

January 5, 2024

VIA E-MAIL

Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: Securities Exchange Act Rel. 34-93504 (SR-NYSEArca-2021-90)

Dear Secretary:

NYSE Arca, Inc. filed the attached Amendment No. 2 to the above-referenced filing on January 5, 2024.

Sincerely,



Encl. (Amendment No. 2 to SR-NYSEArca-2021-90)

Martha Redding
Corporate Secretary

New York Stock Exchange
11 Wall Street
New York, NY 10005
Tel: +1 212.656. 2938 | Fax: +1 212.656.8101
ice.com

Required fields are shown with yellow backgrounds and asterisks.

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

File No. * SR 2021 - * 90

Amendment No. (req. for Amendments *) 2

Filing by NYSE Arca, 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"/>
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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 *).

Proposal to list and trade shares of Grayscale Bitcoin Trust (BTC)

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 * Le-Anh Last Name * Bui

Title * Senior Counsel, NYSE Group Inc.

E-mail * Le-Anh.Bui@ice.com

Telephone * (202) 661-8953 Fax (212) 656-8101

Signature

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

Date 01/05/2024

(Title *)

By Martha Redding

Corporate Secretary

(Name *)

Martha Redding

Digitally signed by Martha Redding
Date: 2024.01.05 15:30:45 -05'00'

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.

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 EFFS website.

Form 19b-4 Information *

Add Remove View

SEC Sub Am. 2 NYSE Arca 19b-4Gra

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 *

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Ex. 1 SEC Sub Am. 2 NYSE Arca 19b

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 *

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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

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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

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

1. Text of the Proposed Rule Change

- (a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934, as amended (the “Act” or “’34 Act”)¹ and Rule 19b-4 thereunder,² NYSE Arca, Inc. (“NYSE Arca” or “Exchange”), proposes to list and trade shares of the following under NYSE Arca Rule 8.201-E: Grayscale Bitcoin Trust (BTC) (the “Trust”).³

This Amendment No. 2 to SR-NYSEArca-2021-90 replaces SR-NYSEArca-2021-90 as originally filed and supersedes such filing in its entirety.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1.

- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change is being submitted to the Securities and Exchange Commission (“Commission”) by Exchange staff pursuant to authority delegated to it by the NYSE Arca Board of Directors.

The person on the Exchange staff prepared to respond to questions and comments on the proposed rule change is:

Le-Anh Bui
Senior Counsel
NYSE Group, Inc.
(202) 661-8953

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

- (a) Purpose

Under NYSE Arca Rule 8.201-E, the Exchange may propose to list and/or trade pursuant

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Trust was previously named Bitcoin Investment Trust, whose name was changed pursuant to a Certificate of Amendment to the Certificate of Trust of Bitcoin Investment Trust filed with the Delaware Secretary of State on January 11, 2019.

to unlisted trading privileges “Commodity-Based Trust Shares.”⁴ The Exchange proposes to list and trade shares (“Shares”)⁵ of the Trust pursuant to NYSE Arca Rule 8.201-E.⁶

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

⁵ The Shares are expected to be listed under the ticker symbol “GBTC.”

⁶ On March 22, 2016, the Trust confidentially filed its draft registration statement on Form 10 under the Securities Act of 1933 (15 U.S.C. 77a) (the “Securities Act” or “’33 Act”) (File No. 377-01289) (the “Draft Registration Statement on Form S-1”). On May 31, 2016, the Trust confidentially filed Amendment No. 1 to the Draft Registration Statement on Form S-1. On July 29, 2016, the Trust confidentially filed Amendment No. 2 to the Draft Registration Statement on Form S-1. On November 2, 2016, the Trust confidentially filed Amendment No. 3 to the Draft Registration Statement on Form S-1. The Jumpstart Our Business Startups Act (the “JOBS Act”), enacted on April 5, 2012, added Section 6(e) to the Securities Act. Section 6(e) of the Securities Act provides that an “emerging growth company” may confidentially submit to the Commission a draft registration statement for confidential, non-public review by the Commission staff prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed not later than 21 days before the date on which the issuer conducts a road show, as such term is defined in Securities Act Rule 433(h)(4). An emerging growth company is defined in Section 2(a)(19) of the Securities Act as an issuer with less than \$1,000,000,000 total annual gross revenues during its most recently completed fiscal year. The Trust meets the definition of an emerging growth company and consequently submitted its Draft Registration Statement on Form S-1 to the Commission on a confidential basis.

On January 20, 2017, the Trust filed its registration statement on Form S-1 under the Securities Act (File No. 333-215627) (the “Registration Statement on Form S-1”). On March 24, 2017, the Trust filed Amendment No. 1 to the Registration Statement on Form S-1. On May 4, 2017, the Trust filed Amendment No. 2 to the Registration Statement on Form S-1. On October 25, 2017, the Trust requested the withdrawal of the Registration Statement on Form S-1.

On October 3, 2018, the Trust confidentially filed its draft registration statement on Form 10 under the Securities Act (File No. 377-02297) (the “Draft Registration Statement on Form 10”). On December 6, 2018, the Trust confidentially filed Amendment No. 1 to the Draft Registration Statement on Form 10. On February 25, 2019 the Trust confidentially filed Amendment No. 2 to the Draft Registration Statement on Form 10. On April 15, 2019, the Trust confidentially filed Amendment No. 3 to the Draft Registration Statement on Form 10. On September 9, 2019, the Trust confidentially filed Amendment No. 4 to the Draft Registration Statement on Form 10. As noted above, the Trust meets the definition of an emerging growth company under the JOBS Act and consequently submitted its Draft Registration Statement on Form 10 to the Commission on a confidential basis.

On November 19, 2019, the Trust filed its registration statement on Form 10 under the Securities Act (File No. 000-56121) (the “Registration Statement on Form 10”). On December 31, 2019, the Trust filed Amendment No. 1 to the Registration Statement on Form 10. On January 21, 2020, the Registration Statement on Form 10 was automatically deemed effective.

On March 20, 2020, March 5, 2021, February 25, 2022 and March 1, 2023, the Trust filed its annual reports on Form 10-K under the Securities Act (File No. 000-56121) (the “Annual Reports”). On May 8, 2020, August 7, 2020, November 6, 2020, May 7, 2021, August 6, 2021, November 5, 2021, May 6, 2022, August 5, 2022, November 4, 2022, May 5, 2023, August 4, 2023, and November 3, 2023, the Trust filed its quarterly reports on Form 10-Q under the Securities Act (File No. 000-56121) (the “Quarterly Reports”). On October 19, 2023, the Trust filed a registration statement on Form S-3 under the Securities Act (File No. 333-275079) (the “Registration Statement”). On November 22, 2023, the Trust filed Amendment No. 1 to the Registration Statement on Form S-3. On December 26, 2023, the Trust filed Amendment No. 2 to the Registration Statement on Form S-3. On January 2, 2024, the Trust filed Amendment No. 3 to the Registration Statement on Form S-3. The descriptions of the Trust, the Shares, and Bitcoin contained herein are based, in part, on the Annual Report, Quarterly Reports and Registration Statement.

The Trust is the world's largest Bitcoin investment fund by assets under management as of the date of this filing. The Trust has approximately \$21.9 billion in assets under management⁷ (representing 3.1% of all Bitcoin in circulation), and its Shares trade millions of dollars in daily volume and are held by nearly a million American investor accounts seeking exposure to Bitcoin without the cost and complexity of purchasing the asset directly. However, because the Trust is not currently listed as an exchange-traded product ("ETP"), the value of the Shares has not been able to closely track the value of the Trust's underlying Bitcoin. The Sponsor thus believes that allowing Shares of the Trust to list and trade on the Exchange as an ETP (*i.e.*, converting the Trust to a spot Bitcoin ETP) would unlock over \$2.9 billion of value⁸ for the Trust's shareholders and provide other investors with a safe and secure way to invest in Bitcoin on a regulated national securities exchange.

The sponsor of the Trust is Grayscale Investments, LLC ("Sponsor"), a Delaware limited liability company. The Sponsor is a wholly-owned subsidiary of Digital Currency Group, Inc. ("Digital Currency Group"). The trustee for the Trust is Delaware Trust Company ("Trustee"). The custodian for the Trust's Bitcoin is Coinbase Custody Trust Company, LLC ("Custodian").⁹ The administrator and transfer agent of the Trust is BNY Mellon Asset Servicing, a division of The Bank of New York Mellon (the "Transfer Agent"). The distribution and marketing agent for the Trust will be Foreside Fund Services, LLC (the "Marketing Agent"). The index provider for the Trust is CoinDesk Indices, Inc. (the "Index Provider").

On January 17, 2019, the Trust submitted to the Commission an amended Form D as a business trust. Shares of the Trust have been quoted on OTC Market's OTCQX Best Marketplace under the symbol "GBTC" since March 26, 2015. On February 22, 2019 and March 20, 2020, the Trust published annual reports for GBTC for the periods ended December 31, 2018 and December 31, 2019, respectively. On May 14, 2019, August 8, 2019, November 14, 2019, May 8, 2020, August 7, 2020 and November 6, 2020, the Trust published quarterly reports for GBTC for the periods ended March 31, 2019, June 30, 2019, September 30, 2019, March 31, 2020, June 30, 2020 and September 30, 2020 respectively. Reports published before January 11, 2020, the date on which the Trust's Shares became registered pursuant to Section 12(g) of the Act, can be found on OTC Market's website (<http://www.otcm Markets.com/stock/GBTC/disclosure>), and reports published on or after January 11, 2020 can be found on OTC Market's website (<http://www.otcm Markets.com/stock/GBTC/disclosure>) and the Commission's website (<https://www.sec.gov/cgi-bin/browse-edgar?CIK=gbtc&owner=exclude&action=getcompany>). The Shares will be of the same class and will have the same rights as Shares of GBTC. Effective October 28, 2014, the Trust suspended its redemption program for shares of GBTC, in which shareholders were permitted to request the redemption of their shares through Genesis Global Trading, Inc. (formerly known as SecondMarket, Inc.), an affiliate of the Sponsor and the Trust. According to the Sponsor, freely tradeable shares of GBTC will remain freely tradeable Shares on the date of the listing of the Shares that are unregistered under the Securities Act. Restricted shares of GBTC will remain subject to private placement restrictions and the holders of such restricted shares will continue to hold those Shares subject to those restrictions until they become freely tradable Shares.

⁷ As of November 14, 2023.

⁸ Based on a discount of 13.4% as of November 14, 2023.

⁹ According to the Annual Report, Digital Currency Group owns a minority interest in Coinbase, Inc., which is the parent company of the Custodian, representing less than 1.0% of its equity.

The Trust is a Delaware statutory trust, organized on September 13, 2013, that operates pursuant to a trust agreement between the Sponsor and the Trustee (“Trust Agreement”). The Trust has no fixed termination date.

Operation of the Trust

According to the Annual Report and Registration Statement, the Trust’s assets consist solely of Bitcoins.¹⁰

Each Share represents a proportional interest, based on the total number of Shares outstanding, in the Trust’s assets as determined by reference to the Index Price,¹¹ less the Trust’s expenses and other liabilities (which include accrued but unpaid fees and expenses). The Sponsor expects that the market price of the Shares will fluctuate over time in response to the market prices of Bitcoin. In addition, because the Shares reflect the estimated accrued but unpaid expenses of the Trust, the number of Bitcoins represented by a Share will gradually decrease over time as the Trust’s Bitcoins are used to pay the Trust’s expenses.

The activities of the Trust will be limited to (i) issuing “Baskets” (as defined below) in exchange for Bitcoins transferred to the Trust as consideration in connection with creations, (ii) transferring or selling Bitcoins as necessary to cover the Sponsor’s Fee¹² and/or certain Trust expenses, (iii) transferring Bitcoins in exchange for Baskets surrendered for redemption (subject to obtaining regulatory approval from the SEC and approval of the Sponsor), (iv) causing the Sponsor to sell Bitcoins on the termination of the Trust, and (v) engaging in all administrative and security procedures necessary to accomplish such activities in accordance with the provisions of the Trust Agreement, the

¹⁰ The Trust may from time to time come into possession of Incidental Rights and/or IR Virtual Currency by virtue of its ownership of Bitcoins, generally through a fork in the Bitcoin Blockchain, an airdrop offered to holders of Bitcoins or other similar event. “Incidental Rights” are rights to acquire, or otherwise establish dominion and control over, any virtual currency or other asset or right, which rights are incident to the Trust’s ownership of Bitcoins and arise without any action of the Trust, or of the Sponsor or Trustee on behalf of the Trust. “IR Virtual Currency” is any virtual currency tokens, or other asset or right, acquired by the Trust through the exercise (subject to the applicable provisions of the Trust Agreement) of any Incidental Right. Although the Trust is permitted to take certain actions with respect to Incidental Rights and IR Virtual Currency in accordance with its Trust Agreement, at this time the Trust will prospectively irrevocably abandon any Incidental Rights and IR Virtual Currency. In the event the Trust seeks to change this position, the Exchange would file a subsequent proposed rule change with the Commission.

¹¹ The “Index Price” means the U.S. dollar value of a Bitcoin derived from the Digital Asset Trading Platforms that are reflected in the CoinDesk Bitcoin Price Index (XBIX) (the “Index”), calculated at 4:00 p.m., New York time, each day. For purposes of the Trust Agreement, the term Bitcoin Index Price has the same meaning as the Index Price as defined herein.

¹² The Sponsor’s Fee means a fee, payable in Bitcoins, which accrues daily in U.S. dollars at an annual rate of currently 2.0%, but which will be lowered in connection with the Trust becoming an ETP, of the NAV Fee Basis Amount of the Trust as of 4:00 p.m., New York time, on each day; provided that for a day that is not a business day, the calculation of the Sponsor’s Fee will be based on the NAV Fee Basis Amount from the most recent business day, reduced by the accrued and unpaid Sponsor’s Fee for such most recent business day and for each day after such most recent business day and prior to the relevant calculation date. The “NAV Fee Basis Amount” is calculated in the manner set forth under “Valuation of Bitcoin and Determination of NAV” below.

Custodian Agreement, the Index License Agreement and the Participant Agreements (each as defined below).

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

Investment Objective

According to the Annual Report and Registration Statement, the Trust's investment objective is for the value of the Shares (based on Bitcoin per Share) to reflect the value of the Bitcoins held by the Trust, determined by reference to the Index Price, less the Trust's expenses and other liabilities.

While an investment in the Shares is not a direct investment in Bitcoin, the Shares are designed to provide investors with a cost-effective and convenient way to gain investment exposure to Bitcoin. Generally speaking, a substantial direct investment in Bitcoin may require expensive and sometimes complicated arrangements in connection with the acquisition, security and safekeeping of the Bitcoin and may involve the payment of substantial fees to acquire such Bitcoin from third-party facilitators through cash payments of U.S. dollars. Because the value of the Shares is correlated with the value of Bitcoin held by the Trust, it is important to understand the investment attributes of, and the market for, Bitcoin.

The Trust uses the Index Price to calculate its "NAV," which is the aggregate value, expressed in U.S. dollars, of the Trust's assets (other than U.S. dollars or other fiat currency), less the U.S. dollar value of the Trust's expenses and other liabilities calculated in the manner set forth under "Valuation of Bitcoin and Determination of NAV." "NAV per Share" is calculated by dividing NAV by the number of Shares then outstanding.

Valuation of Bitcoin and Determination of NAV

The following is a description of the material terms of the Trust Agreement as it relates to valuation of the Trust's Bitcoin and the NAV calculations.¹³

On each business day at 4:00 p.m., New York time, or as soon thereafter as practicable (the "Evaluation Time"), the Sponsor will evaluate the Bitcoins held by the Trust and calculate and publish the NAV of the Trust. To calculate the NAV, the Sponsor will:

1. Determine the Index Price as of such business day.
2. Multiply the Index Price by the Trust's aggregate number of Bitcoins owned by the Trust as of 4:00 p.m., New York time, on the immediately preceding day, less

¹³ While the Sponsor uses the terminology "NAV" in this filing, the term used in the Trust Agreement is "Digital Asset Holdings."

the aggregate number of Bitcoins payable as the accrued and unpaid Sponsor's Fee as of 4:00 p.m., New York time, on the immediately preceding day.

3. Add the U.S. dollar value of Bitcoins, calculated using the Index Price, receivable under pending creation orders, if any, determined by multiplying the number of the Baskets represented by such creation orders by the Basket Amount and then multiplying such product by the Index Price.¹⁴
4. Subtract the U.S. dollar amount of accrued and unpaid Additional Trust Expenses,¹⁵ if any.
5. Subtract the U.S. dollar value of the Bitcoins, calculated using the Index Price, to be distributed under pending redemption orders, if any, determined by multiplying the number of Baskets to be redeemed represented by such redemption orders by the Basket Amount and then multiplying such product by the Index Price (the amount derived from steps 1 through 5 above, the "NAV Fee Basis Amount").
6. Subtract the U.S. dollar amount of the Sponsor's Fee that accrues for such business day, as calculated based on the NAV Fee Basis Amount for such business day.

In the event that the Sponsor determines that the primary methodology used to determine the Index Price is not an appropriate basis for valuation of the Trust's Bitcoins, the Sponsor will utilize the cascading set of rules as described in "Determination of the Index Price When Index Price is Unavailable" below.

Bitcoin and the Bitcoin Network

According to the Annual Report, Bitcoin is a digital asset that is created and transmitted through the operations of the peer-to-peer "Bitcoin Network," a decentralized network of computers that operates on cryptographic protocols. No single entity owns or operates the Bitcoin Network, the infrastructure of which is collectively maintained by a decentralized user base. The Bitcoin Network allows people to exchange tokens of value, called Bitcoin, which are recorded on a public transaction ledger known as a Blockchain.

¹⁴ "Baskets" and "Basket Amount" have the meanings set forth in "Creation and Redemption of Shares" below.

¹⁵ "Additional Trust Expenses" are any expenses incurred by the Trust in addition to the Sponsor's Fee that are not Sponsor-paid expenses, including, but not limited to, (i) taxes and governmental charges, (ii) expenses and costs of any extraordinary services performed by the Sponsor (or any other service provider) on behalf of the Trust to protect the Trust or the interests of shareholders, (iii) any indemnification of the Custodian or other agents, service providers or counterparties of the Trust, (iv) the fees and expenses related to the listing, quotation or trading of the Shares on any marketplace or other alternative trading system, as determined by the Sponsor, on which the Shares may then be listed, quoted or traded, including but not limited to, NYSE Arca, Inc. (including legal, marketing and audit fees and expenses) to the extent exceeding \$600,000 in any given fiscal year and (v) extraordinary legal fees and expenses, including any legal fees and expenses incurred in connection with litigation, regulatory enforcement or investigation matters.

Bitcoin can be used to pay for goods and services, or it can be converted to fiat currencies, such as the U.S. dollar, at rates determined on “Digital Asset Markets”¹⁶ that trade Bitcoin or in individual end-user-to-end-user transactions under a barter system.

The Bitcoin Network is decentralized in that it does not require governmental authorities or financial institution intermediaries to create, transmit or determine the value of Bitcoin. Rather, Bitcoin is created and allocated by the Bitcoin Network protocol through a “mining” process. The value of Bitcoin is determined by the supply of and demand for Bitcoin on the Digital Asset Markets or in private end-user-to-end-user transactions.

New Bitcoin are created and rewarded to the miners of a block in the Blockchain for verifying transactions. The Blockchain is effectively a decentralized database that includes all blocks that have been mined by miners and it is updated to include new blocks as they are solved. Each Bitcoin transaction is broadcast to the Bitcoin Network and, when included in a block, recorded in the Blockchain. As each new block records outstanding Bitcoin transactions, and outstanding transactions are settled and validated through such recording, the Blockchain represents a complete, transparent and unbroken history of all transactions of the Bitcoin Network.

Overview of the Bitcoin Network’s Operations

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

Summary of a Bitcoin Transaction

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

¹⁶ A “Digital Asset Market” is a “Brokered Market,” “Dealer Market,” “Principal-to-Principal Market” or “Exchange Market,” as each such term is defined in the Financial Accounting Standards Board Accounting Standards Codification Master Glossary.

The “Digital Asset Trading Platform Market” is the global trading platform market for the trading of Bitcoins, which consists of transactions on electronic Digital Asset Trading Platforms.

A “Digital Asset Trading Platform” is an electronic marketplace where participants may trade, buy and sell Bitcoins based on bid-ask trading. The largest Digital Asset Trading Platforms are online and typically trade on a 24-hour basis, publishing transaction price and volume data.

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

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

Neither the recipient nor the sender reveal their private keys in a transaction, because the private key authorizes transfer of the funds in that address to other users. Therefore, if a user loses his private key, the user may permanently lose access to the Bitcoin contained in the associated address. Likewise, Bitcoin is irretrievably lost if the private key associated with them is deleted and no backup has been made. When sending Bitcoin, a user’s Bitcoin Network software program must validate the transaction with the associated private key. In addition, since every computation on the Bitcoin Network requires processing power, there is a transaction fee involved with the transfer that is paid by the payor. The resulting digitally validated transaction is sent by the user’s Bitcoin Network software program to the Bitcoin Network miners to allow transaction confirmation.

Bitcoin Network miners record and confirm transactions when they mine and add blocks of information to the Blockchain. When a miner mines a block, it creates that block, which includes data relating to (i) newly submitted and accepted transactions; (ii) a reference to the prior block in the Bitcoin Blockchain; and (iii) the satisfaction of the consensus mechanism to mine the block. The miner becomes aware of outstanding, unrecorded transactions through the data packet transmission and distribution discussed above.

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

Some Bitcoin transactions are conducted “off-blockchain” and are therefore not recorded in the Blockchain. Some “off-blockchain transactions” involve the transfer of control over, or ownership of, a specific digital wallet holding Bitcoin or the reallocation of ownership of certain Bitcoin in a pooled-ownership digital wallet, such as a digital wallet owned by a Digital Asset Trading Platform. In contrast to on-blockchain transactions, which are publicly recorded on the Blockchain, information and data regarding off-

blockchain transactions are generally not publicly available. Therefore, off-blockchain transactions are not truly Bitcoin transactions in that they do not involve the transfer of transaction data on the Bitcoin Network and do not reflect a movement of Bitcoin between addresses recorded in the Blockchain. For these reasons, off-blockchain transactions are subject to risks, as any such transfer of Bitcoin ownership is not protected by the protocol behind the Bitcoin Network or recorded in, and validated through, the blockchain mechanism.

Limits on Bitcoin Supply

The supply of new Bitcoin is mathematically controlled so that the number of Bitcoin grows at a limited rate pursuant to a pre-set schedule. The number of Bitcoin awarded for solving a new block is automatically halved after every 210,000 blocks are added to the Blockchain. Currently, the fixed reward for solving a new block is 6.25 Bitcoin per block and this is expected to decrease by half to become 3.125 Bitcoin after the next 210,000 blocks have entered the Bitcoin Network, which is expected to be mid-2024. This deliberately controlled rate of Bitcoin creation means that the number of Bitcoin in existence will increase at a controlled rate until the number of Bitcoin in existence reaches the pre-determined 21 million Bitcoin. As of September 30, 2023, approximately 19.5 million Bitcoins were outstanding and the date when the 21 million Bitcoin limitation will be reached is estimated to be the year 2140.

Custody of the Trust's Bitcoins

Digital assets and digital asset transactions are recorded and validated on blockchains, the public transaction ledgers of a digital asset network. Each digital asset blockchain serves as a record of ownership for all of the units of such digital asset, even in the case of certain privacy-preserving digital assets, where the transactions themselves are not publicly viewable. All digital assets recorded on a blockchain are associated with a public blockchain address, also referred to as a digital wallet. Digital assets held at a particular public blockchain address may be accessed and transferred using a corresponding private key.

Key Generation

Public addresses and their corresponding private keys are generated by the Custodian in secret key generation ceremonies at secure locations inside faraday cages, which are enclosures used to block electromagnetic fields and thus mitigate against attacks. The Custodian uses quantum random number generators to generate the public and private key pairs.

Once generated, private keys are encrypted, separated into “shards,” and then further encrypted. After the key generation ceremony, all materials used to generate private keys, including computers, are destroyed. All key generation ceremonies are performed offline. No party other than the Custodian has access to the private key shards of the Trust.

Key Storage

Private key shards are distributed geographically in secure vaults around the world, including in the United States. The locations of the secure vaults may change regularly and are kept confidential by the Custodian for security purposes.

The “Digital Asset Account” is a segregated custody account controlled and secured by the Custodian to store private keys, which allows for the transfer of ownership or control of the Trust’s Bitcoins on the Trust’s behalf. The Digital Asset Account uses offline storage, or “cold” storage, mechanisms to secure the Trust’s private keys. The term cold storage refers to a safeguarding method by which the private keys corresponding to digital assets are disconnected and/or deleted entirely from the internet. Cold storage of private keys may involve keeping such keys on a non-networked (or “air-gapped”) computer or electronic device or storing the private keys on a storage device (for example, a USB thumb drive) or printed medium (for example, papyrus, paper or a metallic object). A digital wallet may receive deposits of digital assets but may not send digital assets without use of the digital assets’ corresponding private keys. In order to send digital assets from a digital wallet in which the private keys are kept in cold storage, either the private keys must be retrieved from cold storage and entered into an online, or “hot,” digital asset software program to sign the transaction, or the unsigned transaction must be transferred to the cold server in which the private keys are held for signature by the private keys and then transferred back to the online digital asset software program. At that point, the user of the digital wallet can transfer its digital assets.

Security Procedures

The Custodian is the custodian of the Trust’s private keys (which, as noted above, facilitate the transfer of ownership or control of the Trust’s Bitcoins) in accordance with the terms and provisions of the custodian agreement by and between the Custodian, the Sponsor and the Trust (the “Custodian Agreement”). Transfers from the Digital Asset Account require certain security procedures, including, but not limited to, multiple encrypted private key shards, usernames, passwords and 2-step verification. Multiple private key shards held by the Custodian must be combined to reconstitute the private key to sign any transaction in order to transfer the Trust’s assets. Private key shards are distributed geographically in secure vaults around the world, including in the United States.

As a result, if any one secure vault is ever compromised, this event will have no impact on the ability of the Trust to access its assets, other than a possible delay in operations, while one or more of the other secure vaults is used instead. These security procedures are intended to remove single points of failure in the protection of the Trust’s assets.

Transfers of Bitcoins to the Digital Asset Account will be available to the Trust once processed on the Blockchain.

Subject to obtaining regulatory approval to operate a redemption program and authorization of the Sponsor, the process of accessing and withdrawing Bitcoins from the

Trust to redeem a Basket by an Authorized Participant¹⁷ will follow the same general procedure as transferring Bitcoins to the Trust to create a Basket by an Authorized Participant, only in reverse.

The Sponsor will maintain ownership and control of the Trust's Bitcoin in a manner consistent with good delivery requirements for spot commodity transactions.

Bitcoin Value

Digital Asset Trading Platform Valuation

According to the Annual Report and Registration Statement, the value of Bitcoin is determined by the value that various market participants place on Bitcoin through their transactions. The most common means of determining the value of a Bitcoin is by surveying one or more Digital Asset Trading Platforms where Bitcoin is traded publicly (e.g., Coinbase, Bitstamp, Kraken, and LMAX Digital). Additionally, there are over-the-counter dealers or market makers that transact in Bitcoin.

Digital Asset Trading Platforms Public Market Data

On each online Digital Asset Trading Platforms, Bitcoin is traded with publicly disclosed valuations for each executed trade, measured by one or more fiat currencies such as the U.S. dollar or Euro. Over-the-counter dealers or market makers do not typically disclose their trade data.

As of September 30, 2023, the Digital Asset Trading Platforms included in the Index are Coinbase, Bitstamp, Kraken and LMAX Digital. As further described below, the Sponsor and the Trust reasonably believe each of these Digital Asset Trading Platforms are in material compliance with applicable U.S. federal and state licensing requirements and maintain practices and policies designed to comply with know-your-customer ("KYC"), anti-money-laundering ("AML") regulations.

Coinbase: A U.S.-based trading platform registered as a money services business ("MSB") with the U.S. Department of Treasury's Financial Crimes Enforcement Network ("FinCEN") and licensed as a virtual currency business under the New York State Department of Financial Services ("NYDFS") BitLicense and as a money transmitter in various U.S. states.

Bitstamp: A U.K.-based trading platform registered as an MSB with FinCen and licensed as a virtual currency business under the NYDFS BitLicense and as a money transmitter in various U.S. states.

Kraken: A U.S.-based trading platform registered as an MSB with FinCEN and licensed as a money transmitter in various U.S. states. Kraken does not hold a BitLicense.

¹⁷ "Authorized Participant" has the meaning set forth in "Creation and Redemption of Shares" below.

LMAX Digital: A U.K.-based trading platform registered as a broker with the Financial Conduct Authority. LMAX Digital does not hold a BitLicense.

Currently, there are several Digital Asset Trading Platforms operating worldwide, and online Digital Asset Trading Platforms represent a substantial percentage of Bitcoin buying and selling activity and provide the most data with respect to prevailing valuations of Bitcoins. These trading platforms include established trading platforms such as trading platforms included in the Index, which provide a number of options for buying and selling Bitcoins. The below table reflects the trading volume in Bitcoins and market share¹⁸ of the BTC-U.S. dollar trading pairs of each of the Digital Asset Trading Platforms included in the Index as of September 30, 2023¹⁹ using data reported by the Index Provider from May 1, 2015 to September 30, 2023:

Digital Trading Platforms included in the Index as of September 30, 2023	Volume (BTC)	Market Share
Coinbase	44,082,174	24.33%
Bitstamp	23,391,038	12.91%
Kraken	13,173,711	7.27%
LMAX Digital	8,929,858	4.93%
Total BTC-U.S. dollar trading pair	89,576,781	49.44%

¹⁸ Market share is calculated using trading volume data (in Bitcoins) for certain Digital Asset Trading Platforms, including Coinbase, Bitstamp, Kraken, and LMAX Digital, as well as certain other large U.S.-dollar denominated Digital Asset Trading Platforms that were not included in the Index as of September 30, 2023, including Binance.US (data included from April 1, 2020), Bitfinex, Bitflyer (data included from December 24, 2018), Bittrex (data included from July 31, 2018), Cboe Digital (data included from October 1, 2020), FTX.US (data included from July 1, 2021 through November 10, 2022), Gemini (data included from October 7, 2015), itBit, LakeBTC (data included from May 1, 2015 to June 1, 2018 and from January 27, 2019 to May 6, 2021), HitBTC (data included from April 1, 2019 to March 31, 2020) and OKCoin (data included through March 31, 2023).

¹⁹ On January 19, 2020, the Index Provider removed Bittrex due to a lack of trading volume and added LMAX Digital based on its meeting the liquidity thresholds for inclusion in the Index. On April 6, 2020, the Index Provider removed itBit due to a lack of trading volume and did not add any constituents as part of its scheduled quarterly review. On October 29, 2022, the Index Provider removed Bitstamp from the Index due to its failure to meet the minimum liquidity requirement and added Binance.US as a Constituent Trading Platform based on its satisfaction of the minimum liquidity requirement as part of its scheduled quarterly review. On June 17, 2023, the Index Provider removed Binance.US from the Index, due to Binance.US's announcement that it was suspending U.S. dollar deposits and withdrawals and planned to delist its U.S. dollar trading pairs and did not add any Constituent Trading Platforms as part of its review. Effective July 29, 2023, the Index Provider added Bitstamp to the Index based on its satisfaction of the Index Provider's minimum liquidity requirement and did not remove any Constituent Trading Platforms as part of its scheduled quarterly review. On October 28, 2023, the Index Provider added Crypto.com to the Index based on its satisfaction of the Index Provider's minimum liquidity requirement and did not remove any Constituent Trading Platforms as part of its scheduled quarterly review.

The domicile, regulation, and legal compliance of the Digital Asset Trading Platforms included in the Index varies. Information regarding each Digital Asset Trading Platform may be found, where available, on the websites for such Digital Asset Trading Platforms, among other places.

The Index and the Index Price

The Index is a U.S. dollar-denominated composite reference rate for the price of Bitcoin. The Index is designed to (i) mitigate the effects of fraud, manipulation and other anomalous trading activity from impacting the Bitcoin reference rate, (ii) provide a real-time, volume-weighted fair value of Bitcoin and (iii) appropriately handle and adjust for non-market related events.

The Index Price is determined by the Index Provider through a process in which trade data is cleansed and compiled in such a manner as to algorithmically reduce the impact of anomalous or manipulative trading. This is accomplished by adjusting the weight of each data input based on price deviation relative to the observable set, as well as recent and long-term trading volume at each venue relative to the observable set.

The value of the Index is calculated and disseminated on a 24-hour basis and will be available on a continuous basis at <https://www.coindesk.com/indices>.

Constituent Trading Platform Selection

According to the Annual Report and Registration Statement, the Digital Asset Trading Platforms that are included in the Index are selected by the Index Provider utilizing a methodology that is guided by the International Organization of Securities Commissions (“IOSCO”) principles for financial benchmarks. For a trading platform to become a Digital Asset Trading Platform included in the Index (a “Constituent Trading Platform”), it must satisfy the criteria listed below (the “Inclusion Criteria”):

- Sufficient USD liquidity relative to the size of the listed assets;
- No evidence in the past 12 months of trading restrictions on individuals or entities that would otherwise meet the trading platform’s eligibility requirements to trade;
- No evidence in the past 12 months of undisclosed restrictions on deposits or withdrawals from user accounts;
- Real-time price discovery;
- Limited or no capital controls;²⁰
- Transparent ownership including a publicly-owned ownership entity;
- Publicly available language and policies addressing legal and regulatory compliance in the US, including KYC (Know Your Customer), AML (Anti-Money Laundering) and other policies designed to comply with relevant regulations that might apply to it;

²⁰

“Capital controls” in this context means governmental sanctions that would limit the movement of capital into, or out of, the jurisdiction in which such Digital Asset Trading Platforms operate.

- Be a US-domiciled trading platform or a non-US domiciled trading platform that is able to service US investors;
- Offer programmatic spot trading of the trading pair,²¹ and reliably publish trade prices and volumes on a real-time basis through Rest and Websocket APIs.

A Digital Asset Trading Platform is removed from the Constituent Trading Platforms when it no longer satisfies the Inclusion Criteria. The Index Provider does not currently include data from non-Digital Asset Trading Platforms (or over-the-counter markets) or derivatives platforms among the Constituent Trading Platforms. According to the Annual Report and Registration Statement, over-the-counter data is not currently included because of the potential for trades to include a significant premium or discount paid for larger liquidity, which creates an uneven comparison relative to more active markets. There is also a higher potential for over-the-counter transactions to not be arms-length, and thus not be representative of a true market price. Bitcoin derivative markets data, including Bitcoin futures markets and perpetuals markets data, are also not currently included as the markets remain relatively thin. The Index Provider will consider IOSCO principles for financial benchmarks and the management of trading venues of Bitcoin derivatives and the aforementioned Inclusion Criteria when considering inclusion of over-the-counter or derivative platform data in the future.

The Index Provider and the Sponsor have entered into the index license agreement, dated as of February 1, 2022 (as amended, the “Index License Agreement”), governing the Sponsor’s use of the Index Price.²² Pursuant to the terms of the Index License Agreement, the Index Provider may adjust the calculation methodology for the Index Price without notice to, or consent of, the Trust or its shareholders. The Index Provider may decide to change the calculation methodology to maintain the integrity of the Index Price calculation should it identify or become aware of previously unknown variables or issues with the existing methodology that it believes could materially impact its performance and/or reliability. The Index Provider has sole discretion over the determination of Index Price and may change the methodologies for determining the Index Price from time to time. Shareholders will be notified of any material changes to the calculation methodology or the Index Price in the Trust’s current reports and will be notified of all other changes that the Sponsor considers significant in the Trust’s periodic or current reports. The Trust will determine the materiality of any changes to the Index Price on a case-by-case basis, in consultation with external counsel.

The Index Provider may change the trading venues that are used to calculate the Index or otherwise change the way in which the Index is calculated at any time. For example, the Index Provider has scheduled quarterly reviews in which it may add or remove Constituent Trading Platforms that satisfy or fail the Inclusion Criteria. The Index Provider does not have any obligation to consider the interests of the Sponsor, the Trust,

²¹ Trading platforms with programmatic trading offer traders an application programming interface that permits trading by sending programmed commands to the trading platform.

²² Upon entering into the Index License Agreement, the Sponsor and the Index Provider terminated the license agreement between the parties dated as of February 28, 2019.

the shareholders, or anyone else in connection with such changes. Although the Index Provider is not required to publicize or explain the changes or to alert the Sponsor to such changes, it has historically notified the Trust (and other subscribers to the Index) of any material changes to the Constituent Trading Platforms, including any additions or removals, contemporaneous with its issuance of press releases in connection with the same. The Sponsor will notify investors of any such material event by filing a current report on Form 8-K. Although the Index methodology is designed to operate without any manual intervention, rare events would justify manual intervention. Intervention of this kind would be in response to non-market-related events, such as the halting of deposits or withdrawals of funds on a Digital Asset Trading Platform, the unannounced closure of operations on a Digital Asset Trading Platform, insolvency or the compromise of user funds. In the event that such an intervention is necessary, the Index Provider would issue a public announcement through its website, API and other established communication channels with its clients.

Determination of the Index Price

The Index applies an algorithm to the price of Bitcoin on the Constituent Trading Platforms calculated on a per second basis over a 24-hour period. The Index's algorithm is expected to reflect a four-pronged methodology to calculate the Index Price from the Constituent Trading Platforms:

- Volume Weighting: Constituent Trading Platforms with greater liquidity receive a higher weighting in the Index, increasing the ability to execute against (i.e., replicate) the Index in the underlying spot markets.
- Price-Variance Weighting: The Index Price reflects data points that are discretely weighted in proportion to their variance from the rest of the Constituent Trading Platforms. As the price at a particular trading platform diverges from the prices at the rest of the Constituent Trading Platforms, its weight in the Index Price consequently decreases.
- Inactivity Adjustment: The Index Price algorithm penalizes stale activity from any given Constituent Trading Platform. When a Constituent Trading Platform does not have recent trading data, its weighting in the Index Price is gradually reduced until it is de-weighted entirely. Similarly, once trading activity at a Constituent Trading Platform resumes, the corresponding weighting for that Constituent Trading Platform is gradually increased until it reaches the appropriate level.
- Manipulation Resistance: In order to mitigate the effects of wash trading and order book spoofing, the Index only includes executed trades in its calculation. Additionally, the Index only includes Constituent Trading Platforms that charge trading fees to its users in order to attach a real, quantifiable cost to any manipulation attempts.

The Index Provider re-evaluates the weighting algorithm on a periodic basis, but maintains discretion to change the way in which an Index Price is calculated based on its periodic review or in extreme circumstances and does not make the exact methodology to calculate the Index Price publicly available. Nonetheless, the Sponsor believes that, the Index is designed to limit exposure to trading or price distortion of any individual Digital Asset Trading Platform that experiences periods of unusual activity or limited liquidity by discounting, in real-time, anomalous price movements at individual Digital Asset Trading Platforms.

The Sponsor believes the Index Provider's selection process for Constituent Trading Platforms as well as the methodology of the Index Price's algorithm provides a more accurate picture of Bitcoin price movements than a simple average of Digital Asset Trading Platform spot prices, and that the weighting of Bitcoin prices on the Constituent Trading Platforms limits the inclusion of data that is influenced by temporary price dislocations that may result from technical problems, limited liquidity or fraudulent activity elsewhere in the Bitcoin spot market. By referencing multiple trading venues and weighting them based on trade activity, the Sponsor believes that the impact of any potential fraud, manipulation or anomalous trading activity occurring on any single venue is reduced.

If the Index Price becomes unavailable, or if the Sponsor determines in good faith that such Index Price does not reflect an accurate price for Bitcoin, then the Sponsor will, on a best efforts basis, contact the Index Provider to obtain the Index Price directly from the Index Provider. If after such contact such Index Price remains unavailable or the Sponsor continues to believe in good faith that such Index Price does not reflect an accurate price for the relevant digital asset, then the Sponsor will employ a cascading set of rules to determine the Index Price, as described below in "Determination of the Index Price When Index Price is Unavailable."

The Trust values its Bitcoin for operational purposes by reference to the Index Price. The Index Price is the value of a Bitcoin as represented by the Index, calculated at 4:00 p.m., New York time, on each business day.

Illustrative Example

For the purposes of illustration, outlined below are examples of how the attributes that impact weighting and adjustments in the aforementioned methodology may be utilized to generate the Index Price for a digital asset. For example, the Constituent Trading Platforms for the Index Price for a digital asset are Coinbase, Kraken, LMAX Digital and Bitstamp.

The Index Price algorithm, as described above, accounts for manipulation at the outset by only including data from executed trades on Constituent Trading Platforms that charge trading fees. Then, the below-listed elements may impact the weighting of the Constituent Trading Platforms on the Index price as follows:

- Volume Weighting: Each Constituent Trading Platform will be weighted to appropriately reflect the trading volume share of the Constituent Trading Platform relative to all the Constituent Trading Platforms during this same period. For example, an average hourly weighting of 67.06%, 14.57%, 11.88% and 6.49% for Coinbase, Kraken, LMAX Digital and Bitstamp, respectively, would represent each Constituent Trading Platform's share of trading volume during the same period.
- Inactivity Adjustment: Assume that a Constituent Trading Platform represented a 14% weighting on the Index Price of the digital asset, which is based on the per-second calculations of its trading volume and price-variance relative to the cohort of Constituent Trading Platforms included in such Index, and then went offline for approximately two hours. The index algorithm would automatically recognize inactivity and start de-weighting the Constituent Trading Platform at the 3-minute mark and continue to do so over a 7-minute period until its influence was effectively zero, 10 minutes after becoming inactive. As soon as trading activity resumed at the Constituent Trading Platform, the index algorithm would re-weight it to the appropriate weighting based on trading volume and price-variance relative to the cohort of Constituent Trading Platforms included in the Index. Due to the period of inactivity, it would re-weight the Constituent Trading Platform activity to a weight lower than its original weighting—for example, to 12%.
- Price-Variance Weighting: Assume that for a one-hour period, the digital asset's execution prices on one Constituent Trading Platform were trading more than 7% higher than the average execution prices on another Constituent Trading Platform. The algorithm will automatically detect the anomaly and reduce that specific Constituent Trading Platform's weighting to 0% for that one-hour period, ensuring a reliable spot reference unaffected by the localized event.

Determination of the Index Price When Index Price is Unavailable

The Sponsor uses the following cascading set of rules to calculate the Index Price when the Index Price is unavailable.²³ For the avoidance of doubt, the Sponsor will employ the below rules sequentially and in the order as presented below, should one or more specific rule(s) fail.

1. Index Price = The price set by the Index as of 4:00 p.m., New York time, on the valuation date.²⁴ If the Index becomes unavailable, or if the Sponsor determines in good faith that the Index does not reflect an accurate price, then the Sponsor will,

²³ The Sponsor updated these rules on January 11, 2022.

²⁴ The valuation date is any day for which the value of the Bitcoin in the Trust may be calculated utilizing the Index Price. This calculation may be performed on business days for creation or redemption procedures or on non-business days in relation to calculating information that may be included in SEC reports comparing the GAAP and non-GAAP prices on period end dates that are non-business days. The cascading rule set is consistent for determining the value of the Bitcoin in the Trust on both business days and non-business days.

on a best efforts basis, contact the Index Provider to obtain the Index Price directly from the Index Provider. If after such contact the Index remains unavailable or the Sponsor continues to believe in good faith that the Index does not reflect an accurate price, then the Sponsor will employ the next rule to determine the Index Price. There are no predefined criteria to make a good faith assessment and it will be made by the Sponsor in its sole discretion.

2. Index Price = The price set by Coin Metrics Real-Time Rate (the “Secondary Index”) as of 4:00 p.m., New York time, on the valuation date (the “Secondary Index Price”). The Secondary Index Price is a real-time reference rate price, calculated using trade data from constituent markets selected by Coin Metrics (the “Secondary Index Provider”). The Secondary Index Price is calculated by applying weighted-median techniques to such trade data where half the weight is derived from the trading volume on each constituent market and half is derived from inverse price variance, where a constituent market with high price variance as a result of outliers or market anomalies compared to other constituent markets is assigned a smaller weight. If the Secondary Index becomes unavailable, or if the Sponsor determines in good faith that the Secondary Index does not reflect an accurate price, then the Sponsor will, on a best efforts basis, contact the Secondary Index Provider to obtain the Secondary Index Price directly from the Secondary Index Provider. If after such contact the Secondary Index remains unavailable or the Sponsor continues to believe in good faith that the Secondary Index does not reflect an accurate price, then the Sponsor will employ the next rule to determine the Index Price. There are no predefined criteria to make a good faith assessment and it will be made by the Sponsor in its sole discretion.
3. Index Price = The price set by the Trust’s principal market (as defined in the Annual Report) (the “Tertiary Pricing Option”) as of 4:00 p.m., New York time, on the valuation date. The Tertiary Pricing Option is a spot price derived from the principal market’s public data feed that is believed to be consistently publishing pricing information as of 4:00 p.m., New York time, and is provided to the Sponsor via an application programming interface. If the Tertiary Pricing Option becomes unavailable, or if the Sponsor determines in good faith that the Tertiary Pricing Option does not reflect an accurate price, then the Sponsor will, on a best efforts basis, contact the Tertiary Pricing Provider to obtain the Tertiary Pricing Option directly from the Tertiary Pricing Provider. If after such contact the Tertiary Pricing Option remains unavailable after such contact or the Sponsor continues to believe in good faith that the Tertiary Pricing Option does not reflect an accurate price, then the Sponsor will employ the next rule to determine the Index Price. There are no predefined criteria to make a good faith assessment and it will be made by the Sponsor in its sole discretion.
4. Index Price = The Sponsor will use its best judgment to determine a good faith estimate of the Index Price. There are no predefined criteria to make a good faith assessment and it will be made by the Sponsor in its sole discretion.

In the event of a fork, the Index Provider may calculate the Index Price based on a digital asset that the Sponsor does not believe to be an appropriate asset of the Trust (*i.e.*, a digital asset other than Bitcoin).²⁵ In this event, the Sponsor has full discretion to use a different index provider or calculate the Index Price itself using its best judgment. In such an event, the Exchange will submit a proposed rule filing to contemplate the assets that would subsequently be held by the Trust.²⁶

The Sponsor may, in its sole discretion, select a different index provider, select a different index price provided by the Index Provider, calculate the Index Price by using the cascading set of rules set forth above, or change the cascading set of rules set forth above at any time.²⁷

The Impact of the Approval of Bitcoin Futures ETFs and ETPs on Spot Bitcoin ETPs Like the Trust

On October 19, 2021, the date of the Exchange's initial submission of this proposed rule change,²⁸ the first Bitcoin-based exchange-traded fund ("ETF") was approved by the Commission for trading.²⁹ Additional Bitcoin-based ETFs and ETPs were subsequently

²⁵ According to the Annual Report, when a modification is introduced and a substantial majority of users and miners consent to the modification, the change is implemented and the network remains uninterrupted. However, if less than a substantial majority of users and miners consent to the proposed modification, and the modification is not compatible with the software prior to its modification, the consequence would be what is known as a "hard fork" of the Bitcoin Network, with one group running the pre-modified software and the other running the modified software. The effect of such a fork would be the existence of two versions of Bitcoin running in parallel, yet lacking interchangeability. For example, in August 2017, Bitcoin "forked" into Bitcoin and a new digital asset, Bitcoin Cash, as a result of a several-year dispute over how to increase the rate of transactions that the Bitcoin Network can process. In the event of a hard fork of the Bitcoin Network, the Sponsor will, consistent with its obligations pursuant to the Trust Agreement, use its discretion to determine, in good faith, which peer-to-peer network, among a group of incompatible forks of the Bitcoin Network, is generally accepted as the Bitcoin Network and should therefore be considered the appropriate network for the Trust's purposes. The Sponsor will base its determination on a variety of then relevant factors, including, but not limited to, the Sponsor's beliefs regarding expectations of the core developers of Bitcoin, users, services, businesses, miners, and other constituencies, as well as the actual continued acceptance of, mining power on, and community engagement with, the Bitcoin Network. There is no guarantee that the Sponsor will choose the digital asset that is ultimately the most valuable fork, and the Sponsor's decision may adversely affect the value of the Shares as a result. The Sponsor may also disagree with shareholders, security vendors, and the Index Provider on what is generally accepted as Bitcoin and should therefore be considered "Bitcoin" for the Trust's purposes, which may also adversely affect the value of the Shares as a result.

²⁶ See supra note 10.

²⁷ The Sponsor will provide notice of any such changes in the Trust's periodic or current reports and, if the Sponsor makes such a change other than on an ad hoc or temporary basis, it will file a proposed rule change under Section 19(b) with the Commission.

²⁸ See Securities Exchange Act Release No. 93504 (November 2, 2021), 86 FR 61804 (November 8, 2021) (Notice of Filing of Proposed Rule Change To List and Trade Shares of the Grayscale Bitcoin Trust (BTC) Under NYSE Arca Rule 8.201-E).

²⁹ ProShares Bitcoin Strategy ETF (BITO).

approved for trading.³⁰ All of those approved ETFs and ETPs hold Bitcoin futures contracts that trade on the CME and many settle using the CME CF Bitcoin Reference Rate (“BRR”), which is priced based on the spot Bitcoin markets Coinbase, Kraken, LMAX, Bitstamp, Gemini, and itBit, essentially the same spot markets that are included in the Index that the Trust uses to value its Bitcoin holdings. Given that the Commission has approved ETFs and ETPs that offer exposure to Bitcoin futures, which themselves are priced based on the underlying spot Bitcoin market, the Sponsor believes that the Commission must also approve ETPs that offer exposure to spot Bitcoin, like the Trust.

The Commission has historically sought to justify treating futures-based ETFs and ETPs differently from spot-based ETPs because of (i) distinctions between the regulations under which the two products would be registered (the Investment Company Act of 1940 (the “’40 Act”) for digital-asset futures ETFs and ’33 Act for spot digital-asset ETPs) and/or (ii) the existence of regulation and surveillance-sharing over the CME digital-asset futures market through the Intermarket Surveillance Group (“ISG”), as compared to the spot market for those digital assets.³¹ The Sponsor believes that this reasoning is unsupported for the following reasons.

The ’40 Act offers no more investor protections than the ’33 Act in the context of Bitcoin-based ETF and ETP proposals

While the ’40 Act has certain added investor protections that the ’33 Act does not require, these protections do not seek to allay harms arising from underlying assets or markets of assets that ETFs hold, such as the potential for fraud or manipulation in such markets. In other words, the Sponsor does not believe that the application of the ’40 Act supports the purported justifications the Commission has made in denying other spot digital asset ETPs. Instead, the ’40 Act seeks to remedy certain abusive practices in the *management* of investment companies such as ETFs, and thus places certain restrictions on ETFs and ETF sponsors. The ’40 Act explicitly lists out the types of abuses it seeks to prevent, and places certain restrictions related to accounting, borrowing, custody, fees, and independent boards, among others. Notably, none of these restrictions address an ETF’s underlying assets, whether Bitcoin futures or spot Bitcoin, or the markets from which

³⁰ See, e.g., Securities Exchange Act Release No. 94620 (April 6, 2022), 87 FR 21676 (April 12, 2022) (SR-NYSEArca-2021-53) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of the Teucrium Bitcoin Futures Fund under NYSE ARCA Rule 8.200-E, Commentary .02 (Trust Issued Receipts)) (“Teucrium Order”); VanEck Bitcoin Strategy ETF (XBTF); Valkyrie Bitcoin Strategy ETF (BTF).

³¹ See, e.g., Chair Gary Gensler Public Statement, “Remarks Before the Aspen Security Forum,” (August 3, 2021), stating that the Chair looked forward to the Commission’s review of Bitcoin-based ETF proposals registered under the ’40 Act, “particularly if those are limited to [the] CME-traded Bitcoin futures,” noting the “significant investor protection” offered by the ’40 Act, <https://www.sec.gov/news/public-statement/gensler-aspen-security-forum-2021-08-03>; Securities Exchange Act Release No. 93559 (November 12, 2021), 86 FR 64539 (November 18, 2021) (SR-CboeBZX-2021-019) (Order Disapproving a Proposed Rule Change to List and Trade Shares of the VanEck Bitcoin Trust under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares) (“VanEck Order”) (denying the first spot bitcoin ETP registered under the ’33 Act following the first approval of a bitcoin futures ETF registered under the ’40 Act, noting the differences in the standard of review that applies to such products); Teucrium Order (approving the first bitcoin futures ETP registered under the ’33 Act).

such assets' pricing is derived, whether the CME Bitcoin futures market or spot Bitcoin markets. As a result, the Sponsor believes that the distinction between registration of Bitcoin futures ETFs under the '40 Act and the registration of spot Bitcoin ETPs under the '33 Act is one without a difference in the context of Bitcoin-based ETP proposals.

Indeed, the Sponsor believes that the Commission implicitly confirmed as much in the April 2022 Teucrium Order.³² Much like prior approved Bitcoin-based ETFs, the Teucrium ETP holds only Bitcoin futures, rather than spot Bitcoin. *Unlike* previous filings, however, the Teucrium ETP was filed under the '33 Act, rather than the '40 Act. The Sponsor believes that, by approving the Teucrium ETP, the Commission has indicated that registration under the '40 Act and the registration under the '33 Act is a distinction without a difference.

Surveillance-sharing with the CME Bitcoin futures market is sufficient to protect against fraud and manipulation in the underlying spot Bitcoin market

The Sponsor believes that, because the CME Bitcoin futures market is priced based on the underlying spot Bitcoin market, any fraud or manipulation in the spot market would necessarily affect the price of Bitcoin futures, thereby affecting the net asset value of an ETP holding spot Bitcoin or an ETF holding Bitcoin futures, as well as the price investors pay for such product's shares.

This conclusion has been corroborated by a study conducted by Professor Robert E. Whaley, a finance professor and expert on derivative contract valuation, which found that the BRR, the index underlying many of the Bitcoin-futures based ETFs, and the Index underlying the Trust, are near perfect substitutes.³³ In fact, according to the study, there is a 99.9% correlation between prices in the Bitcoin futures market and the spot Bitcoin market.

Nevertheless, the Commission denied the Exchange's original proposed rule change.³⁴ In its petition for review in the D.C. Circuit challenging the Grayscale Order, the Sponsor argued that the Trust and the approved Bitcoin futures ETPs (the Teucrium and Valkyrie

³² Teucrium Order, 87 FR at 21678 (“With respect to the proposed ETP, the underlying bitcoin assets are CME bitcoin futures contracts. The relevant analysis, therefore, is whether Arca has a comprehensive surveillance sharing agreement with a regulated market of significant size related to CME bitcoin futures contracts. As discussed below, taking into consideration the direct relationship between the regulated market with which Arca has a surveillance-sharing agreement and the assets held by the proposed ETP, as well as developments with respect to the CME bitcoin futures market—including the launch of exchange-traded funds registered under the Investment Company Act of 1940 (‘1940 Act’) that hold CME bitcoin futures (‘Bitcoin Futures ETFs’)—the Commission concludes that the Exchange has the requisite surveillance-sharing agreement.”).

³³ See Comment Letter from Robert E. Whaley (May 25, 2022), available at: <https://www.sec.gov/comments/sr-nysearca-2021-90/srnysearca202190-20129557-295794.pdf>.

³⁴ See Securities Exchange Act Release No. 95180 (June 29, 2022), 87 FR 40299 (July 6, 2022) (SR-NYSEArca-2021-90) (Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Share of Grayscale Bitcoin Trust Under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares)) (“Grayscale Order”).

Futures ETPs) rely on nearly identical sets of spot-market Bitcoin pricing data to calculate the value of their holdings.³⁵ The D.C. Circuit agreed — in the court’s unanimous decision vacating the Grayscale Order, the Court held the Sponsor “presented uncontested evidence that there is a 99.9 percent correlation between bitcoin’s spot market and CME futures contract prices” and that the “tight correlation is not a coincidence: bitcoin futures prices are ultimately based on spot market prices.”³⁶ In fact, the Court held the Sponsor’s proposed spot Bitcoin ETP and approved Bitcoin futures ETPs, were “materially similar across relevant regulatory factors.”³⁷

Given the similarity between the two types of products, the Sponsor believes that it must be the case that CME surveillance can either detect spot-market fraud that affects both futures ETFs and spot ETPs, or that such surveillance cannot do so for either type of product. Having approved Bitcoin futures ETFs in part on the basis of such surveillance, the Commission has clearly determined that CME surveillance can detect spot-market fraud that would affect spot ETPs, and the Sponsor thus believes that it must also approve spot Bitcoin ETPs on that basis.

In summary, the Sponsor believes that the distinctions between the ’40 Act and the ’33 Act, and the surveillance-sharing available for the CME Bitcoin futures market versus the spot Bitcoin market, are not meaningful in the context of Bitcoin-based ETF and ETP proposals, and that such reasoning cannot be a basis for the Commission treating Bitcoin futures ETFs differently from spot Bitcoin ETPs like the Trust. The Sponsor believes that the Commission’s approval of Bitcoin futures ETFs means it must also approve spot Bitcoin ETPs like the Trust.

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

Even if the Commission had not approved Bitcoin futures ETFs and ETPs, the Sponsor still believes the Commission should approve the listing and trading of Shares of the Trust. The Commission has expressed legitimate concerns about the underlying Digital Asset Market due to the potential for fraud and manipulation and has clearly outlined the reasons why prior Bitcoin-based ETP proposals have been unable to satisfy these concerns in orders disapproving the proposed listing and trading of the Winklevoss

³⁵ *Grayscale Investments, LLC v. Securities and Exchange Commission* (“Grayscale v. SEC”), No. 22-1142, Brief of Petitioner Grayscale Investments, LLC (October 11, 2022).

³⁶ *Grayscale v. SEC*, No. 22-1142, Opinion at 10 (August 29, 2023) (“Grayscale presented uncontested evidence that there is a 99.9 percent correlation between bitcoin’s spot market and CME futures contract prices. This tight correlation is not a coincidence: bitcoin futures prices are ultimately based on spot market prices. Bitcoin futures trade based on predicted settlement prices that are in turn calculated using the Bitcoin Reference Rate. The Reference Rate, like the CoinDesk Index, aggregates spot prices from multiple exchanges. Four of the six exchanges are shared between the indexes. A study conducted by a finance professor and expert on derivative contract valuation found the CoinDesk Index and the Reference Rate are ‘near perfect substitutes.’”) (internal citations omitted).

³⁷ *Id.* at 11.

Bitcoin Trust, Bitwise Bitcoin ETF Trust, United States Bitcoin and Treasury Investment Trust, and various Bitcoin-based trust issued receipts.³⁸

In these disapproval orders, the Commission outlined that a proposal relating to a Bitcoin-based ETP could satisfy its concerns regarding potential for fraud and manipulation by demonstrating:

- 1) Inherent Resistance to Fraud and Manipulation: that the underlying commodity market is inherently resistant to fraud and manipulation;
- 2) Other Means to Prevent Fraud and Manipulation: that there are other means to prevent fraudulent and manipulative acts and practices that are sufficient; or
- 3) Surveillance Sharing: that the listing exchange has entered into a surveillance sharing agreement with a regulated market of significant size relating to the underlying or reference assets.

As described below, the Sponsor believes the structure and operation of the Trust are designed to prevent fraudulent and manipulative acts and practices, to protect investors and the public interest, and to respond to the specific concerns that the Commission has identified with respect to potential fraud and manipulation in the context of a Bitcoin-based ETP.

How the Trust Meets Standards in the Winklevoss Order, Bitwise Order and Wilshire Phoenix Order and Vacated Grayscale Order

1. Resistance to or Prevention of Fraud and Manipulation

³⁸ See Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To List and Trade Shares of the Winklevoss Bitcoin Trust, Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (Aug. 1, 2018) (SR-BatsBZX-2016-30) (the “Winklevoss Order”); Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the Bitwise Bitcoin ETF Trust Under NYSE Arca Rule 8.201-E, Securities Exchange Act Release No. 87267 (Oct. 9, 2019), 84 FR 55382 (Oct. 16, 2019) (SR-NYSEArca-2019-01) (the “Bitwise Order”); Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, to Amend NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) and to List and Trade Shares of the United States Bitcoin and Treasury Investment Trust Under NYSE Arca Rule 8.201-E, Securities Exchange Act Release No. 88284 (February 26, 2020), 85 FR 12595 (March 3, 2020) (SR-NYSEArca-2019-39) (the “Wilshire Phoenix Order”); Order Disapproving a Proposed Rule Change to List and Trade the Shares of the ProShares Bitcoin ETF and the ProShares Short Bitcoin ETF, Securities Exchange Act Release No. 83904 (Aug. 22, 2018), 83 FR 43934 (Aug. 28, 2018) (SR-NYSEArca-2017-139) (the “ProShares Order”); Order Disapproving a Proposed Rule Change Relating to Listing and Trading of the Direxion Daily Bitcoin Bear 1X Shares, Direxion Daily Bitcoin 1.25X Bull Shares, Direxion Daily Bitcoin 1.5X Bull Shares, Direxion Daily Bitcoin 2X Bull Shares, and Direxion Daily Bitcoin 2X Bear Shares Under NYSE Arca Rule 8.200-E, Securities Exchange Act Release No. 83912 (Aug. 22, 2018), 83 FR 43912 (Aug. 28, 2018) (SR-NYSEArca-2018-02) (the “Direxion Order”); Order Disapproving a Proposed Rule Change to List and Trade the Shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF, Securities Exchange Act Release No. 83913 (Aug. 22, 2018), 83 FR 43923 (Aug. 28, 2018) (SR-CboeBZX-2018-01) (the “GraniteShares Order”).

In the Bitwise Order, the Commission disagreed with the proposition that Bitcoin’s fungibility, transportability and exchange tradability combine to provide unique protections against, and allow Bitcoin to be uniquely resistant to, attempts at price manipulation. The Commission reached its conclusion based on concessions by Bitwise that 95% of the reported trading in Bitcoin is “fake” or non-economic, effectively admitting that the properties of Bitcoin do not make it inherently resistant to manipulation. Bitwise’s concessions were further compounded by evidence of potential and actual fraud and manipulation in the historical trading of Bitcoin on certain marketplaces such as (1) “wash” trading, (2) trading based on material, non-public information, including the dissemination of false and misleading information, (3) manipulative activity involving Tether, and (4) fraud and manipulation.³⁹

The Sponsor acknowledges the possibility that fraud and manipulation may exist and that Bitcoin trading *on any given exchange* may be no more uniquely resistant to fraud and manipulation than other commodity markets.⁴⁰ However, the Sponsor believes that the fundamental features of Bitcoin’s fungibility, transportability and exchange tradability offer novel protections beyond those that exist in traditional commodity markets or equity markets when combined with other means, as discussed further below.

2. *Other Means to Prevent Fraud and Manipulation*

The Commission has recognized 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.⁴¹ In evaluating the effectiveness of this type of resistance, the Commission does not apply a “cannot be manipulated” standard. Instead, the Commission requires that such resistance to fraud and manipulation be novel and beyond those protections that exist in traditional commodity markets or equity markets for which the Commission has long required surveillance-sharing agreements in the context of listing derivative securities products.⁴²

The Sponsor believes the Index represents a novel means to prevent fraud and manipulation from impacting a reference price for Bitcoin and that it offers protections beyond those that exist in traditional commodity markets or equity markets. Specifically, Bitcoin is novel and exists outside traditional commodity markets. It therefore stands to

³⁹ See Bitwise Order, 84 FR at 55383 (discussing analysis of the Bitcoin spot market that asserts that 95% of the spot market is dominated by fake and non-economic activity, such as wash trades), 55391 (discussing possible sources of fraud and manipulation in the bitcoin spot market). See also Winklevoss Order, 83 FR at 37585–86 (discussing pending litigation against a Bitcoin trading platform for fraudulent conduct relating to Tether); Bitwise Order, 84 FR at 55391 n.140, 55402 & n.331 (same); Winklevoss Order, 83 FR at 37584–86 (discussing potential types of manipulation in the Bitcoin spot market). The Commission has also noted that fraud and manipulation in the Bitcoin spot market could persist for a significant duration. See, e.g., Bitwise Order, 84 FR at 55405 & n.379.

⁴⁰ See generally Bitwise Order.

⁴¹ See Winklevoss Order, 84 FR at 37580, 37582-91; Bitwise Order, 84 FR at 55383, 55385-406; Wilshire Phoenix Order, 85 FR at 12597.

⁴² See Winklevoss Order, 84 FR at 37582; Wilshire Phoenix Order, 85 FR at 12597.

reason that the methods in which it trades will be novel and that the market for Bitcoin will have different attributes than traditional commodity markets. Bitcoin was only introduced within the past decade, twenty years after the first U.S. ETFs were offered⁴³ and 150 years after the first futures were offered.⁴⁴ In contrast to older commodities such as gold, silver, platinum, palladium or copper, which the Commission has noted all had at least one significant, regulated market for trading futures on the underlying commodity at the time commodity trust ETPs were approved for listing and trading, the first trading in Bitcoin took place entirely in an open, transparent and online setting where other commodities cannot trade.

The Trust has priced its Shares consistently for more than seven years based on the Index. The Sponsor believes the Trust's use of the Index specifically addresses the Commission's concerns in that the Index serves as an alternative means to prevent fraud and manipulation. Specifically, the Index can (i) mitigate the effects of fraud, manipulation and other anomalous trading activity on the Bitcoin reference rate, (ii) provide a real-time, volume-weighted fair value of Bitcoin and (iii) appropriately handle and adjust for non-market related events.

As described in more detail below, the Sponsor believes that the Index accomplishes those objectives in the following ways:

1. The Index tracks the Digital Asset Trading Platform Market price through trading activity at "U.S.-Compliant Trading Platforms";⁴⁵

⁴³ SEC, "Investor Bulletin: Exchange-Traded Funds (ETFs)," August 2012, <https://www.sec.gov/investor/alerts/etfs.pdf>.

⁴⁴ Commodity Futures Trading Commission ("CFTC"), "History of the CFTC," https://www.cftc.gov/About/HistoryoftheCFTC/history_precftc.html

⁴⁵ "U.S.-Compliant Trading Platforms" are trading platforms in the Digital Asset Trading Platform Market in material compliance with applicable U.S. federal and state licensing requirements and maintain practices and policies designed to comply with AML and KYC regulations. All Constituent Trading Platforms are U.S.-Compliant Trading Platforms.

"Non-U.S.-Compliant Trading Platforms" are all other trading platforms in the Digital Asset Trading Platform Market.

As of September 30, 2023, the U.S.-Compliant Trading Platforms that the Index Provider considered for inclusion in the Index were Coinbase, Bitstamp, Kraken and LMAX Digital. On October 29, 2022, the Index Provider removed Bitstamp due to its failure to meet the minimum liquidity requirement and added Binance.US as a Constituent Trading Platform based on its satisfaction of the minimum liquidity requirement as part of its scheduled quarterly review. On June 17, 2023, the Index Provider removed Binance.US from the Index, due to Binance.US's announcement that it was suspending U.S. dollar deposits and withdrawals and planned to delist its U.S. dollar trading pairs and did not add any Constituent Trading Platforms as part of its review. On July 29, 2023, the Index Provider added Bitstamp to the Index based on its satisfaction of the Index Provider's minimum liquidity requirement and did not remove any Constituent Trading Platforms as part of its scheduled quarterly review. On October 28, 2023, the Index Provider added Crypto.com to the Index based on its satisfaction of the Index Provider's minimum liquidity requirement and did not remove any Constituent Trading Platforms as part of its scheduled quarterly review.

From these U.S.-Compliant Trading Platforms, the Index Provider then applies additional Inclusion Criteria to determine the Constituent Trading Platforms. As of September 30, 2023, the Constituent Trading

2. The Index mitigates the impact of instances of fraud, manipulation and other anomalous trading activity in real-time through systematic adjustments;
3. The Index is constructed and maintained by an expert third-party index provider, allowing for prudent handling of non-market-related events; and
4. The Index mitigates the impact of instances of fraud, manipulation and other anomalous trading activity concentrated on any one specific trading platform through a cross-trading platform composite index rate.

1. The Index tracks the Digital Asset Trading Platform Market price through trading activity at “U.S.-Compliant Trading Platforms”.

To reduce the risk of fraud, manipulation, and other anomalous trading activity from impacting the Index, only U.S.-Compliant Trading Platforms are eligible to be included in the Index.

The Index maintains a minimum number of three trading platforms and a maximum number of five trading platforms to track the Digital Asset Trading Platform Market while offering replicability for traders and market makers.⁴⁶

U.S.-Compliant Trading Platforms possess safeguards that protect against fraud and manipulation. For example, U.S.-Compliant Trading Platforms regulated by the NYDFS under the BitLicense program have regulatory requirements to implement measures designed to effectively detect, prevent, and respond to fraud, attempted fraud, market manipulation, and similar wrongdoing, and to monitor, control, investigate and report back to the NYDFS regarding any wrongdoing.⁴⁷ These trading platforms also have the following obligations:⁴⁸

- Submission of audited financial statements including income statements, statements of assets/liabilities, insurance, and banking;
- Compliance with capitalization requirements set at NYDFS’s discretion;
- Prohibitions against the sale or encumbrance to protect full reserves of custodian assets;

Platforms were Coinbase, Bitstamp, Kraken, and LMAX Digital. As of the date of filing, the Constituent Trading Platforms were Coinbase, Bitstamp, Crypto.com, Kraken, and LMAX Digital.

⁴⁶ According to the Sponsor, the more trading platforms included in the Index, the more ability there is for traders and market makers to arbitrage price differences. For example, in the event of variances between Bitcoin prices on Constituent Trading Platforms and non-Constituent Trading Platforms, arbitrage trading opportunities would exist. These discrepancies generally consolidate over time, as traders and market makers trade against the Index to realize price differences across trading platforms and capitalize upon arbitrage opportunities.

⁴⁷ See, e.g., “DFS Takes Action to Deter Fraud and Manipulation in Virtual Currency Markets,” available at: <https://www.dfs.ny.gov/about/press/pr1802071.htm>.

⁴⁸ See “New York’s Final “BitLicense” Rule: Overview and Changes from July 2014 Proposal,” June 5, 2015, Davis Polk, available at: https://www.davispolk.com/files/new_yorks_final_bitlicense_rule_overview_changes_july_2014_proposal.pdf.

- Fingerprints and photographs of employees with access to customer funds;
- Retention of a qualified Chief Information Security Officer and annual penetration testing/audits;
- Documented business continuity and disaster recovery plan, independently tested annually; and
- Participation in an independent exam by NYDFS.

Other U.S.-Compliant Trading Platforms have voluntarily implemented measures to protect against common forms of market manipulation.⁴⁹

Furthermore, all U.S.-Compliant Trading Platforms are considered MSBs that are subject to FinCEN's federal and state reporting requirements that provide additional safeguards. For example, unscrupulous traders may be less likely to engage in fraudulent or manipulative acts and practices on trading platforms that (1) report suspicious activity to FinCEN as money services businesses, (2) report to state regulators as money transmitters, and/or (3) require customer identification through KYC procedures. U.S.-Compliant Trading Platforms are required to:⁵⁰

- Identify people with ownership stakes or controlling roles in the MSB;
- Establish a formal AML policy in place with documentation, training, independent review, and a named compliance officer;
- Implement strict customer identification and verification policies and procedures;
- File Suspicious Activity Reports (SARs) for suspicious customer transactions;
- File Currency Transaction Reports (CTRs) for cash-in or cash-out transactions greater than \$10,000; and
- Maintain a five-year record of currency exchanges greater than \$1,000 and money transfers greater than \$3,000.

Lastly, because of Bitcoin's classification as a commodity,⁵¹ the CFTC has authority to police fraud and manipulation on U.S.-Compliant Trading Platforms.

The Sponsor acknowledges that there are substantial differences between FinCEN and New York state regulations and the Commission's regulation of the national securities exchanges.⁵² The Sponsor does not believe the inclusion of U.S.-Compliant Trading Platforms is in and of itself sufficient to prove that the Index is an alternative means to prevent fraud and manipulation such that surveillance sharing agreements are not required, but does believe that the inclusion of only U.S.-Compliant Trading Platforms in

⁴⁹ As of the date of filing, two of the five Constituent Trading Platforms, Coinbase and Bitstamp, are regulated by NYDFS.

⁵⁰ See BSA Requirements for MSBs, FinCEN website: <https://www.fincen.gov/bsarequirements-msbs>.

⁵¹ CFTC, What is a Bitcoin Futures ETF?, <https://www.cftc.gov/LearnAndProtect/AdvisoriesAndArticles/BitcoinFuturesETF.html>

⁵² See Bitwise Order, 84 FR at 55392; Wilshire Phoenix Order, 85 FR at 12603.

the Index is one significant way in which the Index is protected from the potential impacts of fraud and manipulation.

2. The Index mitigates the impact of instances of fraud, manipulation and other anomalous trading activity in real-time through systematic adjustments.

The Index is calculated once every second according to a systematic methodology that relies on observed trading activity on the Constituent Trading Platforms. While the precise methodology underlying the Index is currently proprietary, the key elements of the Index are outlined below:

- **Volume Weighting:** Constituent Trading Platforms with greater liquidity receive a higher weighting in the Index, increasing the ability to execute against (i.e., replicate) the Index in the underlying spot markets.
- **Price-Variance Weighting:** The Index reflects data points that are discretely weighted in proportion to their variance from the rest of the Constituent Trading Platforms. As the price at a Constituent Trading Platform diverges from the prices at the rest of the Constituent Trading Platforms, its weight in the Index consequently decreases.
- **Inactivity Adjustment:** The Index algorithm penalizes stale activity from any given Constituent Trading Platform. When a Constituent Trading Platform does not have recent trading data, its weighting in the Index is gradually reduced, until it is de-weighted entirely. Similarly, once trading activity at the Constituent Trading Platform resumes, the corresponding weighting for that Constituent Trading Platform is gradually increased until it reaches the appropriate level.
- **Manipulation Resistance:** In order to mitigate the effects of wash trading and order book spoofing, the Index only includes executed trades in its calculation. Additionally, the Index only includes Constituent Trading Platforms that charge trading fees to its users in order to attach a real, quantifiable cost to any manipulation attempts.

3. The Index is constructed and maintained by an expert third-party index provider, allowing for prudent handling of non-market-related events.

The Index Provider reviews and periodically updates which trading platforms are included in the Index by utilizing a methodology that is guided by the IOSCO principles for financial benchmarks.

For a trading platform to become a Constituent Trading Platform, it must satisfy the following Inclusion Criteria:

- Sufficient USD liquidity relative to the size of the listed assets;
- No evidence in the past 12 months of trading restrictions on individuals or entities that would otherwise meet the trading platform's eligibility requirements to trade;

- No evidence in the past 12 months of undisclosed restrictions on deposits or withdrawals from user accounts;
- Real-time price discovery;
- Limited or no capital controls;
- Transparent ownership including a publicly-owned ownership entity;
- Publicly available language and policies addressing legal and regulatory compliance in the US, including KYC (Know Your Customer), AML (Anti-Money Laundering) and other policies designed to comply with relevant regulations that might apply to it;
- Be a US-domiciled trading platform or a non-US domiciled trading platform that is able to service US investors;
- Offer programmatic spot trading of the trading pair, and reliably publish trade prices and volumes on a real-time basis through Rest and Websocket APIs.

Although the Index methodology is designed to operate without any human interference, rare events would justify manual intervention. Manual intervention would only be in response to “non-market-related events” (e.g., halting of deposits or withdrawals of funds, unannounced closure of trading platform operations, insolvency, compromise of user funds, etc.). In the event that such an intervention is necessary, the Index Provider would issue a public announcement through its website, API and other established communication channels with its clients.⁵³

4. The Index mitigates the impact of instances of fraud, manipulation and other anomalous trading activity concentrated on any one specific trading platform through a cross-trading platform composite index rate.

The Index is based on the price and volume data of multiple U.S.-Compliant Trading Platforms that satisfy the Index Provider’s Inclusion Criteria. By referencing multiple trading venues and weighting them based on trade activity, the impact of any potential fraud, manipulation, or anomalous trading activity occurring on any single venue is reduced. Specifically, the effects of fraud, manipulation, or anomalous trading activity occurring on any single venue are de-weighted and consequently diluted by non-anomalous trading activity from other Constituent Trading Platforms.

Although the Index is designed to accurately capture the market price of Bitcoin, third parties may be able to purchase and sell Bitcoin on public or private markets included or not included among the Constituent Trading Platforms, and such transactions may take place at prices materially higher or lower than the Index Price. For example, based on data provided by the Index Provider, on any given day during the twelve months ended September 30, 2023, the maximum differential between the 4:00 p.m., New York time spot price of any single Digital Asset Trading Platform included in the Index and the Index Price was 3.18% and the average of the maximum differentials of the 4:00 p.m., New York time spot price of each Digital Asset Trading Platform included in the Index

⁵³

To the extent any such intervention has a material impact on the Trust, the Sponsor will also issue a public announcement.

and the Index Price was 0.83%. During this same period, the average differential between the 4:00 p.m., New York time spot prices of all the Digital Asset Trading Platforms included in the Index and the Index Price was 0.01%.⁵⁴

Since November 1, 2014, the Trust has consistently priced its Shares at 4:00 p.m., New York time based on the Index Price.⁵⁵ While that pricing would be known to the market, the Sponsor believes that, even if efforts to manipulate the price of Bitcoin at 4:00 p.m., E.T. were successful on any trading platform, such activity would have had a negligible effect on the pricing of the Trust, due to the controls embedded in the structure of the Index.

Accordingly, the Sponsor believes that the Index has proven its ability to (i) mitigate the effects of fraud, manipulation and other anomalous trading activity on the Bitcoin reference rate, (ii) provide a real-time, volume-weighted fair value of Bitcoin and (iii) appropriately handle and adjust for non-market related events. For these reasons, the Sponsor believes that the Index represents an effective alternative means to prevent fraud and manipulation and the Trust's reliance on the Index addresses the Commission's concerns with respect to potential fraud and manipulation.

3. A Significant, Regulated and Surveilled Market Exists and Is Closely Connected with Spot Market for Bitcoin

In the Winklevoss Order, Bitwise Order, Wilshire Phoenix Order and vacated Grayscale Order, the Commission described both the need for and the definition of a surveilled market of significant size for commodity-trust ETPs like the Trust to date.⁵⁶ Specifically, the Commission explained that:

for the commodity-trust ETPs approved to date for listing and trading, there has been in every case at least one significant, regulated market for trading futures on the underlying commodity—whether gold, silver, platinum, palladium, or copper—and the ETP listing exchange has entered into surveillance-sharing

⁵⁴ All Digital Asset Trading Platforms that were included in the Index throughout the period were considered in this analysis.

⁵⁵ Prior to February 1, 2022, the Trust valued its Bitcoins for operational purposes by reference to the volume-weighted average Index Price (the “Old Index Price”). The Old Index Price was calculated by applying a weighting algorithm to the price and trading volume data for the immediately preceding 24-hour period as of 4:00 p.m., New York time, derived from the Constituent Trading Platforms reflected in the Index on such trade date, and overlaying an averaging mechanism to the price produced. Thus, whereas the Old Index Price reflected the price of a Bitcoin at 4:00 p.m., New York time, calculated by taking the average of each price of a Bitcoin produced by the Index over the preceding 24-hour period, the Index Price now is the price of a Bitcoin at 4:00 p.m., New York time, calculated based on the price and trading volume data of the Digital Asset Trading Platforms included in the Index over the preceding 24-hour period. The Index Price differs from the Old Index Price only in that it does not use an additional averaging mechanism; the Index Price otherwise uses the same methodology as the Old Index Price, and there has been no change to the Index used to determine the Index Price or the criteria used to select the Constituent Trading Platforms.

⁵⁶ See Winklevoss Order, 83 FR at 37593-94; Bitwise Order, 84 FR at 55383, 55410; Wilshire Phoenix Order, 85 FR at 12609; Grayscale Order, 87 FR at 40300.

agreements with, or held Intermarket Surveillance Group membership in common with, that market.⁵⁷

Further, the Commission stated that its interpretation of the term “market of significant size” depends on the interrelationship between the market with which the listing exchange has a surveillance-sharing agreement and the proposed ETP.⁵⁸ Accordingly, the terms “significant market” and “market of significant size” could mean:

a market (or group of markets) as to which (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, so that a surveillance-sharing agreement would assist 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.⁵⁹

In the context of Bitcoin-based ETPs specifically, the Commission has stated that establishing a lead-lag relationship between the Bitcoin futures market and the spot market is central to understanding whether it is reasonably likely that a would-be manipulator of the ETP would need to trade on the Bitcoin futures market to successfully manipulate prices on those spot platforms that feed into the proposed ETP’s pricing mechanism such that a surveillance-sharing agreement would assist the ETP listing market in detecting and deterring misconduct.⁶⁰ In particular, if the spot market leads the futures market, this would indicate that it would not be necessary to trade on the futures market to manipulate the proposed ETP, even if arbitrage worked efficiently, because the futures price would move to meet the spot price.

While studies have found that the CME futures market does lead the spot Bitcoin market,⁶¹ as explained in the Sponsor’s briefs and argument in its prevailing case before the D.C. Circuit Court of Appeals regarding its Bitcoin-based ETP proposal, the Sponsor believes that the lead/lag question is irrelevant. If a would-be manipulator were to attempt

⁵⁷ See Winklevoss Order, 83 FR at 37594.

⁵⁸ See Winklevoss Order, 83 FR at 37594; Bitwise Order, 84 FR at 55410; ProShares Order, 83 FR at 43936; GraniteShares Order, 83 FR at 43925; Direxion Order, 83 FR at 43914; Wilshire Phoenix Order, 85 FR at 12609.

⁵⁹ See Winklevoss Order, 83 FR at 37594. This definition is illustrative and not exclusive. There could be other types of “significant markets” and “markets of significant size,” but this definition is an example that will provide guidance to market participants.

⁶⁰ See Bitwise Order, 84 FR at 55411; Wilshire Phoenix Order, 85 FR at 12612.

⁶¹ See Memorandum to File from Neel Maitra, Senior Special Counsel (Fintech & Crypto Specialist), Division of Trading and Markets, U.S. Securities and Exchange Commission re: Meeting with Representatives from Fidelity Digital Assets, et al. and attachment (SR-CboeBZX-2021-039) (September 8, 2021), [available at](https://www.sec.gov/comments/sr-cboebzx-2021-039/srcboebzx2021039-250110.pdf): <https://www.sec.gov/comments/sr-cboebzx-2021-039/srcboebzx2021039-250110.pdf>; Letter from Bitwise Asset Management, Inc. re: File Number SR-NYSEArca-2021-89 (February 25, 2022), [available at](https://www.sec.gov/comments/sr-nysearca-2021-89/srnysearca202189-20117902-270822.pdf): <https://www.sec.gov/comments/sr-nysearca-2021-89/srnysearca202189-20117902-270822.pdf>; Letter from Wilson Sonsini Goodrich and Rosati, P.C. and Chapman and Cutler LLP, on behalf of Bitwise Asset Management, Inc. re: File No. SR-NYSEArca-2021-89 (March 7, 2022), [available at](https://www.sec.gov/comments/sr-nysearca-2021-89/srnysearca202189-20118794-271630.pdf): <https://www.sec.gov/comments/sr-nysearca-2021-89/srnysearca202189-20118794-271630.pdf>.

to manipulate either a spot ETP or futures ETP by trading futures on the CME, then a surveillance-sharing agreement with the CME would provide access to information concerning that activity.⁶² If, on the other hand, a would-be manipulator were to attempt to manipulate either a spot ETP or a futures ETP by trading on the spot market, then a surveillance-sharing agreement with the CME would also be able to provide access to information concerning that activity. If that were not true, the Commission could not have approved the Bitcoin futures ETPs. Given that the Commission has approved Bitcoin futures ETPs, the Commission must have concluded that the CME is capable of detecting manipulation attempts in the spot bitcoin market.

Regardless of the irrelevance of the lead/lag relationship and the mixed findings regarding the lead/lag relationship between the CME futures and Bitcoin spot markets, the Sponsor believes that the CME futures market represents a large, surveilled and regulated market and meets the Commission's definition of a "significant market." For example, from November 1, 2019 to September 30, 2023, the CME futures market trading volume was over \$1.4 trillion, compared to \$1.15 trillion in trading volume across the Constituent Trading Platforms included in the Index. With over 121% of the Index trading volume, the CME futures market represents significant coverage of U.S.-Compliant Trading Platforms in the Bitcoin market. In addition, the CME futures market trading volume from November 1, 2019 to September 30, 2023 was approximately equal to trading volume of the U.S. dollar-denominated Bitcoin spot markets referenced in the Bitwise Order.⁶³

Given the size of the CME futures markets, the Sponsor believes such markets meet the Commission's definition of "significant market" because there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, since arbitrage between the derivative and spot markets would tend to counter an attempt to manipulate the spot market alone. As a result, the Exchange's ability to obtain information regarding trading in the Shares and futures from markets and other entities that are members of the ISG, including the CME, would assist the Exchange in detecting and deterring misconduct.

The Sponsor also believes it is unlikely that the ETP would become the predominant influence on prices in the market.

While future inflows to the proposed Trust cannot be predicted, to provide comparable data, the Sponsor examined the change in market capitalization of Bitcoin with net inflows into the Trust, which currently trades on OTC Markets and is the largest and most liquid Bitcoin investment product in the world.⁶⁴ From November 1, 2019 to September 30, 2023, the market capitalization of Bitcoin grew from \$166 billion to \$527 billion, a

⁶² Grayscale v. SEC, No. 22-1142, Commission Reply Brief at 27 (February 3, 2023).

⁶³ These Bitcoin spot markets include Binance.US, Coinbase, Bitfinex, Kraken, Bitstamp, BitFlyer, Poloniex, Bittrex and itBit.

⁶⁴ To further illustrate the size and liquidity of the Trust, as of September 30, 2023, compared with global commodity ETPs, the Trust would rank third in assets under management and fourth in notional trading volume from November 1, 2019 to September 30, 2023.

\$361 billion increase. Over the same period, the Trust experienced \$6.6 billion of inflows. The cumulative inflow into the Trust over the stated time period was only 1.8% of the aggregate growth of Bitcoin's market capitalization.

Additionally, the Trust experienced approximately \$153 billion of trading volume from November 1, 2019 to September 30, 2023, only 11% of the CME futures market and 13% of the Index over the same period.

In summary, the Sponsor believes that the foregoing addresses concerns the Commission may have with respect to Bitcoin-based ETPs, based on the Commission's articulated concerns with respect to potential fraud and manipulation in Bitcoin-based ETPs. Specifically, the Sponsor believes that, although Bitcoin is not itself inherently resistant to fraud and manipulation, the Index represents an effective means to prevent fraudulent and manipulative acts and practices. As discussed above, the Trust has used the Index to price the Shares for more than seven years, and the Sponsor believes that the Index has proven its ability to (i) mitigate the effects of fraud, manipulation and other anomalous trading activity on the Bitcoin reference rate, (ii) provide a real-time, volume-weighted fair value of Bitcoin and (iii) appropriately handle and adjust for non-market related events. The Sponsor also believes that the CME futures market is a significant, surveilled and regulated market that is closely connected with the spot market for Bitcoin fulfills the requirements for surveillance sharing given the Exchange's ability to obtain information from markets and other entities that are members of the ISG to assist in detecting and deterring misconduct.

Creation and Redemption of Shares

Authorized Participants may submit orders to create or redeem Shares under procedures for "Cash Orders."

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, or an affiliate of the Trust (and in any event 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, or an affiliate of the Trust (and in any event 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.

Cash Orders are made through the participation of a Liquidity Provider⁶⁵ who obtains or receives Bitcoin in exchange for cash, and are facilitated by the Transfer Agent and Grayscale Investments, LLC, acting in its capacity as the Liquidity Engager. Liquidity Providers are not party to the Participant Agreements and are engaged separately by the Liquidity Engager.

According to the Registration Statement, the Trust creates Baskets (as described below) of Shares only upon receipt of Bitcoins and redeems Shares only by distributing Bitcoins. “Authorized Participants” are the only persons that may place orders to create and redeem Baskets. Each Authorized Participant must (i) be a registered broker-dealer and (ii) enter into an agreement with the Sponsor and Transfer Agent that provides the procedures for the creation and redemption of Baskets and for the delivery of Bitcoins required for the creation and redemption of Baskets via a Liquidity Provider (each, a “Participant Agreement”). An Authorized Participant may act for its own account or as agent for broker-dealers, custodians and other securities market participants that wish to create or redeem Baskets. Shareholders who are not Authorized Participants will only be able to create or redeem their Shares through an Authorized Participant.

The Trust issues Shares to and redeems Shares from Authorized Participants on an ongoing basis, but only in one or more “Baskets” (with a Basket being a block of 10,000 Shares). The Trust will not issue fractions of a Basket.

The creation and redemption of Baskets will be made only in exchange for the delivery to the Trust, or the distribution by the Trust, of the number of whole and fractional Bitcoins represented by each Basket being created or redeemed, which is determined by dividing (x) the number of Bitcoins owned by the Trust at 4:00 p.m., New York time, on the trade date of a creation or redemption order, after deducting the number of Bitcoins representing the U.S. dollar value of accrued but unpaid fees and expenses of the Trust (converted using the Index Price at such time, and carried to the eighth decimal place), by (y) the number of Shares outstanding at such time (with the quotient so obtained calculated to one one-hundred-millionth of one Bitcoin (i.e., carried to the eighth decimal place)), and multiplying such quotient by 10,000 (the “Basket Amount”). The U.S. dollar value of a Basket is calculated by multiplying the Basket Amount by the Index Price as of

⁶⁵ A “Liquidity Provider” means one or more eligible companies that facilitate the purchase and sale of Bitcoins in connection with creations or redemptions pursuant to Cash Orders. The Liquidity Providers with which Grayscale Investments, LLC, acting other than in its capacity as the Sponsor (in such other capacity, the “Liquidity Engager”) will engage in Bitcoin transactions are third parties that are not affiliated with the Sponsor or the Trust and are not acting as agents of the Trust, the Sponsor, or any Authorized Participant, and all transactions will be done on an arms-length basis. Except for the contractual relationships between each Liquidity Provider and Grayscale Investments, LLC in its capacity as the Liquidity Engager, there is no contractual relationship between each Liquidity Provider and the Trust, the Sponsor, or any Authorized Participant. When seeking to buy Bitcoin in connection with creations or sell Bitcoin in connection with redemptions, the Liquidity Engager will seek to obtain commercially reasonable prices and terms from the approved Liquidity Providers. Once agreed upon, the transaction will generally occur on an “over-the-counter” basis.

the trade date (the “Basket NAV”). The Basket NAV multiplied by the number of Baskets being created or redeemed is referred to as the “Total Basket NAV.” All questions as to the calculation of the Basket Amount will be conclusively determined by the Sponsor and will be final and binding on all persons interested in the Trust. The number of Bitcoins represented by a Share will gradually decrease over time as the Trust’s Bitcoins are used to pay the Trust’s expenses. As of September 30, 2023, each Share represented approximately 0.0009 of one Bitcoin.

The creation of Baskets requires the delivery to the Trust of the Total Basket Amount and the redemption of Baskets requires the distribution by the Trust of the Total Basket Amount.

Although the Trust creates Baskets only upon the receipt of Bitcoins, and redeems Baskets only by distributing Bitcoins, an Authorized Participant will submit Cash Orders, pursuant to which the Authorized Participant will deposit cash with, or accept cash from, the Transfer Agent in connection with the creation and redemption of Baskets.

Cash Orders will be facilitated by the Transfer Agent and Liquidity Engager, acting other than in its capacity as Sponsor. On an order-by-order basis, the Liquidity Engager will engage one or more Liquidity Providers to obtain or receive Bitcoin in exchange for cash in connection with such order, as described in more detail below.

Each Authorized Participant that submits a Cash Order to create or redeem Baskets will pay a fee based on the Total Basket NAV (the “Variable Fee”). The Variable Fee is intended to cover all of a Liquidity Provider’s expenses in connection with the creation or redemption order, including any Bitcoin trading platform fees that the Liquidity Provider incurs in connection with buying or selling Bitcoins, and the risk of intervening spot Bitcoin market movements. The amount may be changed by the Sponsor in its sole discretion at any time.

In the case of creations, to transfer the Total Basket Amount to the Trust’s Digital Asset Account, the Liquidity Provider will transfer Bitcoin to one of the public key addresses associated with the Digital Asset Account and as provided by the Sponsor. In the case of redemptions, the same procedure is conducted, but in reverse, using the public key addresses associated with the wallet of the Liquidity Provider and as provided by such party. All such transactions will be conducted on the Blockchain and parties acknowledge and agree that such transfers may be irreversible if done incorrectly.

Authorized Participants do not pay a transaction fee to the Trust in connection with the creation or redemption of Baskets, but there may be transaction fees associated with the validation of the transfer of Bitcoins by the Bitcoin Network, which will be paid by the Custodian in the case of redemptions and the Authorized Participant or the Liquidity Provider in the case of creations. Service providers may charge Authorized Participants administrative fees for order placement and other services related to creation of Baskets. As discussed above, Authorized Participants will also pay the Variable Fee. Authorized Participants will receive no fees, commissions or other form of compensation or inducement of any kind from either the Sponsor or the Trust and no such person has any

obligation or responsibility to the Sponsor or the Trust to effect any sale or resale of Shares.

The following is a summary of the procedures for the creation and redemption of Baskets.

Creation Procedures

On any business day, an Authorized Participant may place an order with the Transfer Agent to create one or more Baskets.

Cash Orders for creation must be placed with the Transfer Agent no later than 1:59:59 p.m., New York time.

The Sponsor may in its sole discretion limit the number of Shares created pursuant to Cash Orders on any specified day without notice to the Authorized Participants and may direct the Marketing Agent to reject any Cash Orders in excess of such capped amount. In exercising its discretion to limit the number of Shares created pursuant to Cash Orders, the Sponsor expects to take into consideration a number of factors, including the availability of Liquidity Providers to facilitate Cash Orders and the cost of processing Cash Orders.

Creations under Cash Orders will take place as follows, where “T” is the trade date and each day in the sequence must be a business day:

T	T+1, or T+2, as established at the time of order placement
<ul style="list-style-type: none"> • The Authorized Participant places a creation order with the Transfer Agent. • The Marketing Agent accepts (or rejects) the creation order, which is communicated to the Authorized Participant by the Transfer Agent. • The Sponsor notifies the Liquidity Provider of the creation order. • The Sponsor determines the Total Basket NAV and any Variable Fee as soon as practicable after 4:00 p.m., New York time. 	<ul style="list-style-type: none"> • The Authorized Participant delivers the Total Basket NAV and any Variable Fee to the Cash Account.¹ • The Liquidity Provider transfers the Total Basket Amount to the Trust’s Digital Asset Account. • The Trust issues the aggregate number of Shares corresponding to the Baskets ordered by the Authorized Participant, which the Transfer Agent holds for the benefit of the Authorized Participant. • Cash equal to the U.S. dollar value of the Total Basket NAV, plus any Variable Fee, is delivered to the Liquidity Provider from the Cash Account. • The Transfer Agent delivers Shares to the Authorized Participant by crediting the number

of Baskets created to the Authorized Participant's DTC account.

- ¹ The "Cash Account" means the account maintained by the Transfer Agent in the name of Grayscale Securities, LLC, designated as "Special Account for the Exclusive Benefit of Customers of Grayscale Securities, LLC," for purposes of receiving cash from, and distributing cash to, Authorized Participants in connection with creations and redemptions pursuant to Cash Orders. For the avoidance of doubt, the Trust shall have no interest (beneficial, equitable or otherwise) in the Cash Account or any cash held therein.

Redemption Procedures

The procedures by which an Authorized Participant can redeem one or more Baskets mirror the procedures for the creation of Baskets. On any business day, an Authorized Participant may place a redemption order specifying the number of Baskets to be redeemed.

The redemption of Shares pursuant to Cash Orders will only take place if approved by the Sponsor in writing, in its sole discretion and on a case-by-case basis. In exercising its discretion to approve the redemption of Shares pursuant to Cash Orders, the Sponsor expects to take into consideration a number of factors, including the availability of Liquidity Providers to facilitate Cash Orders and the cost of processing Cash Orders

Cash Orders for redemption must be placed no later than 1:59:59 p.m., New York time on each business day. The Authorized Participants may only redeem Baskets and cannot redeem any Shares in an amount less than a Basket.

Redemptions under Cash Orders will take place as follows, where "T" is the trade date and each day in the sequence must be a business day:

T	T+2 (or T+1 on case-by-case basis, as approved by Sponsor)
<ul style="list-style-type: none"> • The Authorized Participant places a redemption order with the Transfer Agent. • The Marketing Agent accepts (or rejects) the redemption order, which is communicated to the Authorized Participant by the Transfer Agent. • The Sponsor notifies the Liquidity Provider(s) of the redemption order. • The Sponsor determines the Total Basket NAV and any Variable Fee as soon as practicable after 4:00 p.m., New York time. 	<ul style="list-style-type: none"> • The Authorized Participant delivers Baskets to be redeemed from its DTC account to the Transfer Agent. • The Liquidity Provider delivers the Total Basket NAV, less any Variable Fee, to the Cash Account. • The Transfer Agent cancels the Shares comprising the number of Baskets redeemed by the Authorized Participant. • The Custodian sends the Liquidity Provider the Total Basket Amount and cash equal to the U.S. dollar value of the Total Basket NAV, less any Variable Fee and any other charges and fees

payable in connection with the redemption order, is delivered to the Authorized Participant from the Cash Account.

Suspension or Rejection of Orders and Total Basket Amount

The creation or redemption of Shares may be suspended generally, or refused with respect to particular requested creations or redemptions, during any period when the transfer books of the Transfer Agent are closed or if circumstances outside the control of the Sponsor or its delegates make it for all practicable purposes not feasible to process creation orders or redemption orders or for any other reason at any time or from time to time.⁶⁶ The Transfer Agent may reject an order or, after accepting an order, may cancel such order if: (i) such order is not presented in proper form as described in the Participant Agreement, (ii) the transfer of the Total Basket Amount comes from an account other than a Bitcoin wallet address that is known to the Custodian as belonging to a Liquidity Provider or (iii) the fulfillment of the order, in the opinion of counsel, might be unlawful, among other reasons. None of the Sponsor or its delegates will be liable for the suspension, rejection or acceptance of any creation order or redemption order.

Availability of Information

The Trust's website (<https://grayscale.com/crypto-products/grayscale-bitcoin-trust/>) will include quantitative information on a per Share basis updated on a daily basis, including, (i) the current NAV per Share daily and the prior business day's NAV per Share and the reported closing price of the Shares; (ii) the mid-point of the bid-ask price⁶⁷ as of the time the NAV per Share is calculated ("Bid-Ask Price") and a calculation of the premium or discount of such price against such NAV per Share; and (iii) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid-Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters (or for as long as the Trust has been trading as an ETP if shorter). In addition, on each business day the Trust's website will provide pricing information for the Shares.

One or more major market data vendors, will provide an intra-day indicative value ("IIV") per Share updated every 15 seconds, as calculated by the Exchange or a third party financial data provider during the Exchange's Core Trading Session (9:30 a.m. to

⁶⁶ Extenuating circumstances outside of the control of the Sponsor and its delegates or that could cause the transfer books of the Transfer Agent to be closed are outlined in the Participant Agreement and include, for example, public service or utility problems, power outages resulting in telephone, telecopy and computer failures, acts of God such as fires, floods or extreme weather conditions, market conditions or activities causing trading halts, systems failures involving computer or other information systems, including any failures or outages of the Bitcoin Network, affecting the Authorized Participant, the Sponsor, the Trust, the Transfer Agent, the Marketing Agent and the Custodian and similar extraordinary events.

⁶⁷ The bid-ask price of the Trust is determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day NAV.

4:00 p.m., E.T.).⁶⁸ The IIV will be calculated using the same methodology as the NAV per Share of the Trust (as described above), specifically by using the prior day's closing NAV per Share as a base and updating that value during the NYSE Arca Core Trading Session based on the value of the Index during the trading day.

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

The NAV for the Trust will be calculated by the Sponsor once a day and will be disseminated daily to all market participants at the same time. To the extent that the Sponsor has utilized the cascading set of rules described in "Index Price" above, the Trust's website will note the valuation methodology used and the price per Bitcoin resulting from such calculation. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association ("CTA").

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

On each business day, the Sponsor will publish the Index Price, the Trust's NAV, and the NAV per Share on the Trust's website as soon as practicable after its determination. If the NAV and NAV per Share have been calculated using a price per Bitcoin other than the Index Price for such Evaluation Time, the publication on the Trust's website will note the valuation methodology used and the price per Bitcoin resulting from such calculation.

The Trust will provide website disclosure of its NAV and NAV per Share daily. The website disclosure of the Trust's NAV and NAV per Share will occur at the same time as the disclosure by the Sponsor of the NAV and NAV per Share to Authorized Participants so that all market participants are provided such portfolio information at the same time. Therefore, the same portfolio information will be provided on the public website as well as in electronic files provided to Authorized Participants. Accordingly, each investor will

⁶⁸ The IIV on a per Share basis disseminated during the Core Trading Session should not be viewed as a real-time update of the NAV, which is calculated once a day.

have access to the current NAV and NAV per Share of the Trust through the Trust's website, as well as from one or more major market data vendors.

The value of the Index, as well as additional information regarding the Index, will be available on a continuous basis at <https://www.coindesk.com/indices>.

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.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m., E.T. in accordance with NYSE Arca Rule 7.34-E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6-E, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00, for which the MPV for order entry is \$0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.201-E. The trading of the Shares will be subject to NYSE Arca Rule 8.201-E(g), which sets forth certain restrictions on Equity Trading Permit Holders ("ETP Holders") acting as registered Market Makers in Commodity-Based Trust Shares to facilitate surveillance. The Exchange represents that, for initial and continued listing, the Trust will be in compliance with Rule 10A-3⁶⁹ under the Act, as provided by NYSE Arca Rule 5.3-E. A minimum of 100,000 Shares of the Trust will be outstanding at the commencement of trading on the Exchange.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Trust.⁷⁰ Trading in Shares of the Trust will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

The Exchange may halt trading during the day in which an interruption to the dissemination of the IIV or the value of the Index occurs. If the interruption to the

⁶⁹ 17 CFR 240.10A-3.

⁷⁰ See NYSE Arca Rule 7.12-E.

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 per Share is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV per Share is available to all market participants.

Surveillance

The Exchange represents that trading in the Shares of the Trust will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.⁷¹ The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

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

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement (“CSSA”).⁷² The Exchange is also 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 in connection with such ETP Holders’ proprietary or customer trades which they effect through ETP Holders on any relevant market.

Under NYSE Arca Rule 8.201-E(g), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its accounts for trading in the underlying commodity, related futures or options on futures, or any other related derivatives. Commentary .04 of NYSE Arca Rule 11.3-E requires an ETP Holder acting as a registered Market Maker, and its affiliates, in the Shares to establish, maintain and enforce written policies and procedures reasonably designed to prevent the

⁷¹ FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

⁷² For a list of the current members of ISG, see www.isgportal.org. The Exchange notes that not all components of the Trust may trade on markets that are members of ISG or with which the Exchange has in place a CSSA.

misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares). As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder. To the extent the Exchange may be found to lack jurisdiction over a subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts, 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.

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

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

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

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an “Information Bulletin” of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) the procedures for creations of Shares in Baskets; (2) NYSE Arca Rule 9.2-E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) information regarding how the value of the Index and NAV are disseminated; (4) the possibility that trading spreads and the resulting premium or discount on the Shares may widen during the Opening and Late Trading Sessions, when an updated IIV will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction and (6) trading information.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses as described in the Annual Report. The Information Bulletin will disclose that information about the Shares of the Trust is publicly available on the Trust’s website. The Information Bulletin 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.

The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

(b) Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)⁷³ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.201-E. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets. In addition, the Exchange may obtain information regarding trading in the Shares from markets that are members of ISG or with which the Exchange has in place a CSSA. Also, pursuant to NYSE Arca Rule 8.201-E(g), the Exchange is able to obtain information regarding Market Maker accounts for trading in the Shares and the underlying Bitcoin or any Bitcoin derivative through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades through ETP Holders which they effect on any relevant market.

The proposed rule change is also designed to prevent fraudulent and manipulative acts and practices because, although the Digital Asset Trading Platform Market is not inherently resistant to fraud and manipulation, the Index serves as a means sufficient to mitigate the impact of instances of fraud and manipulation on a reference price for Bitcoin. Specifically, the Index provides a better benchmark for the price of Bitcoin than the Digital Asset Trading Platform Market price because it (1) tracks the Digital Asset Trading Platform Market price through trading activity at U.S.-Compliant Trading Platforms; (2) mitigates the impact of instances of fraud, manipulation and other anomalous trading activity in real-time through systematic adjustments; (3) is constructed and maintained by an expert third-party index provider, allowing for prudent handling of non-market-related events; and (4) mitigates the impact of instances of fraud, manipulation and other anomalous trading activity concentrated on any one specific trading platform through a cross-trading platform composite index rate. The Trust has

⁷³

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

used the Index to price the Shares for more than seven years, and the Sponsor believes the Index has proven its ability to (i) mitigate the effects of fraud, manipulation and other anomalous trading activity from impacting the Bitcoin reference rate, (ii) provide a real-time, volume-weighted fair value of Bitcoin and (iii) appropriately handle and adjust for non-market related events, such that efforts to manipulate the price of Bitcoin would have had a negligible effect on the pricing of the Trust, due to the controls embedded in the structure of the Index. In addition, certain of the Index's Constituent Trading Platforms also have or have begun to implement market surveillance infrastructure to further detect, prevent, and respond to fraud, attempted fraud, and similar wrongdoing, including market manipulation. The proposed rule change is also designed to prevent fraudulent and manipulative acts and practices based on the existence of the CME futures market as a large, surveilled and regulated market that is closely connected with the spot market for Bitcoin and through which the Exchange could obtain information to assist in detecting and deterring potential fraud or manipulation.

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

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a CSSA. In addition, as noted above,

investors will have ready access to information regarding the Trust's NAV per Share, IIV, and quotation and last sale information for the Shares.

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 purposes of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of exchange-traded product, and the first such product based on Bitcoin, which will enhance competition among market participants, to the benefit of investors and the marketplace.

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

Written comments on the proposed rule change were neither solicited nor received.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period specified in Section 19(b)(2) of the Act.

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

Not applicable.

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

The proposed rule change is not based on the rules of the Commission or of another self-regulatory organization.

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

Not applicable.

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

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Federal Register

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NYSEARCA-2021-90, Amendment No. 2)

[Date]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to List and Trade Shares of Grayscale Bitcoin Trust (BTC)

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on January 5, 2024, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to list and trade shares of the following under NYSE Arca Rule 8.201-E: Grayscale Bitcoin Trust (BTC) (the “Trust”).⁴ This Amendment No. 2 to SR-NYSEArca-2021-90 replaces SR-NYSEArca-2021-90 as originally filed and supersedes such filing in its entirety. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ The Trust was previously named Bitcoin Investment Trust, whose name was changed pursuant to a Certificate of Amendment to the Certificate of Trust of Bitcoin Investment Trust filed with the Delaware Secretary of State on January 11, 2019.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

Under NYSE Arca Rule 8.201-E, the Exchange may propose to list and/or trade pursuant to unlisted trading privileges “Commodity-Based Trust Shares.”⁵ The Exchange proposes to list and trade shares (“Shares”)⁶ of the Trust pursuant to NYSE Arca Rule 8.201-E.⁷

⁵ Commodity-Based Trust Shares are securities issued by a trust that represent investors’ discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust.

⁶ The Shares are expected to be listed under the ticker symbol “GBTC.”

⁷ On March 22, 2016, the Trust confidentially filed its draft registration statement on Form 10 under the Securities Act of 1933 (15 U.S.C. 77a) (the “Securities Act” or “’33 Act”) (File No. 377-01289) (the “Draft Registration Statement on Form S-1”). On May 31, 2016, the Trust confidentially filed Amendment No. 1 to the Draft Registration Statement on Form S-1. On July 29, 2016, the Trust confidentially filed Amendment No. 2 to the Draft Registration Statement on Form S-1. On November 2, 2016, the Trust confidentially filed Amendment No. 3 to the Draft Registration Statement on Form S-1. The Jumpstart Our Business Startups Act (the “JOBS Act”), enacted on April 5, 2012, added Section 6(e) to the Securities Act. Section 6(e) of the Securities Act provides that an “emerging growth company” may confidentially submit to the Commission a draft registration statement for confidential, non-public review by the Commission staff prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed not later than 21 days before the date on which the issuer conducts a road show, as such term is defined in Securities Act Rule 433(h)(4). An emerging growth company is defined in Section 2(a)(19) of the Securities Act as an issuer with less than \$1,000,000,000 total annual gross revenues during its most recently completed fiscal year. The Trust meets the definition of an emerging growth company and consequently submitted its Draft Registration Statement on Form S-1 to the Commission on a confidential basis.

On January 20, 2017, the Trust filed its registration statement on Form S-1 under the Securities Act (File No. 333-215627) (the “Registration Statement on Form S-1”). On March 24, 2017, the Trust filed Amendment No. 1 to the Registration Statement on Form S-1. On May 4, 2017, the Trust filed Amendment No. 2 to the Registration Statement on Form S-1. On October 25, 2017, the Trust requested the withdrawal of the Registration Statement on Form S-1.

The Trust is the world's largest Bitcoin investment fund by assets under management as of the date of this filing. The Trust has approximately \$21.9 billion in assets under management⁸

On October 3, 2018, the Trust confidentially filed its draft registration statement on Form 10 under the Securities Act (File No. 377-02297) (the "Draft Registration Statement on Form 10"). On December 6, 2018, the Trust confidentially filed Amendment No. 1 to the Draft Registration Statement on Form 10. On February 25, 2019 the Trust confidentially filed Amendment No. 2 to the Draft Registration Statement on Form 10. On April 15, 2019, the Trust confidentially filed Amendment No. 3 to the Draft Registration Statement on Form 10. On September 9, 2019, the Trust confidentially filed Amendment No. 4 to the Draft Registration Statement on Form 10. As noted above, the Trust meets the definition of an emerging growth company under the JOBS Act and consequently submitted its Draft Registration Statement on Form 10 to the Commission on a confidential basis.

On November 19, 2019, the Trust filed its registration statement on Form 10 under the Securities Act (File No. 000-56121) (the "Registration Statement on Form 10"). On December 31, 2019, the Trust filed Amendment No. 1 to the Registration Statement on Form 10. On January 21, 2020, the Registration Statement on Form 10 was automatically deemed effective.

On March 20, 2020, March 5, 2021, February 25, 2022 and March 1, 2023, the Trust filed its annual reports on Form 10-K under the Securities Act (File No. 000-56121) (the "Annual Reports"). On May 8, 2020, August 7, 2020, November 6, 2020, May 7, 2021, August 6, 2021, November 5, 2021, May 6, 2022, August 5, 2022, November 4, 2022, May 5, 2023, August 4, 2023, and November 3, 2023, the Trust filed its quarterly reports on Form 10-Q under the Securities Act (File No. 000-56121) (the "Quarterly Reports"). On October 19, 2023, the Trust filed a registration statement on Form S-3 under the Securities Act (File No. 333-275079) (the "Registration Statement"). On November 22, 2023, the Trust filed Amendment No. 1 to the Registration Statement on Form S-3. On December 26, 2023, the Trust filed Amendment No. 2 to the Registration Statement on Form S-3. On January 2, 2024, the Trust filed Amendment No. 3 to the Registration Statement on Form S-3. The descriptions of the Trust, the Shares, and Bitcoin contained herein are based, in part, on the Annual Report, Quarterly Reports and Registration Statement.

On January 17, 2019, the Trust submitted to the Commission an amended Form D as a business trust. Shares of the Trust have been quoted on OTC Market's OTCQX Best Marketplace under the symbol "GBTC" since March 26, 2015. On February 22, 2019 and March 20, 2020, the Trust published annual reports for GBTC for the periods ended December 31, 2018 and December 31, 2019, respectively. On May 14, 2019, August 8, 2019, November 14, 2019, May 8, 2020, August 7, 2020 and November 6, 2020, the Trust published quarterly reports for GBTC for the periods ended March 31, 2019, June 30, 2019, September 30, 2019, March 31, 2020, June 30, 2020 and September 30, 2020 respectively. Reports published before January 11, 2020, the date on which the Trust's Shares became registered pursuant to Section 12(g) of the Act, can be found on OTC Market's website (<http://www.otcm Markets.com/stock/GBTC/disclosure>), and reports published on or after January 11, 2020 can be found on OTC Market's website (<http://www.otcm Markets.com/stock/GBTC/disclosure>) and the Commission's website (<https://www.sec.gov/cgi-bin/browse-edgar?CIK=gbtc&owner=exclude&action=getcompany>). The Shares will be of the same class and will have the same rights as Shares of GBTC. Effective October 28, 2014, the Trust suspended its redemption program for shares of GBTC, in which shareholders were permitted to request the redemption of their shares through Genesis Global Trading, Inc. (formerly known as SecondMarket, Inc.), an affiliate of the Sponsor and the Trust. According to the Sponsor, freely tradeable shares of GBTC will remain freely tradeable Shares on the date of the listing of the Shares that are unregistered under the Securities Act. Restricted shares of GBTC will remain subject to private placement restrictions and the holders of such restricted shares will continue to hold those Shares subject to those restrictions until they become freely tradable Shares.

⁸ As of November 14, 2023.

(representing 3.1% of all Bitcoin in circulation), and its Shares trade millions of dollars in daily volume and are held by nearly a million American investor accounts seeking exposure to Bitcoin without the cost and complexity of purchasing the asset directly. However, because the Trust is not currently listed as an exchange-traded product (“ETP”), the value of the Shares has not been able to closely track the value of the Trust’s underlying Bitcoin. The Sponsor thus believes that allowing Shares of the Trust to list and trade on the Exchange as an ETP (*i.e.*, converting the Trust to a spot Bitcoin ETP) would unlock over \$2.9 billion of value⁹ for the Trust’s shareholders and provide other investors with a safe and secure way to invest in Bitcoin on a regulated national securities exchange.

The sponsor of the Trust is Grayscale Investments, LLC (“Sponsor”), a Delaware limited liability company. The Sponsor is a wholly-owned subsidiary of Digital Currency Group, Inc. (“Digital Currency Group”). The trustee for the Trust is Delaware Trust Company (“Trustee”). The custodian for the Trust’s Bitcoin is Coinbase Custody Trust Company, LLC (“Custodian”).¹⁰ The administrator and transfer agent of the Trust is BNY Mellon Asset Servicing, a division of The Bank of New York Mellon (the “Transfer Agent”). The distribution and marketing agent for the Trust will be Foreside Fund Services, LLC (the “Marketing Agent”). The index provider for the Trust is CoinDesk Indices, Inc. (the “Index Provider”).

The Trust is a Delaware statutory trust, organized on September 13, 2013, that operates pursuant to a trust agreement between the Sponsor and the Trustee (“Trust Agreement”). The Trust has no fixed termination date.

Operation of the Trust

⁹ Based on a discount of 13.4% as of November 14, 2023.

¹⁰ According to the Annual Report, Digital Currency Group owns a minority interest in Coinbase, Inc., which is the parent company of the Custodian, representing less than 1.0% of its equity.

According to the Annual Report and Registration Statement, the Trust's assets consist solely of Bitcoins.¹¹

Each Share represents a proportional interest, based on the total number of Shares outstanding, in the Trust's assets as determined by reference to the Index Price,¹² less the Trust's expenses and other liabilities (which include accrued but unpaid fees and expenses). The Sponsor expects that the market price of the Shares will fluctuate over time in response to the market prices of Bitcoin. In addition, because the Shares reflect the estimated accrued but unpaid expenses of the Trust, the number of Bitcoins represented by a Share will gradually decrease over time as the Trust's Bitcoins are used to pay the Trust's expenses.

The activities of the Trust will be limited to (i) issuing "Baskets" (as defined below) in exchange for Bitcoins transferred to the Trust as consideration in connection with creations, (ii) transferring or selling Bitcoins as necessary to cover the Sponsor's Fee¹³ and/or certain Trust

¹¹ The Trust may from time to time come into possession of Incidental Rights and/or IR Virtual Currency by virtue of its ownership of Bitcoins, generally through a fork in the Bitcoin Blockchain, an airdrop offered to holders of Bitcoins or other similar event. "Incidental Rights" are rights to acquire, or otherwise establish dominion and control over, any virtual currency or other asset or right, which rights are incident to the Trust's ownership of Bitcoins and arise without any action of the Trust, or of the Sponsor or Trustee on behalf of the Trust. "IR Virtual Currency" is any virtual currency tokens, or other asset or right, acquired by the Trust through the exercise (subject to the applicable provisions of the Trust Agreement) of any Incidental Right. Although the Trust is permitted to take certain actions with respect to Incidental Rights and IR Virtual Currency in accordance with its Trust Agreement, at this time the Trust will prospectively irrevocably abandon any Incidental Rights and IR Virtual Currency. In the event the Trust seeks to change this position, the Exchange would file a subsequent proposed rule change with the Commission.

¹² The "Index Price" means the U.S. dollar value of a Bitcoin derived from the Digital Asset Trading Platforms that are reflected in the CoinDesk Bitcoin Price Index (XBIX) (the "Index"), calculated at 4:00 p.m., New York time, each day. For purposes of the Trust Agreement, the term Bitcoin Index Price has the same meaning as the Index Price as defined herein.

¹³ The Sponsor's Fee means a fee, payable in Bitcoins, which accrues daily in U.S. dollars at an annual rate of currently 2.0%, but which will be lowered in connection with the Trust becoming an ETP, of the NAV Fee Basis Amount of the Trust as of 4:00 p.m., New York time, on each day; provided that for a day that is not a business day, the calculation of the Sponsor's Fee will be based on the NAV Fee Basis Amount from the most recent business day, reduced by the accrued and unpaid Sponsor's Fee for such most recent business day and for each day after such most recent business day and prior to the relevant calculation date. The "NAV Fee Basis Amount" is calculated in the manner set forth under "Valuation of Bitcoin and Determination of NAV" below.

expenses, (iii) transferring Bitcoins in exchange for Baskets surrendered for redemption (subject to obtaining regulatory approval from the SEC and approval of the Sponsor), (iv) causing the Sponsor to sell Bitcoins on the termination of the Trust, and (v) engaging in all administrative and security procedures necessary to accomplish such activities in accordance with the provisions of the Trust Agreement, the Custodian Agreement, the Index License Agreement and the Participant Agreements (each as defined below).

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

Investment Objective

According to the Annual Report and Registration Statement, the Trust's investment objective is for the value of the Shares (based on Bitcoin per Share) to reflect the value of the Bitcoins held by the Trust, determined by reference to the Index Price, less the Trust's expenses and other liabilities.

While an investment in the Shares is not a direct investment in Bitcoin, the Shares are designed to provide investors with a cost-effective and convenient way to gain investment exposure to Bitcoin. Generally speaking, a substantial direct investment in Bitcoin may require expensive and sometimes complicated arrangements in connection with the acquisition, security and safekeeping of the Bitcoin and may involve the payment of substantial fees to acquire such Bitcoin from third-party facilitators through cash payments of U.S. dollars. Because the value of the Shares is correlated with the value of Bitcoin held by the Trust, it is important to understand the investment attributes of, and the market for, Bitcoin.

The Trust uses the Index Price to calculate its "NAV," which is the aggregate value, expressed in U.S. dollars, of the Trust's assets (other than U.S. dollars or other fiat currency),

less the U.S. dollar value of the Trust's expenses and other liabilities calculated in the manner set forth under "Valuation of Bitcoin and Determination of NAV." "NAV per Share" is calculated by dividing NAV by the number of Shares then outstanding.

Valuation of Bitcoin and Determination of NAV

The following is a description of the material terms of the Trust Agreement as it relates to valuation of the Trust's Bitcoin and the NAV calculations.¹⁴

On each business day at 4:00 p.m., New York time, or as soon thereafter as practicable (the "Evaluation Time"), the Sponsor will evaluate the Bitcoins held by the Trust and calculate and publish the NAV of the Trust. To calculate the NAV, the Sponsor will:

1. Determine the Index Price as of such business day.
2. Multiply the Index Price by the Trust's aggregate number of Bitcoins owned by the Trust as of 4:00 p.m., New York time, on the immediately preceding day, less the aggregate number of Bitcoins payable as the accrued and unpaid Sponsor's Fee as of 4:00 p.m., New York time, on the immediately preceding day.
3. Add the U.S. dollar value of Bitcoins, calculated using the Index Price, receivable under pending creation orders, if any, determined by multiplying the number of the Baskets represented by such creation orders by the Basket Amount and then multiplying such product by the Index Price.¹⁵
4. Subtract the U.S. dollar amount of accrued and unpaid Additional Trust Expenses,¹⁶ if any.

¹⁴ While the Sponsor uses the terminology "NAV" in this filing, the term used in the Trust Agreement is "Digital Asset Holdings."

¹⁵ "Baskets" and "Basket Amount" have the meanings set forth in "Creation and Redemption of Shares" below.

¹⁶ "Additional Trust Expenses" are any expenses incurred by the Trust in addition to the Sponsor's Fee that are not Sponsor-paid expenses, including, but not limited to, (i) taxes and governmental charges,

5. Subtract the U.S. dollar value of the Bitcoins, calculated using the Index Price, to be distributed under pending redemption orders, if any, determined by multiplying the number of Baskets to be redeemed represented by such redemption orders by the Basket Amount and then multiplying such product by the Index Price (the amount derived from steps 1 through 5 above, the “NAV Fee Basis Amount”).
6. Subtract the U.S. dollar amount of the Sponsor’s Fee that accrues for such business day, as calculated based on the NAV Fee Basis Amount for such business day.

In the event that the Sponsor determines that the primary methodology used to determine the Index Price is not an appropriate basis for valuation of the Trust’s Bitcoins, the Sponsor will utilize the cascading set of rules as described in “Determination of the Index Price When Index Price is Unavailable” below.

Bitcoin and the Bitcoin Network

According to the Annual Report, Bitcoin is a digital asset that is created and transmitted through the operations of the peer-to-peer “Bitcoin Network,” a decentralized network of computers that operates on cryptographic protocols. No single entity owns or operates the Bitcoin Network, the infrastructure of which is collectively maintained by a decentralized user base. The Bitcoin Network allows people to exchange tokens of value, called Bitcoin, which are recorded on a public transaction ledger known as a Blockchain. Bitcoin can be used to pay for

(ii) expenses and costs of any extraordinary services performed by the Sponsor (or any other service provider) on behalf of the Trust to protect the Trust or the interests of shareholders, (iii) any indemnification of the Custodian or other agents, service providers or counterparties of the Trust, (iv) the fees and expenses related to the listing, quotation or trading of the Shares on any marketplace or other alternative trading system, as determined by the Sponsor, on which the Shares may then be listed, quoted or traded, including but not limited to, NYSE Arca, Inc. (including legal, marketing and audit fees and expenses) to the extent exceeding \$600,000 in any given fiscal year and (v) extraordinary legal fees and expenses, including any legal fees and expenses incurred in connection with litigation, regulatory enforcement or investigation matters.

goods and services, or it can be converted to fiat currencies, such as the U.S. dollar, at rates determined on “Digital Asset Markets”¹⁷ that trade Bitcoin or in individual end-user-to-end-user transactions under a barter system.

The Bitcoin Network is decentralized in that it does not require governmental authorities or financial institution intermediaries to create, transmit or determine the value of Bitcoin. Rather, Bitcoin is created and allocated by the Bitcoin Network protocol through a “mining” process. The value of Bitcoin is determined by the supply of and demand for Bitcoin on the Digital Asset Markets or in private end-user-to-end-user transactions.

New Bitcoin are created and rewarded to the miners of a block in the Blockchain for verifying transactions. The Blockchain is effectively a decentralized database that includes all blocks that have been mined by miners and it is updated to include new blocks as they are solved. Each Bitcoin transaction is broadcast to the Bitcoin Network and, when included in a block, recorded in the Blockchain. As each new block records outstanding Bitcoin transactions, and outstanding transactions are settled and validated through such recording, the Blockchain represents a complete, transparent and unbroken history of all transactions of the Bitcoin Network.

Overview of the Bitcoin Network’s Operations

In order to own, transfer or use Bitcoin directly on the Bitcoin Network (as opposed to

¹⁷ A “Digital Asset Market” is a “Brokered Market,” “Dealer Market,” “Principal-to-Principal Market” or “Exchange Market,” as each such term is defined in the Financial Accounting Standards Board Accounting Standards Codification Master Glossary.

The “Digital Asset Trading Platform Market” is the global trading platform market for the trading of Bitcoins, which consists of transactions on electronic Digital Asset Trading Platforms.

A “Digital Asset Trading Platform” is an electronic marketplace where participants may trade, buy and sell Bitcoins based on bid-ask trading. The largest Digital Asset Trading Platforms are online and typically trade on a 24-hour basis, publishing transaction price and volume data.

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

Summary of a Bitcoin Transaction

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

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

public or provide to the sender its related private key.

Neither the recipient nor the sender reveal their private keys in a transaction, because the private key authorizes transfer of the funds in that address to other users. Therefore, if a user loses his private key, the user may permanently lose access to the Bitcoin contained in the associated address. Likewise, Bitcoin is irretrievably lost if the private key associated with them is deleted and no backup has been made. When sending Bitcoin, a user's Bitcoin Network software program must validate the transaction with the associated private key. In addition, since every computation on the Bitcoin Network requires processing power, there is a transaction fee involved with the transfer that is paid by the payor. The resulting digitally validated transaction is sent by the user's Bitcoin Network software program to the Bitcoin Network miners to allow transaction confirmation.

Bitcoin Network miners record and confirm transactions when they mine and add blocks of information to the Blockchain. When a miner mines a block, it creates that block, which includes data relating to (i) newly submitted and accepted transactions; (ii) a reference to the prior block in the Bitcoin Blockchain; and (iii) the satisfaction of the consensus mechanism to mine the block. The miner becomes aware of outstanding, unrecorded transactions through the data packet transmission and distribution discussed above.

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

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

Limits on Bitcoin Supply

The supply of new Bitcoin is mathematically controlled so that the number of Bitcoin grows at a limited rate pursuant to a pre-set schedule. The number of Bitcoin awarded for solving a new block is automatically halved after every 210,000 blocks are added to the Blockchain. Currently, the fixed reward for solving a new block is 6.25 Bitcoin per block and this is expected to decrease by half to become 3.125 Bitcoin after the next 210,000 blocks have entered the Bitcoin Network, which is expected to be mid-2024. This deliberately controlled rate of Bitcoin creation means that the number of Bitcoin in existence will increase at a controlled rate until the number of Bitcoin in existence reaches the pre-determined 21 million Bitcoin. As of September 30, 2023, approximately 19.5 million Bitcoins were outstanding and the date when the 21 million Bitcoin limitation will be reached is estimated to be the year 2140.

Custody of the Trust's Bitcoins

Digital assets and digital asset transactions are recorded and validated on blockchains, the public transaction ledgers of a digital asset network. Each digital asset blockchain serves as a record of ownership for all of the units of such digital asset, even in the case of certain privacy-preserving digital assets, where the transactions themselves are not publicly viewable. All digital assets recorded on a blockchain are associated with a public blockchain address, also referred to as a digital wallet. Digital assets held at a particular public blockchain address may be accessed and transferred using a corresponding private key.

Key Generation

Public addresses and their corresponding private keys are generated by the Custodian in secret key generation ceremonies at secure locations inside faraday cages, which are enclosures used to block electromagnetic fields and thus mitigate against attacks. The Custodian uses quantum random number generators to generate the public and private key pairs.

Once generated, private keys are encrypted, separated into “shards,” and then further encrypted. After the key generation ceremony, all materials used to generate private keys, including computers, are destroyed. All key generation ceremonies are performed offline. No party other than the Custodian has access to the private key shards of the Trust.

Key Storage

Private key shards are distributed geographically in secure vaults around the world, including in the United States. The locations of the secure vaults may change regularly and are kept confidential by the Custodian for security purposes.

The “Digital Asset Account” is a segregated custody account controlled and secured by the Custodian to store private keys, which allows for the transfer of ownership or control of the

Trust's Bitcoins on the Trust's behalf. The Digital Asset Account uses offline storage, or "cold" storage, mechanisms to secure the Trust's private keys. The term cold storage refers to a safeguarding method by which the private keys corresponding to digital assets are disconnected and/or deleted entirely from the internet. Cold storage of private keys may involve keeping such keys on a non-networked (or "air-gapped") computer or electronic device or storing the private keys on a storage device (for example, a USB thumb drive) or printed medium (for example, papyrus, paper or a metallic object). A digital wallet may receive deposits of digital assets but may not send digital assets without use of the digital assets' corresponding private keys. In order to send digital assets from a digital wallet in which the private keys are kept in cold storage, either the private keys must be retrieved from cold storage and entered into an online, or "hot," digital asset software program to sign the transaction, or the unsigned transaction must be transferred to the cold server in which the private keys are held for signature by the private keys and then transferred back to the online digital asset software program. At that point, the user of the digital wallet can transfer its digital assets.

Security Procedures

The Custodian is the custodian of the Trust's private keys (which, as noted above, facilitate the transfer of ownership or control of the Trust's Bitcoins) in accordance with the terms and provisions of the custodian agreement by and between the Custodian, the Sponsor and the Trust (the "Custodian Agreement"). Transfers from the Digital Asset Account require certain security procedures, including, but not limited to, multiple encrypted private key shards, usernames, passwords and 2-step verification. Multiple private key shards held by the Custodian must be combined to reconstitute the private key to sign any transaction in order to transfer the Trust's assets. Private key shards are distributed geographically in secure vaults around the

world, including in the United States.

As a result, if any one secure vault is ever compromised, this event will have no impact on the ability of the Trust to access its assets, other than a possible delay in operations, while one or more of the other secure vaults is used instead. These security procedures are intended to remove single points of failure in the protection of the Trust's assets.

Transfers of Bitcoins to the Digital Asset Account will be available to the Trust once processed on the Blockchain.

Subject to obtaining regulatory approval to operate a redemption program and authorization of the Sponsor, the process of accessing and withdrawing Bitcoins from the Trust to redeem a Basket by an Authorized Participant¹⁸ will follow the same general procedure as transferring Bitcoins to the Trust to create a Basket by an Authorized Participant, only in reverse.

The Sponsor will maintain ownership and control of the Trust's Bitcoin in a manner consistent with good delivery requirements for spot commodity transactions.

Bitcoin Value

Digital Asset Trading Platform Valuation

According to the Annual Report and Registration Statement, the value of Bitcoin is determined by the value that various market participants place on Bitcoin through their transactions. The most common means of determining the value of a Bitcoin is by surveying one or more Digital Asset Trading Platforms where Bitcoin is traded publicly (e.g., Coinbase, Bitstamp, Kraken, and LMAX Digital). Additionally, there are over-the-counter dealers or market makers that transact in Bitcoin.

¹⁸ "Authorized Participant" has the meaning set forth in "Creation and Redemption of Shares" below.

Digital Asset Trading Platforms Public Market Data

On each online Digital Asset Trading Platforms, Bitcoin is traded with publicly disclosed valuations for each executed trade, measured by one or more fiat currencies such as the U.S. dollar or Euro. Over-the-counter dealers or market makers do not typically disclose their trade data.

As of September 30, 2023, the Digital Asset Trading Platforms included in the Index are Coinbase, Bitstamp, Kraken and LMAX Digital. As further described below, the Sponsor and the Trust reasonably believe each of these Digital Asset Trading Platforms are in material compliance with applicable U.S. federal and state licensing requirements and maintain practices and policies designed to comply with know-your-customer (“KYC”), anti-money-laundering (“AML”) regulations.

Coinbase: A U.S.-based trading platform registered as a money services business (“MSB”) with the U.S. Department of Treasury’s Financial Crimes Enforcement Network (“FinCEN”) and licensed as a virtual currency business under the New York State Department of Financial Services (“NYDFS”) BitLicense and as a money transmitter in various U.S. states.

Bitstamp: A U.K.-based trading platform registered as an MSB with FinCen and licensed as a virtual currency business under the NYDFS BitLicense and as a money transmitter in various U.S. states.

Kraken: A U.S.-based trading platform registered as an MSB with FinCEN and licensed as a money transmitter in various U.S. states. Kraken does not hold a BitLicense.

LMAX Digital: A U.K.-based trading platform registered as a broker with the Financial Conduct Authority. LMAX Digital does not hold a BitLicense.

Currently, there are several Digital Asset Trading Platforms operating worldwide, and online Digital Asset Trading Platforms represent a substantial percentage of Bitcoin buying and selling activity and provide the most data with respect to prevailing valuations of Bitcoins. These trading platforms include established trading platforms such as trading platforms included in the Index, which provide a number of options for buying and selling Bitcoins. The below table reflects the trading volume in Bitcoins and market share¹⁹ of the BTC-U.S. dollar trading pairs of each of the Digital Asset Trading Platforms included in the Index as of September 30, 2023²⁰ using data reported by the Index Provider from May 1, 2015 to September 30, 2023:

Digital Trading Platforms included in the Index as of September 30, 2023	Volume (BTC)	Market Share
Coinbase	44,082,174	24.33%
Bitstamp	23,391,038	12.91%
Kraken	13,173,711	7.27%
LMAX Digital	8,929,858	4.93%
Total BTC-U.S. dollar trading pair	89,576,781	49.44%

¹⁹ Market share is calculated using trading volume data (in Bitcoins) for certain Digital Asset Trading Platforms, including Coinbase, Bitstamp, Kraken, and LMAX Digital, as well as certain other large U.S.-dollar denominated Digital Asset Trading Platforms that were not included in the Index as of September 30, 2023, including Binance.US (data included from April 1, 2020), Bitfinex, Bitflyer (data included from December 24, 2018), Bittrex (data included from July 31, 2018), Cboe Digital (data included from October 1, 2020), FTX.US (data included from July 1, 2021 through November 10, 2022), Gemini (data included from October 7, 2015), itBit, LakeBTC (data included from May 1, 2015 to June 1, 2018 and from January 27, 2019 to May 6, 2021), HitBTC (data included from April 1, 2019 to March 31, 2020) and OKCoin (data included through March 31, 2023).

²⁰ On January 19, 2020, the Index Provider removed Bittrex due to a lack of trading volume and added LMAX Digital based on its meeting the liquidity thresholds for inclusion in the Index. On April 6, 2020, the Index Provider removed itBit due to a lack of trading volume and did not add any constituents as part of its scheduled quarterly review. On October 29, 2022, the Index Provider removed Bitstamp from the Index due to its failure to meet the minimum liquidity requirement and added Binance.US as a Constituent Trading Platform based on its satisfaction of the minimum liquidity requirement as part of its scheduled quarterly review. On June 17, 2023, the Index Provider removed Binance.US from the Index, due to Binance.US's announcement that it was suspending U.S. dollar deposits and withdrawals and planned to delist its U.S. dollar trading pairs and did not add any Constituent Trading Platforms as part of its review. Effective July 29, 2023, the Index Provider added Bitstamp to the Index based on its satisfaction of the Index Provider's minimum liquidity requirement and did not remove any Constituent Trading Platforms as part of its scheduled quarterly review. On October 28, 2023, the Index Provider added Crypto.com to the Index based on its satisfaction of the Index Provider's minimum liquidity requirement and did not remove any Constituent Trading Platforms as part of its scheduled quarterly review.

Digital Trading Platforms included in the Index as of September 30, 2023	Volume (BTC)	Market Share
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The domicile, regulation, and legal compliance of the Digital Asset Trading Platforms included in the Index varies. Information regarding each Digital Asset Trading Platform may be found, where available, on the websites for such Digital Asset Trading Platforms, among other places.

The Index and the Index Price

The Index is a U.S. dollar-denominated composite reference rate for the price of Bitcoin. The Index is designed to (i) mitigate the effects of fraud, manipulation and other anomalous trading activity from impacting the Bitcoin reference rate, (ii) provide a real-time, volume-weighted fair value of Bitcoin and (iii) appropriately handle and adjust for non-market related events.

The Index Price is determined by the Index Provider through a process in which trade data is cleansed and compiled in such a manner as to algorithmically reduce the impact of anomalous or manipulative trading. This is accomplished by adjusting the weight of each data input based on price deviation relative to the observable set, as well as recent and long-term trading volume at each venue relative to the observable set.

The value of the Index is calculated and disseminated on a 24-hour basis and will be available on a continuous basis at <https://www.coindesk.com/indices>.

Constituent Trading Platform Selection

According to the Annual Report and Registration Statement, the Digital Asset Trading Platforms that are included in the Index are selected by the Index Provider utilizing a methodology that is guided by the International Organization of Securities Commissions

(“IOSCO”) principles for financial benchmarks. For a trading platform to become a Digital Asset Trading Platform included in the Index (a “Constituent Trading Platform”), it must satisfy the criteria listed below (the “Inclusion Criteria”):

- Sufficient USD liquidity relative to the size of the listed assets;
- No evidence in the past 12 months of trading restrictions on individuals or entities that would otherwise meet the trading platform’s eligibility requirements to trade;
- No evidence in the past 12 months of undisclosed restrictions on deposits or withdrawals from user accounts;
- Real-time price discovery;
- Limited or no capital controls;²¹
- Transparent ownership including a publicly-owned ownership entity;
- Publicly available language and policies addressing legal and regulatory compliance in the US, including KYC (Know Your Customer), AML (Anti-Money Laundering) and other policies designed to comply with relevant regulations that might apply to it;
- Be a US-domiciled trading platform or a non-US domiciled trading platform that is able to service US investors;
- Offer programmatic spot trading of the trading pair,²² and reliably publish trade prices and volumes on a real-time basis through Rest and Websocket APIs.

²¹ “Capital controls” in this context means governmental sanctions that would limit the movement of capital into, or out of, the jurisdiction in which such Digital Asset Trading Platforms operate.

²² Trading platforms with programmatic trading offer traders an application programming interface that permits trading by sending programmed commands to the trading platform.

A Digital Asset Trading Platform is removed from the Constituent Trading Platforms when it no longer satisfies the Inclusion Criteria. The Index Provider does not currently include data from non-Digital Asset Trading Platforms (or over-the-counter markets) or derivatives platforms among the Constituent Trading Platforms. According to the Annual Report and Registration Statement, over-the-counter data is not currently included because of the potential for trades to include a significant premium or discount paid for larger liquidity, which creates an uneven comparison relative to more active markets. There is also a higher potential for over-the-counter transactions to not be arms-length, and thus not be representative of a true market price. Bitcoin derivative markets data, including Bitcoin futures markets and perpetuals markets data, are also not currently included as the markets remain relatively thin. The Index Provider will consider IOSCO principles for financial benchmarks and the management of trading venues of Bitcoin derivatives and the aforementioned Inclusion Criteria when considering inclusion of over-the-counter or derivative platform data in the future.

The Index Provider and the Sponsor have entered into the index license agreement, dated as of February 1, 2022 (as amended, the “Index License Agreement”), governing the Sponsor’s use of the Index Price.²³ Pursuant to the terms of the Index License Agreement, the Index Provider may adjust the calculation methodology for the Index Price without notice to, or consent of, the Trust or its shareholders. The Index Provider may decide to change the calculation methodology to maintain the integrity of the Index Price calculation should it identify or become aware of previously unknown variables or issues with the existing methodology that it believes could materially impact its performance and/or reliability. The Index Provider has sole

²³ Upon entering into the Index License Agreement, the Sponsor and the Index Provider terminated the license agreement between the parties dated as of February 28, 2019.

discretion over the determination of Index Price and may change the methodologies for determining the Index Price from time to time. Shareholders will be notified of any material changes to the calculation methodology or the Index Price in the Trust's current reports and will be notified of all other changes that the Sponsor considers significant in the Trust's periodic or current reports. The Trust will determine the materiality of any changes to the Index Price on a case-by-case basis, in consultation with external counsel.

The Index Provider may change the trading venues that are used to calculate the Index or otherwise change the way in which the Index is calculated at any time. For example, the Index Provider has scheduled quarterly reviews in which it may add or remove Constituent Trading Platforms that satisfy or fail the Inclusion Criteria. The Index Provider does not have any obligation to consider the interests of the Sponsor, the Trust, the shareholders, or anyone else in connection with such changes. Although the Index Provider is not required to publicize or explain the changes or to alert the Sponsor to such changes, it has historically notified the Trust (and other subscribers to the Index) of any material changes to the Constituent Trading Platforms, including any additions or removals, contemporaneous with its issuance of press releases in connection with the same. The Sponsor will notify investors of any such material event by filing a current report on Form 8-K. Although the Index methodology is designed to operate without any manual intervention, rare events would justify manual intervention. Intervention of this kind would be in response to non-market-related events, such as the halting of deposits or withdrawals of funds on a Digital Asset Trading Platform, the unannounced closure of operations on a Digital Asset Trading Platform, insolvency or the compromise of user funds. In the event that such an intervention is necessary, the Index Provider would issue a public announcement through its website, API and other established communication channels with its

clients.

Determination of the Index Price

The Index applies an algorithm to the price of Bitcoin on the Constituent Trading Platforms calculated on a per second basis over a 24-hour period. The Index's algorithm is expected to reflect a four-pronged methodology to calculate the Index Price from the Constituent Trading Platforms:

- Volume Weighting: Constituent Trading Platforms with greater liquidity receive a higher weighting in the Index, increasing the ability to execute against (i.e., replicate) the Index in the underlying spot markets.
- Price-Variance Weighting: The Index Price reflects data points that are discretely weighted in proportion to their variance from the rest of the Constituent Trading Platforms. As the price at a particular trading platform diverges from the prices at the rest of the Constituent Trading Platforms, its weight in the Index Price consequently decreases.
- Inactivity Adjustment: The Index Price algorithm penalizes stale activity from any given Constituent Trading Platform. When a Constituent Trading Platform does not have recent trading data, its weighting in the Index Price is gradually reduced until it is de-weighted entirely. Similarly, once trading activity at a Constituent Trading Platform resumes, the corresponding weighting for that Constituent Trading Platform is gradually increased until it reaches the appropriate level.
- Manipulation Resistance: In order to mitigate the effects of wash trading and order book spoofing, the Index only includes executed trades in its calculation. Additionally, the Index only includes Constituent Trading Platforms that charge

trading fees to its users in order to attach a real, quantifiable cost to any manipulation attempts.

The Index Provider re-evaluates the weighting algorithm on a periodic basis, but maintains discretion to change the way in which an Index Price is calculated based on its periodic review or in extreme circumstances and does not make the exact methodology to calculate the Index Price publicly available. Nonetheless, the Sponsor believes that, the Index is designed to limit exposure to trading or price distortion of any individual Digital Asset Trading Platform that experiences periods of unusual activity or limited liquidity by discounting, in real-time, anomalous price movements at individual Digital Asset Trading Platforms.

The Sponsor believes the Index Provider's selection process for Constituent Trading Platforms as well as the methodology of the Index Price's algorithm provides a more accurate picture of Bitcoin price movements than a simple average of Digital Asset Trading Platform spot prices, and that the weighting of Bitcoin prices on the Constituent Trading Platforms limits the inclusion of data that is influenced by temporary price dislocations that may result from technical problems, limited liquidity or fraudulent activity elsewhere in the Bitcoin spot market. By referencing multiple trading venues and weighting them based on trade activity, the Sponsor believes that the impact of any potential fraud, manipulation or anomalous trading activity occurring on any single venue is reduced.

If the Index Price becomes unavailable, or if the Sponsor determines in good faith that such Index Price does not reflect an accurate price for Bitcoin, then the Sponsor will, on a best efforts basis, contact the Index Provider to obtain the Index Price directly from the Index Provider. If after such contact such Index Price remains unavailable or the Sponsor continues to believe in good faith that such Index Price does not reflect an accurate price for the relevant

digital asset, then the Sponsor will employ a cascading set of rules to determine the Index Price, as described below in “Determination of the Index Price When Index Price is Unavailable.”

The Trust values its Bitcoin for operational purposes by reference to the Index Price. The Index Price is the value of a Bitcoin as represented by the Index, calculated at 4:00 p.m., New York time, on each business day.

Illustrative Example

For the purposes of illustration, outlined below are examples of how the attributes that impact weighting and adjustments in the aforementioned methodology may be utilized to generate the Index Price for a digital asset. For example, the Constituent Trading Platforms for the Index Price for a digital asset are Coinbase, Kraken, LMAX Digital and Bitstamp.

The Index Price algorithm, as described above, accounts for manipulation at the outset by only including data from executed trades on Constituent Trading Platforms that charge trading fees. Then, the below-listed elements may impact the weighting of the Constituent Trading Platforms on the Index price as follows:

- Volume Weighting: Each Constituent Trading Platform will be weighted to appropriately reflect the trading volume share of the Constituent Trading Platform relative to all the Constituent Trading Platforms during this same period. For example, an average hourly weighting of 67.06%, 14.57%, 11.88% and 6.49% for Coinbase, Kraken, LMAX Digital and Bitstamp, respectively, would represent each Constituent Trading Platform’s share of trading volume during the same period.
- Inactivity Adjustment: Assume that a Constituent Trading Platform represented a 14% weighting on the Index Price of the digital asset, which is based on the per-

second calculations of its trading volume and price-variance relative to the cohort of Constituent Trading Platforms included in such Index, and then went offline for approximately two hours. The index algorithm would automatically recognize inactivity and start de-weighting the Constituent Trading Platform at the 3-minute mark and continue to do so over a 7-minute period until its influence was effectively zero, 10 minutes after becoming inactive. As soon as trading activity resumed at the Constituent Trading Platform, the index algorithm would re-weight it to the appropriate weighting based on trading volume and price-variance relative to the cohort of Constituent Trading Platforms included in the Index. Due to the period of inactivity, it would re-weight the Constituent Trading Platform activity to a weight lower than its original weighting—for example, to 12%.

- Price-Variance Weighting: Assume that for a one-hour period, the digital asset's execution prices on one Constituent Trading Platform were trading more than 7% higher than the average execution prices on another Constituent Trading Platform. The algorithm will automatically detect the anomaly and reduce that specific Constituent Trading Platform's weighting to 0% for that one-hour period, ensuring a reliable spot reference unaffected by the localized event.

Determination of the Index Price When Index Price is Unavailable

The Sponsor uses the following cascading set of rules to calculate the Index Price when the Index Price is unavailable.²⁴ For the avoidance of doubt, the Sponsor will employ the below rules sequentially and in the order as presented below, should one or more specific rule(s) fail.

²⁴ The Sponsor updated these rules on January 11, 2022.

1. Index Price = The price set by the Index as of 4:00 p.m., New York time, on the valuation date.²⁵ If the Index becomes unavailable, or if the Sponsor determines in good faith that the Index does not reflect an accurate price, then the Sponsor will, on a best efforts basis, contact the Index Provider to obtain the Index Price directly from the Index Provider. If after such contact the Index remains unavailable or the Sponsor continues to believe in good faith that the Index does not reflect an accurate price, then the Sponsor will employ the next rule to determine the Index Price. There are no predefined criteria to make a good faith assessment and it will be made by the Sponsor in its sole discretion.
2. Index Price = The price set by Coin Metrics Real-Time Rate (the “Secondary Index”) as of 4:00 p.m., New York time, on the valuation date (the “Secondary Index Price”). The Secondary Index Price is a real-time reference rate price, calculated using trade data from constituent markets selected by Coin Metrics (the “Secondary Index Provider”). The Secondary Index Price is calculated by applying weighted-median techniques to such trade data where half the weight is derived from the trading volume on each constituent market and half is derived from inverse price variance, where a constituent market with high price variance as a result of outliers or market anomalies compared to other constituent markets is assigned a smaller weight. If the Secondary Index becomes unavailable, or if the Sponsor determines in good faith that the Secondary Index does not reflect an

²⁵

The valuation date is any day for which the value of the Bitcoin in the Trust may be calculated utilizing the Index Price. This calculation may be performed on business days for creation or redemption procedures or on non-business days in relation to calculating information that may be included in SEC reports comparing the GAAP and non-GAAP prices on period end dates that are non-business days. The cascading rule set is consistent for determining the value of the Bitcoin in the Trust on both business days and non-business days.

accurate price, then the Sponsor will, on a best efforts basis, contact the Secondary Index Provider to obtain the Secondary Index Price directly from the Secondary Index Provider. If after such contact the Secondary Index remains unavailable or the Sponsor continues to believe in good faith that the Secondary Index does not reflect an accurate price, then the Sponsor will employ the next rule to determine the Index Price. There are no predefined criteria to make a good faith assessment and it will be made by the Sponsor in its sole discretion.

3. Index Price = The price set by the Trust's principal market (as defined in the Annual Report) (the "Tertiary Pricing Option") as of 4:00 p.m., New York time, on the valuation date. The Tertiary Pricing Option is a spot price derived from the principal market's public data feed that is believed to be consistently publishing pricing information as of 4:00 p.m., New York time, and is provided to the Sponsor via an application programming interface. If the Tertiary Pricing Option becomes unavailable, or if the Sponsor determines in good faith that the Tertiary Pricing Option does not reflect an accurate price, then the Sponsor will, on a best efforts basis, contact the Tertiary Pricing Provider to obtain the Tertiary Pricing Option directly from the Tertiary Pricing Provider. If after such contact the Tertiary Pricing Option remains unavailable after such contact or the Sponsor continues to believe in good faith that the Tertiary Pricing Option does not reflect an accurate price, then the Sponsor will employ the next rule to determine the Index Price. There are no predefined criteria to make a good faith assessment and it will be made by the Sponsor in its sole discretion.

4. Index Price = The Sponsor will use its best judgment to determine a good faith estimate of the Index Price. There are no predefined criteria to make a good faith assessment and it will be made by the Sponsor in its sole discretion.

In the event of a fork, the Index Provider may calculate the Index Price based on a digital asset that the Sponsor does not believe to be an appropriate asset of the Trust (*i.e.*, a digital asset other than Bitcoin).²⁶ In this event, the Sponsor has full discretion to use a different index provider or calculate the Index Price itself using its best judgment. In such an event, the Exchange will submit a proposed rule filing to contemplate the assets that would subsequently be held by the Trust.²⁷

The Sponsor may, in its sole discretion, select a different index provider, select a different index price provided by the Index Provider, calculate the Index Price by using the cascading set of rules set forth above, or change the cascading set of rules set forth above at any

²⁶ According to the Annual Report, when a modification is introduced and a substantial majority of users and miners consent to the modification, the change is implemented and the network remains uninterrupted. However, if less than a substantial majority of users and miners consent to the proposed modification, and the modification is not compatible with the software prior to its modification, the consequence would be what is known as a “hard fork” of the Bitcoin Network, with one group running the pre-modified software and the other running the modified software. The effect of such a fork would be the existence of two versions of Bitcoin running in parallel, yet lacking interchangeability. For example, in August 2017, Bitcoin “forked” into Bitcoin and a new digital asset, Bitcoin Cash, as a result of a several-year dispute over how to increase the rate of transactions that the Bitcoin Network can process. In the event of a hard fork of the Bitcoin Network, the Sponsor will, consistent with its obligations pursuant to the Trust Agreement, use its discretion to determine, in good faith, which peer-to-peer network, among a group of incompatible forks of the Bitcoin Network, is generally accepted as the Bitcoin Network and should therefore be considered the appropriate network for the Trust’s purposes. The Sponsor will base its determination on a variety of then relevant factors, including, but not limited to, the Sponsor’s beliefs regarding expectations of the core developers of Bitcoin, users, services, businesses, miners, and other constituencies, as well as the actual continued acceptance of, mining power on, and community engagement with, the Bitcoin Network. There is no guarantee that the Sponsor will choose the digital asset that is ultimately the most valuable fork, and the Sponsor’s decision may adversely affect the value of the Shares as a result. The Sponsor may also disagree with shareholders, security vendors, and the Index Provider on what is generally accepted as Bitcoin and should therefore be considered “Bitcoin” for the Trust’s purposes, which may also adversely affect the value of the Shares as a result.

²⁷ See supra note 11.

time.²⁸

The Impact of the Approval of Bitcoin Futures ETFs and ETPs on Spot Bitcoin ETPs Like the Trust

On October 19, 2021, the date of the Exchange’s initial submission of this proposed rule change,²⁹ the first Bitcoin-based exchange-traded fund (“ETF”) was approved by the Commission for trading.³⁰ Additional Bitcoin-based ETFs and ETPs were subsequently approved for trading.³¹ All of those approved ETFs and ETPs hold Bitcoin futures contracts that trade on the CME and many settle using the CME CF Bitcoin Reference Rate (“BRR”), which is priced based on the spot Bitcoin markets Coinbase, Kraken, LMAX, Bitstamp, Gemini, and itBit, essentially the same spot markets that are included in the Index that the Trust uses to value its Bitcoin holdings. Given that the Commission has approved ETFs and ETPs that offer exposure to Bitcoin futures, which themselves are priced based on the underlying spot Bitcoin market, the Sponsor believes that the Commission must also approve ETPs that offer exposure to spot Bitcoin, like the Trust.

The Commission has historically sought to justify treating futures-based ETFs and ETPs differently from spot-based ETPs because of (i) distinctions between the regulations under which the two products would be registered (the Investment Company Act of 1940 (the “’40 Act”) for

²⁸ The Sponsor will provide notice of any such changes in the Trust’s periodic or current reports and, if the Sponsor makes such a change other than on an ad hoc or temporary basis, it will file a proposed rule change under Section 19(b) with the Commission.

²⁹ See Securities Exchange Act Release No. 93504 (November 2, 2021), 86 FR 61804 (November 8, 2021) (Notice of Filing of Proposed Rule Change To List and Trade Shares of the Grayscale Bitcoin Trust (BTC) Under NYSE Arca Rule 8.201-E).

³⁰ ProShares Bitcoin Strategy ETF (BITO).

³¹ See, e.g., Securities Exchange Act Release No. 94620 (April 6, 2022), 87 FR 21676 (April 12, 2022) (SR-NYSEArca-2021-53) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of the Teucrium Bitcoin Futures Fund under NYSE ARCA Rule 8.200-E, Commentary .02 (Trust Issued Receipts)) (“Teucrium Order”); VanEck Bitcoin Strategy ETF (XBTF); Valkyrie Bitcoin Strategy ETF (BTF).

digital-asset futures ETFs and '33 Act for spot digital-asset ETPs) and/or (ii) the existence of regulation and surveillance-sharing over the CME digital-asset futures market through the Intermarket Surveillance Group (“ISG”), as compared to the spot market for those digital assets.³² The Sponsor believes that this reasoning is unsupported for the following reasons.

The '40 Act offers no more investor protections than the '33 Act in the context of Bitcoin-based ETF and ETP proposals

While the '40 Act has certain added investor protections that the '33 Act does not require, these protections do not seek to allay harms arising from underlying assets or markets of assets that ETFs hold, such as the potential for fraud or manipulation in such markets. In other words, the Sponsor does not believe that the application of the '40 Act supports the purported justifications the Commission has made in denying other spot digital asset ETPs. Instead, the '40 Act seeks to remedy certain abusive practices in the *management* of investment companies such as ETFs, and thus places certain restrictions on ETFs and ETF sponsors. The '40 Act explicitly lists out the types of abuses it seeks to prevent, and places certain restrictions related to accounting, borrowing, custody, fees, and independent boards, among others. Notably, none of these restrictions address an ETF's underlying assets, whether Bitcoin futures or spot Bitcoin, or the markets from which such assets' pricing is derived, whether the CME Bitcoin futures market or spot Bitcoin markets. As a result, the Sponsor believes that the distinction between registration

³² See, e.g., Chair Gary Gensler Public Statement, “Remarks Before the Aspen Security Forum,” (August 3, 2021), stating that the Chair looked forward to the Commission’s review of Bitcoin-based ETF proposals registered under the '40 Act, “particularly if those are limited to [the] CME-traded Bitcoin futures,” noting the “significant investor protection” offered by the '40 Act, <https://www.sec.gov/news/public-statement/gensler-aspen-security-forum-2021-08-03>; Securities Exchange Act Release No. 93559 (November 12, 2021), 86 FR 64539 (November 18, 2021) (SR–CboeBZX–2021–019) (Order Disapproving a Proposed Rule Change to List and Trade Shares of the VanEck Bitcoin Trust under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares) (“VanEck Order”) (denying the first spot bitcoin ETP registered under the '33 Act following the first approval of a bitcoin futures ETF registered under the '40 Act, noting the differences in the standard of review that applies to such products); Teucrium Order (approving the first bitcoin futures ETP registered under the '33 Act).

of Bitcoin futures ETFs under the '40 Act and the registration of spot Bitcoin ETPs under the '33 Act is one without a difference in the context of Bitcoin-based ETP proposals.

Indeed, the Sponsor believes that the Commission implicitly confirmed as much in the April 2022 Teucrium Order.³³ Much like prior approved Bitcoin-based ETFs, the Teucrium ETP holds only Bitcoin futures, rather than spot Bitcoin. *Unlike* previous filings, however, the Teucrium ETP was filed under the '33 Act, rather than the '40 Act. The Sponsor believes that, by approving the Teucrium ETP, the Commission has indicated that registration under the '40 Act and the registration under the '33 Act is a distinction without a difference.

Surveillance-sharing with the CME Bitcoin futures market is sufficient to protect against fraud and manipulation in the underlying spot Bitcoin market

The Sponsor believes that, because the CME Bitcoin futures market is priced based on the underlying spot Bitcoin market, any fraud or manipulation in the spot market would necessarily affect the price of Bitcoin futures, thereby affecting the net asset value of an ETP holding spot Bitcoin or an ETF holding Bitcoin futures, as well as the price investors pay for such product's shares.

This conclusion has been corroborated by a study conducted by Professor Robert E. Whaley, a finance professor and expert on derivative contract valuation, which found that the BRR, the index underlying many of the Bitcoin-futures based ETFs, and the Index underlying the Trust, are near perfect substitutes.³⁴ In fact, according to the study, there is a 99.9%

³³ Teucrium Order, 87 FR at 21678 (“With respect to the proposed ETP, the underlying bitcoin assets are CME bitcoin futures contracts. The relevant analysis, therefore, is whether Arca has a comprehensive surveillance sharing agreement with a regulated market of significant size related to CME bitcoin futures contracts. As discussed below, taking into consideration the direct relationship between the regulated market with which Arca has a surveillance-sharing agreement and the assets held by the proposed ETP, as well as developments with respect to the CME bitcoin futures market— including the launch of exchange-traded funds registered under the Investment Company Act of 1940 (‘1940 Act’) that hold CME bitcoin futures (‘Bitcoin Futures ETFs’)—the Commission concludes that the Exchange has the requisite surveillance-sharing agreement.”).

³⁴ See Comment Letter from Robert E. Whaley (May 25, 2022), available at:

correlation between prices in the Bitcoin futures market and the spot Bitcoin market.

Nevertheless, the Commission denied the Exchange’s original proposed rule change.³⁵ In its petition for review in the D.C. Circuit challenging the Grayscale Order, the Sponsor argued that the Trust and the approved Bitcoin futures ETPs (the Teucrium and Valkyrie Futures ETPs) rely on nearly identical sets of spot-market Bitcoin pricing data to calculate the value of their holdings.³⁶ The D.C. Circuit agreed — in the court’s unanimous decision vacating the Grayscale Order, the Court held the Sponsor “presented uncontested evidence that there is a 99.9 percent correlation between bitcoin’s spot market and CME futures contract prices” and that the “tight correlation is not a coincidence: bitcoin futures prices are ultimately based on spot market prices.”³⁷ In fact, the Court held the Sponsor’s proposed spot Bitcoin ETP and approved Bitcoin futures ETPs, were “materially similar across relevant regulatory factors.”³⁸

Given the similarity between the two types of products, the Sponsor believes that it must be the case that CME surveillance can either detect spot-market fraud that affects both futures ETFs and spot ETPs, or that such surveillance cannot do so for either type of product. Having approved Bitcoin futures ETFs in part on the basis of such surveillance, the Commission has

<https://www.sec.gov/comments/sr-nysearca-2021-90/srnysearca202190-20129557-295794.pdf>.

³⁵ See Securities Exchange Act Release No. 95180 (June 29, 2022), 87 FR 40299 (July 6, 2022) (SR-NYSEArca-2021-90) (Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Share of Grayscale Bitcoin Trust Under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares)) (“Grayscale Order”).

³⁶ *Grayscale Investments, LLC v. Securities and Exchange Commission* (“Grayscale v. SEC”), No. 22-1142, Brief of Petitioner Grayscale Investments, LLC (October 11, 2022).

³⁷ *Grayscale v. SEC*, No. 22-1142, Opinion at 10 (August 29, 2023) (“Grayscale presented uncontested evidence that there is a 99.9 percent correlation between bitcoin’s spot market and CME futures contract prices. This tight correlation is not a coincidence: bitcoin futures prices are ultimately based on spot market prices. Bitcoin futures trade based on predicted settlement prices that are in turn calculated using the Bitcoin Reference Rate. The Reference Rate, like the CoinDesk Index, aggregates spot prices from multiple exchanges. Four of the six exchanges are shared between the indexes. A study conducted by a finance professor and expert on derivative contract valuation found the CoinDesk Index and the Reference Rate are ‘near perfect substitutes.’”) (internal citations omitted).

³⁸ *Id.* at 11.

clearly determined that CME surveillance can detect spot-market fraud that would affect spot ETPs, and the Sponsor thus believes that it must also approve spot Bitcoin ETPs on that basis.

In summary, the Sponsor believes that the distinctions between the '40 Act and the '33 Act, and the surveillance-sharing available for the CME Bitcoin futures market versus the spot Bitcoin market, are not meaningful in the context of Bitcoin-based ETF and ETP proposals, and that such reasoning cannot be a basis for the Commission treating Bitcoin futures ETFs differently from spot Bitcoin ETPs like the Trust. The Sponsor believes that the Commission's approval of Bitcoin futures ETFs means it must also approve spot Bitcoin ETPs like the Trust.

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

Even if the Commission had not approved Bitcoin futures ETFs and ETPs, the Sponsor still believes the Commission should approve the listing and trading of Shares of the Trust. The Commission has expressed legitimate concerns about the underlying Digital Asset Market due to the potential for fraud and manipulation and has clearly outlined the reasons why prior Bitcoin-based ETP proposals have been unable to satisfy these concerns in orders disapproving the proposed listing and trading of the Winklevoss Bitcoin Trust, Bitwise Bitcoin ETF Trust, United States Bitcoin and Treasury Investment Trust, and various Bitcoin-based trust issued receipts.³⁹

³⁹ See Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To List and Trade Shares of the Winklevoss Bitcoin Trust, Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (Aug. 1, 2018) (SR-BatsBZX-2016-30) (the "Winklevoss Order"); Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the Bitwise Bitcoin ETF Trust Under NYSE Arca Rule 8.201-E, Securities Exchange Act Release No. 87267 (Oct. 9, 2019), 84 FR 55382 (Oct. 16, 2019) (SR-NYSEArca-2019-01) (the "Bitwise Order"); Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, to Amend NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) and to List and Trade Shares of the United States Bitcoin and Treasury Investment Trust Under NYSE Arca Rule 8.201-E, Securities Exchange Act Release No. 88284 (February 26, 2020), 85 FR 12595 (March 3, 2020) (SR-NYSEArca-2019-39) (the "Wilshire Phoenix Order"); Order Disapproving a Proposed Rule Change to List and Trade the Shares of the ProShares Bitcoin ETF and the ProShares Short Bitcoin ETF, Securities Exchange Act Release No. 83904 (Aug. 22, 2018), 83 FR 43934 (Aug. 28, 2018) (SR-

In these disapproval orders, the Commission outlined that a proposal relating to a Bitcoin-based ETP could satisfy its concerns regarding potential for fraud and manipulation by demonstrating:

- 1) Inherent Resistance to Fraud and Manipulation: that the underlying commodity market is inherently resistant to fraud and manipulation;
- 2) Other Means to Prevent Fraud and Manipulation: that there are other means to prevent fraudulent and manipulative acts and practices that are sufficient; or
- 3) Surveillance Sharing: that the listing exchange has entered into a surveillance sharing agreement with a regulated market of significant size relating to the underlying or reference assets.

As described below, the Sponsor believes the structure and operation of the Trust are designed to prevent fraudulent and manipulative acts and practices, to protect investors and the public interest, and to respond to the specific concerns that the Commission has identified with respect to potential fraud and manipulation in the context of a Bitcoin-based ETP.

How the Trust Meets Standards in the Winklevoss Order, Bitwise Order and Wilshire Phoenix Order and Vacated Grayscale Order

1. Resistance to or Prevention of Fraud and Manipulation

In the Bitwise Order, the Commission disagreed with the proposition that Bitcoin's fungibility, transportability and exchange tradability combine to provide unique

NYSEArca-2017-139) (the "ProShares Order"); Order Disapproving a Proposed Rule Change Relating to Listing and Trading of the Direxion Daily Bitcoin Bear 1X Shares, Direxion Daily Bitcoin 1.25X Bull Shares, Direxion Daily Bitcoin 1.5X Bull Shares, Direxion Daily Bitcoin 2X Bull Shares, and Direxion Daily Bitcoin 2X Bear Shares Under NYSE Arca Rule 8.200-E, Securities Exchange Act Release No. 83912 (Aug. 22, 2018), 83 FR 43912 (Aug. 28, 2018) (SR-NYSEArca-2018-02) (the "Direxion Order"); Order Disapproving a Proposed Rule Change to List and Trade the Shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF, Securities Exchange Act Release No. 83913 (Aug. 22, 2018), 83 FR 43923 (Aug. 28, 2018) (SR-CboeBZX-2018-01) (the "GraniteShares Order").

protections against, and allow Bitcoin to be uniquely resistant to, attempts at price manipulation. The Commission reached its conclusion based on concessions by Bitwise that 95% of the reported trading in Bitcoin is “fake” or non-economic, effectively admitting that the properties of Bitcoin do not make it inherently resistant to manipulation. Bitwise’s concessions were further compounded by evidence of potential and actual fraud and manipulation in the historical trading of Bitcoin on certain marketplaces such as (1) “wash” trading, (2) trading based on material, non-public information, including the dissemination of false and misleading information, (3) manipulative activity involving Tether, and (4) fraud and manipulation.⁴⁰

The Sponsor acknowledges the possibility that fraud and manipulation may exist and that Bitcoin trading *on any given exchange* may be no more uniquely resistant to fraud and manipulation than other commodity markets.⁴¹ However, the Sponsor believes that the fundamental features of Bitcoin’s fungibility, transportability and exchange tradability offer novel protections beyond those that exist in traditional commodity markets or equity markets when combined with other means, as discussed further below.

2. Other Means to Prevent Fraud and Manipulation

The Commission has recognized that a listing exchange could demonstrate that other means to prevent fraudulent and manipulative acts and practices are sufficient to justify

⁴⁰ See Bitwise Order, 84 FR at 55383 (discussing analysis of the Bitcoin spot market that asserts that 95% of the spot market is dominated by fake and non-economic activity, such as wash trades), 55391 (discussing possible sources of fraud and manipulation in the bitcoin spot market). See also Winklevoss Order, 83 FR at 37585–86 (discussing pending litigation against a Bitcoin trading platform for fraudulent conduct relating to Tether); Bitwise Order, 84 FR at 55391 n.140, 55402 & n.331 (same); Winklevoss Order, 83 FR at 37584–86 (discussing potential types of manipulation in the Bitcoin spot market). The Commission has also noted that fraud and manipulation in the Bitcoin spot market could persist for a significant duration. See, e.g., Bitwise Order, 84 FR at 55405 & n.379.

⁴¹ See generally Bitwise Order.

dispensing with the requisite surveillance-sharing agreement.⁴² In evaluating the effectiveness of this type of resistance, the Commission does not apply a “cannot be manipulated” standard. Instead, the Commission requires that such resistance to fraud and manipulation be novel and beyond those protections that exist in traditional commodity markets or equity markets for which the Commission has long required surveillance-sharing agreements in the context of listing derivative securities products.⁴³ The Sponsor believes the Index represents a novel means to prevent fraud and manipulation from impacting a reference price for Bitcoin and that it offers protections beyond those that exist in traditional commodity markets or equity markets. Specifically, Bitcoin is novel and exists outside traditional commodity markets. It therefore stands to reason that the methods in which it trades will be novel and that the market for Bitcoin will have different attributes than traditional commodity markets. Bitcoin was only introduced within the past decade, twenty years after the first U.S. ETFs were offered⁴⁴ and 150 years after the first futures were offered.⁴⁵ In contrast to older commodities such as gold, silver, platinum, palladium or copper, which the Commission has noted all had at least one significant, regulated market for trading futures on the underlying commodity at the time commodity trust ETPs were approved for listing and trading, the first trading in Bitcoin took place entirely in an open, transparent and online setting where other commodities cannot trade.

⁴² See Winklevoss Order, 84 FR at 37580, 37582-91; Bitwise Order, 84 FR at 55383, 55385-406; Wilshire Phoenix Order, 85 FR at 12597.

⁴³ See Winklevoss Order, 84 FR at 37582; Wilshire Phoenix Order, 85 FR at 12597.

⁴⁴ SEC, “Investor Bulletin: Exchange-Traded Funds (ETFs),” August 2012, <https://www.sec.gov/investor/alerts/etfs.pdf>.

⁴⁵ Commodity Futures Trading Commission (“CFTC”), “History of the CFTC,” https://www.cftc.gov/About/HistoryoftheCFTC/history_precftc.html

The Trust has priced its Shares consistently for more than seven years based on the Index. The Sponsor believes the Trust’s use of the Index specifically addresses the Commission’s concerns in that the Index serves as an alternative means to prevent fraud and manipulation. Specifically, the Index can (i) mitigate the effects of fraud, manipulation and other anomalous trading activity on the Bitcoin reference rate, (ii) provide a real-time, volume-weighted fair value of Bitcoin and (iii) appropriately handle and adjust for non-market related events.

As described in more detail below, the Sponsor believes that the Index accomplishes those objectives in the following ways:

1. The Index tracks the Digital Asset Trading Platform Market price through trading activity at “U.S.-Compliant Trading Platforms”;⁴⁶
2. The Index mitigates the impact of instances of fraud, manipulation and other

⁴⁶ “U.S.-Compliant Trading Platforms” are trading platforms in the Digital Asset Trading Platform Market are in material compliance with applicable U.S. federal and state licensing requirements and maintain practices and policies designed to comply with AML and KYC regulations. All Constituent Trading Platforms are U.S.-Compliant Trading Platforms.

“Non-U.S.-Compliant Trading Platforms” are all other trading platforms in the Digital Asset Trading Platform Market.

As of September 30, 2023, the U.S.-Compliant Trading Platforms that the Index Provider considered for inclusion in the Index were Coinbase, Bitstamp, Kraken and LMAX Digital. On October 29, 2022, the Index Provider removed Bitstamp due to its failure to meet the minimum liquidity requirement and added Binance.US as a Constituent Trading Platform based on its satisfaction of the minimum liquidity requirement as part of its scheduled quarterly review. On June 17, 2023, the Index Provider removed Binance.US from the Index, due to Binance.US’s announcement that it was suspending U.S. dollar deposits and withdrawals and planned to delist its U.S. dollar trading pairs and did not add any Constituent Trading Platforms as part of its review. On July 29, 2023, the Index Provider added Bitstamp to the Index based on its satisfaction of the Index Provider’s minimum liquidity requirement and did not remove any Constituent Trading Platforms as part of its scheduled quarterly review. On October 28, 2023, the Index Provider added Crypto.com to the Index based on its satisfaction of the Index Provider’s minimum liquidity requirement and did not remove any Constituent Trading Platforms as part of its scheduled quarterly review.

From these U.S.-Compliant Trading Platforms, the Index Provider then applies additional Inclusion Criteria to determine the Constituent Trading Platforms. As of September 30, 2023, the Constituent Trading Platforms were Coinbase, Bitstamp, Kraken, and LMAX Digital. As of the date of filing, the Constituent Trading Platforms were Coinbase, Bitstamp, Crypto.com, Kraken, and LMAX Digital.

- anomalous trading activity in real-time through systematic adjustments;
3. The Index is constructed and maintained by an expert third-party index provider, allowing for prudent handling of non-market-related events; and
 4. The Index mitigates the impact of instances of fraud, manipulation and other anomalous trading activity concentrated on any one specific trading platform through a cross-trading platform composite index rate.

1. The Index tracks the Digital Asset Trading Platform Market price through trading activity at “U.S.-Compliant Trading Platforms”.

To reduce the risk of fraud, manipulation, and other anomalous trading activity from impacting the Index, only U.S.-Compliant Trading Platforms are eligible to be included in the Index.

The Index maintains a minimum number of three trading platforms and a maximum number of five trading platforms to track the Digital Asset Trading Platform Market while offering replicability for traders and market makers.⁴⁷

U.S.-Compliant Trading Platforms possess safeguards that protect against fraud and manipulation. For example, U.S.-Compliant Trading Platforms regulated by the NYDFS under the BitLicense program have regulatory requirements to implement measures designed to effectively detect, prevent, and respond to fraud, attempted fraud, market manipulation, and similar wrongdoing, and to monitor, control, investigate and report back to the NYDFS regarding

⁴⁷ According to the Sponsor, the more trading platforms included in the Index, the more ability there is for traders and market makers to arbitrage price differences. For example, in the event of variances between Bitcoin prices on Constituent Trading Platforms and non-Constituent Trading Platforms, arbitrage trading opportunities would exist. These discrepancies generally consolidate over time, as traders and market makers trade against the Index to realize price differences across trading platforms and capitalize upon arbitrage opportunities.

any wrongdoing.⁴⁸ These trading platforms also have the following obligations:⁴⁹

- Submission of audited financial statements including income statements, statements of assets/liabilities, insurance, and banking;
- Compliance with capitalization requirements set at NYDFS's discretion;
- Prohibitions against the sale or encumbrance to protect full reserves of custodian assets;
- Fingerprints and photographs of employees with access to customer funds;
- Retention of a qualified Chief Information Security Officer and annual penetration testing/audits;
- Documented business continuity and disaster recovery plan, independently tested annually; and
- Participation in an independent exam by NYDFS.

Other U.S.-Compliant Trading Platforms have voluntarily implemented measures to protect against common forms of market manipulation.⁵⁰

Furthermore, all U.S.-Compliant Trading Platforms are considered MSBs that are subject to FinCEN's federal and state reporting requirements that provide additional safeguards. For example, unscrupulous traders may be less likely to engage in fraudulent or manipulative acts and practices on trading platforms that (1) report suspicious activity to FinCEN as money

⁴⁸ See, e.g., "DFS Takes Action to Deter Fraud and Manipulation in Virtual Currency Markets," available at: <https://www.dfs.ny.gov/about/press/pr1802071.htm>.

⁴⁹ See "New York's Final "BitLicense" Rule: Overview and Changes from July 2014 Proposal," June 5, 2015, Davis Polk, available at: https://www.davispolk.com/files/new_yorks_final_bitlicense_rule_overview_changes_july_2014_proposal.pdf.

⁵⁰ As of the date of filing, two of the five Constituent Trading Platforms, Coinbase and Bitstamp, are regulated by NYDFS.

services businesses, (2) report to state regulators as money transmitters, and/or (3) require customer identification through KYC procedures. U.S.-Compliant Trading Platforms are required to:⁵¹

- Identify people with ownership stakes or controlling roles in the MSB;
- Establish a formal AML policy in place with documentation, training, independent review, and a named compliance officer;
- Implement strict customer identification and verification policies and procedures;
- File Suspicious Activity Reports (SARs) for suspicious customer transactions;
- File Currency Transaction Reports (CTRs) for cash-in or cash-out transactions greater than \$10,000; and
- Maintain a five-year record of currency exchanges greater than \$1,000 and money transfers greater than \$3,000.

Lastly, because of Bitcoin's classification as a commodity,⁵² the CFTC has authority to police fraud and manipulation on U.S.-Compliant Trading Platforms.

The Sponsor acknowledges that there are substantial differences between FinCEN and New York state regulations and the Commission's regulation of the national securities exchanges.⁵³ The Sponsor does not believe the inclusion of U.S.-Compliant Trading Platforms is in and of itself sufficient to prove that the Index is an alternative means to prevent fraud and manipulation such that surveillance sharing agreements are not required, but does believe that the inclusion of only U.S.-Compliant Trading Platforms in the Index is one significant way in which

⁵¹ See BSA Requirements for MSBs, FinCEN website: <https://www.fincen.gov/bsarequirements-msbs>.

⁵² CFTC, What is a Bitcoin Futures ETF?, <https://www.cftc.gov/LearnAndProtect/AdvisoriesAndArticles/BitcoinFuturesETF.html>

⁵³ See Bitwise Order, 84 FR at 55392; Wilshire Phoenix Order, 85 FR at 12603.

the Index is protected from the potential impacts of fraud and manipulation.

2. The Index mitigates the impact of instances of fraud, manipulation and other anomalous trading activity in real-time through systematic adjustments.

The Index is calculated once every second according to a systematic methodology that relies on observed trading activity on the Constituent Trading Platforms. While the precise methodology underlying the Index is currently proprietary, the key elements of the Index are outlined below:

- **Volume Weighting:** Constituent Trading Platforms with greater liquidity receive a higher weighting in the Index, increasing the ability to execute against (i.e., replicate) the Index in the underlying spot markets.
- **Price-Variance Weighting:** The Index reflects data points that are discretely weighted in proportion to their variance from the rest of the Constituent Trading Platforms. As the price at a Constituent Trading Platform diverges from the prices at the rest of the Constituent Trading Platforms, its weight in the Index consequently decreases.
- **Inactivity Adjustment:** The Index algorithm penalizes stale activity from any given Constituent Trading Platform. When a Constituent Trading Platform does not have recent trading data, its weighting in the Index is gradually reduced, until it is de-weighted entirely. Similarly, once trading activity at the Constituent Trading Platform resumes, the corresponding weighting for that Constituent Trading Platform is gradually increased until it reaches the appropriate level.
- **Manipulation Resistance:** In order to mitigate the effects of wash trading and order book spoofing, the Index only includes executed trades in its calculation. Additionally, the Index only includes Constituent Trading Platforms that charge

trading fees to its users in order to attach a real, quantifiable cost to any manipulation attempts.

3. The Index is constructed and maintained by an expert third-party index provider, allowing for prudent handling of non-market-related events.

The Index Provider reviews and periodically updates which trading platforms are included in the Index by utilizing a methodology that is guided by the IOSCO principles for financial benchmarks.

For a trading platform to become a Constituent Trading Platform, it must satisfy the following Inclusion Criteria:

- Sufficient USD liquidity relative to the size of the listed assets;
- No evidence in the past 12 months of trading restrictions on individuals or entities that would otherwise meet the trading platform's eligibility requirements to trade;
- No evidence in the past 12 months of undisclosed restrictions on deposits or withdrawals from user accounts;
- Real-time price discovery;
- Limited or no capital controls;
- Transparent ownership including a publicly-owned ownership entity;
- Publicly available language and policies addressing legal and regulatory compliance in the US, including KYC (Know Your Customer), AML (Anti-Money Laundering) and other policies designed to comply with relevant regulations that might apply to it;
- Be a US-domiciled trading platform or a non-US domiciled trading platform that is able to service US investors;

- Offer programmatic spot trading of the trading pair, and reliably publish trade prices and volumes on a real-time basis through Rest and Websocket APIs.

Although the Index methodology is designed to operate without any human interference, rare events would justify manual intervention. Manual intervention would only be in response to “non-market-related events” (e.g., halting of deposits or withdrawals of funds, unannounced closure of trading platform operations, insolvency, compromise of user funds, etc.). In the event that such an intervention is necessary, the Index Provider would issue a public announcement through its website, API and other established communication channels with its clients.⁵⁴

4. The Index mitigates the impact of instances of fraud, manipulation and other anomalous trading activity concentrated on any one specific trading platform through a cross-trading platform composite index rate.

The Index is based on the price and volume data of multiple U.S.-Compliant Trading Platforms that satisfy the Index Provider’s Inclusion Criteria. By referencing multiple trading venues and weighting them based on trade activity, the impact of any potential fraud, manipulation, or anomalous trading activity occurring on any single venue is reduced. Specifically, the effects of fraud, manipulation, or anomalous trading activity occurring on any single venue are de-weighted and consequently diluted by non-anomalous trading activity from other Constituent Trading Platforms.

Although the Index is designed to accurately capture the market price of Bitcoin, third parties may be able to purchase and sell Bitcoin on public or private markets included or not included among the Constituent Trading Platforms, and such transactions may take place at prices materially higher or lower than the Index Price. For example, based on data provided by

⁵⁴ To the extent any such intervention has a material impact on the Trust, the Sponsor will also issue a public announcement.

the Index Provider, on any given day during the twelve months ended September 30, 2023, the maximum differential between the 4:00 p.m., New York time spot price of any single Digital Asset Trading Platform included in the Index and the Index Price was 3.18% and the average of the maximum differentials of the 4:00 p.m., New York time spot price of each Digital Asset Trading Platform included in the Index and the Index Price was 0.83%. During this same period, the average differential between the 4:00 p.m., New York time spot prices of all the Digital Asset Trading Platforms included in the Index and the Index Price was 0.01%.⁵⁵

Since November 1, 2014, the Trust has consistently priced its Shares at 4:00 p.m., New York time based on the Index Price.⁵⁶ While that pricing would be known to the market, the Sponsor believes that, even if efforts to manipulate the price of Bitcoin at 4:00 p.m., E.T. were successful on any trading platform, such activity would have had a negligible effect on the pricing of the Trust, due to the controls embedded in the structure of the Index.

Accordingly, the Sponsor believes that the Index has proven its ability to (i) mitigate the effects of fraud, manipulation and other anomalous trading activity on the Bitcoin reference rate, (ii) provide a real-time, volume-weighted fair value of Bitcoin and (iii) appropriately handle and adjust for non-market related events. For these reasons, the Sponsor believes that the Index

⁵⁵ All Digital Asset Trading Platforms that were included in the Index throughout the period were considered in this analysis.

⁵⁶ Prior to February 1, 2022, the Trust valued its Bitcoins for operational purposes by reference to the volume-weighted average Index Price (the “Old Index Price”). The Old Index Price was calculated by applying a weighting algorithm to the price and trading volume data for the immediately preceding 24-hour period as of 4:00 p.m., New York time, derived from the Constituent Trading Platforms reflected in the Index on such trade date, and overlaying an averaging mechanism to the price produced. Thus, whereas the Old Index Price reflected the price of a Bitcoin at 4:00 p.m., New York time, calculated by taking the average of each price of a Bitcoin produced by the Index over the preceding 24-hour period, the Index Price now is the price of a Bitcoin at 4:00 p.m., New York time, calculated based on the price and trading volume data of the Digital Asset Trading Platforms included in the Index over the preceding 24-hour period. The Index Price differs from the Old Index Price only in that it does not use an additional averaging mechanism; the Index Price otherwise uses the same methodology as the Old Index Price, and there has been no change to the Index used to determine the Index Price or the criteria used to select the Constituent Trading Platforms.

represents an effective alternative means to prevent fraud and manipulation and the Trust's reliance on the Index addresses the Commission's concerns with respect to potential fraud and manipulation.

3. A Significant, Regulated and Surveilled Market Exists and Is Closely Connected with Spot Market for Bitcoin

In the Winklevoss Order, Bitwise Order, Wilshire Phoenix Order and vacated Grayscale Order, the Commission described both the need for and the definition of a surveilled market of significant size for commodity-trust ETPs like the Trust to date.⁵⁷ Specifically, the Commission explained that:

for the commodity-trust ETPs approved to date for listing and trading, there has been in every case at least one significant, regulated market for trading futures on the underlying commodity—whether gold, silver, platinum, palladium, or copper—and the ETP listing exchange has entered into surveillance-sharing agreements with, or held Intermarket Surveillance Group membership in common with, that market.⁵⁸

Further, the Commission stated that its interpretation of the term “market of significant size” depends on the interrelationship between the market with which the listing exchange has a surveillance-sharing agreement and the proposed ETP.⁵⁹ Accordingly, the terms “significant market” and “market of significant size” could mean:

⁵⁷ See Winklevoss Order, 83 FR at 37593-94; Bitwise Order, 84 FR at 55383, 55410; Wilshire Phoenix Order, 85 FR at 12609; Grayscale Order, 87 FR at 40300.

⁵⁸ See Winklevoss Order, 83 FR at 37594.

⁵⁹ See Winklevoss Order, 83 FR at 37594; Bitwise Order, 84 FR at 55410; ProShares Order, 83 FR at 43936; GraniteShares Order, 83 FR at 43925; Direxion Order, 83 FR at 43914; Wilshire Phoenix Order, 85 FR at 12609.

a market (or group of markets) as to which (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, so that a surveillance-sharing agreement would assist 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.⁶⁰

In the context of Bitcoin-based ETPs specifically, the Commission has stated that establishing a lead-lag relationship between the Bitcoin futures market and the spot market is central to understanding whether it is reasonably likely that a would-be manipulator of the ETP would need to trade on the Bitcoin futures market to successfully manipulate prices on those spot platforms that feed into the proposed ETP's pricing mechanism such that a surveillance-sharing agreement would assist the ETP listing market in detecting and deterring misconduct.⁶¹ In particular, if the spot market leads the futures market, this would indicate that it would not be necessary to trade on the futures market to manipulate the proposed ETP, even if arbitrage worked efficiently, because the futures price would move to meet the spot price.

While studies have found that the CME futures market does lead the spot Bitcoin market,⁶² as explained in the Sponsor's briefs and argument in its prevailing case before the D.C.

⁶⁰ See Winklevoss Order, 83 FR at 37594. This definition is illustrative and not exclusive. There could be other types of "significant markets" and "markets of significant size," but this definition is an example that will provide guidance to market participants.

⁶¹ See Bitwise Order, 84 FR at 55411; Wilshire Phoenix Order, 85 FR at 12612.

⁶² See Memorandum to File from Neel Maitra, Senior Special Counsel (Fintech & Crypto Specialist), Division of Trading and Markets, U.S. Securities and Exchange Commission re: Meeting with Representatives from Fidelity Digital Assets, et al. and attachment (SR-CboeBZX-2021-039) (September 8, 2021), available at: <https://www.sec.gov/comments/sr-cboebzx-2021-039/srcboebzx2021039-250110.pdf>; Letter from Bitwise Asset Management, Inc. re: File Number SR-NYSEArca-2021-89 (February 25, 2022), available at: <https://www.sec.gov/comments/sr-nysearca-2021-89/srnysearca202189-20117902-270822.pdf>; Letter from Wilson Sonsini Goodrich and Rosati, P.C. and Chapman and Cutler LLP, on behalf of Bitwise Asset Management, Inc. re: File No. SR-NYSEArca-2021-89 (March 7, 2022), available

Circuit Court of Appeals regarding its Bitcoin-based ETP proposal, the Sponsor believes that the lead/lag question is irrelevant. If a would-be manipulator were to attempt to manipulate either a spot ETP or futures ETP by trading futures on the CME, then a surveillance-sharing agreement with the CME would provide access to information concerning that activity.⁶³ If, on the other hand, a would-be manipulator were to attempt to manipulate either a spot ETP or a futures ETP by trading on the spot market, then a surveillance-sharing agreement with the CME would also be able to provide access to information concerning that activity. If that were not true, the Commission could not have approved the Bitcoin futures ETPs. Given that the Commission has approved Bitcoin futures ETPs, the Commission must have concluded that the CME is capable of detecting manipulation attempts in the spot bitcoin market.

Regardless of the irrelevance of the lead/lag relationship and the mixed findings regarding the lead/lag relationship between the CME futures and Bitcoin spot markets, the Sponsor believes that the CME futures market represents a large, surveilled and regulated market and meets the Commission's definition of a "significant market." For example, from November 1, 2019 to September 30, 2023, the CME futures market trading volume was over \$1.4 trillion, compared to \$1.15 trillion in trading volume across the Constituent Trading Platforms included in the Index. With over 121% of the Index trading volume, the CME futures market represents significant coverage of U.S.-Compliant Trading Platforms in the Bitcoin market. In addition, the CME futures market trading volume from November 1, 2019 to September 30, 2023 was approximately equal to trading volume of the U.S. dollar-denominated Bitcoin spot markets referenced in the Bitwise Order.⁶⁴

at: <https://www.sec.gov/comments/sr-nysearca-2021-89/srnysearca202189-20118794-271630.pdf>.

⁶³ Grayscale v. SEC, No. 22-1142, Commission Reply Brief at 27 (February 3, 2023).

⁶⁴ These Bitcoin spot markets include Binance.US, Coinbase, Bitfinex, Kraken, Bitstamp, BitFlyer, Poloniex,

Given the size of the CME futures markets, the Sponsor believes such markets meet the Commission's definition of "significant market" because there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, since arbitrage between the derivative and spot markets would tend to counter an attempt to manipulate the spot market alone. As a result, the Exchange's ability to obtain information regarding trading in the Shares and futures from markets and other entities that are members of the ISG, including the CME, would assist the Exchange in detecting and deterring misconduct.

The Sponsor also believes it is unlikely that the ETP would become the predominant influence on prices in the market.

While future inflows to the proposed Trust cannot be predicted, to provide comparable data, the Sponsor examined the change in market capitalization of Bitcoin with net inflows into the Trust, which currently trades on OTC Markets and is the largest and most liquid Bitcoin investment product in the world.⁶⁵ From November 1, 2019 to September 30, 2023, the market capitalization of Bitcoin grew from \$166 billion to \$527 billion, a \$361 billion increase. Over the same period, the Trust experienced \$6.6 billion of inflows. The cumulative inflow into the Trust over the stated time period was only 1.8% of the aggregate growth of Bitcoin's market capitalization.

Additionally, the Trust experienced approximately \$153 billion of trading volume from November 1, 2019 to September 30, 2023, only 11% of the CME futures market and 13% of the

Bittrex and itBit.

⁶⁵ To further illustrate the size and liquidity of the Trust, as of September 30, 2023, compared with global commodity ETPs, the Trust would rank third in assets under management and fourth in notional trading volume from November 1, 2019 to September 30, 2023.

Index over the same period.

In summary, the Sponsor believes that the foregoing addresses concerns the Commission may have with respect to Bitcoin-based ETPs, based on the Commission's articulated concerns with respect to potential fraud and manipulation in Bitcoin-based ETPs. Specifically, the Sponsor believes that, although Bitcoin is not itself inherently resistant to fraud and manipulation, the Index represents an effective means to prevent fraudulent and manipulative acts and practices. As discussed above, the Trust has used the Index to price the Shares for more than seven years, and the Sponsor believes that the Index has proven its ability to (i) mitigate the effects of fraud, manipulation and other anomalous trading activity on the Bitcoin reference rate, (ii) provide a real-time, volume-weighted fair value of Bitcoin and (iii) appropriately handle and adjust for non-market related events. The Sponsor also believes that the CME futures market is a significant, surveilled and regulated market that is closely connected with the spot market for Bitcoin fulfills the requirements for surveillance sharing given the Exchange's ability to obtain information from markets and other entities that are members of the ISG to assist in detecting and deterring misconduct.

Creation and Redemption of Shares

Authorized Participants may submit orders to create or redeem Shares under procedures for "Cash Orders."

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, or an affiliate of the Trust (and in any event 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, or an affiliate of the Trust (and in any event 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.

Cash Orders are made through the participation of a Liquidity Provider⁶⁶ who obtains or receives Bitcoin in exchange for cash, and are facilitated by the Transfer Agent and Grayscale Investments, LLC, acting in its capacity as the Liquidity Engager. Liquidity Providers are not party to the Participant Agreements and are engaged separately by the Liquidity Engager.

⁶⁶ A “Liquidity Provider” means one or more eligible companies that facilitate the purchase and sale of Bitcoins in connection with creations or redemptions pursuant to Cash Orders. The Liquidity Providers with which Grayscale Investments, LLC, acting other than in its capacity as the Sponsor (in such other capacity, the “Liquidity Engager”) will engage in Bitcoin transactions are third parties that are not affiliated with the Sponsor or the Trust and are not acting as agents of the Trust, the Sponsor, or any Authorized Participant, and all transactions will be done on an arms-length basis. Except for the contractual relationships between each Liquidity Provider and Grayscale Investments, LLC in its capacity as the Liquidity Engager, there is no contractual relationship between each Liquidity Provider and the Trust, the Sponsor, or any Authorized Participant. When seeking to buy Bitcoin in connection with creations or sell Bitcoin in connection with redemptions, the Liquidity Engager will seek to obtain commercially reasonable prices and terms from the approved Liquidity Providers. Once agreed upon, the transaction will generally occur on an “over-the-counter” basis.

According to the Registration Statement, the Trust creates Baskets (as described below) of Shares only upon receipt of Bitcoins and redeems Shares only by distributing Bitcoins. “Authorized Participants” are the only persons that may place orders to create and redeem Baskets. Each Authorized Participant must (i) be a registered broker-dealer and (ii) enter into an agreement with the Sponsor and Transfer Agent that provides the procedures for the creation and redemption of Baskets and for the delivery of Bitcoins required for the creation and redemption of Baskets via a Liquidity Provider (each, a “Participant Agreement”). An Authorized Participant may act for its own account or as agent for broker-dealers, custodians and other securities market participants that wish to create or redeem Baskets. Shareholders who are not Authorized Participants will only be able to create or redeem their Shares through an Authorized Participant.

The Trust issues Shares to and redeems Shares from Authorized Participants on an ongoing basis, but only in one or more “Baskets” (with a Basket being a block of 10,000 Shares). The Trust will not issue fractions of a Basket.

The creation and redemption of Baskets will be made only in exchange for the delivery to the Trust, or the distribution by the Trust, of the number of whole and fractional Bitcoins represented by each Basket being created or redeemed, which is determined by dividing (x) the number of Bitcoins owned by the Trust at 4:00 p.m., New York time, on the trade date of a creation or redemption order, after deducting the number of Bitcoins representing the U.S. dollar value of accrued but unpaid fees and expenses of the Trust (converted using the Index Price at such time, and carried to the eighth decimal place), by (y) the number of Shares outstanding at such time (with the quotient so obtained calculated to one one-hundred-millionth of one Bitcoin (i.e., carried to the eighth decimal place)), and multiplying such quotient by 10,000 (the “Basket Amount”). The U.S. dollar value of a Basket is calculated by multiplying the Basket Amount by

the Index Price as of the trade date (the “Basket NAV”). The Basket NAV multiplied by the number of Baskets being created or redeemed is referred to as the “Total Basket NAV.” All questions as to the calculation of the Basket Amount will be conclusively determined by the Sponsor and will be final and binding on all persons interested in the Trust. The number of Bitcoins represented by a Share will gradually decrease over time as the Trust’s Bitcoins are used to pay the Trust’s expenses. As of September 30, 2023, each Share represented approximately 0.0009 of one Bitcoin.

The creation of Baskets requires the delivery to the Trust of the Total Basket Amount and the redemption of Baskets requires the distribution by the Trust of the Total Basket Amount.

Although the Trust creates Baskets only upon the receipt of Bitcoins, and redeems Baskets only by distributing Bitcoins, an Authorized Participant will submit Cash Orders, pursuant to which the Authorized Participant will deposit cash with, or accept cash from, the Transfer Agent in connection with the creation and redemption of Baskets.

Cash Orders will be facilitated by the Transfer Agent and Liquidity Engager, acting other than in its capacity as Sponsor. On an order-by-order basis, the Liquidity Engager will engage one or more Liquidity Providers to obtain or receive Bitcoin in exchange for cash in connection with such order, as described in more detail below.

Each Authorized Participant that submits a Cash Order to create or redeem Baskets will pay a fee based on the Total Basket NAV (the “Variable Fee”). The Variable Fee is intended to cover all of a Liquidity Provider’s expenses in connection with the creation or redemption order, including any Bitcoin trading platform fees that the Liquidity Provider incurs in connection with buying or selling Bitcoins, and the risk of intervening spot Bitcoin market movements. The amount may be changed by the Sponsor in its sole discretion at any time.

In the case of creations, to transfer the Total Basket Amount to the Trust's Digital Asset Account, the Liquidity Provider will transfer Bitcoin to one of the public key addresses associated with the Digital Asset Account and as provided by the Sponsor. In the case of redemptions, the same procedure is conducted, but in reverse, using the public key addresses associated with the wallet of the Liquidity Provider and as provided by such party. All such transactions will be conducted on the Blockchain and parties acknowledge and agree that such transfers may be irreversible if done incorrectly.

Authorized Participants do not pay a transaction fee to the Trust in connection with the creation or redemption of Baskets, but there may be transaction fees associated with the validation of the transfer of Bitcoins by the Bitcoin Network, which will be paid by the Custodian in the case of redemptions and the Authorized Participant or the Liquidity Provider in the case of creations. Service providers may charge Authorized Participants administrative fees for order placement and other services related to creation of Baskets. As discussed above, Authorized Participants will also pay the Variable Fee. Authorized Participants will receive no fees, commissions or other form of compensation or inducement of any kind from either the Sponsor or the Trust and no such person has any obligation or responsibility to the Sponsor or the Trust to effect any sale or resale of Shares.

The following is a summary of the procedures for the creation and redemption of Baskets.

Creation Procedures

On any business day, an Authorized Participant may place an order with the Transfer Agent to create one or more Baskets.

Cash Orders for creation must be placed with the Transfer Agent no later than 1:59:59

p.m., New York time.

The Sponsor may in its sole discretion limit the number of Shares created pursuant to Cash Orders on any specified day without notice to the Authorized Participants and may direct the Marketing Agent to reject any Cash Orders in excess of such capped amount. In exercising its discretion to limit the number of Shares created pursuant to Cash Orders, the Sponsor expects to take into consideration a number of factors, including the availability of Liquidity Providers to facilitate Cash Orders and the cost of processing Cash Orders.

Creations under Cash Orders will take place as follows, where “T” is the trade date and each day in the sequence must be a business day:

T	T+1, or T+2, as established at the time of order placement
<ul style="list-style-type: none"> • The Authorized Participant places a creation order with the Transfer Agent. • The Marketing Agent accepts (or rejects) the creation order, which is communicated to the Authorized Participant by the Transfer Agent. • The Sponsor notifies the Liquidity Provider of the creation order. • The Sponsor determines the Total Basket NAV and any Variable Fee as soon as practicable after 4:00 p.m., New York time. 	<ul style="list-style-type: none"> • The Authorized Participant delivers the Total Basket NAV and any Variable Fee to the Cash Account.¹ • The Liquidity Provider transfers the Total Basket Amount to the Trust’s Digital Asset Account. • The Trust issues the aggregate number of Shares corresponding to the Baskets ordered by the Authorized Participant, which the Transfer Agent holds for the benefit of the Authorized Participant. • Cash equal to the U.S. dollar value of the Total Basket NAV, plus any Variable Fee, is delivered to the Liquidity Provider from the Cash Account. • The Transfer Agent delivers Shares to the Authorized Participant by crediting the number of Baskets created to the Authorized Participant’s DTC account.

¹ The “Cash Account” means the account maintained by the Transfer Agent in the name of

Grayscale Securities, LLC, designated as “Special Account for the Exclusive Benefit of Customers of Grayscale Securities, LLC,” for purposes of receiving cash from, and distributing cash to, Authorized Participants in connection with creations and redemptions pursuant to Cash Orders. For the avoidance of doubt, the Trust shall have no interest (beneficial, equitable or otherwise) in the Cash Account or any cash held therein.

Redemption Procedures

The procedures by which an Authorized Participant can redeem one or more Baskets mirror the procedures for the creation of Baskets. On any business day, an Authorized Participant may place a redemption order specifying the number of Baskets to be redeemed.

The redemption of Shares pursuant to Cash Orders will only take place if approved by the Sponsor in writing, in its sole discretion and on a case-by-case basis. In exercising its discretion to approve the redemption of Shares pursuant to Cash Orders, the Sponsor expects to take into consideration a number of factors, including the availability of Liquidity Providers to facilitate Cash Orders and the cost of processing Cash Orders

Cash Orders for redemption must be placed no later than 1:59:59 p.m., New York time on each business day. The Authorized Participants may only redeem Baskets and cannot redeem any Shares in an amount less than a Basket.

Redemptions under Cash Orders will take place as follows, where “T” is the trade date and each day in the sequence must be a business day:

T	T+2 (or T+1 on case-by-case basis, as approved by Sponsor)
<ul style="list-style-type: none"> • The Authorized Participant places a redemption order with the Transfer Agent. • The Marketing Agent accepts (or rejects) the redemption order, which is communicated to the Authorized Participant by the Transfer Agent. 	<ul style="list-style-type: none"> • The Authorized Participant delivers Baskets to be redeemed from its DTC account to the Transfer Agent. • The Liquidity Provider delivers the Total Basket NAV, less any Variable Fee, to the Cash Account.

<ul style="list-style-type: none"> • The Sponsor notifies the Liquidity Provider(s) of the redemption order. • The Sponsor determines the Total Basket NAV and any Variable Fee as soon as practicable after 4:00 p.m., New York time. 	<ul style="list-style-type: none"> • The Transfer Agent cancels the Shares comprising the number of Baskets redeemed by the Authorized Participant. • The Custodian sends the Liquidity Provider the Total Basket Amount and cash equal to the U.S. dollar value of the Total Basket NAV, less any Variable Fee and any other charges and fees payable in connection with the redemption order, is delivered to the Authorized Participant from the Cash Account.
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Suspension or Rejection of Orders and Total Basket Amount

The creation or redemption of Shares may be suspended generally, or refused with respect to particular requested creations or redemptions, during any period when the transfer books of the Transfer Agent are closed or if circumstances outside the control of the Sponsor or its delegates make it for all practicable purposes not feasible to process creation orders or redemption orders or for any other reason at any time or from time to time.⁶⁷ The Transfer Agent may reject an order or, after accepting an order, may cancel such order if: (i) such order is not presented in proper form as described in the Participant Agreement, (ii) the transfer of the Total Basket Amount comes from an account other than a Bitcoin wallet address that is known to the Custodian as belonging to a Liquidity Provider or (iii) the fulfillment of the order, in the opinion of counsel, might be unlawful, among other reasons. None of the Sponsor or its delegates will be liable for the suspension, rejection or acceptance of any creation order or redemption order.

⁶⁷ Extenuating circumstances outside of the control of the Sponsor and its delegates or that could cause the transfer books of the Transfer Agent to be closed are outlined in the Participant Agreement and include, for example, public service or utility problems, power outages resulting in telephone, telecopy and computer failures, acts of God such as fires, floods or extreme weather conditions, market conditions or activities causing trading halts, systems failures involving computer or other information systems, including any failures or outages of the Bitcoin Network, affecting the Authorized Participant, the Sponsor, the Trust, the Transfer Agent, the Marketing Agent and the Custodian and similar extraordinary events.

Availability of Information

The Trust's website (<https://grayscale.com/crypto-products/grayscale-bitcoin-trust/>) will include quantitative information on a per Share basis updated on a daily basis, including, (i) the current NAV per Share daily and the prior business day's NAV per Share and the reported closing price of the Shares; (ii) the mid-point of the bid-ask price⁶⁸ as of the time the NAV per Share is calculated ("Bid-Ask Price") and a calculation of the premium or discount of such price against such NAV per Share; and (iii) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid-Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters (or for as long as the Trust has been trading as an ETP if shorter). In addition, on each business day the Trust's website will provide pricing information for the Shares.

One or more major market data vendors, will provide an intra-day indicative value ("IIV") per Share updated every 15 seconds, as calculated by the Exchange or a third party financial data provider during the Exchange's Core Trading Session (9:30 a.m. to 4:00 p.m., E.T.).⁶⁹ The IIV will be calculated using the same methodology as the NAV per Share of the Trust (as described above), specifically by using the prior day's closing NAV per Share as a base and updating that value during the NYSE Arca Core Trading Session based on the value of the Index during the trading day.

The IIV disseminated during the NYSE Arca Core Trading Session should not be viewed as an actual real-time update of the NAV per Share, which will be calculated only once at the

⁶⁸ The bid-ask price of the Trust is determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day NAV.

⁶⁹ The IIV on a per Share basis disseminated during the Core Trading Session should not be viewed as a real-time update of the NAV, which is calculated once a day.

end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the NYSE Arca Core Trading Session by one or more major market data vendors. In addition, the IIV will be available through on-line information services.

The NAV for the Trust will be calculated by the Sponsor once a day and will be disseminated daily to all market participants at the same time. To the extent that the Sponsor has utilized the cascading set of rules described in “Index Price” above, the Trust’s website will note the valuation methodology used and the price per Bitcoin resulting from such calculation. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (“CTA”).

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

On each business day, the Sponsor will publish the Index Price, the Trust’s NAV, and the NAV per Share on the Trust’s website as soon as practicable after its determination. If the NAV and NAV per Share have been calculated using a price per Bitcoin other than the Index Price for such Evaluation Time, the publication on the Trust’s website will note the valuation methodology used and the price per Bitcoin resulting from such calculation.

The Trust will provide website disclosure of its NAV and NAV per Share daily. The

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

The value of the Index, as well as additional information regarding the Index, will be available on a continuous basis at <https://www.coindesk.com/indices>.

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.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m., E.T. in accordance with NYSE Arca Rule 7.34-E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6-E, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00, for which the MPV for order entry is \$0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.201-E. The trading of the Shares will be subject to NYSE Arca Rule 8.201-E(g), which sets forth certain restrictions on Equity Trading Permit Holders (“ETP Holders”) acting as registered Market Makers in Commodity-Based Trust Shares to facilitate surveillance. The Exchange represents that, for initial and continued listing, the Trust will be in compliance with Rule 10A-3⁷⁰ under the Act, as provided by NYSE Arca Rule 5.3-E. A minimum of 100,000 Shares of the Trust will be outstanding at the commencement of trading on the Exchange.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Trust.⁷¹ Trading in Shares of the Trust will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

The Exchange may halt trading during the day in which an interruption to the dissemination of the IIV 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 per Share is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV per Share is available to all market participants.

⁷⁰ 17 CFR 240.10A-3.

⁷¹ See NYSE Arca Rule 7.12-E.

Surveillance

The Exchange represents that trading in the Shares of the Trust will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.⁷² The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

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

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement (“CSSA”).⁷³ The Exchange is also able to obtain information regarding trading in the Shares and the underlying Bitcoin, Bitcoin futures contracts, options on Bitcoin

⁷² FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

⁷³ For a list of the current members of ISG, see www.isgportal.org. The Exchange notes that not all components of the Trust may trade on markets that are members of ISG or with which the Exchange has in place a CSSA.

futures, or any other Bitcoin derivative in connection with such ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market.

Under NYSE Arca Rule 8.201-E(g), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its accounts for trading in the underlying commodity, related futures or options on futures, or any other related derivatives. Commentary .04 of NYSE Arca Rule 11.3-E requires an ETP Holder acting as a registered Market Maker, and its affiliates, in the Shares to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares). As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder. To the extent the Exchange may be found to lack jurisdiction over a subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts, 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.

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

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

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

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an “Information Bulletin” of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) the procedures for creations of Shares in Baskets; (2) NYSE Arca Rule 9.2-E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) information regarding how the value of the Index and NAV are disseminated; (4) the possibility that trading spreads and the resulting premium or discount on the Shares may widen during the Opening and Late Trading Sessions, when an updated IIV will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction and (6) trading information.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses as described in the Annual Report. The Information Bulletin will disclose that information about the Shares of the Trust is publicly available on the Trust’s website. The Information Bulletin 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.

The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)⁷⁴ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.201-E. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets. In addition, the Exchange may obtain information regarding trading in the Shares from markets that are members of ISG or with which the Exchange has in place a CSSA. Also, pursuant to NYSE Arca Rule 8.201-E(g), the Exchange is able to obtain information regarding Market Maker accounts for trading in the Shares and the

⁷⁴ 15 U.S.C. 78f(b)(5).

underlying Bitcoin or any Bitcoin derivative through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades through ETP Holders which they effect on any relevant market.

The proposed rule change is also designed to prevent fraudulent and manipulative acts and practices because, although the Digital Asset Trading Platform Market is not inherently resistant to fraud and manipulation, the Index serves as a means sufficient to mitigate the impact of instances of fraud and manipulation on a reference price for Bitcoin. Specifically, the Index provides a better benchmark for the price of Bitcoin than the Digital Asset Trading Platform Market price because it (1) tracks the Digital Asset Trading Platform Market price through trading activity at U.S.-Compliant Trading Platforms; (2) mitigates the impact of instances of fraud, manipulation and other anomalous trading activity in real-time through systematic adjustments; (3) is constructed and maintained by an expert third-party index provider, allowing for prudent handling of non-market-related events; and (4) mitigates the impact of instances of fraud, manipulation and other anomalous trading activity concentrated on any one specific trading platform through a cross-trading platform composite index rate. The Trust has used the Index to price the Shares for more than seven years, and the Sponsor believes the Index has proven its ability to (i) mitigate the effects of fraud, manipulation and other anomalous trading activity from impacting the Bitcoin reference rate, (ii) provide a real-time, volume-weighted fair value of Bitcoin and (iii) appropriately handle and adjust for non-market related events, such that efforts to manipulate the price of Bitcoin would have had a negligible effect on the pricing of the Trust, due to the controls embedded in the structure of the Index. In addition, certain of the Index's Constituent Trading Platforms also have or have begun to implement market surveillance infrastructure to further detect, prevent, and respond to fraud, attempted fraud, and similar

wrongdoing, including market manipulation. The proposed rule change is also designed to prevent fraudulent and manipulative acts and practices based on the existence of the CME futures market as a large, surveilled and regulated market that is closely connected with the spot market for Bitcoin and through which the Exchange could obtain information to assist in detecting and deterring potential fraud or manipulation.

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

may halt trading during the day in which an 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.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a CSSA. In addition, as noted above, investors will have ready access to information regarding the Trust's NAV per Share, IIV, and quotation and last sale information for the Shares.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of exchange-traded product, and the first such product based on Bitcoin, which will enhance competition among market participants, to the benefit of investors and the marketplace.

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

No written comments were solicited or received with respect to the proposed rule change.

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

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

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2021-90 on the subject line.

Paper Comments:

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

All submissions should refer to file number SR-NYSEARCA-2021-90. 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-NYSEARCA-2021-90 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.⁷⁵

Sherry R. Haywood,

Assistant Secretary.

⁷⁵ 17 CFR 200.30-3(a)(12).