributable to each Share of the Trust (e.g., a Creation Basket) at the Trust’s NAV. According to the Registration Statement, on any business day, an authorized participant may place an order to create one or more Creation Baskets. Purchase orders must be placed by 4:00 p.m. Eastern Time, or the close of regular trading on the Exchange, whichever is earlier. The day on which an order is received is considered the purchase order date. The total deposit of cash required is an amount of cash sufficient to purchase such amount of bitcoin, the amount of which is equal to the combined NAV of the number of Shares included in the Creation Baskets being created determined as of 4:00 ET on the date the order to purchase is properly received. The Administrator determines the required deposit for a given day by multiplying the NAV per share by the number of Shares in each Creation Basket (5,000) and dividing the product by that day's bitcoin price as determined by the Index. The procedures by which an authorized participant can redeem one or more Creation Baskets mirror the procedures for the creation of Creation Baskets.

The authorized participants will deliver only cash to create shares and will receive only cash when redeeming shares. Further, authorized participants will not directly or indirectly purchase, hold, deliver, or receive bitcoin as part of the creation or redemption process or otherwise direct the Trust or a third party with respect to purchasing, holding, delivering, or receiving bitcoin as part of the creation or redemption process.

The Trust will create shares by receiving bitcoin from a third party that is not the authorized participant and the Trust (through an execution agent that is acting in an agency capacity)—not the authorized participant—is responsible for selecting the third party to deliver the bitcoin. Further, the third party will not be acting as an agent of the authorized participant with respect to the delivery of the bitcoin to the Trust or acting at the direction of the authorized participant with respect to the delivery of the bitcoin to the Trust. The Trust will redeem shares by delivering bitcoin to a third party that is not the authorized participant and the Trust—not the authorized participant—is responsible for selecting the third party to receive the bitcoin. Further, the third party will not be acting as an agent of the authorized participant with respect to the receipt of the bitcoin from the Trust or acting at the direction of the authorized participant with respect to the receipt of the bitcoin from the Trust.

A third party, that is unaffiliated with the Trust and the Sponsor, will use cash to buy and deliver bitcoin to create Shares or withdraw and sell bitcoin for cash to redeem Shares, on behalf of the Trust.

The Sponsor will maintain ownership and control of bitcoin in a manner consistent with good delivery requirements for spot commodity transactions.

**Rule 14.11(e)(4) – Commodity-Based Trust Shares**

The Shares will be subject to BZX Rule 14.11(e)(4), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. The Exchange represents that, for initial and continued listing, the Trust must be in compliance with Rule 10A-3 under the Act. A minimum of 100,000 Shares will be outstanding at the commencement of listing on the Exchange. The Exchange will obtain a representation that the Trust's NAV will be calculated daily and the NAV and information about the assets of the Trust will be made available to all market participants at the same time. The Exchange notes that, as defined in Rule 14.11(e)(4)(C)(i), the Shares will be: (a) issued by a trust that holds (1) a specified commodity<sup>62</sup> deposited with the trust, or (2) a specified commodity and, in addition to such specified commodity, cash; (b) issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity and/or cash; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity and/or cash.

Upon termination of the Trust, the Shares will be removed from listing. The Trustee, Delaware Trust Company, is a trust company having substantial capital and surplus and the experience and facilities for handling corporate trust business, as required under Rule 14.11(e)(4)(E)(iv)(a) and that no change will be made to the trustee without prior notice to and approval of the Exchange. The Exchange also notes that, pursuant to Rule 14.11(e)(4)(F), neither the Exchange nor any agent of the Exchange shall have any

---

<sup>62</sup> For purposes of Rule 14.11(e)(4), the term commodity takes on the definition of the term as provided in the Commodity Exchange Act. As noted above, the CFTC has opined that bitcoin is a commodity as defined in Section 1a(9) of the Commodity Exchange Act. See Coinflip.

liability for damages, claims, losses or expenses caused by any errors, omissions or delays in calculating or disseminating any underlying commodity value, the current value of the underlying commodity required to be deposited to the Trust in connection with issuance of Commodity-Based Trust Shares; resulting from any negligent act or omission by the Exchange, or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange, its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in an underlying commodity. Finally, as required in Rule 14.11(e)(4)(G), 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 in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity 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 this Rule. In addition to the existing obligations under Exchange rules regarding the production of books and records (see, e.g., Rule 4.2), the registered Market Maker in Commodity-Based Trust Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such



entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, as may be requested by the Exchange.

The Exchange is able to obtain information regarding trading in the Shares and the underlying bitcoin, Bitcoin Futures contracts, options on Bitcoin Futures, or any other bitcoin derivative through members acting as registered Market Makers, in connection with their proprietary or customer trades.

As a general matter, the Exchange has regulatory jurisdiction over its members, and their associated persons. The Exchange also has regulatory jurisdiction over any person or entity controlling a member, as well as a subsidiary or affiliate of a member that is in the securities business. A subsidiary or affiliate of a member organization that does business only in commodities would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

#### 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 BZX Rule 11.18. 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. Trading in the Shares also will be subject to Rule 14.11(e)(4)(E)(ii), which sets forth circumstances under which trading in the Shares may be halted.

If the IIV or the value of the Index 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 Index occurs. If the interruption to the dissemination of the IIV or the value of the Index 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.

#### 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. BZX will allow trading in the Shares during all trading sessions on the Exchange. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a) the minimum price variation for quoting and entry of orders in securities traded on the Exchange is \$0.01 where the price is greater than \$1.00 per share or \$0.0001 where the price is less than \$1.00 per share. The Shares of the Trust will conform to the initial and continued listing criteria set forth in BZX Rule 14.11(e)(4).

#### Surveillance

The Exchange represents 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. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

The Exchange, or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and Bitcoin Futures with other markets and other entities that are members of the ISG, and the Exchange, or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and Bitcoin Futures from such markets and other entities.<sup>63</sup> The Exchange may obtain information regarding trading in the Shares and Bitcoin Futures via 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.

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

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

---

<sup>63</sup> For a list of the current members and affiliate members of ISG, see [www.isgportal.com](http://www.isgportal.com).

are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

#### 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: (i) the procedures for the creation and redemption of Baskets (and that the Shares are not individually redeemable); (ii) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (iii) how information regarding the IIV and the Trust's NAV are disseminated; (iv) the risks involved in trading the Shares outside of Regular Trading Hours<sup>64</sup> when an updated IIV will not be calculated or publicly disseminated; (v) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (vi) trading information. The Information Circular will also reference the fact that there is no regulated source of last sale information regarding bitcoin, that the Commission has no jurisdiction over the trading of bitcoin as a commodity, and that the CFTC has regulatory jurisdiction over the trading of Bitcoin Futures contracts and options on Bitcoin Futures contracts.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Shares. Members purchasing the Shares for resale to investors will deliver a prospectus to

---

<sup>64</sup> Regular Trading Hours is the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

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

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act<sup>65</sup> in general and Section 6(b)(5) of the Act<sup>66</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, including Commodity-Based Trust Shares, 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;<sup>67</sup> and (ii) the requirement that an exchange proposal be designed, in

---

<sup>65</sup> 15 U.S.C. 78f.

<sup>66</sup> 15 U.S.C. 78f(b)(5).

<sup>67</sup> As the Exchange has stated in a number of other public documents, it continues to believe 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 trading platforms 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 trading platform because participants will generally ignore markets with quotes that they deem non-executable. Moreover,

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 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 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>68</sup> with a regulated market of significant size. Both the Exchange and CME are members of ISG. The only remaining issue to be addressed is whether the Bitcoin Futures market constitutes a

---

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 trading platform 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>68</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 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 ISG constitutes such a surveillance sharing agreement. See Wilshire Phoenix Disapproval).

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>69</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>70</sup>

*(a) Manipulation of the ETP*

According to the research and analysis presented above, the Bitcoin Futures market is the leading market for bitcoin price formation. Where Bitcoin Futures lead the price in the spot market such that a potential manipulator of the bitcoin spot market (beyond just the constituents of the Index) would have to participate in the Bitcoin Futures market, it follows that a potential manipulator of the Shares would similarly have to transact in the Bitcoin Futures market because the Index is based on spot prices. As such, the Exchange believes that part (a) of the significant market test outlined above is

---

<sup>69</sup> Id.

<sup>70</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.

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 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.

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

As noted above, the Commission also permits a listing exchange to demonstrate that "other means to prevent fraudulent and manipulative acts and practices" are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present.

*(ii) Designed to Protect Investors and the Public Interest*

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past several years, U.S. investor exposure to bitcoin through OTC Bitcoin Funds has grown into the tens of billions of dollars, including through Bitcoin Futures ETFs. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors through roll costs for Bitcoin Futures ETFs and premium/discount volatility and management fees for OTC Bitcoin Funds. The Exchange believes that the concerns related to the prevention of fraudulent and manipulative acts



and practices have been sufficiently addressed to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, such concerns are now outweighed by investor protection concerns. As such, the Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to bitcoin in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks and costs associated with investing in Bitcoin Futures ETFs and operating companies that are imperfect proxies for bitcoin exposure; and (iv) providing an alternative to custodial spot bitcoin.

#### 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 Exchange Rule 14.11(e)(4). 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 Exchange Rule 14.12. 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 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 current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price<sup>71</sup> in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) 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); (d) the prospectus; and (e) other applicable quantitative information. The Trust will also disseminate its holdings on a

---

<sup>71</sup> As defined in Rule 11.23(a)(3), the term "BZX Official Closing Price" shall mean the price disseminated to the consolidated tape as the market center closing trade.

daily basis on its website. The aforementioned information will be published as of the close of business available on the Sponsor's website at [www.invesco.com/etfs](http://www.invesco.com/etfs), or any successor thereto.

The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the most recently reported price of bitcoin as reported by the Index Provider or another reporting service. The IIV disseminated during Regular Trading Hours 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 may differ from the NAV due to the differences in the time window of trades used to calculate each price. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours by one or more major market data vendors. In addition, the IIV will be available through the facilities of the consolidated tape association (CTA) and Consolidated Quotation System (CQS) high speed lines. In addition, the IIV will be available through on-line information services such as Bloomberg and Reuters.

The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours.

As noted above, the Index is designed to provide an estimated fair market value for bitcoin. Information about the Index and Index value, including key elements of how the Index is calculated, will be publicly available at <https://lukka.tech>.

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters. Information relating to trading, including price and volume information, in bitcoin is available from

major market data vendors and from the trading platforms on which bitcoin are traded.

Depth of book information is also available from bitcoin trading platforms. The normal trading hours for bitcoin trading platforms are 24 hours per day, 365 days per year.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA.

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. The investor protection issues for U.S. investors has grown significantly over the last several years, through roll costs for Bitcoin Futures ETFs and premium/discount volatility and management fees for OTC Bitcoin Funds. As discussed throughout, this growth investor protection concerns need to be reevaluated and rebalanced with the prevention of fraudulent and manipulative acts and practices concerns that previous disapproval orders have relied upon. Finally, the Exchange notes that in addition to all of the arguments herein which it believes sufficiently establish the

CME 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 an 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

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

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- 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-CboeBZX-2023-038 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-CboeBZX-2023-038. 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-CboeBZX-2023-038 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>72</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

---

<sup>72</sup> 17 CFR 200.30-3(a)(12).