SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-92395; File No. SR-NYSEArca-2021-57

July 13, 2021

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to List and Trade Shares of the NYDIG Bitcoin ETF under NYSE Arca Rule 8.201-E

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on June 30, 2021, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to list and trade the shares of the NYDIG Bitcoin ETF (the "Trust") [4] under NYSE Arca Rule 8.201-E. The common shares of beneficial interest of the Trust are referred to herein as the "Shares." The proposed change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

4 The Trust was formed as a Delaware statutory trust on January 22, 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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to list and trade the Shares of the Trust under NYSE Arca Rule 8.201-E, which governs the listing and trading of Commodity-Based Trust Shares.

Description of the Trust

The Shares will be issued by the Trust, a Delaware statutory trust. According to the Registration Statement, the Trust's investment objective is to reflect the performance of the price of bitcoin less the expenses of the Trust's operations. The Trust will not seek to reflect the performance of any benchmark or index.[5]

In seeking to achieve its investment objective, the Trust will only hold bitcoin. The Trust will value its assets daily in accordance with Generally Accepted Accounting Principles ("GAAP"), which, according to the Registration Statement, generally value bitcoin by reference to orderly transactions in the principal active market for bitcoin, as described below.

5 On February 16, 2021, the Trust filed a draft Registration Statement on Form S-1 under the Securities Act of 1933 (the "Registration Statement"). The description of the operation of the Trust herein is based, in part, on the Registration Statement. The Registration Statement is not yet effective, and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

NYDIG Asset Management LLC (the “Sponsor”) is the Sponsor of the Trust. Delaware Trust Company (the “Trustee”) is the trustee of the Trust and NYDIG Trust Company LLC (the “Bitcoin Custodian”) will hold all of the Trust’s bitcoin on the Trust’s behalf as custodian. Both the Sponsor and the Bitcoin Custodian are indirect wholly-owned subsidiaries of New York Digital Investment Group LLC (“NYDIG”).

Pursuant to the custodial agreement, the Bitcoin Custodian will be responsible for (1) safekeeping all of the bitcoin owned by the Trust, (2) opening an account that holds the Trust’s bitcoin and (3) facilitating the transfer of bitcoin required for the operation of the Trust, as directed by the Sponsor. The Bitcoin Custodian is chartered as a limited purpose trust company by the New York State Department of Financial Services (“NYDFS”) and is authorized by NYDFS to provide digital asset custody services. U.S. Bancorp Fund Services, LLC will act as the transfer agent for the Trust (the “Transfer Agent”) and as the administrator of the Trust (the “Administrator”) to perform various administrative, tax, accounting and recordkeeping functions on behalf of the Trust. The Transfer Agent and the Administrator will also be responsible for issuing and redeeming Shares and calculating the net asset value (“NAV”) of the Shares, respectively.

According to the Registration Statement, the Trust will process all creations and redemptions of Shares in transactions with financial firms that are authorized to do so (known as “Authorized Participants”). When the Trust issues or redeems its Shares, it will do so only in “in-kind” transactions in blocks of 10,000 Shares (a “Creation Basket”) based on the quantity of bitcoin attributable to each Share of the Trust (net of accrued but unpaid Sponsor fees and any accrued but unpaid extraordinary expenses or liabilities). Because the creation and redemption of Creation Baskets will be effected via in-kind transactions based on the quantity of bitcoin attributable to each Share, the quantity of Creation Baskets so created or redeemed will generally not be affected by fluctuations in the value of bitcoin. When purchasing Creation Baskets, Authorized Participants or their agents will deliver bitcoin to the Trust's account with the Bitcoin Custodian in exchange for Creation Baskets. When redeeming Creation Baskets, Authorized Participants or their agents will receive bitcoin from the Trust through the Bitcoin Custodian. The Trust will not purchase or, barring a liquidation or extraordinary circumstances, sell bitcoin directly.

According to the Registration Statement, to support the ability of Authorized Participants to provide liquidity at prices that reflect the value of the Trust's assets and to facilitate orderly transactions in the Shares, the Trust will ordinarily process redemptions of Shares on the next day when the Exchange is open for regular trading (a "Business Day") following receipt of a redemption request by an Authorized Participant.

The Sponsor believes that the design of the Trust will enable investors to effectively and efficiently implement strategic and tactical asset allocation strategies that use bitcoin by investing in the Shares rather than directly in bitcoin.

Custody of the Trust's Bitcoin

According to the Registration Statement, and as described above, the Trust's Bitcoin Custodian will custody of all of the Trust's bitcoin. Custody of bitcoin typically involves the generation, storage and utilization of private keys. These private keys are used to effect transfer transactions — i.e., transfers of bitcoin from an address associated with the private key to another address. While private keys must be used to send bitcoin, private keys do not need to be used or shared in order to receive a bitcoin transfer; every private key has an associated public key and an address derived from that public key that can be freely shared, to which counterparties can transfer bitcoin. The Bitcoin network has a public ledger, meaning that anybody with access to the address can see the balance of digital assets in that address.

The Bitcoin Custodian carefully considers the design of the physical, operational and cryptographic systems for secure storage of the Trust's private keys in an effort to lower the risk of loss or theft. According to the Registration Statement, no such system is perfectly secure and loss or theft due to operational or other failure is always possible. The Bitcoin Custodian uses a multi-factor security system under which actions by multiple individuals working together are required to access the private keys necessary to transfer such digital assets and ensure the Trust's exclusive ownership. The multi-factor security system generates private keys using a Federal Information Processing Standards Publication 140-2 ("FIPS 140-2")-certified random number generator to ensure the keys' uniqueness. Before these keys are used, the Bitcoin Custodian validates that the public addresses associated with these keys have no associated digital asset balances. The software used for key generation and verification is tested by the Bitcoin Custodian and is reviewed by third-party advisors from the security community with specific expertise in computer security and applied cryptography. The private keys are stored in an encrypted manner using a FIPS 140-2-certified security module held in redundant secure, geographically dispersed locations with high levels of physical security, including robust physical barriers to entry, electronic surveillance and continuously roving patrols. The operational procedures of these facilities and of the Bitcoin Custodian are reviewed by third-party advisors with specific expertise in physical security. The devices that store the keys will never be connected to the internet or any other public or private distributed network — this is colloquially known as "cold storage." Only specific individuals are authorized to participate in the custody process, and no individual acting alone will be able to access or use any of the private keys. In addition, no combination of the executive officers of the Sponsor or the investment professionals managing the Trust, acting alone or together, will be able to access or use any of the private keys that hold the Trust's bitcoin.

The Trust generally does not intend to hold cash or cash equivalents. However, the Trust may hold cash and cash equivalents on a temporary basis to pay extraordinary expenses. The Trust will enter into a cash custody agreement with U.S. Bank N.A. under which U.S. Bank N.A. will act as custodian of the Trust's cash and cash equivalents.

<u>Overview of Bitcoin and the Bitcoin Network</u>

According to the Registration Statement, Bitcoin is a digital asset, the ownership and behavior of which are determined by participants in an online, peer-to-peer network that connects computers that run publicly accessible, or "open source," software that follows the rules and procedures governing the Bitcoin network, commonly referred to as the Bitcoin protocol. The value of bitcoin, like the value of other digital assets, is not backed by any government, corporation or other identified body. Ownership and the ability to transfer or take other actions with respect to bitcoin is protected through public-key cryptography. The supply of bitcoin is constrained formulaically by the Bitcoin protocol instead of being explicitly delegated to an identified body (e.g., a central bank or corporate treasury) to control. Units of bitcoin are treated as fungible. Bitcoin and certain other types of digital assets are sometimes referred to as digital currencies or cryptocurrencies. No single entity owns or operates the Bitcoin network, the infrastructure of which is collectively maintained by (1) a decentralized group of participants who run computer software that results in the recording and validation of transactions (commonly referred to as "miners"), (2) developers who propose improvements to the Bitcoin protocol and the software that enforces the protocol and (3) users who choose what Bitcoin software to run. Bitcoin was released in 2009 and, as a result, there is little data on its long-term investment potential. Bitcoin is not backed by a government-issued legal tender or other assets or currency.

Bitcoin is "stored" or reflected on a digital transaction ledger commonly known as a "blockchain." A blockchain is a type of shared and continually reconciled database, stored in a decentralized manner on the computers of certain users of the digital asset. A blockchain is a canonical record of every digital asset: the blockchain records every "coin" or "token," balances of digital assets, every transaction and every address associated with a quantity of a particular digital asset. Bitcoin utilizes the blockchain to record transactions into and out of different addresses, facilitating a determination of how much bitcoin is in each address.

Bitcoin is created by "mining." Mining involves miners using a sophisticated computer program to repeatedly solve complex mathematical problems on specialized computer hardware. The mathematical problem involves a computation involving all or some bitcoin transactions that have been proposed by the Bitcoin network's participants. When this problem is solved, the computer creates a "block" consisting of these transactions. As each newly solved block refers back to and "connects" with the immediately prior solved block, the addition of a new block adds to the blockchain in a manner similar to a new link being added to a chain. A miner's proposed block is added to the blockchain once a majority of the nodes on the network confirm the miner's work. A miner that is successful in adding a block to the blockchain is automatically awarded a fixed amount of bitcoin for its efforts plus any transaction fees paid by transferors whose transactions are recorded in the block. This reward system is the means by which new bitcoin enter circulation. This reward system, called proof of work, also ensures that the local copies of the Bitcoin blockchain maintained by participants in the Bitcoin network are kept in consensus with one another.

<u>The Bitcoin Market</u>

According to the Registration Statement, Bitcoin is the oldest, best-known and largest market-capitalization digital asset. Since the advent of bitcoin, numerous other digital assets have been created. The website CoinMarketCap.com tracks the U.S. dollar price and total market capitalization for each of more than 5,000 traded digital assets. As of April 30, 2021, bitcoin had a total market capitalization in excess of $1 trillion and represented more than 45% of the entire digital asset market.

The first trading venues for bitcoin were informal exchange services marketed primarily in public online forums. Transactions on these services were effected via anonymous email, and the fiat currency portions of these transactions were effected through payment services such as PayPal. These services required their operators to manually match buyers and sellers in order to process transactions. Later, automated exchanges that matched buyers and sellers began to form. Many such exchanges have been created in the U.S. and abroad. In the U.S., a number of exchanges now operate under licensing from the NYDFS.

Beginning in 2016, more institutional investors entered the bitcoin market. As a result, an increasing number of transactions have occurred in over-the-counter ("OTC") markets instead of exchanges. This type of trading allows for bespoke trading arrangements that may ease of the burden of trade operations or reduce different types of risks (e.g., counterparty risk).

As a result, there is not a single source for pricing bitcoin. According to the Registration Statement, the Trust believes that prices on the bitcoin trading venues are generally formed by the levels of demand on either side of the exchange's order book, and arbitrage between exchanges typically prevents larger and/or more persistent differences in prices between bitcoin trading venues. Factors that the Trust believes may influence the relative balance of buyers and sellers on the bitcoin trading venues include trading activity in the OTC markets, global or regional economic conditions, expected levels of inflation, growth or reversal in the adoption and use of bitcoin, developments in the regulation of bitcoin, changes in the preference of market participants between bitcoin and other digital assets, maintenance and development of the open-source software protocol of the Bitcoin network, and negative consumer or public perception of bitcoin specifically or digital assets generally.

Bitcoin spot trading occurs on venues in the U.S. that are licensed to conduct that business by the NYDFS, other venues in the U.S. and non-U.S. venues. In addition, bitcoin futures and options trading occurs on exchanges in the U.S. regulated by the Commodity Futures Trading Commission (the "CFTC"). The market for NYDFS-licensed and CFTC-regulated trading of bitcoin and bitcoin derivatives has developed substantially. Bitcoin market conditions in the three months ending on April 30, 2021 are briefly summarized as follows:

- Bitcoin: Six NYDFS-licensed entities operate trading venues with order books for spot trading of bitcoin, with a total average daily trading volume of approximately $2.5 billion. Across these venues, the average daily deviation of prices was less than 0.08%. The largest NYDFS-licensed trading venue by volume had an average bid-ask spread during the period of less than 0.05% for trades of $250,000.
- Futures: Two CFTC-regulated exchanges facilitate trading of bitcoin futures, with a total average daily trading volume of approximately $2.9 billion.

- Options: One CFTC-regulated exchange facilitates trading of options on bitcoin futures, with average monthly trading volume of approximately $380 million.

The following table shows the average daily trading volume for bitcoin across the three largest NYDFS-licensed exchanges, as well as the average daily trading volume and average daily open interest (i.e., the average total bitcoin exposure of futures contracts held by market participants at the end of each trading day) for bitcoin futures contracts on the Chicago Mercantile Exchange ("CME") and the Intercontinental Exchange. The bitcoin data shown is for trading volumes of bitcoin against U.S. dollars and exclude trading transactions of bitcoin against other digital assets (e.g., Tether) or other fiat currencies (e.g., euros).

Year	Bitcoin Daily Volume (USD millions)	Futures Daily Volume (USD millions)	Futures Average Open Interest (USD millions)
2016.............................	7.95	-	-
2017.............................	215.44	41.10	81.87
2018.............................	267.19	86.68	126.90
2019.............................	216.97	172.60	246.62
2020.............................	708.39	561.78	535.13
2021 (through 4/30)......	2,564.30	2,507.96	2,934.98

Calculation of Net Asset Value

The Trust's NAV is determined in accordance with GAAP as the total value of bitcoin held by the Trust, plus any cash or other assets, less any liabilities including accrued but unpaid expenses. The NAV per Share is determined by dividing the NAV of the Trust by the number of

Shares outstanding. The NAV of the Trust is typically determined as of 4:00 p.m. Eastern Time (ET) on each Business Day. The Administrator will calculate the NAV of the Trust once each Exchange trading day. The Exchange's Core Trading Session closes at 4:00 p.m. ET. The Trust's daily activities are generally not reflected in the NAV determined for the Business Day on which the transactions are effected (the trade date), but rather on the following Business Day. The NAV for the Trust's Shares will be disseminated daily to all market participants at the same time.

Intraday Indicative Value

In order to provide updated information relating to the Trust for use by shareholders and market professionals, the Trust will disseminate an intraday indicative value ("IIV") per Share updated every 15 seconds. The IIV will be calculated by using the same methodology that the Trust uses to determine NAV, which, as described above, is to follow GAAP. Generally, GAAP requires the fair value of an asset that is traded on a market to be measured by reference to orderly transactions on an active market. Among all active markets with orderly transactions, the market that is used to determine the fair value of an asset is the principal market. The Sponsor expects that the principal market will initially generally be the NYDFS-regulated trading venue with the highest trading volume and level of activity.

The IIV disseminated during the Exchange's Core Trading Session between 9:30 a.m. to 4:00 p.m. ET 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 Core Trading Session by one or more major market data vendors.

Creation and Redemption of Shares

According to the Registration Statement, the Trust will create and redeem Shares from time to time, but only in one or more blocks of 10,000 Shares (known as "Creation Baskets"). Creation Baskets will only be made in exchange for delivery to the Trust or the distribution by the Trust of the amount of bitcoin represented by the Shares being created or redeemed, the amount of which will be based on the quantity of bitcoin attributable to each Share of the Trust (net of accrued but unpaid Sponsor fees, extraordinary expenses or liabilities) being created or redeemed determined as of 4:00 p.m. ET on the day the order is properly received. Because creation and redemption of Creation Baskets will be effected via in-kind transactions based on the quantity of bitcoin attributable to each Share, the quantity of Creation Baskets so created or redeemed will generally not be affected by fluctuations in the value of bitcoin.

According to the Registration Statement, Authorized Participants are the only persons that may place orders to create and redeem Creation Baskets. Authorized Participants must be (1) registered broker-dealers or other securities market participants, such as banks or other financial institutions, that are not required to register as broker-dealers to engage in securities transactions, and (2) entities that have an account with The Depository Trust Company ("DTC") such as banks, brokers, dealers and trust companies. To become an Authorized Participant, a person must enter into an authorized participant agreement with the Trust and the Sponsor (the "Authorized Participant Agreement"). The Authorized Participant Agreement provides the procedures for the creation and redemption of Shares and for the delivery of the bitcoin required for such creation and redemptions.

According to the Registration Statement, Authorized Participants will place orders through the Transfer Agent. The Transfer Agent will coordinate with the Trust's Bitcoin Custodian in order to facilitate settlement of the Shares and bitcoin.

Creation Procedures

According to the Registration Statement, on any Business Day, an Authorized Participant may place an order with the Transfer Agent to create one or more Creation Baskets. Purchase orders must be placed by 4:00 p.m. ET or the close of regular trading on the Exchange, whichever is earlier. The day on which a valid order is received by the Transfer Agent is considered the purchase order date.

By placing a purchase order, an Authorized Participant agrees to facilitate the deposit of bitcoin with the Trust. If required by the Sponsor and the Trust, prior to the delivery of Creation Baskets for a purchase order, the Authorized Participant must also have wired to the Transfer Agent the non-refundable transaction fee due for the purchase order. Authorized Participants may not withdraw a purchase order.

The manner by which Creation Baskets are made is dictated by the terms of the Authorized Participant Agreement. By placing a purchase order, an Authorized Participant agrees to facilitate the deposit of bitcoin with the Bitcoin Custodian. If an Authorized Participant fails to consummate the foregoing, the order will be cancelled.

The total deposit of bitcoin required to create each Creation Basket is an amount of bitcoin that is in the same proportion to the total amount of bitcoin held by of the Trust (net of accrued but unpaid Sponsor fees, extraordinary expenses or liabilities) on the date the purchase order is properly received as the number of Shares to be created under the purchase order is to the total number of Shares outstanding on the date the order is received.

Following an Authorized Participant's purchase order, the Trust's bitcoin account with the Bitcoin Custodian (the "Bitcoin Account") is credited with the required bitcoin by the end of the second Business Day following the purchase order date. Upon receipt of the bitcoin deposit amount in the Trust's Bitcoin Account, the Bitcoin Custodian will notify the Transfer Agent, the Authorized Participant and the Sponsor that the bitcoin has been deposited. The Transfer Agent will then direct DTC to credit the number of Shares created to the Authorized Participant's DTC account.

Redemption Procedures

According to the Registration Statement, the procedures by which an Authorized Participant can redeem one or more Creation Baskets mirror the procedures for the creation of Creation Baskets. Accordingly, on any Business Day, an Authorized Participant may place an order with the Transfer Agent to redeem one or more Creation Baskets. Redemption orders must be placed by 4:00 p.m. ET or the close of regular trading on the Exchange, whichever is earlier. A redemption order will be effective on the date it is received by the Transfer Agent.

The redemption distribution from the Trust consists of a transfer of bitcoin to the redeeming Authorized Participant corresponding to the number of Shares being redeemed. The redemption distribution due from the Trust will be delivered once the Transfer Agent notifies the Bitcoin Custodian and the Sponsor that the Authorized Participant has delivered the Shares represented by the Creation Baskets to be redeemed to the Transfer Agent's DTC account. If the Transfer Agent's DTC account has not been credited with all of the Shares of the Creation Baskets to be redeemed, the redemption distribution will be delayed until such time as the Transfer Agent confirms receipt of all such Shares.

Once the Transfer Agent notifies the Bitcoin Custodian and the Sponsor that the Shares have been received in the Transfer Agent's DTC account, the Sponsor will instruct the Bitcoin Custodian to transfer the redemption distribution from the Trust's Bitcoin Account to the Authorized Participant.

Availability of Information

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association ("CTA").

In addition, the Trust's website will display the applicable end of day closing NAV. The daily holdings of the Trust will be available on the Trust's website before 9:30 a.m. E.T. The Trust's website will also include a form of the prospectus for the Trust that may be downloaded. The website will include the Shares' ticker and CUSIP information, along with additional quantitative information updated on a daily basis for the Trust. The Trust's website will include (1) the prior Business Day's trading volume, the prior Business Day's reported NAV and closing price, and a calculation of the premium and discount of the closing price or mid-point of the bid/ask spread at the time of NAV calculation ("Bid/Ask Price") against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters. The Trust's website will be publicly available prior to the public offering of Shares and accessible at no charge.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Trust.[6] Trading in Shares of the Trust

[6] See NYSE Arca Rule 7.12-E.

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

If the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Trading Rules

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

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.201-E. The trading of the Shares will be subject to NYSE Arca Rule 8.201-E(g), which sets forth certain restrictions on firms that have been issued an Equity Trading Permit ("ETP Holders") to act as registered Market Makers in Commodity-Based Trust Shares to facilitate surveillance. The Exchange represents that, for initial and continued listing, the Trust will be in compliance with Rule 10A-3[7] under the Act, as provided by NYSE Arca Rule 5.3-E. A

[7] 17 CFR 240.10A-3.

minimum of 100,000 Shares of the Trust will be outstanding at the commencement of trading on the Exchange.

Surveillance

The Exchange represents that trading in the Shares of the Trust will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[8] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

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

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG"), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the

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

Exchange has in place a comprehensive surveillance sharing agreement ("CSSA").[9] The Exchange is also able to obtain information regarding trading in the Shares in connection with ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market.

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

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

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

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an information bulletin (the "Information Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) the procedures for purchases and redemptions of Shares; (2) NYSE Arca Rule 9.2-E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts

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

relating to every customer prior to trading the Shares; (3) how information regarding portfolio holdings is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (5) trading information.

Prior to the commencement of trading, the Exchange will inform its ETP Holders of the suitability requirements of NYSE Arca Rule 9.2-E(a) in an Information Bulletin. Specifically, ETP Holders will be reminded in the Information Bulletin that, in recommending transactions in the Shares, they must have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such ETP Holder, and (2) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the Shares. In connection with the suitability obligation, the Information Bulletin will also provide that ETP Holders must make reasonable efforts to obtain the following information: (1) the customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such ETP Holder or registered representative in making recommendations to the customer.

In addition, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Trust. The Information Bulletin will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses described in the Registration Statement.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[10] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change satisfies the requirements of Section 6(b)(5), as discussed in more detail below.

The Commission has approved numerous series of Trust Issued Receipts,[11] including Commodity-Based Trust Shares,[12] 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, and, in particular, the requirement that (i) a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; and (ii) an exchange proposal be designed, in general, to protect investors and the public interest.

As discussed below, the Exchange, as the listing exchange for the Shares, and the CME, a regulated market of significant size relating to bitcoin, are both members of ISG, the purpose of which is "to provide a framework for the sharing of information and the coordination of regulatory efforts among exchanges trading securities and related products to address potential

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10 15 U.S.C. 78f(b)(5).

11 See Exchange Rule 8.200-E.

12 Commodity-Based Trust Shares, as described in Exchange Rule 8.201-E, are a type of Trust Issued Receipt.

intermarket manipulation and trading abuses."[13] In addition, the Sponsor believes that, on the whole, the manipulation concerns previously articulated by the Commission have since been significantly mitigated, and do not exceed those that exist in the markets for other commodities that underly securities listed on U.S. national securities exchanges. Specifically, significant increase in trading volume and open interest in the bitcoin futures market, growth of liquidity in the spot market for bitcoin, and certain features of the Shares mitigate the manipulation concerns expressed by the Commission when it last reviewed exchange proposals to list a bitcoin exchange-traded product ("ETP").

The proposed rule change is designed to protect investors and the public interest as an investment in the Trust would provide investors with exposure to bitcoin in a manner that may be more efficient, more convenient and more regulated than the purchase of bitcoin or other investment products that provide exposure to bitcoin.

For example, the Sponsor notes that OTC bitcoin funds, which have attracted significant investor interest, offer exposure to bitcoin in a similar manner as the Trust. However, OTC bitcoin funds do not offer a creation or redemption mechanism that would keep their shares trading in line with their NAVs and, as a result, OTC bitcoin funds have historically traded at significant premiums or discounts compared to their NAVs. In contrast, when the Trust's Shares trade at a premium or discount compared to their NAV, creation or redemption can be facilitated by the Authorized Participants to drive the value of the Shares towards their NAV. Notably, investors in OTC bitcoin funds also have historically borne significantly higher fees and expenses than those that would be borne by investors in the Trust.

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

Additionally, the Sponsor notes that investors holding bitcoin through a cryptocurrency "exchange" often face credit risk to the exchange for cash balances, and often face risk of loss or theft of their bitcoin as a result of the exchange using Internet-connected storage (commonly known as "hot" wallets) and/or having poor private key management (e.g., insufficient password protection, lost key, etc.). In the Bitcoin Custodian, the Trust is holding bitcoin in 100% "cold" storage, meaning the entire storage process is done completely offline, with a regulated and licensed entity applying industry best practices.

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

When considering whether an exchange's proposal to list bitcoin-based ETPs is designed to prevent fraudulent and manipulative acts and practices, the Commission requires that an exchange demonstrate that there is a CSSA in place with a regulated market of significant size relating to the underlying assets.[14]

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

[14] 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." See Securities Exchange Act Release No. 88284 (Feb. 26, 2020), 85 FR 12595 (Mar. 3, 2020) (the "Wilshire Phoenix Order") at 12596.

manipulative acts and practices" are sufficient to justify dispensing with the requisite surveillance-sharing agreement.[15] Sponsors of proposed bitcoin-based ETPs in particular have attempted to demonstrate that other means besides surveillance-sharing agreements are sufficient to prevent fraudulent and manipulative acts and practices, and in particular have attempted to demonstrate that the bitcoin market is "uniquely" and "inherently" resistant to fraud and manipulation.[16] Such resistance to fraud and manipulation must be novel and beyond those protections that exist in traditional commodity markets or equity markets for which the Commission has long required surveillance-sharing agreements in the context of listing derivative securities products. To date, exchanges proposing rule changes to list bitcoin ETFs have not been able to establish that the relevant bitcoin market possesses a resistance to manipulation that is unique beyond that of traditional security or commodity markets such that it is inherently resistant to manipulation.

The Exchange understands the Commission's focus on potential manipulation of a bitcoin-based ETP in prior disapproval orders, including the Wilshire Phoenix Order, and believes that such concerns have since been largely mitigated. The Exchange believes that

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15 See Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the "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 [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 [Act] have been met." Id. at 37582.

16 See Winklevoss Order, 83 FR at 37580, 37582-91; see also Securities Exchange Act Release No. 87267 (Oct. 9, 2019), 84 FR 55382 (Oct. 16, 2019) (the "Bitwise Order") at 55383, 55385-406. The Commission noted that "the Winklevoss Order addressed an assertion that 'bitcoin and bitcoin [spot] markets' generally, as well as one bitcoin trading platform specifically, have unique resistance to fraud and manipulation; and the Bitwise Order addressed the assertion that prices from at least certain bitcoin trading platforms ('the 'real' bitcoin spot market as opposed to the 'fake' and non-economic bitcoin spot market') possessed such unique resistance." See Wilshire Phoenix Order at 12597.

increases in investor participation in and institutional adoption of bitcoin have facilitated the maturation of the bitcoin trading ecosystem.

However, the Exchange is not required to demonstrate "other means to prevent fraudulent and manipulative acts and practices," such as the assertion that the relevant underlying bitcoin market is "unique" or "inherently" resistant to manipulation, if it can establish that it has a CSSA with a regulated bitcoin market of significant size, or that both the Exchange and the relevant futures market, in this case, the CME, hold common membership in ISG. To this end, the Exchange represents that both the Exchange and CME are members of the ISG. The remaining determination to be made is whether the CME bitcoin futures market constitutes a market of significant size, which the Exchange contends that it does, unlike at the time of the Wilshire Phoenix Order. In the context of this standard, the terms "significant market" and "market of significant size" include a market (or group of markets) as to which (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, so that a surveillance-sharing agreement would assist 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.[17]

(a) Manipulation of the ETP

The significant growth in trading volumes, open interest, large open interest holders, and total market participants in the bitcoin futures market since the Wilshire Phoenix Order was issued is reflective of that market's growing influence on the spot price of bitcoin.

[17] See Wilshire Phoenix Order at 12596.

Some academic research[18] suggests that the bitcoin futures market has been leading bitcoin spot market price discovery since as early as 2018. However, in the Wilshire Phoenix Order, the Commission noted that academic research was, at the time, inconclusive as to the influence of the bitcoin futures market on price discovery in bitcoin spot markets, and noted specifically that existing research did not focus appropriately on lead-lag analyses, or on the influence of non-U.S. bitcoin spot market.[19] To this end, NYDIG has developed more recent proprietary research, including lead-lag analyses, that demonstrates that prices in the CME bitcoin futures market do indeed lead prices in the bitcoin spot market, including non-U.S. bitcoin spot markets. This finding supports the thesis that a market participant attempting to manipulate the Shares would have to trade on that market to manipulate the ETP.

Because Shares can only be created or redeemed in kind, and further because the Sponsor fee is accrued with respect to the quantity of bitcoin held by the Trust and paid in kind by the Trust, the Trust receives and holds only bitcoin. This substantially reduces the potential for manipulation of the number of Shares created or redeemed, which therefore substantially reduces the potential for shareholders to be harmed by manipulation.

NYDIG's research shows that the bitcoin futures market is one of the primary venues that market participants use to transact large exposures to bitcoin. This can be attributed to multiple

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18 See 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."

19 See Wilshire Phoenix Order at 12613.

factors, such as institutional familiarity with futures margining and settlement processes, the simplicity of cash settlement instead of physical settlement in a novel asset, and the efficient leverage offered by exchange margining.

In contrast to the efficient leverage offered through the futures market, many bitcoin spot trading venues require full pre-funding of trading, which means it would be highly capital intensive to "spoof" or "layer" order books on spot trading venues. This further supports NYDIG's conclusion that if a market participant intended to manipulate the price of bitcoin, and thereby the Shares, the bitcoin futures market is the one that would be manipulated first.

As such, 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 Exchange in detecting and deterring misconduct in the Shares.

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

According to the Sponsor, trading in the Shares would not be the predominant force on prices in the bitcoin futures market (or spot market) given the significant volume in the bitcoin futures market (in excess of $2.5 billion in average daily volume), the size of bitcoin's market cap (in excess of $1 trillion), and the significant liquidity available in the spot market (in excess of $2.5 billion in average daily volume, in each case as of April 30, 2021).

In addition, NYDIG performed a conservative analysis, considering only a small subset of spot trading venues, that concludes that the cost to buy or sell $5 million worth of bitcoin averages roughly 20 basis points.[20] For a $10 million market order, the cost to buy or sell is roughly 40 basis points. This is comparable to the liquidity of existing commodity ETPs. Using

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[20] These statistics are based on three random daily samples of bitcoin liquidity in USD (excluding stablecoins or Euro liquidity) based on executable quotes on Coinbase Pro, Bitstamp and Itbit from January 1, 2021 to April 30, 2021.

more sophisticated execution strategies and additional liquidity sources would likely result in a lower cost to trade.

As such, 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 supports the Sponsor's belief that the Shares are unlikely to become a predominant force on pricing in either the bitcoin spot or bitcoin futures markets, satisfying part (b) of the test outlined above.

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

(ii) Designed to Protect Investors and the Public Interest

The Exchange believes the proposed rule change is designed to protect investors and the public interest.

With the growth of OTC bitcoin funds, so too has grown the potential risk to U.S. investors. Significant and prolonged premiums and discounts, significant premium/discount volatility, high fees, insufficient disclosures, limited liquidity to trade or borrow shares, and the lack of surveillance and oversight through a listed exchange are putting U.S. investor money at risk in ways that could potentially be eliminated through access to the Shares. For example, the OTC bitcoin fund with the largest assets under management in the United States returned 46.41% year-to-date through April 30, 2021 while spot bitcoin returned 95.61% over the same period. The deviation in price performance can be attributed to the fluctuation in NAV of this fund.

As such, the Sponsor believes that this proposed rule change would act to limit the risk to U.S. investors that are increasingly seeking exposure to bitcoin, with benefits such as the elimination of significant and prolonged premiums and discounts, the reduction of significant premium/discount volatility, the reduction of management fees through meaningful competition, the avoidance of risks associated with investing in operating companies that are imperfect proxies for bitcoin exposure, and substantially greater surveillance and regulatory oversight.

The Exchange also notes there is a considerable amount of bitcoin price and market information available on public websites and through professional and subscription services. Investors may obtain, on a 24-hour basis, bitcoin pricing information based on the spot price for bitcoin from various financial information service providers. The closing price and settlement prices of bitcoin are readily available from the Bitcoin exchanges and other publicly available websites. In addition, such prices are published in public sources, or on-line information services such as Bloomberg. The Trust will provide daily website disclosure of its bitcoin holdings, net asset value, and closing price daily.

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. Trading in Shares of the Trust will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Additionally, the Exchange represents that the Exchange may halt trading during the day in which an interruption to the dissemination of the IIV occurs. If the interruption to the dissemination of the IIV persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares and of the suitability requirements of NYSE Arca Rule 9.2-E(a). The Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Trust. The Information Bulletin will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will disclose that information about the Shares will be publicly available on the Trust's website.

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

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, and in the best interest of investors and the public at large.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of a new type of Commodity-Based Trust Share based on the price of bitcoin that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

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

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

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

(A) by order approve or disapprove the proposed rule change, or

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

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2021-57 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEArca-2021-57. 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-NYSEArca-2021-57 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.[21]

J. Matthew DeLesDernier
Assistant Secretary

[21] 17 CFR 200.30-3(a)(12).