

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- 101218; File No. SR-NASDAQ-2024-028)

September 30, 2024

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Shares of the Hashdex Nasdaq Crypto Index US ETF under Nasdaq Rule 5711(d)

I. Introduction

On June 17, 2024, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the Hashdex Nasdaq Crypto Index US ETF (“Trust”) under Nasdaq Rule 5711(d), Commodity-Based Trust Shares. The proposed rule change was published for comment in the Federal Register on July 2, 2024.³

On August 9, 2024, pursuant to Section 19(b)(2) of the Exchange Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On September 5, 2024, the Exchange filed Amendment No. 1 to the proposed rule change, described in Item II below, which Item has been prepared by the Exchange.⁶

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 100434 (June 26, 2024), 89 FR 54868. The proposed rule change was subject to notice and comment. The Commission has not received any comments.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 100681, 89 FR 66470 (Aug. 15, 2024) (designating September 30, 2024, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change).

⁶ The full text of Amendment No. 1 is available on the Commission’s website at: <https://www.sec.gov/comments/sr-nasdaq-2024-028/srnasdaq2024028-516575-1489102.pdf>.

Amendment No. 1 amended and superseded the original proposed rule change in its entirety. The Commission is publishing this notice and order to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons and to institute proceedings under Section 19(b)(2)(B) of the Act⁷ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

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 Shares of the Trust under Nasdaq Rule 5711(d), which governs the listing and trading of “Commodity-Based Trust Shares.” The Trust is managed and controlled by the Hashdex Asset Management Ltd. (“Sponsor”) and administered by Tidal ETF Services LLC (the “Administrator”). The Shares will be registered with the SEC by means of the Trust's registration statement on Form S-1 (the “Registration Statement”).⁸

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ On July 24, 2024, the Trust filed with the Commission an initial registration statement (the “Registration Statement”) on Form S-1 under the Securities Act of 1933 (15 U.S.C. 77a). The description of the operation of the Trust herein is based, in part, on the most recent 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.

Description of the Trust

The Shares will be issued by the Trust, a Delaware statutory trust to be established by the Sponsor. The Trust will operate pursuant to the rules and guidelines set forth in the Trust agreement (“Trust Agreement”). The Trust will issue Shares representing fractional undivided beneficial interests in its net assets. The assets of the Trust will consist only of bitcoin and ether. Under limited circumstances, the Trust will hold cash and/or cash equivalents to pay its expenses. The Trust will not be an investment company registered under the Investment Company Act of 1940, as amended (the “1940 Act”), and will not be a commodity pool under the Commodity Exchange Act.

U.S. Bancorp Fund Services, LLC will be the sub-administrator, and transfer agent for the Trust (“Sub-Administrator” or “Transfer Agent”). U.S. Bank, N.A. will hold the Trust’s cash and/or cash equivalents⁹ (“Cash Custodian”). The Sponsor intends to enter into an agreement with Coinbase Custody Trust Company, LLC and BitGo Trust Company, Inc. (“Crypto Custodians”, and together with the Cash Custodian, the “Custodians”). The Crypto Custodians will keep custody of all the Trust’s bitcoin and ether.¹⁰

The Trust’s Investment Objective

The investment objective of the Trust is to have the daily changes in the net asset value (“NAV”) of the Shares correspond to the daily changes in the price of the Nasdaq Crypto US

⁹ “Cash equivalents” are limited to short-term treasury bills (90 days or less to maturity), money market funds, and demand deposit accounts.

¹⁰ The Trust may engage additional custodians for its bitcoin and ether, each of whom may be referred to as a Crypto Custodian. The Trust may also remove or change current Crypto Custodians, provided that there is at least one Crypto Custodian at all times. Any such changes to the Trust’s Crypto Custodians would require a rule filing under Rule 19b-4 of the Act.

Settlement Price Index,¹¹ NCIUSS (the “NCIUSS” or “Index”), less expenses and liabilities from the Trust’s operations, by investing in bitcoin and ether.

The Shares are designed to provide a straightforward means of obtaining investment exposure to bitcoin and ether through the public securities market, as opposed to direct acquisition, holding, and trading of spot bitcoin and spot ether on a peer-to-peer or other basis or via a crypto asset platform. The Shares have been designed to remove the obstacles represented by the complexities and operational burdens involved in a direct investment in bitcoin and ether, while at the same time having an intrinsic value that reflects, at any given time, the investment exposure to the bitcoin and ether owned by the Trust at such time, less the Trust’s expenses and liabilities. The Shares provide investors with an alternative method of achieving exposure to bitcoin and ether through the public securities market, which may be more familiar to them.

The Trust will gain exposure to bitcoin and ether by buying spot bitcoin and spot ether. The Trust will maintain cash and/or cash equivalent balances to the extent it is necessary for currently due Trust-payable expenses.

If there are no Share redemption orders or currently due Trust-payable expenses, the Trust’s portfolio is expected to consist of bitcoin and ether. The Trust will not invest in any other spot crypto asset besides bitcoin and ether. The Trust will not invest in crypto securities, tokenized assets or stablecoins. As of May 27, 2024, the crypto asset constituents of the Index (“Index Constituents”) and their weightings¹² were as follows:

¹¹ See https://indexes.nasdaqomx.com/docs/Methodology_NCIUS.pdf.

¹² The Index Constituents will be weighted according to their relative free float market capitalizations, as described in the next section “The Trust’s Benchmark”.

Constituents	Weight
Bitcoin (BTC)	70.54%
Ether (ETH)	29.46%

The Sponsor will employ a passive investment strategy that is intended to track the changes in the Index regardless of whether the Index goes up or goes down, meaning that the Sponsor will not try to “beat” the Index. The Trust’s passive investment strategy is designed to allow investors to purchase and sell the Shares for the purpose of investing in the Index, whether to hedge the risk of losses in their Index-related transactions or gain price exposure to the Index. The Trust’s investments will be consistent with the Trust’s investment objective and will not be used to enhance leverage. That is, given its passive investment strategy, the Trust’s investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2Xs, 3Xs, -2Xs, and -3Xs) of the Trust’s Index.

None of the Trust, the Sponsor, any Crypto Custodian, or any other person associated with the Trust will, directly or indirectly, engage in action where any portion of the Trust’s ether becomes subject to the Ethereum proof-of-stake validation or is used to earn additional ether or generate income or other earnings.

From time to time, the Trust may be entitled to or come into possession of “Incidental Rights” and/or “IR Virtual Currency” by virtue of its ownership of bitcoin or ether, generally through a fork in the Bitcoin or Ethereum blockchain, an airdrop offered to holders of bitcoin or ether or other similar event. “Incidental Rights” are rights to acquire, or otherwise establish dominion and control over, any crypto asset (for the avoidance of doubt, other than bitcoin and ether) or other asset or right, which rights are incident to the Trust’s ownership of bitcoin or ether

and arise without any action of the Trust or of the Sponsor. “IR Virtual Currency” is any crypto asset (other than bitcoin or ether), or other assets or rights, acquired through the exercise of any Incidental Right.

With respect to a fork, airdrop or similar event, the Sponsor will cause the Trust to permanently and irrevocably abandon any such Incidental Rights and IR Virtual Currency and no such Incidental Right or IR Virtual Currency shall be taken into account for purposes of determining the NAV of the Trust.

The Trust’s Benchmark

The Trust will use the Index as a reference to track and measure its performance compared to the price performance of the markets for the Index Constituents and to value the bitcoin and ether held by the Trust for purposes of calculating the Trust’s NAV.

The Index is designed to measure the performance of a portion of the overall crypto asset market. The Index does not track the overall performance of all crypto assets generally, nor the performance of any specific crypto assets. The Index is owned and administered by Nasdaq, Inc. (“Index Provider”) and is calculated by CF Benchmarks Limited (“Calculation Agent”), which is experienced in calculating and administering crypto assets indices. The Calculation Agent publishes daily the Index Constituents, the Index Constituents’ weightings, the intraday value of the Index (under the ticker NCIUS), and the daily settlement value of the Index (under the ticker NCIUSS), which is effectively the Index’s closing value.¹³

The Index is derived from a rules-based methodology (“Index Rules”), which is overseen by the Nasdaq Cryptocurrency Index Oversight Committee (“NCIOC”). The NCIOC governs the

¹³ The closing level of the Index is calculated once a day on business days at 4:05 p.m. New York Time. See https://indexes.nasdaqomx.com/docs/Methodology_NCIUS.pdf (under “Index Calculation and Dissemination”).

Index and is responsible for its implementation, administration, and general oversight, including assessing crypto assets for eligibility, adjustments to account for regulatory changes and periodic methodology reviews. Neither the Trust, nor the Sponsor have control over the Index Rules or the Index administration.

According to the Index Rules, crypto assets are eligible for inclusion in the Index if they satisfy the criteria set forth under the Nasdaq Crypto US Index methodology, which includes being listed on a U.S.-regulated digital asset trading platform at the time of inclusion¹⁴ or serving as the underlying asset for a derivative instrument listed on a U.S.-regulated derivatives platform.¹⁵ The Index adjusts its constituents and weightings on a quarterly basis to reflect changes in the crypto asset markets.

Pursuant to the Index Rules, to be eligible for inclusion in the Index, crypto assets must meet the following criteria on a quarterly basis:

- (1) Have active tradable markets listed on at least two Core Crypto Platforms¹⁶ for the entire period since the previous Index reconstitution;

¹⁴ Currently, there are no U.S.-regulated digital asset trading platforms and therefore, no crypto assets are eligible for inclusion in the Index based on this criteria today; however, the Nasdaq Crypto US Index methodology has been written and designed to be forward-looking to account for any potential future regulatory changes, including potential changes where digital asset trading platforms would be regulated by U.S. regulators such as the SEC and the CFTC .

¹⁵ Currently, U.S.-regulated derivatives platforms would be regulated by the CFTC, and therefore crypto assets eligible for inclusion in the Index based on this criteria includes crypto assets (i.e., spot bitcoin and spot ether) that are used as a reference price for futures contracts traded on a CFTC-regulated exchange.

¹⁶ As discussed above, to be eligible for Index inclusion, a crypto asset must trade on at least two “Core Crypto Platforms.” As set forth in the Index methodology, a “Core Crypto Platform” is a crypto asset platform that, in the opinion of the NCIOC, exhibits at a minimum the characteristics specified in the Index methodology, such as having strong forking controls, effective anti-money laundering controls, including surveillance for manipulative trading practices and erroneous transactions, demonstrating robust IT infrastructure and active capacity management, evidencing cooperation with regulators and law enforcement, and be licensed by a public independent governing body. Such license could be obtained today through the New York State Department of Financial Services’ (NYDFS) BitLicense, and Core Crypto Platforms could also be registered with FinCEN as Money Services Businesses. The list of existing Core Crypto Platforms will be recertified by the NCIOC at a minimum on an annual basis. The Core Crypto Platforms as of May 27, 2024 are BitStamp, Coinbase, Gemini, itBit, and Kraken.

- (2) Be supported by at least one Core Custodian¹⁷ for the entire period since the previous Index reconstitution.
- (3) To be considered for entry to the Index at any Index reconstitution, an asset must have a median daily trading volume in the USD pair conducted across all Core Crypto Platforms that is no less than 0.5% of the cryptocurrency asset that has the highest median daily trading volume.
- (4) Be listed (at the time of inclusion) on a U.S.-regulated digital asset trading platform or serve as the underlying asset for a derivative instrument listed on a U.S.-regulated derivatives platform.¹⁸
- (5) Have free-floating pricing (i.e., not be pegged to the value of any asset).

If a crypto asset meets requirements (1) through (5), it will be considered eligible for Index inclusion.

Notwithstanding inclusion in the eligible list, the NCIOC reserves the right to further exclude any additional assets based on one or more factors, including but not limited to its risk of being deemed a security by United States securities laws along with its review of general reputational, fraud, manipulation, or security concerns connected to the asset. Assets that, in the sole discretion of the Nasdaq Crypto Index Oversight Committee, do not offer utility, do not

¹⁷ As discussed above, only crypto assets that are supported by at least one “Core Custodian” for the entire period since the previous Index reconstitution will be considered for inclusion in the Index. A “Core Custodian” is a crypto assets custodian that, in the opinion of the NCIOC, exhibits the characteristics specified in the Index methodology. See https://indexes.nasdaqomx.com/docs/Methodology_NCIUS.pdf (under “Core Custodians”). A Core Custodian might lose eligibility if it does not comply with the specified requirements in the Index methodology or with any other NCIOC requirements. The NCIOC will review new Core Custodian candidates throughout the year and announce any new additions when approved. The list of existing Core Custodians will be recertified by the NCIOC at a minimum on an annual basis. Changes to the list of Core Custodians may be made by the approval of the NCIOC and announced accordingly in the case of exceptional events or in order to maintain the integrity of the Index. The Core Custodians as of May 27, 2024 are BitGo, Coinbase, Fidelity and Gemini.

¹⁸ See supra notes 14-15.

facilitate novel use cases, or that do not exhibit technical, structural or cryptoeconomic innovation (e.g., assets inspired by memes or internet jokes) may also be excluded.

The Index will assess any crypto assets resulting from a hard fork or an airdrop under the same criteria as established digital assets and will only include a new digital asset if it meets the eligibility criteria set forth above.

The Sponsor will not invest the Trust's assets in any other crypto assets (i.e., other than bitcoin and ether), even if such other crypto assets are included in the Index pursuant to the Index Rules and the eligibility criteria above.¹⁹

The Index Constituents will be weighted according to their relative free float market capitalizations. The free float market capitalization of an Index Constituent on any given day is defined as the product of an Index Constituent Settlement Price (as defined below) and its "Circulating Supply"²⁰ as set in the most recent reconstitution. Weights are calculated by dividing the free float market capitalization of a digital asset by the total free float market capitalization of all Index Constituents at the time of rebalancing.

¹⁹ The Exchange would file an amendment to this rule filing if any Index change would require a change to the Trust's investment objective.

²⁰ The Index will utilize "Circulating Supply" of an Index Constituent for all calculations of free float market capitalization and the determination of constituent weights. "Circulating Supply" is defined as the total supply of all units of a digital asset issued outside of the codebase since the initial block on a digital asset's blockchain or since the point of inception of the digital asset on a cryptographic distributed ledger that can be "spent" or moved from one deposit address to another that is deemed to be likely to be available for trading as defined by the Calculation Agent and described by the methods in the CF Cryptocurrency Index Family Multi Asset Ground Rules (section 4.2.1 to 4.3.1.2.1). Circulating Supply data will be determined at the block height or ledger number which is the last confirmed block or ledger number at 16:00:00 UTC on the day that is eight (8) business days immediately preceding the relevant Reconstitution Date. Where the Calculation Agent cannot reliably determine any of the respective inputs for the calculation of the Circulating Supply for a given crypto asset that is an Index Constituent then its Circulating Supply shall be approximated. This will be done by applying the Median Free Float Factor (Circulating Supply/Total Supply) that has been determined for that reconstitution of all Index Constituents to the Total Supply (Circulating Supply = Total Supply X Median Free Float Factor). During reconstitution, updated Circulating Supply of crypto assets will be set and will remain fixed until the next reconstitution. The Index fixes Circulating Supply of Index Constituents between reconstitutions in order to preserve the investability property of the Index.

The Index will be reconstituted and rebalanced quarterly, on the first Business Day in March, June, September, and December (each a “Reconstitution Date”).

The settlement price of each Index Constituent (“Index Constituent Settlement Price”) is calculated once every trading day²¹ by applying a publicly available rules-based pricing methodology (the “Pricing Methodology”) to a diverse collection of pricing sources to provide an institutional-grade reference price for each constituent. The Pricing Methodology is designed to account for variances in price across a wide range of sources, each of which has been vetted according to criteria identified in the methodology. Specifically, the Index Constituent Settlement Price is the Time Weighted Average Price (“TWAP”) calculated across the volume weighted average prices (“VWAPs”) for each minute in the settlement price window, which is between 3:50:00 and 4:00:00 p.m. New York time, on all Core Crypto Platforms. Where there are no transactions observed in any given minute of the settlement price window, that minute is excluded from the calculation of the TWAP.

The Pricing Methodology also utilizes penalty factors to mitigate the impact of anomalous trading activity such as manipulation, illiquidity, large block trading, or operational issues that could compromise price representation. Three types of penalties are applied when three or more contributing Core Crypto Platforms contribute pricing for a constituent asset: abnormal price penalties, abnormal volatility penalties, and abnormal volume penalties. These penalties are defined as adjustment factors to the weight of information from each platform that contributes pricing information based on the deviation of a platform’s price, volatility, or volume from the median across all Core Crypto Platforms. For example, if a Core Crypto Platform’s

²¹ All Index Constituent calculations are performed concurrently with the Index calculation, which takes place at 4:05 p.m. New York time. See supra note 13.

price is 2.5 standard deviations away from the median price, its price penalty factor will be a 1/2.5 multiplier.

The Sponsor believes that the NCIUSS is a suitable Index for the Trust for pricing the Trust's assets and as an Index that the Trust tracks. Specifically, it would provide reliable pricing for purposes of tracking the actual performance of the crypto asset markets for bitcoin and ether. Second, it is administered by a reputable index administrator that is not affiliated with the Sponsor or Trust,²² which provides assurances of accountability and independence. Finally, its Pricing Methodology is designed to resist potential price manipulation from unregulated crypto markets by applying the following safeguards:

- (1) Requiring that constituents be listed (at the time of inclusion) on a U.S.-regulated crypto asset trading platform or serve as the underlying asset for a derivative instrument listed on a U.S.-regulated derivatives platform²³
- (2) Strict eligibility criteria for the Core Crypto Platforms from which the Index data is drawn;
- (3) A diverse collection of trustworthy pricing sources to provide an institutional-grade reference price for the Index Constituents; and

²² Nasdaq, Inc. ("Nasdaq"), the Index Provider, adheres to the International Organization of Securities Commissions principles for benchmarks (the "IOSCO Principles") for many of its indexes via an internal control and governance framework that is audited by an external, independent auditor on an annual basis. Although NCIUSS is not currently one of the indexes that is required to comply with IOSCO Principles, as a reference rate index, it is administered in a manner that is generally consistent with both the IOSCO Principles and the elements of Nasdaq's internal control and governance framework pursuant to IOSCO Principles. NCIUSS is administered and governed by the NCIOC in accordance with the publicly available NCIUS methodology. The NCIOC oversees all aspects of the administration of the NCIUSS, including the defined processes and controls for the selection and recertification of third parties such as the Core Crypto Platforms and Core Custodians, as well as the validation and reconciliation of Index calculations and pricing data. As discussed above, the list of existing Core Crypto Platforms and Core Custodians will be recertified by the NCIOC at a minimum on an annual basis. The NCIOC also oversees the identification and mitigation of any potential conflicts of interest, formal complaints, and updates or changes to the Index methodology consistent with the IOSCO Principles.

²³ See supra notes 14-15.

(4) The use of adjustment factors to mitigate against the impact of any anomalous trading activity on the Index Constituent Settlement Prices.

Custody of the Trust's Bitcoin and Ether

An investment in the Shares is backed by assets held by the Trust, including the bitcoin and ether held by the Crypto Custodians on behalf of the Trust. The Crypto Custodians must qualify as Core Custodians by the NCIOC and, thus satisfy at least the requirements set forth by the NCIOC in the NCIUSS methodology.²⁴ The Trust may engage additional custodians for its bitcoin and ether and may also remove or change current Crypto Custodians, provided that there is at least one Crypto Custodian who is also a Core Custodian at all times.²⁵

The Trust's Crypto Custodians will hold and be responsible for maintaining custody of the Trust's bitcoin and ether. The Sponsor will cause the Trust to maintain ownership and control of the Trust's bitcoin in a manner consistent with good delivery requirements for spot commodity transactions.

All of the Trust's bitcoin and ether will be held in one or more accounts in the name of the Trust (each a "Custody Account" and together the "Custody Accounts"), other than the Trust's assets which are temporarily maintained in a trading account under limited circumstances ("Trading Account"), i.e., in connection with creation and redemption basket activity or sales of bitcoin and ether deducted from the Trust's holdings in payment of Trust expenses or the Sponsor's fee (or, in extraordinary circumstances, upon liquidation of the Trust).

²⁴ See https://indexes.nasdaqomx.com/docs/Methodology_NCIUS.pdf. As noted above, the Core Custodians as of May 27, 2024 are BitGo, Coinbase, Fidelity and Gemini, and the Trust's Crypto Custodians are on this list.

²⁵ If the Trust determines to do so, the Exchange will submit a rule filing with the Commission under Rule 19b-4 of the Act

The Trust's bitcoin, ether and cash holdings from time to time may temporarily be maintained in the Trading Account. The Sponsor intends to execute an agreement so Coinbase Inc. can serve as the Trust's "Prime Execution Agent" ("Prime Execution Agent Agreement"). In this capacity, the Prime Execution Agent will facilitate the buying and selling of bitcoin and ether by the Trust in response to cash creations and redemptions between the Trust and registered broker-dealers that are Depository Trust Company ("DTC") participants that enter into an authorized participant agreement with the Sponsor ("Authorized Participants"), and the sale of bitcoin and ether to pay the Sponsor's fee, any other Trust expenses not assumed by the Sponsor, to the extent applicable, and in extraordinary circumstances, in connection with the liquidation of the Trust's assets.

Creation and Redemption of Shares

The Trust issues and redeems "Baskets"²⁶ on a continuous basis. Baskets are issued or redeemed only in exchange for an amount of cash determined by the Sponsor or the Administrator on each Business Day. No Shares are issued unless the Cash Custodian has allocated to the Trust's account the corresponding amount of cash. Baskets may be created or redeemed only by Authorized Participants. Each Authorized Participant must be registered as a broker-dealer under the Exchange Act and regulated by the FINRA, and must be qualified to act as a broker or dealer in the states or other jurisdictions where the nature of its business so requires.

²⁶ Baskets will be offered continuously at NAV per Share for 5,000 Shares. Therefore, a Basket of Shares would be valued at NAV per Share multiplied by the Basket size and the value of the bitcoin and ether to be acquired by the Trust as part of the creation of a Basket would be based on the dollar value of the NAV per Share multiplied by the Basket size for such creations. Only Authorized Participants may purchase or redeem Baskets.

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

The Trust will create Shares by receiving bitcoin and ether from a third party that is not the Authorized Participant, and the Trust – not the Authorized Participant – is responsible for selecting the third party to deliver the assets. Further, the third party will not be acting as an agent of the Authorized Participant with respect to the delivery of the bitcoin and ether to the Trust or acting at the direction of the Authorized Participant with respect to the delivery of the bitcoin and ether to the Trust. The Trust will redeem Shares by delivering bitcoin and ether to a third party that is not the Authorized Participant, and the Trust – not the Authorized Participant – is responsible for selecting the third party to receive the bitcoin and ether. Further, the third party will not be acting as an agent of the Authorized Participant with respect to the receipt of the bitcoin and ether from the Trust or acting at the direction of the Authorized Participant with respect to the receipt of the bitcoin and ether from the Trust. The third-party will be unaffiliated with the Trust and the Sponsor.

In connection with cash creations and cash redemptions, the Authorized Participants will submit orders to create or redeem Baskets²⁷ of Shares exclusively in exchange for cash. The Trust will engage in transactions to convert cash into bitcoin and ether (in association with creation orders) and bitcoin and ether into cash (in association with redemption orders). The Trust will conduct its bitcoin and ether purchase and sale transactions by choosing, in its sole

²⁷ The Trust issues and redeems Shares only in blocks or “Baskets” of 5,000 or integral multiples thereof.

discretion, either to trade directly with designated third parties (each, a “Crypto Trading Counterparty”), who are not registered broker-dealers pursuant to written agreements between each such Crypto Trading Counterparty and the Trust, or to trade through the Prime Execution Agent acting in an agency capacity with third parties pursuant to the Prime Execution Agent Agreement. Crypto Trading Counterparties settle trades with the Trust using their own accounts at the Prime Execution Agent when trading with the Trust.

For a creation of a Basket of Shares, the Authorized Participant will be required to submit the creation order by 2:00 p.m. ET, or the close of regular trading on the Exchange, whichever is earlier (the “Order Cutoff Time”). The Order Cutoff Time may be modified by the Sponsor in its sole discretion.

On the date of the Order Cutoff Time for a creation order, the Trust will enter into a transaction by choosing, in its sole discretion, to trade directly with a Crypto Trading Counterparty or the Prime Execution Agent, to buy bitcoin and ether in exchange for the cash proceeds from such creation order. The Authorized Participant is responsible for the dollar cost of the difference between the bitcoin and ether price utilized in calculating the NAV per Share on the Creation Order Date (as described below) and the price at which the Trust acquires the bitcoin and ether to the extent the price amount for buying the bitcoin and ether is higher than the price utilized in calculating the NAV. In the case the price amount for buying the bitcoin and ether is lower than the price utilized in calculating the NAV, the Authorized Participant shall keep the dollar impact of any such difference.

Creation orders will take place as follows, where “T” is the date of the creation order and each day in the sequence must be a business day in the U.S.

Creation Order Date (T)	Settlement Date (T+1)
<ul style="list-style-type: none"> ● Authorized Participant places a creation order. ● The Transfer Agent accepts (or rejects) the creation order. ● The Trust will enter into a transaction with the Crypto Trading Counterparty or the Prime Execution Agent to purchase the corresponding bitcoin and ether. ● As soon as practicable after 4:00 p.m. ET, the Sponsor determines the Basket cash component, including any dollar cost difference between the bitcoin and ether price utilized in calculating NAV per Share and the price at which the Trust acquires the bitcoin and ether. 	<ul style="list-style-type: none"> ● The Authorized Participant delivers the Basket cash component to the Trust's cash account that is maintained with the Cash Custodian. ● The Crypto Trading Counterparty or the Prime Execution Agent deposits the bitcoin and ether into the Trust's Trading Account related to the purchase transaction. ● Once the Trust is in simultaneous possession of the Basket cash component and the bitcoin and ether, the Trust delivers the corresponding Shares to the Authorized Participant. ● The Trust transfers the cash related to the purchase transaction from the Trust cash account maintained with the Cash Custodian to the Crypto Trading Counterparty or the Prime Execution Agent.

When the Trust chooses to enter into a transaction with the Prime Execution Agent, because the Trust's Trading Account may not be funded with cash on the Creation Order Date for the purchase of bitcoin and ether associated with a cash creation order, the Trust may borrow trade credits ("Trade Credits") in the form of cash from the "Trade Credit Lender", under a trade financing agreement ("Trade Financing Agreement") or may require the Authorized Participant to deliver the required cash for the creation order on the Creation Order Date. The extension of Trade Credits on the Creation Order Date allows the Trust to purchase bitcoin and ether through the Prime Execution Agent on the Creation Order Date, with such bitcoin and ether being deposited in the Trust's Trading Account. On Settlement Date for a creation order, the Trust

delivers Shares to the Authorized Participant in exchange for cash received from the Authorized Participant. To the extent Trade Credits were utilized, the Trust uses the cash to repay the Trade Credits borrowed from the Trade Credit Lender. On the Settlement Date for a creation order, the bitcoin and ether purchased are swept from the Trust's Trading Account to the Custody Account pursuant to a regular end-of-day sweep process.

For a redemption of a Basket of Shares, the Authorized Participant will be required to submit a redemption order by the Order Cutoff Time. On the date of the Order Cutoff Time for a redemption order, the Trust will enter into a transaction by choosing, in its sole discretion, to trade directly with a Crypto Trading Counterparty or the Prime Execution Agent, to sell bitcoin and ether in exchange for cash. The Authorized Participant will bear the difference between the bitcoin and ether price utilized in calculating the NAV per Share on the Redemption Order Date and the price realized in selling the bitcoin and ether to raise the cash needed for the cash redemption order to the extent the price realized in selling the bitcoin and ether is lower than the price utilized in the NAV. To the extent the price realized in selling the bitcoin and ether is higher than the price utilized in the NAV, the Trust will deliver the dollar impact of any such difference to the Authorized Participant.

Redemption orders will take place as follows, where "T" is the date of the redemption order and each day in the sequence must be a business day.

Redemption Order Date (T)	Settlement Date (T+1)
<ul style="list-style-type: none"> ● Authorized Participant places a redemption order. ● The Transfer Agent accepts (or rejects) the redemption order. ● The Trust instructs the Crypto Custodian to prepare to move the corresponding bitcoin and ether from the Trust’s Custody Account to the Trading Account. ● The Trust enters into a transaction with the Crypto Trading Counterparty or the Prime Execution Agent to sell the corresponding bitcoin and ether. ● As soon as practicable after 4:00 p.m. ET, the Sponsor determines the Basket cash component, including any dollar cost difference between the bitcoin and ether price utilized in calculating NAV per Share and the price at which the Trust sells the bitcoin and ether. 	<ul style="list-style-type: none"> ● The Authorized Participant delivers the Baskets of Shares to be redeemed to the Trust. ● The Crypto Trading Counterparty or the Prime Execution Agent delivers cash to the Trust’s cash account that is maintained with the Cash Custodian related to the sell transaction. ● Once the Trust is in simultaneous possession of the Basket of Shares and the respective Basket cash component, the Trust cancels the Shares comprising the number of Baskets redeemed by the Authorized Participant. ● The Trust instructs the Crypto Custodian to transfer the corresponding bitcoin and ether agreed on the sell transaction from the Trust's Trading Account to the Crypto Trading Counterparty or Prime Execution Agent. ● The Trust transfers the Basket cash component from the cash account maintained with the Cash Custodian to the Authorized Participant.

The Trust may use financing in connection with a redemption order when bitcoin and ether remain in the Custody Account at the point of intended execution of a sale of bitcoin and ether. In those circumstances, the Trust may borrow Trade Credits in the form of bitcoin and ether from the Trade Credit Lender, which allows the Trust to sell bitcoin and ether through the Prime Execution Agent on the Redemption Order Date, and the cash proceeds are deposited in

the Trading Account. On the Settlement Date for a redemption order, the Trust delivers cash to the Authorized Participant in exchange for Shares received from the Authorized Participant. In the event financing was used, the Trust will use the bitcoin and ether moved from the Custody Account to the Trading Account to repay the Trade Credits borrowed from the Trade Credit Lender.

Net Asset Value

The Trust's NAV per Share will be calculated by taking the current value of its total assets, subtracting any liabilities, and dividing that total by the number of Shares. The assets of the Trust will consist of bitcoin, ether, cash and cash equivalents. The Sponsor has the exclusive authority to determine the Trust's NAV, which it has delegated to the Administrator.

The Administrator of the Trust will calculate the NAV once each Business Day, as of the earlier of the close of the Nasdaq or 4:00 p.m. New York time. For purposes of making these calculations, a Business Day means any day other than a day when Nasdaq is closed for regular trading ("Business Day").

The Administrator will value the bitcoin and ether held by the Trust based on the Index Constituent Settlement Price, unless the prices are not available or the Administrator, in its sole discretion, determines that the Index Constituent Settlement Price is unreliable ("Fair Value Event"). In the instance of a Fair Value Event, the Trust's holdings may be fair valued on a temporary basis in accordance with the fair value policies approved by the Administrator.

In the instance of a Fair Value Event and pursuant to the Administrator's fair valuation policies and procedures, VWAP or Volume Weighted Median Prices ("VWMP") from another index administrator ("Secondary Index") will be utilized.

If a Secondary Index is also not available or the Administrator in its sole discretion determines the Secondary Index is unreliable, the price set by the Trust's principal market as of 4:00 p.m. ET, on the valuation date will be utilized. In the event the principal market price is not available or the Administrator in its sole discretion determines the principal market valuation is unreliable, the Administrator will use its best judgment to determine a good faith estimate of fair value. The Administrator identifies and determines the Trust's principal market (or in the absence of a principal market, the most advantageous market) for bitcoin and ether consistent with the application of fair value measurement framework in FASB ASC 820-10.²⁸ The principal market is the market where the reporting entity would normally enter into a transaction to sell the asset or transfer the liability. The principal market must be available to and be accessible by the reporting entity. The reporting entity is the Trust.

If the Index Constituent Settlement Price is not used to determine the Trust's bitcoin and ether holdings, owners of the beneficial interests of Shares (the "Shareholders") will be notified in a prospectus supplement or on the Trust's website and, if this index change is on a permanent basis, a filing with the Commission under Rule 19b-4 of the Act will be required.

A Fair Value Event value determination will be based upon all available factors that the Sponsor or the Administrator deems relevant at the time of the determination and may be based on analytical values determined by the Sponsor or Administrator using third-party valuation models. Fair value policies approved by the Administrator will seek to determine the fair value price that the Trust might reasonably expect to receive from the current sale of that asset or

²⁸ See FASB (Financial Accounting Standards Board) Accounting standards codification (ASC) 820-10. For financial reporting purposes only, the Trustee has adopted a valuation policy that outlines the methodology for valuing the Trust's assets. The policy also outlines the methodology for determining the principal market (or in the absence of a principal market, the most advantageous market) in accordance with FASB ASC 820-10.

liability in an arm’s-length transaction on the date on which the asset or liability is being valued consistent with “Relevant Transactions”.²⁹

Indicative Trust Value

In order to provide updated information relating to the Trust for use by Shareholders and market professionals, the Sponsor will engage an independent calculator to calculate an updated Indicative Trust Value (“ITV”). The ITV will be calculated by using the prior day’s closing NAV per Share of the Trust as a base and will be updated throughout the regular market session of 9:30 a.m. E.T. to 4:00 p.m. E.T. (the “Regular Market Session”) to reflect changes in the value of the Trust’s holdings during the trading day. For purposes of calculating the ITV, the Trust’s spot bitcoin and ether holdings will be priced using a real time version of the Index, the Nasdaq Crypto US Index (“NCIUS”)³⁰.

The ITV will be disseminated on a per Share basis every 15 seconds during the Exchange’s Regular Market Session and be widely disseminated by one or more major market data vendors during the Regular Market Session.³¹

Background – Spot Bitcoin and Ether ETPs

The Commission has recently permitted exchange-traded products (“ETPs”) to directly hold bitcoin and ether. The Exchange and the Sponsor applaud the Commission as these

²⁹ A “Relevant Transaction” is any crypto asset versus U.S. dollar spot trade that occurs during the observation window between 3:00 p.m. and 4:00 p.m. ET on a “Core Crypto Platform” in the BTC/USD and ETH/USD pair that is reported and disseminated by a Core Crypto Platform through its publicly available application programming interface and observed by the index administrator.

³⁰ The Nasdaq Crypto US Index (Index symbol NCIUS) is calculated every second throughout a 24-hour trading day, seven days per week, using published, real-time bid and ask quotes for Index constituents observed on Core Crypto Platforms through the publicly available API. See <https://indexes.nasdaqomx.com/Index/Overview/NCIUS>

³¹ Several major market data vendors display and/or make widely available ITVs taken from the Consolidated Tape Association (“CTA”) or other data feeds.

approvals mark a significant step forward in offering U.S. investors and traders transparent, exchange-listed products for expressing views on crypto assets.

The Exchange and the Sponsor believe that the proposed rule change does not introduce any elements that the Commission has not previously approved, and therefore, it will not impose any inappropriate consequences on the market. Although building on previously approved ETP proposals, the Trust employs a new strategy of investing in bitcoin and ether, as it will hold both spot bitcoin and spot ether in accordance with the Index methodology, and its approval will add value to the U.S. market.

The Trust will hold spot bitcoin and spot ether, commodities for which proposals to list and trade ETPs have recently been approved by the Commission. As the Trust will invest in bitcoin and ether for which proposals to list and trade ETPs have been recently approved by the Commission, and because the Exchange will utilize the same surveillance mechanisms that were deployed pursuant to the proposals to list and trade those approved ETPs, the Sponsor and the Exchange understand that the proposed rule change does not introduce any novel regulatory issues and believe that the Commission should approve this proposal.

Spot Bitcoin ETP

On January 10, 2024, the Commission issued an order granting approval for proposals to list certain bitcoin-based commodity trust and bitcoin-based trust units (“Spot Bitcoin ETPs”).³² In considering the Spot Bitcoin ETPs, the Commission determined in the Spot Bitcoin ETP Approval Order that the exchanges’ comprehensive surveillance-sharing agreement with the

³² See Exchange Act Release No. 99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (Self-Regulatory Organizations; NYSE Arca, Inc.; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units) (the “Spot Bitcoin ETP Approval Order”).

Chicago Mercantile Exchange (“CME”) - a U.S. regulated market whose bitcoin futures market is consistently highly correlated to spot bitcoin - could be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the proposals. The exchanges have comprehensive surveillance-sharing agreements with the CME via their common membership in the Intermarket Surveillance Group (“ISG”), which facilitates the sharing of information that is available to the CME through its surveillance of its markets.

After reviewing the proposals for the Spot Bitcoin ETPs, the Commission found that they were consistent with the Act, including with Section 6(b)(5), and rules and regulations thereunder applicable to a national securities exchange, including the Exchange. The abovementioned Section 6(b)(5) requires, among other things, that the investment product is designed to “prevent fraudulent and manipulative acts and practices” and, “in general, to protect investors and the public interest.”

The Commission's analysis³³ in the Spot Bitcoin ETP Approval Order also demonstrated that prices typically move in close, though not perfect, correlation³⁴ between the spot bitcoin market and the CME bitcoin futures market. Therefore, the Commission concluded that fraud or manipulation affecting spot bitcoin market prices would likely similarly impact CME bitcoin futures prices. Since the CME's surveillance can help detect these impacts on CME bitcoin futures prices, such surveillance can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the Spot Bitcoin ETPs proposals.

³³ The robustness of the Commission's correlation analysis rests on the pre-requisites of (1) the correlations being calculated with respect to bitcoin futures that trade on the CME, a U.S. market regulated by the CFTC, (2) the lengthy sample period of price returns for both the CME bitcoin futures market and the spot bitcoin market, (3) the frequent intra-day trading data in both the CME bitcoin futures market and the spot bitcoin market over that lengthy sample period, and (4) the consistency of the correlation results throughout the lengthy sample period.

³⁴ Correlation should not be interpreted as an indicator of a causal relationship or whether one variable leads or lags the other.

In the Spot Bitcoin ETP Approval Order, the Commission also stated that the Spot Bitcoin ETP proposals, similar to other spot commodity ETPs it has approved, are reasonably designed to ensure fair disclosure of information necessary for accurate share pricing, to prevent trading in the absence of sufficient transparency, to protect material nonpublic information related to the products' portfolios, and to maintain fair and orderly markets for the shares of the Spot Bitcoin ETPs.

Spot Ether ETP

A few months after the issuance of its Spot Bitcoin ETP Approval Order, the Commission issued on May 23, 2024 an approval order for proposals to list certain ether-based trusts ("Spot Ether ETPs").³⁵ The Commission also concluded in the Spot Ether ETP Approval Order that the exchanges' comprehensive surveillance-sharing agreement with the CME, a U.S.-regulated market whose ether futures market is consistently highly correlated with spot ether, can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices within the context of the mentioned proposals.

As in the case of the Spot Bitcoin ETP Approval Order, in the Spot Ether ETP Approval Order, the Commission determined that the exchanges' comprehensive surveillance-sharing agreement with the CME ether futures market, which exhibits a consistent high correlation with spot ether, can reasonably be expected to assist in surveilling for fraudulent and manipulative practices in the specific context of the Spot Ether ETP proposals. Therefore, based on similar reasons to the Spot Bitcoin ETP Approval Order, the Commission approved the Spot Ether ETPs, stating that the proposals to list and trade those Spot Ether ETPs were also consistent with

³⁵ See Exchange Act Release No. 100224 (May 23, 2024), 89 FR 46937 (May 30, 2024) (Self-Regulatory Organizations; NYSE Arca, Inc.; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Shares of Ether-Based Exchange-Traded Products) (the "Spot Ether ETP Approval Order").

the requirements of the Act and the regulations applicable to a national securities exchange, in particular with Section 6(b)(5) and Section 11A(a)(1)(C)(iii) of the Act.

Availability of Information

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the prior Business Day's NAV per Share; (b) the prior Business Day's Nasdaq official closing price; (c) calculation of the premium or discount of such Nasdaq official closing price against such NAV per Share; (d) data in chart form displaying the frequency distribution of discounts and premiums of the Nasdaq official closing price against the NAV per Share, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (e) the prospectus; and (f) other applicable quantitative information. The Administrator will also disseminate the Trust's holdings on a daily basis on the Trust's website. The NAV per Share 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 relevant securities information processor.

Also, an estimated value that reflects an estimated ITV will be disseminated. For more information on the ITV, including the calculation methodology, see "Indicative Trust Value" above. The ITV disseminated during the Regular Market Session should not be viewed as an actual real time update of the NAV per Share, which will be calculated only once at the end of each trading day. The ITV will be widely disseminated on a per Share basis every 15 seconds during the Regular Market Session by one or more major market data vendors. In addition, the ITV will be available through online information services.

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

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

Initial and Continued Listing

The Shares will be subject to Nasdaq Rule 5711(d)(vi), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. A minimum of 40,000 Shares, or the equivalent of eight Baskets, will be required to be outstanding at the time of commencement of trading on the Exchange. Upon termination of the Trust, the Shares will be removed from listing.

As required in Nasdaq Rule 5711(d)(viii), the Exchange notes that any registered market maker ("Market Maker") in the Shares must file with the Exchange, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for trading the underlying commodity, related futures or options on futures, or any other related derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker in the Shares shall trade in the underlying commodity, related futures or options on futures, or any other related derivatives, in an account in which a registered Market

Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by Nasdaq Rule 5711(d). In addition to the existing obligations under Exchange rules regarding the production of books and records, the registered Market Maker in the Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or any limited partner, officer or approved person thereof, registered or non-registered employee affiliated with such entity for its or their own accounts in the underlying commodity, related futures or options on futures, or any other related derivatives, as may be requested by the Exchange.

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

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

Trading Rules

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

appropriate rules to facilitate transactions in the Shares during all trading sessions. The Shares of the Trust will conform to the initial and continued listing criteria set forth in Nasdaq Rule 5711(d) and will comply with the requirements of Rule 10A-3 of the Act.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including without limitation the conditions specified in Nasdaq Rule 4120(a)(9) and (10) and the trading pauses under Nasdaq Rules 4120(a)(11) and (12).

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

If the ITV or the value of the Index is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the ITV or the value of the Index occurs. If the interruption to the dissemination of the ITV or the value of the Index persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

In addition, if the Exchange becomes aware that the NAV per Share 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 per Share is available to all market participants.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. The surveillance program includes real-time patterns for price and volume movements and post-trade surveillance patterns (e.g., spoofing, marking the close, pinging, phishing). In addition to the Exchange's existing surveillance, a new pattern will be added to surveil for significant deviation in the Shares' price from the underlying asset's price. The Exchange will use the trade data from an external vendor that consolidates the real-time data from multiple crypto assets platforms.

Trading of Shares on the Exchange will be subject to the Exchange's surveillance program for derivative products, as well as cross-market surveillances administered by FINRA, on behalf of the Exchange pursuant to a regulatory services agreement, which are also designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

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

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and bitcoin and ether derivatives with other markets and

other entities that are members of the ISG³⁶, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and bitcoin and ether derivatives from such markets and other entities. The Exchange also may obtain information regarding trading in the Shares and listed bitcoin and ether 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.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. 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 is able to obtain information regarding trading in the Shares, the physical commodities included in, or options, futures or options on futures on, Shares through Members, in connection with such Members' proprietary or customer trades which they effect on any relevant market. The Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the exchanges that are members of the ISG.

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 applicable federal securities laws.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an information circular ("Information Circular") of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) the

³⁶ For a list of the current members and affiliate members of ISG, see <https://www.isgportal.com/>.

procedures for creations and redemptions of Shares in Baskets (and that Shares are not individually redeemable); (2) Section 10 of Nasdaq General Rule 9, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how information regarding the ITV and NAV is disseminated; (4) the risks involved in trading the Shares during the pre-market and postmarket sessions when an updated ITV will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information. The Information Circular will also discuss any exemptive, no action and interpretive relief granted by the Commission from any rules under the Act.

The Information Circular will also reference the fact that there is no regulated source of last sale information regarding bitcoin and ether, that the Commission has no jurisdiction over the trading of bitcoin and ether as a commodity.

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

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)³⁷ that an exchange has rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and

³⁷ 15 U.S.C. 78f(b)(5).

perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria set forth in Nasdaq Rule 5711(d). The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and bitcoin and ether derivatives with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and bitcoin and ether derivatives from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and listed bitcoin and ether derivatives via the ISG, from other exchanges that are members or affiliates of ISG, or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange is also able to obtain information regarding trading in the Shares and bitcoin and ether derivatives through Members, in connection with such Members' proprietary or customer trades which they effect on any relevant market. The Exchange will require the Trust to represent to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust is not in compliance with the

applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.

Trading in Shares of the Trust will be halted if the circuit breaker parameters have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market.

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 Shares 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 to deter and detect violations of Exchange rules and applicable federal securities laws.

The Commission has approved numerous spot-based bitcoin and ether products to be listed on U.S. national securities exchanges.³⁸ In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of Section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act because this filing sufficiently demonstrates that the applicable standard that has previously been articulated by the Commission

³⁸ See "Background – Spot Bitcoin and Ether ETPs" above.

with respect to proposals to list and trade units of commodity-based trusts has been met as outlined below.

To list and trade the commodity-trust ETPs, one way that an exchange can meet the obligation under Exchange Act Section 6(b)(5) that its rules be designed to prevent fraudulent and manipulative acts and practices is by demonstrating that the exchange has a comprehensive surveillance-sharing agreement with a regulated market of significant size related to the underlying or reference assets. The Exchange and CME are members of the ISG, satisfying the comprehensive surveillance sharing agreement portion.

In the Spot Bitcoin ETP Approval Order and the Spot Ether ETP Approval Order, the Commission concluded that the proposing exchanges' comprehensive surveillance-sharing agreement with the CME - a U.S. regulated market - whose bitcoin and ether futures market is consistently highly correlated to spot bitcoin and spot ether, respectively - could be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the proposals.

Consequently, this Trust, which invests solely in bitcoin and ether, is similar to these approved products, since its only holdings are bitcoin, ether, cash and/or cash equivalents. CME's bitcoin futures market and ether futures market are highly, though not perfectly correlated with the spot bitcoin market and the spot ether market respectively, so that surveillance of CME's bitcoin futures market and CME's ether futures market can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of this proposal.

For all 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 will facilitate the listing and trading of the Shares, which are Commodity-Based Trust Shares and 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 either solicited or received.

III. Proceedings to Determine Whether to Approve or Disapprove SR-NASDAQ-2024-028, as Modified by Amendment No. 1, and Grounds for Disapproval under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act³⁹ to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as modified by Amendment No. 1, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change, as modified by Amendment No. 1.

Pursuant to Section 19(b)(2)(B) of the Act,⁴⁰ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change’s consistency with Section 6(b)(5) of the Act,

³⁹ 15 U.S.C. 78s(b)(2)(B).

⁴⁰ Id.

which requires, among other things, that the rules of a national securities exchange be “designed to prevent fraudulent and manipulative acts and practices” and “to protect investors and the public interest.”⁴¹

The Commission asks that commenters address the sufficiency of the Exchange’s statements in support of the proposal, which are set forth in Item II above, in addition to any other comments they may wish to submit about the proposed rule change, as modified by Amendment No. 1. In particular, the Commission seeks comment on whether the proposed Trust, which would hold both spot bitcoin and spot ether, and Shares would be susceptible to manipulation and whether the Exchange’s proposal, as modified by Amendment No. 1, is designed to prevent fraudulent and manipulative acts and practices. Namely, as the Trust would hold both spot bitcoin and spot ether, the Commission seeks comment on whether the Trust raises any new or novel concerns not previously contemplated by the Commission.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.⁴²

⁴¹ 15 U.S.C. 78f(b)(5).

⁴² Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved by [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR- NASDAQ-2024-028 on the subject line.

Paper Comments:

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

All submissions should refer to file number SR-NASDAQ-2024-028. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications

opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2024-028 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Rebuttal comments should be submitted by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴³

Vanessa A. Countryman,
Secretary.

⁴³ 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(57).