SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94184; File No. SR-CboeBZX-2022-006)

February 8, 2022

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on January 25, 2022, Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes rule change to list and trade shares of the WisdomTree Bitcoin Trust (the "Trust"),[3] under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The shares of the Trust are referred to herein as the "Shares."

The text of the proposed rule change is available on the Exchange's website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

---

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 The Trust was formed as a Delaware statutory trust on March 8, 2021 and is operated as a grantor trust for U.S. federal tax purposes. The Trust has no fixed termination date.

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

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

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

1. Purpose

The Exchange proposes to list and trade the Shares under BZX Rule 14.11(e)(4),[4] which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.[5, 6] WisdomTree Digital Commodity Services, LLC is the sponsor of the Trust (the "Sponsor"). The Shares will be registered with the Commission by means of the Trust's registration statement on

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

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

6 The Exchange notes that a different proposal to list and trade shares of the WisdomTree Bitcoin Trust was disapproved by the Commission on December 1, 2021. See Exchange Act Release No. 93700 (December 1, 2021), 86 FR 69322 (December 7, 2021). The Sponsor has subsequently submitted an amended Registration Statement that includes a number of additional voluntary disclosures and shareholder protections that the Sponsor intends to undertake. This proposal is also significantly different than the previously disapproved proposal in that it includes additional information related to such voluntary disclosures and protections, additional information related to Bitcoin Futures ETFs, as defined below, and additional statistical and statutory analysis that seeks to respond to the concerns of the Commission.

Form S-1 (the "Registration Statement").[7] As further discussed below, the Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts, including spot-based Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity.[8] A survey of previously approved series of Commodity-Based Trust Shares and Currency Trust Shares makes clear that the spot markets for commodities and currencies held in such ETPs are generally unregulated. In fact, the Commission specifically noted in the Winklevoss Order that the first gold ETP approval order, which was also the first commodity-trust ETP, "was based on an assumption that the currency market and the spot gold market were largely unregulated."[9] This makes clear that the applicable standard is not whether the underlying commodity market itself is regulated. Further to this point, prior orders have also emphasized that in every prior approval order for Commodity-Based Trust Shares there was a regulated derivatives market of significant size, generally a Commodity Futures Trading Commission (the "CFTC") regulated futures market.[10] Despite the lack of

---

7 The Trust has filed an amended registration statement on Form S-1 under the Securities Act of 1933, dated December 8, 2021 (File No. 333-254134) ("Registration Statement"). The description of the Trust and the Shares contained herein are based on the Registration Statement. The Registration Statement for the Trust is not yet effective and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

8 See Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018). This proposal was subsequently disapproved by the Commission. See Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the "Winklevoss Order").

9 See Winklevoss Order at 37592 and Exchange Act Release No. 50603 (Oct. 28, 2004), 69 FR 64614 (Nov. 5, 2004) (SR-NYSE-2004-22) (order approving the listing and trading of streetTRACKS Gold Shares) (the "First Gold Approval Order").

10 See Winklevoss Order at 37592. See also the First Gold Approval Order at 64618–19; iShares COMEX Gold Trust, Exchange Act Release No. 51058 (Jan. 19, 2005), 70 FR 3749, 3751, 3754–55 (Jan. 26, 2005) (SR-Amex-2004-38); iShares Silver Trust, Exchange Act Release No. 53521 (Mar. 20, 2006), 71 FR 14967, 14968, 14973–74 (Mar.

24, 2006) (SR-Amex-2005-072); ETFS Gold Trust, Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993, 22994–95, 22998, 23000 (May 15, 2009) (SR-NYSEArca-2009-40); ETFS Silver Trust, Exchange Act Release No. 59781 (Apr. 17, 2009), 74 FR 18771, 18772, 18775–77 (Apr. 24, 2009) (SR-NYSEArca-2009-28); ETFS Palladium Trust, Exchange Act Release No. 61220 (Dec. 22, 2009), 74 FR 68895, 68896 (Dec. 29, 2009) (SR-NYSEArca-2009-94) (notice of proposed rule change included NYSE Arca's representation that "[t]he most significant palladium futures exchanges are the NYMEX and the Tokyo Commodity Exchange," that "NYMEX is the largest exchange in the world for trading precious metals futures and options," and that NYSE Arca "may obtain trading information via the Intermarket Surveillance Group," of which NYMEX is a member, Exchange Act Release No. 60971 (Nov. 9, 2009), 74 FR 59283, 59285–86, 59291 (Nov. 17, 2009)); ETFS Platinum Trust, Exchange Act Release No. 61219 (Dec. 22, 2009), 74 FR 68886, 68887–88 (Dec. 29, 2009) (SR-NYSEArca-2009-95) (notice of proposed rule change included NYSE Arca's representation that "[t]he most significant platinum futures exchanges are the NYMEX and the Tokyo Commodity Exchange," that "NYMEX is the largest exchange in the world for trading precious metals futures and options," and that NYSE Arca "may obtain trading information via the Intermarket Surveillance Group," of which NYMEX is a member, Exchange Act Release No. 60970 (Nov. 9, 2009), 74 FR 59319, 59321, 59327 (Nov. 17, 2009)); Sprott Physical Gold Trust, Exchange Act Release No. 61496 (Feb. 4, 2010), 75 FR 6758, 6760 (Feb. 10, 2010) (SR-NYSEArca-2009-113) (notice of proposed rule change included NYSE Arca's representation that the COMEX is one of the "major world gold markets," that NYSE Arca "may obtain trading information via the Intermarket Surveillance Group," and that NYMEX, of which COMEX is a division, is a member of the Intermarket Surveillance Group, Exchange Act Release No. 61236 (Dec. 23, 2009), 75 FR 170, 171, 174 (Jan. 4, 2010)); Sprott Physical Silver Trust, Exchange Act Release No. 63043 (Oct. 5, 2010), 75 FR 62615, 62616, 62619, 62621 (Oct. 12, 2010) (SR-NYSEArca-2010-84); ETFS Precious Metals Basket Trust, Exchange Act Release No. 62692 (Aug. 11, 2010), 75 FR 50789, 50790 (Aug. 17, 2010) (SR-NYSEArca-2010-56) (notice of proposed rule change included NYSE Arca's representation that "the most significant gold, silver, platinum and palladium futures exchanges are the COMEX and the TOCOM" and that NYSE Arca "may obtain trading information via the Intermarket Surveillance Group," of which COMEX is a member, Exchange Act Release No. 62402 (Jun. 29, 2010), 75 FR 39292, 39295, 39298 (July 8, 2010)); ETFS White Metals Basket Trust, Exchange Act Release No. 62875 (Sept. 9, 2010), 75 FR 56156, 56158 (Sept. 15, 2010) (SR-NYSEArca-2010-71) (notice of proposed rule change included NYSE Arca's representation that "the most significant silver, platinum and palladium futures exchanges are the COMEX and the TOCOM" and that NYSE Arca "may obtain trading information via the Intermarket Surveillance Group," of which COMEX is a member, Exchange Act Release No. 62620 (July 30, 2010), 75 FR 47655, 47657, 47660 (Aug. 6, 2010)); ETFS Asian Gold Trust, Exchange Act Release No. 63464 (Dec. 8, 2010), 75 FR 77926, 77928 (Dec. 14, 2010) (SR-NYSEArca-2010-95) (notice of proposed rule change included NYSE Arca's representation that "the most significant gold futures exchanges are the COMEX and the Tokyo Commodity Exchange," that "COMEX is the largest exchange in the world for trading precious metals futures and options," and that NYSE Arca "may obtain trading information via the Intermarket Surveillance Group," of which COMEX is a member, Exchange Act Release No. 63267 (Nov. 8, 2010), 75 FR 69494, 69496, 69500–01 (Nov. 12, 2010)); Sprott Physical Platinum and Palladium Trust, Exchange Act Release No. 68430 (Dec. 13, 2012), 77 FR 75239, 75240–41 (Dec. 19, 2012) (SR-NYSEArca-2012-111) (notice of proposed rule change included NYSE Arca's representation that "[f]utures on platinum and palladium are traded on two major exchanges: The New York Mercantile Exchange ... and Tokyo Commodities Exchange" and that NYSE Arca "may obtain trading information via the Intermarket Surveillance Group," of which COMEX is a member, Exchange Act Release No. 68101 (Oct. 24, 2012), 77 FR 65732, 65733, 65739 (Oct. 30, 2012)); APMEX Physical—1 oz. Gold Redeemable Trust, Exchange Act Release No. 66930 (May 7, 2012), 77 FR 27817, 27818 (May 11, 2012) (SR-NYSEArca-2012-18) (notice of proposed rule change included NYSE Arca's representation that NYSE Arca "may obtain trading information via the Intermarket Surveillance Group," of which COMEX is a member, and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the "major world gold markets," Exchange Act Release No. 66627 (Mar. 20, 2012), 77 FR 17539, 17542–43, 17547 (Mar. 26, 2012)); JPM XF Physical Copper Trust, Exchange Act Release No. 68440 (Dec. 14, 2012), 77 FR 75468, 75469–70, 75472, 75485–86 (Dec. 20, 2012) (SR-NYSEArca-2012-28); iShares Copper Trust, Exchange Act Release No. 68973 (Feb. 22, 2013), 78 FR 13726, 13727, 13729–30, 13739–40 (Feb. 28, 2013) (SR-NYSEArca-2012-66); First Trust Gold Trust, Exchange Act Release No. 70195 (Aug. 14, 2013), 78 FR 51239, 51240 (Aug. 20, 2013) (SR-NYSEArca-2013-61) (notice of proposed rule change included NYSE Arca's representation that FINRA, on behalf of the exchange, may obtain trading information regarding gold futures and options on gold futures from members of the Intermarket Surveillance Group, including COMEX, or from markets "with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement," and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the "major world gold markets," Exchange Act Release No. 69847 (June 25, 2013), 78 FR 39399, 39400, 39405 (July 1, 2013)); Merk Gold Trust, Exchange Act Release No. 71378 (Jan. 23, 2014), 79 FR 4786, 4786–87 (Jan. 29, 2014) (SR-NYSEArca-2013-137) (notice of proposed rule change included NYSE Arca's representation that "COMEX is the largest gold futures and options exchange" and that NYSE Arca "may obtain trading information via the Intermarket Surveillance Group," including with respect to transactions occurring on COMEX pursuant to CME and NYMEX's membership, or from exchanges "with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement," Exchange Act Release No. 71038 (Dec. 11, 2013), 78 FR 76367, 76369, 76374 (Dec. 17, 2013)); Long Dollar Gold Trust, Exchange Act Release No. 79518 (Dec. 9, 2016), 81 FR 90876, 90881, 90886, 90888 (Dec. 15, 2016) (SR-NYSEArca-2016-84).

regulation of the underlying spot commodity and currency markets, the Commission approved series of Currency and Commodity-Based Trust Shares, including those that held gold, silver, platinum, palladium, copper, and other commodities and currencies, because it determined that the futures markets for these commodities and currencies represented regulated markets of significant size and that the listing exchange had a surveillance sharing agreement in place with that market.[11]

The Exchange acknowledges that largely unregulated currency and spot commodity markets do not provide the same protections as the markets that are subject to the Commission's oversight. However, the Commission has consistently looked to surveillance sharing agreements with an underlying futures market to determine whether ETPs holding currency or commodities were consistent with the Act, as established above. As such, the Commission's regulated market of significant size test does not require that the spot bitcoin market be regulated to approve this proposal. To the contrary, precedent makes clear that any requirement that the spot bitcoin market be a "regulated market" prior to approval would be incongruous with all prior spot commodity and currency approval orders. With this in mind, the CME Bitcoin Futures market is the proper market for the Commission to consider in determining whether this proposal is consistent with the Act. The Exchange has a comprehensive surveillance sharing agreement in place with CME, which operates a bitcoin futures market that, as established by the included analysis below, represents a regulated market of significant size related to the underlying commodity (bitcoin) to be held by the Trust. Therefore, both the Exchange and the Sponsor believe that the CME Bitcoin Futures market satisfies the standard that the Commission has

---

11 Id.

applied to all previously approved series of Commodity-Based Trust Shares and that this proposal should be approved.

Background

Bitcoin is a digital asset based on the decentralized, open source protocol of the peer-to-peer computer network launched in 2009 that governs the creation, movement, and ownership of bitcoin and hosts the public ledger, or "blockchain," on which all bitcoin transactions are recorded (the "Bitcoin Network" or "Bitcoin"). The decentralized nature of the Bitcoin Network allows parties to transact directly with one another based on cryptographic proof instead of relying on a trusted third party. The protocol also lays out the rate of issuance of new bitcoin within the Bitcoin Network, a rate that is reduced by half approximately every four years with an eventual hard cap of 21 million. It's generally understood that the combination of these two features – a systemic hard cap of 21 million bitcoin and the ability to transact trustlessly with anyone connected to the Bitcoin Network – gives bitcoin its value.[12]

The first rule filing proposing to list an exchange-traded product to provide exposure to bitcoin in the U.S. was submitted by the Exchange on June 30, 2016.[13] At that time, blockchain technology, and digital assets that utilized it, were relatively new to the broader public. The market cap of all bitcoin in existence at that time was approximately $10 billion. No registered offering of digital asset securities or shares in an investment vehicle with exposure to bitcoin or any other cryptocurrency had yet been conducted, and the regulated infrastructure for conducting

---

12 For additional information about bitcoin and the Bitcoin Network, see https://bitcoin.org/en/getting-started; https://www.wisdomtree.com/strategies/crypto; https://www.fidelitydigitalassets.com/articles/addressing-bitcoin-criticisms; and https://www.vaneck.com/education/investment-ideas/investing-in-bitcoin-and-digital-assets/.

13 See Winklevoss Order.

a digital asset securities offering had not begun to develop.[14] Similarly, regulated U.S. bitcoin futures contracts did not exist. The CFTC had determined that bitcoin is a commodity,[15] but had not engaged in significant enforcement actions in the space. The New York Department of Financial Services ("NYDFS") adopted its final BitLicense regulatory framework in 2015, but had only approved four entities to engage in activities relating to virtual currencies (whether through granting a BitLicense or a limited-purpose trust charter) as of June 30, 2016.[16] While the first over-the-counter bitcoin fund launched in 2013, public trading was limited and the fund had only $60 million in assets.[17] There were very few, if any, traditional financial institutions engaged in the space, whether through investment or providing services to digital asset companies. In January 2018, the Staff of the Commission noted in a letter to the Investment

---

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

15 See "In the Matter of Coinflip, Inc." ("Coinflip") (CFTC Docket 15-29 (September 17, 2015)) (order instituting proceedings pursuant to Sections 6(c) and 6(d) of the CEA, making findings and imposing remedial sanctions), in which the CFTC stated:

> "Section 1a(9) of the CEA defines 'commodity' to include, among other things, 'all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.' 7 U.S.C. § 1a(9). The definition of a 'commodity' is broad. See, e.g., Board of Trade of City of Chicago v. SEC, 677 F. 2d 1137, 1142 (7th Cir. 1982). Bitcoin and other virtual currencies are encompassed in the definition and properly defined as commodities."

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

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

Company Institute and SIFMA that it was not aware, at that time, of a single custodian providing fund custodial services for digital assets.[18]

Fast forward to the fourth quarter of 2021 and the digital assets financial ecosystem, including bitcoin, has progressed significantly. The development of a regulated market for digital asset securities has significantly evolved, with market participants having conducted registered public offerings of both digital asset securities[19] and shares in investment vehicles holding bitcoin futures.[20] Additionally, licensed and regulated service providers have emerged to provide fund custodial services for digital assets, among other services. For example, in May 2021, the Staff of the Commission released a statement permitting open-end mutual funds to invest in cash-settled bitcoin futures; in December 2020, the Commission adopted a conditional no-action position permitting certain special purpose broker-dealers to custody digital asset securities under Rule 15c3-3 under the Exchange Act (the "Custody Statement");[21] in September 2020, the Staff of the Commission released a no-action letter permitting certain broker-dealers to operate a

---

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

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

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

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

non-custodial Alternative Trading System ("ATS") for digital asset securities, subject to specified conditions;[22] and in October 2019, the Staff of the Commission granted temporary relief from the clearing agency registration requirement to an entity seeking to establish a securities clearance and settlement system based on distributed ledger technology,[23] and multiple transfer agents who provide services for digital asset securities registered with the Commission.[24]

Outside the Commission's purview, the regulatory landscape has changed significantly since 2016, and cryptocurrency markets have grown and evolved as well. The market for bitcoin is approximately 100 times larger, with a market cap of over $1 trillion.[25] According to the CME Bitcoin Futures Report, from October 25, 2021 through November 19, 2021, CFTC regulated bitcoin futures represented approximately $2.9 billion in notional trading volume on Chicago Mercantile Exchange ("CME") ("CME Bitcoin Futures") on a daily basis and notional volume

---

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

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

24 See, e.g., Form TA-1/A filed by Securrency Transfers, Inc. (CIK: 0001846640) on August 13, 2021, available at https://www.sec.gov/Archives/edgar/data/0001846640/000184664021000006/xslFTA1X01/primary_doc.xml; and Form TA-1/A filed by Tokensoft Transfer Agent LLC (CIK: 0001794142) on January 8, 2021, available at: https://www.sec.gov/Archives/edgar/data/1794142/000179414219000001/xslFTA1X01/primary_doc.xml.

25 As of December 1, 2021, the total market cap of all bitcoin in circulation was approximately $1.08 trillion.

was never below $1.2 billion per day.[26] Open interest was over $4 billion for the entirety of the period and at one point reached $5.5 billion. The CFTC has exercised its regulatory jurisdiction in bringing a number of enforcement actions related to bitcoin and against trading platforms that offer cryptocurrency trading.[27] The U.S. Office of the Comptroller of the Currency (the "OCC") has made clear that federally-chartered banks are able to provide custody services for cryptocurrencies and other digital assets[28] and major U.S. banks that currently serve as asset custodians for investment companies registered under the Investment Company Act of 1940, as amended ("1940 Act"), are now serving, or have expressed an intention of serving, as bitcoin custodians.[29] One such bank, U.S. Bank, N.A., will be serving as the custodian of the Trust (the "Custodian"). The OCC has also recently granted conditional approval of two charter conversions by state-chartered trust companies to national banks, both of which provide cryptocurrency custody services.[30] NYDFS has granted no fewer than twenty-five BitLicenses,

---

26 Data sourced from the CME Bitcoin Futures Report: 19 Nov, 2021, available at: https://www.cmegroup.com/ftp/bitcoinfutures/Bitcoin_Futures_Liquidity_Report.pdf.

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

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

29 See U.S. Bank Announces New Cryptocurrency Custodian Services for Institutional Investment Managers (October 5, 2021) available at: https://ir.usbank.com/news-releases/news-release-details/us-bank-announces-new-cryptocurrency-custody-services.

30 See OCC News Release 2021-6 (January 13, 2021) available at: https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-6.html and OCC

including to established public payment companies like PayPal Holdings, Inc. and Square, Inc., and limited purpose trust charters to entities providing cryptocurrency custody services. The U.S. Treasury Financial Crimes Enforcement Network ("FinCEN") has released extensive guidance regarding the applicability of the Bank Secrecy Act ("BSA") and implementing regulations to virtual currency businesses,[31] and has proposed rules imposing requirements on entities subject to the BSA that are specific to the technological context of virtual currencies.[32] In addition, the Treasury's Office of Foreign Assets Control ("OFAC") has brought enforcement actions over apparent violations of the sanctions laws in connection with the provision of wallet management services for digital assets.[33]

In addition to the regulatory developments laid out above, more traditional financial market participants have embraced and continue to embrace cryptocurrency: large insurance

---

News Release 2021-19 (February 5, 2021) available at: https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-19.html.

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

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

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

companies,[34] asset managers,[35] university endowments,[36] pension funds,[37] and even historically bitcoin skeptical fund managers[38] are allocating to bitcoin. The largest over-the-counter bitcoin fund previously filed a Form 10 registration statement, which the Staff of the Commission reviewed and which took effect automatically, and is now a reporting company.[39] Established

---

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

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

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

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

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

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

companies like Tesla, Inc.,[40] MicroStrategy Incorporated,[41] and Square, Inc.,[42] among others, have recently announced substantial investments in bitcoin in amounts as large as 43,200 BTC[43], worth around $2.5 billion (Tesla) valued at a BTCUSD price of $60,000 and 121,043 BTC worth $7.2 billion (MicroStrategy). The foregoing examples demonstrate that bitcoin has gained mainstream usage and recognition.

Despite these developments, access for U.S. retail investors to gain exposure to bitcoin via a transparent and U.S. regulated, U.S. exchange-traded vehicle remains limited. Instead current options include: (i) paying a potentially high premium (and high management fees) to buy over-the-counter bitcoin funds ("OTC Bitcoin Funds"), to the advantage of more sophisticated investors that are able to create shares at net asset value ("NAV") directly with the issuing trust;[44] (ii) facing the technical risk, complexity and generally high fees associated with

---

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

41 See Form 10-Q submitted by MicroStrategy Incorporated for the quarterly period ended September 30, 2020 at 8: https://www.sec.gov/ix?doc=/Archives/edgar/data/1050446/000156459020047995/mstr-10q_20200930.htm

42 See Form 10-Q submitted by Square, Inc. for the quarterly period ended September 30, 2020 at 51: https://www.sec.gov/ix?doc=/Archives/edgar/data/1512673/000151267320000012/sq-20200930.htm

43 Amount obtained from https://bitcointreasuries.net as of December 3, 2021

44 The largest OTC Bitcoin Fund has grown its AUM from approximately $2.6 billion on February 26, 2020, the date on which the Commission issued the disapproval order for the United States Bitcoin and Treasury Investment Trust, to $37.1 billion on December 1, 2021, according to Grayscale's website. See Securities Exchange Act Release No. 88284 (February 26, 2020), 85 FR 12595 (March 3, 2020) (SR-NYSEArca-2019-39) (the "Wilshire Phoenix Disapproval"). While the price of one bitcoin has increased approximately 690% in the intervening period, the total AUM has increased by approximately 1540%, indicating that the increase in AUM was created beyond just price appreciation in bitcoin. The premium and discount for OTC Bitcoin Funds is known to

buying spot bitcoin; (iii) purchasing shares of operating companies that they believe will provide proxy exposure to bitcoin with limited disclosure about the associated risks;[45] or (iv) through the

move rapidly. For example, over the period of 12/21/20 to 1/21/20, the premium for the largest OTC Bitcoin Fund went from 40.18% to 2.79%. While the price of bitcoin appreciated significantly during this period and NAV per share increased by 41.25%, the price per share increased by only 3.58%. This means that investors are buying shares of a fund that experiences significant volatility in its premium and discount outside of the fluctuations in price of the underlying asset. Even operating within the normal premium and discount range, it's possible for an investor to buy shares of an OTC Bitcoin Fund only to have those shares quickly lose 10% or more in dollar value excluding any movement of the price of bitcoin. That is to say – the price of bitcoin could have stayed exactly the same from market close on one day to market open the next, yet the value of the shares held by the investor decreased only because of the fluctuation of the premium. As more investment vehicles, including mutual funds and ETFs, seek to gain exposure to bitcoin, the easiest option for a buy and hold strategy for such vehicles is often an OTC Bitcoin Fund, meaning that even investors that do not directly buy OTC Bitcoin Funds can be disadvantaged by extreme premiums (or discounts) and premium volatility. Trading at a premium (or a discount) is not unique to OTC Bitcoin Funds and is not in itself problematic, but the Commission has recognized the risks that are posed by a persistent premium or discount and accordingly mandated website disclosure for ETFs under Rule 6c-11. That mandate was in the context of a persistent 2% premium or discount, whereas OTC Bitcoin Funds have had persistent premiums or discounts at least 10 times that percentage.

45 Recently a number of operating companies engaged in unrelated businesses – such as Tesla (a car manufacturer) and MicroStrategy (an enterprise software company) – have announced investments as large as $5.3 billion in bitcoin. Without access to bitcoin exchange-traded products, retail investors seeking investment exposure to bitcoin may end up purchasing shares in these companies in order to gain the exposure to bitcoin that they seek. In fact, mainstream financial news networks have written a number of articles providing investors with guidance for obtaining bitcoin exposure through publicly traded companies (such as MicroStrategy, Tesla, and bitcoin mining companies, among others) instead of dealing with the complications associated with buying spot bitcoin in the absence of a bitcoin ETP. See e.g., "7 public companies with exposure to bitcoin" (February 8, 2021) available at: https://finance.yahoo.com/news/7-public-companies-with-exposure-to-bitcoin-154201525.html; and "Want to get in the crypto trade without holding bitcoin yourself? Here are some investing ideas" (February 19, 2021) available at: https://www.cnbc.com/2021/02/19/ways-to-invest-in-bitcoin-without-holding-the-cryptocurrency-yourself-.html. Such operating companies, however, are imperfect bitcoin proxies and provide investors with partial bitcoin exposure paired with a host of additional risks associated with whichever operating company they decide to purchase. Additionally, the disclosures provided by such operating companies with respect to risks relating to their bitcoin holdings are generally substantially smaller than the registration statement of a bitcoin ETP, including the Registration Statement, typically amounting to

purchase of CME Bitcoin Futures ETFs, which represent a sub-optimal structure for long-term investors that will cost them collectively tens of millions of dollars every year, as further discussed below. Meanwhile, investors in many other countries, including Canada[46] and Brazil, are able to use more traditional exchange listed and traded products (including exchange-traded funds holding physical bitcoin) to gain exposure to bitcoin, disadvantaging U.S. investors and leaving them with more risky means of getting bitcoin exposure.[47] Additionally, investors in other countries and regions, specifically Canada and Europe, generally pay lower fees than U.S. retail investors that invest in OTC Bitcoin Funds due to the fee pressure that results from increased competition among available bitcoin investment options. Without an approved and regulated spot bitcoin ETP in the U.S. as a viable alternative, U.S. investors could seek to purchase shares of non-U.S. bitcoin vehicles in order to get access to bitcoin exposure. Given the separate regulatory regime and the potential difficulties associated with any international litigation, such an arrangement would create more risk exposure for U.S. investors than they would otherwise have with a U.S. exchange listed ETP. Further to this point, the lack of a U.S.-

---

a few sentences of narrative description and a handful of risk factors. In other words, investors seeking bitcoin exposure through publicly traded companies are gaining only partial exposure to bitcoin and are not fully benefitting from the risk disclosures and associated investor protections that come from the securities registration process.

46 The Exchange notes that the Purpose Bitcoin ETF, a retail physical bitcoin ETP launched in Canada, reportedly reached $1.2 billion in assets under management as of October 15, 2021 (“AUM”), demonstrating the demand for a North American market listed bitcoin exchange-traded product (“ETP”). The Purpose Bitcoin ETF also offers a class of units that is U.S. dollar denominated, which could appeal to U.S. investors.

47 The Exchange notes that securities regulators in a number of other countries have either approved or otherwise allowed the listing and trading of bitcoin ETPs. Specifically, these funds include the Purpose Bitcoin ETF, Bitcoin ETF, VanEck Vectors Bitcoin ETN, WisdomTree Bitcoin ETP, Bitcoin Tracker One, BTCetc bitcoin ETP, Amun Bitcoin ETP, Amun Bitcoin Suisse ETP, 21Shares Short Bitcoin ETP, CoinShares Physical Bitcoin ETP.

listed spot bitcoin ETP is not preventing U.S. funds from gaining exposure to bitcoin - several U.S. exchange-traded funds are using Canadian bitcoin ETPs to gain exposure to spot bitcoin. In addition to the benefits to U.S. investors articulated throughout this proposal, approving this proposal (and others like it) would provide U.S. exchange-traded funds with a U.S.-listed and regulated product to provide such access rather than relying on either flawed products or products listed and primarily regulated in other countries.

Bitcoin Futures ETFs

The Exchange and Sponsor applaud the Commission for allowing the recent launch of several ETFs registered under the Investment Company Act of 1940, as amended (the "1940 Act"), that provide exposure to bitcoin through CME Bitcoin Futures ("Bitcoin Futures ETFs"). Allowing such products to list and trade is a productive first step in providing transparent, exchange-listed tools for expressing a view on bitcoin for U.S. investors and traders. However, as has been reported by numerous outlets, the structure of such products provides negative outcomes for buy and hold investors as compared to an ETP that would hold actual bitcoin instead of derivatives contracts ("Spot Bitcoin ETPs").[48] Specifically, the cost of rolling CME Bitcoin Futures contracts (which has reached as high as 17% annually[49] excluding a fund's management fees and borrowing costs, if any) will cause the Bitcoin Futures ETFs to lag the performance of bitcoin itself and, at over a billion dollars in assets under management, would

---

48 See e.g., "Bitcoin ETF's Success Could Come at Fundholders' Expense," Wall Street Journal (October 24, 2021), available at: https://www.wsj.com/articles/bitcoin-etfs-success-could-come-at-fundholders-expense-11635080580; "Physical Bitcoin ETF Prospects Accelerate," ETF.com (October 25, 2021), available at: https://www.etf.com/sections/blog/physical-bitcoin-etf-prospects-shine?nopaging=1&__cf_chl_jschl_tk__=pmd_JsK.fjXz9eAQW9zol0qpzhXDrrlpIVdoCloLXbLjl44-1635476946-0-gqNtZGzNApCjcnBszQql.

49 Id.

cost U.S. investors hundreds of millions of dollars on an annual basis. Such rolling costs would not be required for Spot Bitcoin ETPs that hold bitcoin. Further, Bitcoin Futures ETFs have grown so rapidly that they face potentially running into CME position limits, which would force a Bitcoin Futures ETF to invest in non-futures assets for bitcoin exposure and cause potential investor confusion and lack of certainty about what such Bitcoin Futures ETFs are actually holding to try to get exposure to bitcoin, not to mention completely changing the risk profile associated with such an ETF. While Bitcoin Futures ETFs represent a useful trading tool, they are clearly a sub-optimal structure for U.S. investors that are looking for long-term exposure to bitcoin that will, based on the calculations above, unnecessarily cost U.S. investors millions of dollars every year and the Exchange believes that any proposal to list and trade a Spot Bitcoin ETP should be reviewed by the Commission with this important investor protection context in mind.

As discussed further below, the Commission's primary test in determining whether to approve or disapprove a series of Commodity-Based Trust Shares, a product type which includes Spot Bitcoin ETPs, is whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size in the underlying asset. Previous disapproval orders have made clear that a regulated market of significant size is generally a futures and/or options market rather than the spot commodity markets, which are often unregulated.[50] Leaving aside the analysis of that standard for now,[51] Cboe believes it would be inconsistent to allow the listing and trading of Bitcoin Futures ETFs that hold primarily CME Bitcoin Futures while simultaneously disapproving Spot Bitcoin ETPs on the basis that the CME Bitcoin Futures market is not a regulated market of significant size. If the CME Bitcoin Futures market were not, in the opinion of the Commission, a regulated market of significant size, permitting Bitcoin Futures ETFs that trade on such market would seem to be inconsistent with the requirement under the Act of being designed to "prevent fraudulent and manipulative acts and practices."[52] This is particularly true for the Trust, which will use the CF Bitcoin US Settlement Price (the "Reference Rate") as its price source to calculate its daily net asset value ("NAV"), with inputs from *the same* bitcoin trading platforms ("Constituent Platform") and materially the same methodology as is used to price CME Bitcoin Futures.[53] Hence, to qualify as

---

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

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

52 15 U.S.C. 78f(b)(5). For additional detail, see Winklevoss Order at 37600.

53 For a further description of the Reference Rate methodology and relevance to the requirements of Section 6(b)(5) of the Act, please see the comment letter from CF Benchmarks at https://www.sec.gov/comments/sr-cboebzx-2021-024/srcboebzx2021024-8771282-237582.pdf.

part of the bitcoin pricing input for the Trust, as well as CME Bitcoin Futures, a Constituent Platform must:

have policies to ensure fair and transparent market conditions at all times and has processes in place to identify and impede illegal, unfair or manipulative trading practices,

comply with applicable law and regulation, including, but not limited to capital markets regulations, money transmission regulations, client money custody regulations, know-your-client (KYC) regulations and anti-money laundering (AML) regulations.

Hence, not only are the Constituent Exchanges' pricing inputs and methodology (except for the calculation time) the same with respect to the Trust and CME Bitcoin Futures, but the Sponsor has represented that the Trust will qualify as an investment company under Accounting Standards Update 2013-08, which is the same accounting standards for Bitcoin Futures ETFs under the 1940 Act. As such, the Sponsor will ensure that the Trust's financial statements will be audited at least annually by an independent registered public accounting firm and as part of such audit, the auditor will be expected to perform procedures similar to those used for ETFs registered under the 1940 Act, including:

(i) applying the accounting and reporting guidance for investment companies; and

(ii) testing and evaluating processes for determining bitcoin valuation and evaluate the reasonableness and consistency of assumptions, models, and calculations used, as well as the completeness, accuracy, and relevance of underlying data used.

In addition, the Sponsor will facilitate the Trust's compliance with the financial record keeping and reporting requirements under the Sarbanes-Oxley Act of 2002.

Additional 1940 Act Considerations[54]

In addition to the foregoing, the Sponsor has taken 1940 Act considerations into account in structuring the Trust's operations in seeking "to protect investors and the public interest."

First, the Trust will use U.S. Bank as the Custodian, which qualifies as a "custodian" under the 1940 Act and serves as the custodian for a significant number of ETFs registered under the 1940 Act. Similar to an engagement for an ETF registered under the 1940 Act, the Sponsor has represented that U.S. Bank is expected to agree to exercise reasonable care, prudence, and diligence such as a person having responsibility for the safekeeping of property of the Trust would exercise.[55]

Second, the Sponsor has represented that the Trust will be subject to the transparency requirements of Rule 6c-11 under the 1940 Act, which is commonly referred to as the "ETF Rule." In particular, the Trust will disclose prominently on the Trust's website on a daily basis, which shall be publicly accessible and free of charge:

(i) the Trust's portfolio holdings (i.e., bitcoin);

(ii) NAV per share, market price, and premium or discount, each as of the end of the prior business day;

---

54 We note that the largest OTC Bitcoin Funds holding spot Bitcoin today are not 1940 Act Funds and in any event do not provide the type of transparency and other protections described herein.

55 To the extent the Commission may view differential treatment of Bitcoin Futures ETFs and Spot Bitcoin ETPs as warranted based on the Commission's concerns about the custody of physical Bitcoin that a Spot Bitcoin ETP would hold (compared to cash-settled futures contracts), the Sponsor believes this concern is mitigated by such custodial arrangements, whether directly through the Custodian or through a subcustodial relationship overseen by the Custodian.

(iii) a table showing the number of days the Trust's shares traded at a premium or discount during the most recently completed calendar year and calendar quarters since that year (or the life of the Trust, if shorter);

(iv) a line graph showing the Trust's premiums or discounts for the most recently completed calendar year and the most recently completely calendar quarters since that year (or the life of the Trust, if shorter);

(v) the Trust's median bid-ask spread, expressed as a percentage rounded to the nearest hundredth, in the manner computed under Rule 6c-11(c)(1)(v); and

(vi) if the Trust's premium or discount is greater than 2% for more than seven consecutive trading days, a statement that the Trust's premium or discount, as applicable, was greater than 2% and a discussion of the factors that are reasonably believed to have materially contributed to the premium or discount.

In addition, the Sponsor has represented: (i) that it will adopt procedures to ensure there are no transactions with affiliated persons that would be prohibited by the Section 17 of 1940 Act and the applicable rules and regulations thereunder; (ii) that the Trust will maintain a fidelity bond for the benefit of the Trust in the maximum amount required per Rule 17g-1 of the 1940 Act; and (iii) the Sponsor or applicable service provider of the Trust will maintain the books and records of the Trust in satisfaction of the requirements of Section 31 of the 1940 Act.

Part of the analysis of the regulated market of significant size test is whether an underlying market is sufficiently large to support an ETP is whether trading in the ETP is likely to be the predominant influence on prices in the market of significant size.[56] According to

[56] See Winklevoss Order at 37594.

publicly available data, the largest Bitcoin Futures ETF represents 3,803 contracts[57] of the total 9,625 contracts of open interest in December CME Bitcoin Futures[58] as of 12/2/21 (roughly 40% of open interest). This seems to directly contradict the previously articulated standards by the Commission in the disapproval orders issued for Spot Bitcoin ETPs related to whether the trading in the ETP would be the predominant influence on prices in that market.[59] As further discussed below, research indicates that the CME Bitcoin Futures market is a regulated market of significant size with a predominant influence on prices in USD-based trading in bitcoin futures and spot markets globally.

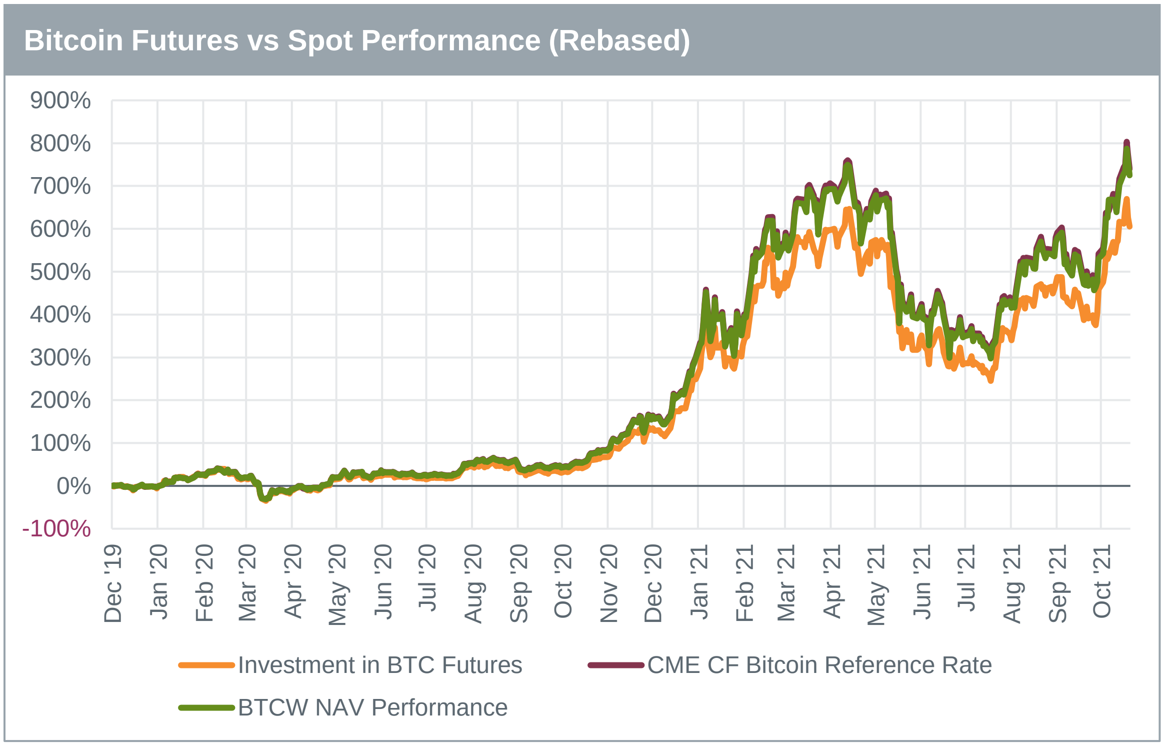
Based on the foregoing, the Exchange and Sponsor believe that any objective review of the proposals to list Spot Bitcoin ETPs compared to the already listed and traded Bitcoin Futures ETFs would lead to the conclusion that Spot Bitcoin ETPs should be available to U.S. investors and, as such, this proposal and other comparable proposals to list and trade Spot Bitcoin ETPs should be approved by the Commission. Stated simply, U.S. investors stand to lose hundreds of millions of dollars from holding Bitcoin Futures ETFs, losses which could be prevented by the Commission approving Spot Bitcoin ETPs. This is particularly evident as demonstrated by the chart on the next page, which shows the dramatic underperformance of Bitcoin Futures as compared to the WisdomTree Bitcoin exchange traded product ("WisdomTree Europe Bitcoin Fund") (BTCW) in Europe that holds spot bitcoin (not Bitcoin Futures) and is listed and traded on the Swiss Stock Exchange ("SIX"). BTCW also uses the Reference Rate (London Time) as its price source.

---

57 See Fund Holdings Information available at https://www.proshares.com/funds/bito.html.

58 See Volume and Open Interest data available at https://www.cmegroup.com/markets/cryptocurrencies/bitcoin/bitcoin.volume.html.

59 See Winklevoss Order at 37594-37595.



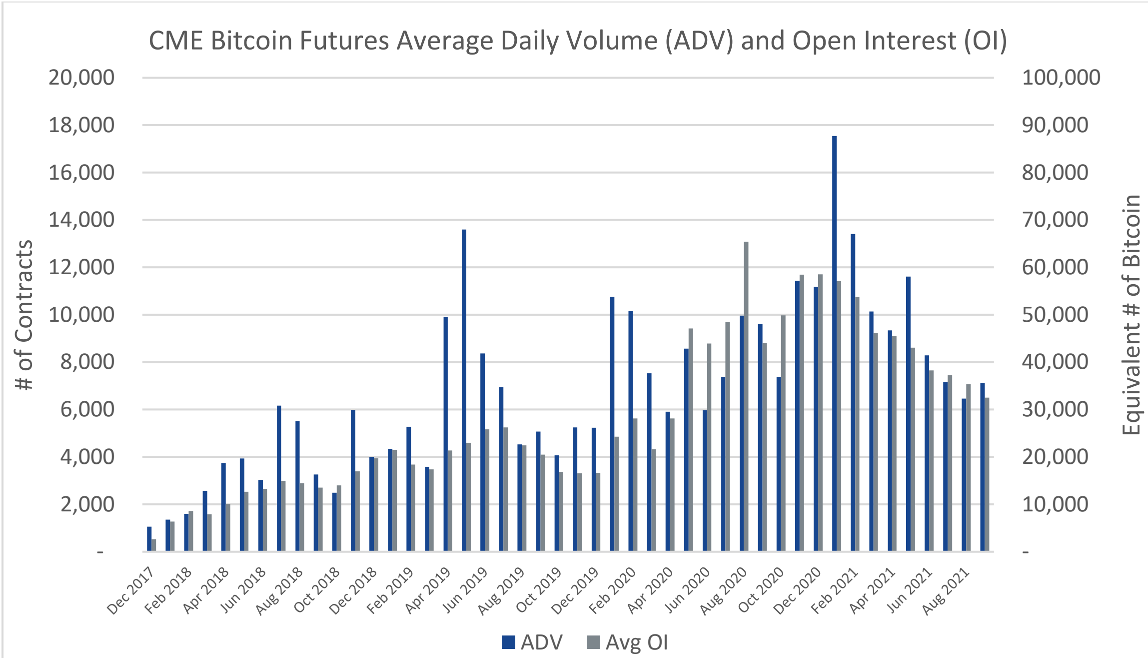
Source: WisdomTree

Additionally, any concerns related to preventing fraudulent and manipulative acts and practices related to Spot Bitcoin ETPs would apply equally to the spot markets underlying the futures contracts held by a Bitcoin Futures ETF. The Sponsor has structured the Trust's operations to operate as if certain 1940 Act provisions apply, providing transparency and investor protections such that a distinction between Bitcoin Futures ETFs and Spot Bitcoin ETPs is unwarranted. To be clear, both the Exchange and Sponsor believe that the CME Bitcoin Futures market is a regulated market of significant size and that such manipulation concerns are mitigated, as described extensively below. After allowing the listing and trading of Bitcoin Futures ETFs that hold primarily CME Bitcoin Futures, however, the only consistent outcome would be approving Spot Bitcoin ETPs on the basis that the CME Bitcoin Futures market is a regulated market of significant size. Including in the analysis the significant and preventable losses to U.S. investors that comes with Bitcoin Futures ETFs, disapproving Spot Bitcoin ETPs seems even more arbitrary and capricious. Given the current landscape, approving this proposal (and others like it) and allowing Spot Bitcoin ETPs to be listed and traded alongside Bitcoin Futures ETFs would establish a consistent regulatory approach, provide U.S. investors with choice in product structures for bitcoin exposure, and offer flexibility in the means of gaining exposure to bitcoin through transparent, regulated, U.S. exchange-listed vehicles.

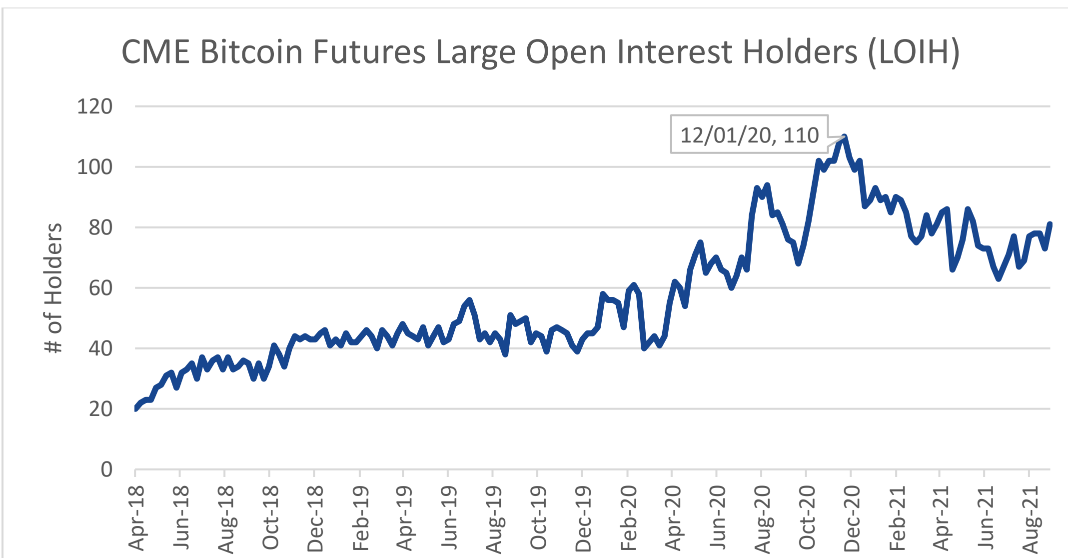
Bitcoin Futures

CME began offering trading in CME Bitcoin Futures in December 2017. Each contract represents five bitcoin and is based on the CME CF Bitcoin Reference Rate.[60] The contracts trade and settle like other cash-settled commodity futures contracts. Nearly every measurable metric related to CME Bitcoin Futures has trended consistently up since launch and/or accelerated upward in the past year. For example, there was approximately $12 billion in trading in Bitcoin Futures in August 2021 compared to $3.9 billion, $4.5b billion, and $9b billion in total trading in August 2017, August 2018, and August 2019, respectively. Bitcoin Futures traded over $500m and represented $1.5 billion in open interest compared to $115 million in December 2019. This general upward trend in trading volume and open interest is captured in the following chart. (Source: CME, Bloomberg 8/31/21)

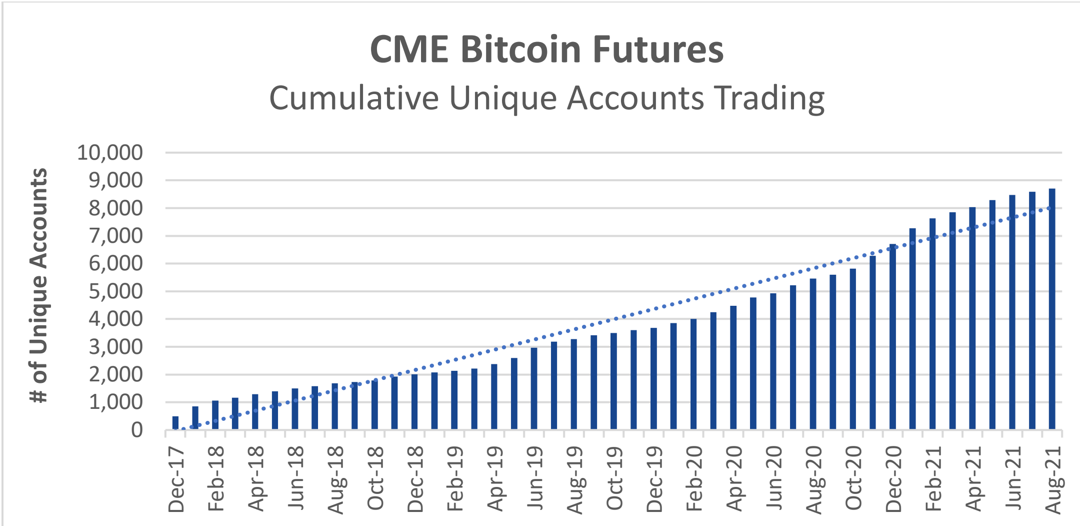
60 According to CME, the CME CF Bitcoin Reference Rate aggregates the trade flow of major bitcoin spot exchanges during a specific calculation window into a once-a-day reference rate of the U.S. dollar price of bitcoin. Calculation rules are geared toward maximum transparency and real-time replicability in underlying spot markets, including Bitstamp, Coinbase, Gemini, itBit, and Kraken. For additional information, refer to https://www.cmegroup.com/trading/cryptocurrency-indices/cf-bitcoin-reference-rate.html?redirect=/trading/cf-bitcoin-reference-rate.html.



Similarly, the number of large open interest holders[61] has continued to increase even as the price of bitcoin has risen, as have the number of unique accounts trading Bitcoin Futures.



61 A large open interest holder in Bitcoin Futures is an entity that holds at least 25 contracts, which is the equivalent of 125 bitcoin. At a price of approximately $46,996 per bitcoin on 8/31/21, more than 80 firms had outstanding positions of greater than $5.8 million in Bitcoin Futures.



The Sponsor further believes that academic research corroborates this overall trend and supports the thesis that bitcoin futures, and more particularly CME Bitcoin Futures given the recent significant growth in that market, is a predominant influence in bitcoin price formation.[62]

[62] See Amendment No. 1 to SR-CboeBZX-2021-051, filed December 9, 2021 (proposal to list and trade shares of the ARK 21Shares Bitcoin ETF) (the "ARK 21Shares Proposal"); Securities Exchange Act Release No. 91994 (May 25, 2021), 86 FR 29321 (June 1, 2021) (proposal to list and trade shares of the Wise Origin Bitcoin Trust) (the "Wise Origin Bitcoin Trust Filing"); Staff Memorandum re: Meeting with Representatives of Fidelity Digital Assets, et al. on September 8th, 2021 regarding the Wise Origin Bitcoin Trust Filing (the "Wise Origin Bitcoin Trust Presentation"); and Hu, Y., Hou, Y. and Oxley, L. (2019). "What role do futures markets play in Bitcoin pricing? Causality, cointegration and price discovery from a time-varying perspective" (available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7481826/). This academic research paper concludes that "There exist no episodes where the Bitcoin spot markets dominates the price discovery processes with regard to Bitcoin futures. This points to a conclusion that the price formation originates solely in the Bitcoin futures market. We can, therefore, conclude that the Bitcoin futures markets dominate the dynamic price discovery process based upon time-varying information share measures. Overall, price discovery seems to occur in the Bitcoin futures markets rather than the underlying spot market based upon a time-varying perspective."

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

The Commission has approved numerous series of Trust Issued Receipts,[63] including Commodity-Based Trust Shares,[64] to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of Section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices;[65] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act and that this filing sufficiently demonstrates that the CME Bitcoin Futures market

63 See Exchange Rule 14.11(f).

64 Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

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

represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently addressed to warrant approval. Specifically, the Exchange believes that the significant increase in trading volume in CME Bitcoin Futures and the growing body of evidence that the CME Bitcoin Futures market represents a regulated market of significant size as such a market has previously been described by the Commission, the growth of liquidity at the inside in the spot market for bitcoin, and certain features of the Shares and the Reference Rate (as defined below) mitigate potential manipulation concerns to the point that it is consistent with the requirements of Section 6(b)(5) of the Act and therefore provides a basis for the Commission to approve this proposal.

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

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place[66] with a regulated market of significant

---

[66] As previously articulated by the Commission, "The standard requires such surveillance-sharing agreements since "they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur." The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance- sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party." The Commission has historically held that joint membership in the Intermarket Surveillance Group ("ISG") constitutes such a surveillance sharing agreement. See Wilshire Phoenix Disapproval.

size.[67] Both the Exchange and CME are members of ISG.[68] The only remaining issue to be addressed is whether the CME Bitcoin Futures market constitutes a market of significant size, which both the Exchange and the Sponsor believe that it does. The terms "significant market" and "market of significant size" include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[69]

The Commission has also recognized that the "regulated market of significant size" standard is not the only means for satisfying Section 6(b)(5) of the Act, specifically providing that a listing exchange could demonstrate that "other means to prevent fraudulent and

---

67 As described above, the precedent makes clear that the spot market for a series of Commodity-Based Trust Shares need not be "regulated" in order to be consistent with the requirement under the Act that the exchange proposal be designed to "prevent fraudulent and manipulative acts and practices," and in fact that it's been the common historical practice of the Commission to rely on such derivatives markets as the regulated market of significant size because such spot commodities markets are largely unregulated. Specifically, the precedent includes language from numerous approval orders for which the underlying futures markets formed the basis for approving series of ETPs that hold commodities including physical metals, including gold, silver, palladium, platinum, and precious metals more broadly. The Commission also provides that "when the spot market is unregulated – the requirement of preventing fraudulent and manipulative acts may possibly be satisfied by showing that the ETP listing market has entered into a surveillance-sharing agreement with a regulated market of significant size in derivatives related to the underlying asset." The precedent indicates that common historical practice of the Commission is to rely on such derivatives markets as the regulated market of significant size because such spot commodities markets are largely unregulated. See supra note 10.

68 For a list of the current members and affiliate members of ISG, see www.isgportal.com.

69 See Wilshire Phoenix Disapproval.

manipulative acts and practices" are sufficient to justify dispensing with the requisite surveillance-sharing agreement.[70]

(a) Manipulation of the ETP

The significant growth in CME Bitcoin Futures across each of trading volumes, open interest, large open interest holders, and total market participants over the last two years are reflective of that market's growing influence on the spot price.[71] Where CME Bitcoin Futures act as a predominant influence on the price in the spot market, such that a potential manipulator of the bitcoin spot market (beyond just the constituents of the Reference Rate[72]) would have to participate in the CME Bitcoin Futures market, it follows that a potential manipulator of the Shares would similarly have to transact in the CME Bitcoin Futures market because the Reference Rate is based on spot prices. Further, the Trust only allows for in-kind creation and redemption, which, as further described below, reduces the potential for manipulation of the Shares through manipulation of the Reference Rate or any of its individual constituents, again emphasizing that a potential manipulator of the Shares would have to manipulate the entirety of the bitcoin spot market, of which the CME Bitcoin Futures market appears to be a predominant influence. As such, the Exchange believes that part (a) of the significant market test outlined

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

71 See ARK 21Shares Proposal and the Wise Origin Bitcoin Trust Presentation for additional analysis on this point.

72 As further described below, the Reference Rate for the Fund is based on materially the same methodology (except calculation time) as the Administrator's BRR, which is the rate on which bitcoin futures contracts are cash-settled in U.S. dollars at the CME.

above is satisfied and that common membership in ISG between the Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the Shares.

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

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices in the CME Bitcoin Futures market (or spot market) for a number of reasons, including the significant volume in the CME Bitcoin Futures market, the size of bitcoin's market cap, and the significant liquidity available in the spot market. Moreover, the Shares should trade close to NAV given that market participants would arbitrage any significant price deviations between the price of the Shares and prices in the spot market[73]. In addition to the CME Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid. According to data from CoinRoutes from February 2021, the cost to buy or sell $5 million worth of bitcoin averages roughly 10 basis points with a market impact of 30 basis points.[74] For a $10 million market order, the cost to buy or sell is roughly 20 basis points with a market impact of 50 basis points. Stated another way, a market participant could enter a market buy or sell order for $10 million of bitcoin and only move the market 0.5%. More strategic purchases or sales (such as using limit orders and executing through OTC bitcoin trade desks) would likely have less obvious impact on the market – which is consistent with MicroStrategy, Tesla, and Square being able to collectively purchase billions of dollars in bitcoin. As such, the combination of CME Bitcoin Futures acting as a predominant influence on price discovery, the overall size of the bitcoin market, and the ability for market participants, including authorized participants

---

73 See supra footnote 44 for an example of an ETP trading close to NAV, which is just one example of bitcoin ETPs trading in other global markets today that trade close to NAV.

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

creating and redeeming in-kind with the Trust, to buy or sell large amounts of bitcoin without significant market impact will help prevent the Shares from becoming the predominant force on pricing in either the bitcoin spot or CME Bitcoin Futures markets, satisfying part (b) of the test outlined above.

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

As noted above, the Commission also permits a listing exchange to demonstrate that "other means to prevent fraudulent and manipulative acts and practices" are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present. Specifically, the significant liquidity in the spot market and the impact of market orders on the overall price of bitcoin mean that attempting to move the price of bitcoin is costly and has grown more expensive over the past year. In January 2020, for example, the cost to buy or sell $5 million worth of bitcoin averaged roughly 30 basis points (compared to 10 basis points in 2/2021) with a market impact of 50 basis points (compared to 30 basis points in 2/2021).[75] For a $10 million market order, the cost to buy or sell was roughly 50 basis points (compared to 20 basis points in 2/2021) with a market impact of 80 basis points (compared to 50 basis points in 2/2021). As the liquidity in the bitcoin spot market increases, it follows that the impact of $5 million and $10 million orders will continue to decrease the overall impact in spot price.

(ii) Designed to Protect Investors and the Public Interest

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past 1.5 years, U.S. investor exposure to bitcoin through OTC Bitcoin Funds

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

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

WisdomTree Bitcoin Trust

Delaware Trust Company is the trustee ("Trustee"). U.S. Bancorp Fund Services, LLC dba U.S. Bank Global Fund Services will be the administrator ("Administrator") and transfer agent ("Transfer Agent"), with U.S. Bank, N.A. serving as Custodian. Foreside Fund Services LLC will be the marketing agent ("Marketing Agent") in connection with the creation and redemption of "Baskets" of Shares.

According to the Registration Statement, each Share will represent a fractional undivided beneficial interest in and ownership of the Trust. The Trust's assets will consist of bitcoin held by the Custodian on behalf of the Trust. The Trust generally does not intend to hold cash or cash equivalents. However, there may be situations where the Trust will unexpectedly hold cash on a temporary basis.

According to the Registration Statement, the Trust is neither an investment company registered under the Investment Company Act of 1940, as amended,[76] nor a commodity pool for purposes of the Commodity Exchange Act ("CEA"), and neither the Trust nor the Sponsor is subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the Shares.

When the Trust sells or redeems its Shares, it will do so in "in-kind" transactions in blocks of 50,000 Shares (a "Creation Basket") at the Trust's NAV. Authorized participants will deliver, or facilitate the delivery of, bitcoin to the Trust's account with the Custodian in exchange for Shares when they purchase Shares, and the Trust, through the Custodian, will deliver bitcoin to such authorized participants when they redeem Shares with the Trust. Authorized participants may then offer Shares to the public at prices that depend on various factors, including the supply and demand for Shares, the value of the Trust's assets, and market conditions at the time of a transaction. Shareholders who buy or sell Shares during the day from their broker may do so at a premium or discount relative to the NAV of the Shares of the Trust.

Investment Objective

According to the Registration Statement and as further described below, the investment objective of the Trust is to gain exposure to the price of bitcoin, less expenses and liabilities of the Trust's operation. In seeking to achieve its investment objective, the Trust will hold bitcoin and value its Shares daily based on the value of bitcoin as reflected by the CF Bitcoin US

---

[76] 15 U.S.C. 80a-1. However, as previously stated, the Trust has undertaken to comply with certain provisions of the Investment Company Act of 1940.

Settlement Price (the "Reference Rate"), which is an independently calculated value based on an aggregation of executed trade flow of major bitcoin spot exchanges. The Trust will process all creations and redemptions in-kind in transactions with authorized participants. The Trust is not actively managed.

The Reference Rate

As described in the Registration Statement, the Fund will use the Reference Rate to calculate the Trust's NAV. The Reference Rate is not affiliated with the Sponsor and was created and is administered by CF Benchmarks Ltd. (the "Benchmark Administrator"), an independent entity, to facilitate financial products based on bitcoin. The Reference Rate is designed based on the IOSCO Principals for Financial Benchmarks and serves as a once-a-day benchmark rate of the U.S. dollar price of bitcoin (USD/BTC), calculated as of 4 p.m. Eastern time. The Reference Rate is based on materially the same methodology (except calculation time)[77] as the Benchmark Administrator's CME CF Bitcoin Reference Rate ("BRR"), which was first introduced on November 14, 2016 and is the rate on which bitcoin futures contracts are cash-settled in U.S. dollars at the CME. The Reference Rate aggregates the trade flow of several bitcoin exchanges, during an observation window between 3:00 p.m. and 4:00 p.m. Eastern time into the U.S. dollar price of one bitcoin at 4:00 p.m. Eastern time. The current constituent bitcoin exchanges of the Reference Rate are Bitstamp, Coinbase, Gemini, itBit and Kraken (the "Constituent Bitcoin Exchanges").

---

77 The Reference Rate is calculated as of 4 p.m. Eastern Time, whereas the BRR is calculated as of 4 p.m. London Time.

The Reference Rate is calculated based on the "Relevant Transactions"[78] of all of its Constituent Bitcoin Exchanges, as follows:

- All Relevant Transactions are added to a joint list, recording the time of execution, trade price and size for each transaction.
- The list is partitioned by timestamp into 12 equally-sized time intervals of 5 (five) minute length.
- For each partition separately, the volume-weighted median trade price is calculated from the trade prices and sizes of all Relevant Transactions, i.e., across all Constituent Bitcoin Exchanges. A volume-weighted median differs from a standard median in that a weighting factor, in this case trade size, is factored into the calculation.
- The Reference Rate is then determined by the arithmetic mean of the volume-weighted medians of all partitions.

By employing the foregoing steps, the Reference Rate thereby seeks to ensure that transactions in bitcoin conducted at outlying prices do not have an undue effect on the value of a specific partition, large trades or clusters of trades transacted over a short period of time will not have an undue influence on the index level, and the effect of large trades at prices that deviate from the prevailing price are mitigated from having an undue influence on the benchmark level. In addition, the Sponsor notes that an oversight function is implemented by the Benchmark Administrator in seeking to ensure that the Reference Rate is administered through codified policies for Reference Rate integrity.

[78] A "Relevant Transaction" is any cryptocurrency versus U.S. dollar spot trade that occurs during the observation window between 3:00 p.m. and 4:00 p.m. Eastern time on a Constituent Bitcoin Exchange in the BTC/USD pair that is reported and disseminated by a Constituent Bitcoin Exchange through its publicly available API and observed by the Benchmark Administrator, CF Benchmarks Ltd.

Availability of Information

In addition to the price transparency of the Reference Rate, the Trust will provide information regarding the Trust's bitcoin holdings as well as additional data regarding the Trust. The Trust will provide an Intraday 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 Regular Trading Hours (9:30 a.m. to 4:00 p.m. E.T.). The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust's bitcoin holdings during the trading day.

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

As noted above, the website for the Trust, which will be publicly accessible at no charge, will contain information consistent with the disclosure requirements of Rule 6c-11 under the 1940 Act. The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours. Information about the Reference Rate, including key elements of how the Reference Rate is calculated, will be publicly available at https://www.cfbenchmarks.com.

The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. 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 is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters, as well as the Reference Rate. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the exchanges on which bitcoin are traded. Depth of book information is also available from bitcoin exchanges. The normal trading hours for bitcoin exchanges are 24 hours per day, 365 days per year.

Net Asset Value

NAV means the total assets of the Trust including, but not limited to, all bitcoin cash or other assets, less total liabilities of the Trust, each determined on the basis of generally accepted accounting principles. In determining the Trust's NAV, the administrator values the bitcoin held by the Trust based on the price set by the Reference Rate as of 4:00 p.m. Eastern Time. The administrator will determine the NAV of the Trust on each day that the Exchange is open for regular trading. The NAV for a normal trading day will be released after 4:00 p.m. Eastern Time. However, NAVs are not officially struck until later in the day (often by 5:30 p.m. Eastern Time and almost always by 8:00 p.m. Eastern Time). The pause between 4:00 p.m. Eastern Time and 5:30 p.m. Eastern Time (or later) provides an opportunity for the Trust, Benchmark Administrator or administrator to detect, flag, investigate, and correct unusual pricing should it occur. The Sponsor anticipates that the Reference Rate will be reflective of a reasonable valuation of the average spot price of bitcoin. However, in the event the Reference Rate was not available or determined by the Sponsor to not be reliable, the Sponsor would "fair value" the Trust's bitcoin holdings. The Sponsor does not anticipate that the need to "fair value" bitcoin will be a common occurrence. The Sponsor will publish the NAV and NAV per Share at www.wisdomtree.com as soon as practicable after their determination and availability.

Creation and Redemption of Shares

According to the Registration Statement, on any business day, an authorized participant may place an order to create one or more baskets. Purchase orders must be placed by 4:00 p.m. Eastern Time, or the close of regular trading on the Exchange, whichever is earlier. The day on which an order is received is considered the purchase order date. The total deposit of bitcoin required is an amount of bitcoin that is in the same proportion to the total assets of the Trust, net of accrued expenses and other liabilities, on the date the order to purchase is properly received, as the number of Shares to be created under the purchase order is in proportion to the total number of Shares outstanding on the date the order is received. Prior to market open each day, the Sponsor will publish the amount of bitcoin that will be required in exchange for each creation order. The Administrator determines the required deposit for a given day by dividing the number of bitcoin held by the Trust as of the opening of business on that business day, adjusted for the amount of bitcoin constituting estimated accrued but unpaid fees and expenses of the Trust as of the opening of business on that business day, by the quotient of the number of Shares outstanding at the opening of business divided by the aggregation of shares (i.e., 50,000) associated with a creation unit. The procedures by which an authorized participant can redeem one or more Creation Baskets mirror the procedures for the creation of Creation Baskets.

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

The Shares will be subject to BZX Rule 14.11(e)(4), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. The Exchange will obtain a representation that the Trust's NAV will be calculated daily and that these values and information about the assets of the Trust will be made available to all market participants at the same time. The Exchange notes that, as defined in Rule 14.11(e)(4)(C)(i), the Shares will be: (a) issued by a trust that holds a specified commodity[79] deposited with the trust; (b) issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity.

Upon termination of the Trust, the Shares will be removed from listing. The Trustee, Delaware Trust Company, is a trust company having substantial capital and surplus and the experience and facilities for handling corporate trust business, as required under Rule 14.11(e)(4)(E)(iv)(a) and that no change will be made to the trustee without prior notice to and approval of the Exchange. The Exchange also notes that, pursuant to Rule 14.11(e)(4)(F), neither the Exchange nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions or delays in calculating or disseminating any underlying commodity value, the current value of the underlying commodity required to be deposited to the Trust in connection with issuance of Commodity-Based Trust Shares; resulting from any negligent act or omission by the Exchange, or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange, its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in an underlying commodity. Finally, as required in Rule 14.11(e)(4)(G), the Exchange notes that any registered

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

market maker ("Market Maker") in the Shares must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule. In addition to the existing obligations under Exchange rules regarding the production of books and records (see, e.g., Rule 4.2), the registered Market Maker in Commodity-Based Trust Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, as may be requested by the Exchange.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the bitcoin underlying the Shares; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(e)(4)(E)(ii), which sets forth circumstances under which trading in the Shares may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. BZX will allow trading in the Shares during all trading sessions on the Exchange. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a) the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01 where the price is greater than $1.00 per share or $0.0001 where the price is less than $1.00 per share.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and CME Bitcoin Futures via ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[80]

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (i) the procedures for the creation and redemption of Baskets (and that the Shares are not individually redeemable); (ii) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (iii) how information regarding the IIV and the Trust's NAV are disseminated; (iv) the risks involved in trading the Shares outside of Regular Trading Hours[81] when an updated IIV will not be calculated or publicly disseminated; (v) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (vi) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Shares. Members purchasing the Shares for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

---

80 For a list of the current members and affiliate members of ISG, see www.isgportal.com.

81 Regular Trading Hours is the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[82] in general and Section 6(b)(5) of the Act[83] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission has approved numerous series of Trust Issued Receipts,[84] including Commodity-Based Trust Shares,[85] to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of Section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices;[86] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest.

---

82 15 U.S.C. 78f.

83 15 U.S.C. 78f(b)(5).

84 See Exchange Rule 14.11(f).

85 Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

86 As the Exchange has stated in a number of other public documents, it continues to believe that bitcoin is resistant to price manipulation and that "other means to prevent fraudulent and manipulative acts and practices" exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin. The fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging. To the extent that there are bitcoin exchanges engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, such pricing does not normally impact prices on other exchanges because participants

The Exchange believes that the proposal is, in particular, designed to protect investors and the public interest. Over the past 1.5 years, U.S. investor exposure to bitcoin through OTC Bitcoin Funds has grown into the tens of billions of dollars. With that growth, so too has grown the potential risk to U.S. investors. Premium and discount volatility, high fees, insufficient disclosures, and technical hurdles are putting U.S. investor money at risk on a daily basis that could potentially be eliminated through access to a bitcoin ETP. The Exchange understands the Commission's previous focus on potential manipulation of a bitcoin ETP in prior disapproval orders, but now believes that such concerns have been sufficiently mitigated and that the growing and quantifiable investor protection concerns should be a central consideration as the Commission reviews this proposal. As such, the Exchange believes that this proposal acts to limit the risk to U.S. investors that are increasingly seeking exposure to bitcoin by providing direct, 1-for-1 exposure to bitcoin in a regulated, transparent, exchange-traded vehicle, specifically by: (i) reducing premium volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks associated with investing in operating companies that are imperfect proxies for bitcoin exposure; and (iv) providing an alternative to custodying spot bitcoin.

---

will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin exchange or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

The Exchange also believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act and that it has sufficiently demonstrated that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently addressed to warrant approval. Specifically, the Exchange believes that the significant increase in trading volume in Bitcoin Futures, the growth of liquidity at the inside in the spot market for bitcoin, and certain features of the Shares and the Reference Rate mitigate potential manipulation concerns to the point that it is consistent with the requirements of Section 6(b)(5) of the Act and therefore provides a basis for the Commission to approve this proposal.

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

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place[87] with a regulated market of significant size. Both the Exchange and CME are members of ISG.[88] The only remaining issue to be addressed is whether the CME Bitcoin Futures market constitutes a market of significant size,

87 As previously articulated by the Commission, “The standard requires such surveillance-sharing agreements since “they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.” The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance- sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.” The Commission has historically held that joint membership in ISG constitutes such a surveillance sharing agreement. See Wilshire Phoenix Disapproval.

88 For a list of the current members and affiliate members of ISG, see www.isgportal.com.

which both the Exchange and the Sponsor believe that it does. The terms "significant market" and "market of significant size" include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[89]

The Commission has also recognized that the "regulated market of significant size" standard is not the only means for satisfying Section 6(b)(5) of the act, specifically providing that a listing exchange could demonstrate that "other means to prevent fraudulent and manipulative acts and practices" are sufficient to justify dispensing with the requisite surveillance-sharing agreement.[90]

(a) Manipulation of the ETP

The significant growth in CME Bitcoin Futures across each of trading volumes, open interest, large open interest holders, and total market participants since the Wilshire Phoenix Disapproval was issued are reflective of that market's growing influence on the spot price, which according to the academic research cited above, was already leading the spot price in 2018 and 2019. Where Bitcoin Futures act as a predominant influence on the price in the spot market such that a potential manipulator of the bitcoin spot market (beyond just the constituents of the

---

89 See Wilshire Phoenix Disapproval.

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

Reference Rate[91]) would have to participate in the Bitcoin Futures market, it follows that a potential manipulator of the Shares would similarly have to transact in the Bitcoin Futures market because the Reference Rate is based on spot prices. Further, the Trust only allows for in-kind creation and redemption, which, as further described below, reduces the potential for manipulation of the Shares through manipulation of the Reference Rate or any of its individual constituents, again emphasizing that a potential manipulator of the Shares would have to manipulate the entirety of the bitcoin spot market, which is led by the CME Bitcoin Futures market. As such, the Exchange believes that part (a) of the significant market test outlined above is satisfied and that common membership in ISG between the Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the Shares.

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

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices in the CME Bitcoin Futures market (or spot market) for a number of reasons, including the significant volume in the CME Bitcoin Futures market, the size of bitcoin's market cap, and the significant liquidity available in the spot market. Moreover, the Shares should trade close to NAV given that market participants would arbitrage any significant price deviations between the price of the Shares and prices in the spot market. In addition to the CME Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid. According to data from CoinRoutes from February 2021, the cost to buy or sell $5 million worth of bitcoin averages roughly 10 basis points with a market impact of 30 basis points.[92] For a

[91] As noted above, the Constituent Bitcoin Exchanges are Bitstamp, Coinbase, Gemini, itBit and Kraken.

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

$10 million market order, the cost to buy or sell is roughly 20 basis points with a market impact of 50 basis points. Stated another way, a market participant could enter a market buy or sell order for $10 million of bitcoin and only move the market 0.5%. More strategic purchases or sales (such as using limit orders and executing through OTC bitcoin trade desks) would likely have less obvious impact on the market – which is consistent with MicroStrategy, Tesla, and Square being able to collectively purchase billions of dollars in bitcoin. As such, the combination of CME Bitcoin Futures leading price discovery, the overall size of the bitcoin market, and the ability for market participants, including authorized participants creating and redeeming in-kind with the Trust, to buy or sell large amounts of bitcoin without significant market impact will help prevent the Shares from becoming the predominant force on pricing in either the bitcoin spot or CME Bitcoin Futures markets, satisfying part (b) of the test outlined above.

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

As noted above, the Commission also permits a listing exchange to demonstrate that "other means to prevent fraudulent and manipulative acts and practices" are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange believes that such conditions are present. Specifically, the significant liquidity in the spot market and the impact of market orders on the overall price of bitcoin mean that attempting to move the price of bitcoin is costly and has grown more expensive over the past year. In January 2020, for example, the cost to buy or sell $5 million worth of bitcoin averaged roughly 30 basis points (compared to 10 basis points in 2/2021) with a market impact of 50 basis points (compared to 30 basis points in 2/2021).[93] For a $10 million market order, the cost to buy or sell was roughly 50 basis points

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

(compared to 20 basis points in 2/2021) with a market impact of 80 basis points (compared to 50 basis points in 2/2021). As the liquidity in the bitcoin spot market increases, it follows that the impact of $5 million and $10 million orders will continue to decrease the overall impact in spot price.

Additionally, offering only in-kind creation and redemption will provide unique protections against potential attempts to manipulate the Shares. While the Sponsor believes that the independently maintained and administered Reference Rate which it uses to value the Trust's bitcoin is itself resistant to manipulation based on the methodology further described below, the fact that creations and redemptions are only available in-kind makes the manipulability of the Reference Rate significantly less important. Specifically, because the Trust will not accept cash to buy bitcoin in order to create new shares or, barring a forced redemption of the Trust or under other extraordinary circumstances, be forced to sell bitcoin to pay cash for redeemed shares, the price that the Sponsor uses to value the Trust's bitcoin is not particularly important.[94] When authorized participants are creating with the Trust, they need to deliver a certain number of bitcoin per share (regardless of the valuation used) and when they're redeeming, they can similarly expect to receive a certain number of bitcoin per share. As such, even if the price used to value the Trust's bitcoin is manipulated (which the Sponsor believes that its methodology is resistant to), the ratio of bitcoin per Share does not change and the Trust will either accept (for creations) or distribute (for redemptions) the same number of bitcoin regardless of the value. This not only mitigates the risk associated with potential manipulation, but also discourages and

[94] While the Reference Rate will not be particularly important for the creation and redemption process, it will be used for calculating fees.

disincentivizes manipulation of the Reference Rate because there is little financial incentive to do so.

Commodity-Based Trust Shares

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in Exchange Rule 14.11(e)(4). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and listed bitcoin derivatives via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

Availability of Information

The Exchange also believes that the proposal promotes market transparency in that a large amount of information is currently available about bitcoin and will be available regarding the Trust and the Shares. In addition to the price transparency of the Reference Rate, the Trust will provide information regarding the Trust's bitcoin holdings as well as additional data regarding the Trust. The Trust will provide an IIV per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. E.T.). The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust's bitcoin holdings during the trading day.

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

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information, including the information noted with respect to Rule 6c-11 under the 1940 Act. The Trust will also disseminate the Trust's holdings on a daily basis on the Trust's website. The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours. Information about the Reference Rate, including key elements of how the Reference Rate is calculated, will be publicly available at https://www.cfbenchmarks.com.

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

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

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

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

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

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

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

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

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

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2022-006 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-CboeBZX-2022-006. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2022-006 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[95]

J. Matthew DeLesDernier

Assistant Secretary

---

95 17 CFR 200.30-3(a)(12).