

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 67		SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No. * SR 2024 - * 091 Amendment No. (req. for Amendments *) 1	
Filing by Cboe BZX Exchange, Inc. Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934					
Initial * <input type="checkbox"/>		Amendment * <input checked="" type="checkbox"/>		Withdrawal <input type="checkbox"/>	
Section 19(b)(2) * <input checked="" type="checkbox"/>		Section 19(b)(3)(A) * <input type="checkbox"/>		Section 19(b)(3)(B) * <input type="checkbox"/>	
Pilot <input type="checkbox"/>		Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	
		Rule			
		<input type="checkbox"/> 19b-4(f)(1)		<input type="checkbox"/> 19b-4(f)(4)	
		<input type="checkbox"/> 19b-4(f)(2)		<input type="checkbox"/> 19b-4(f)(5)	
		<input type="checkbox"/> 19b-4(f)(3)		<input type="checkbox"/> 19b-4(f)(6)	
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/>			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>		
Exhibit 2 Sent As Paper Document <input type="checkbox"/>			Exhibit 3 Sent As Paper Document <input type="checkbox"/>		
<b>Description</b> Provide a brief description of the action (limit 250 characters, required when Initial is checked *). <div></div>					
<b>Contact Information</b> Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action. First Name * Kyle Last Name * Murray Title * VP, Associate General Counsel E-mail * kmurray@cboe.com Telephone * (913) 815-7121 Fax					
<b>Signature</b> Pursuant to the requirements of the Securities Exchange of 1934, Cboe BZX Exchange, Inc. has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized. Date 12/17/2024 (Title *) By Kyle Murray VP, Associate General Counsel (Name *) NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed. <div><div>Kyle Murray</div><div>Date: 2024.12.17 15:28:28 -06'00'</div></div>					

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SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

**Form 19b-4 Information \***

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BZX-24-091 19b-4 Amendment No. 1

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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BZX-24-091 Exhibit 1 (Franklin Cryptoc

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2- Notices, Written Comments, Transcripts, Other Communications**

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

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Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

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Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

**Partial Amendment**

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

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

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

(b) Not applicable.

(c) Not applicable.

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

(a) The Exchange’s President (or designee) pursuant to delegated authority approved the proposed rule change on September 19, 2024.

(b) Please refer questions and comments on the proposed rule change to Pat Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7467, or Sarah Tadtman, (913) 815-7203, Cboe BZX Exchange, Inc., 433 West Van Buren Street, Chicago, Illinois 60607.

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

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

<sup>3</sup> The Trust was formed as a Delaware statutory trust on August 13, 2024. The Fund is operated as a partnership for U.S. federal tax purposes. The Trust and the Fund have no fixed termination date.

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

(a) Purpose

This Amendment No. 1 to SR-CboeBZX-2024-091 amends and replaces in its entirety the proposal as originally submitted on September 19, 2024. The Exchange submits this Amendment No. 1 in order to clarify certain points and add additional details to the proposal.

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

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

The Commission has approved numerous series of Trust Issued Receipts,<sup>7</sup> including Commodity-Based Trust Shares,<sup>8</sup> to be listed on U.S. national securities

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

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

<sup>6</sup> See Pre-Effective Amendment No. 1 to Form S-1 Registration Statement filed on December 11, 2024, submitted to the Commission by the Sponsor on behalf of the Trust (333-281615). The descriptions of the Trust, the Shares, the Fund, and the Index (as defined below) contained herein are based, in part, on information in 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.

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

<sup>8</sup> Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of Section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest.

The Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts, including spot-based Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.<sup>9</sup> The Commission has also consistently recognized, however, that this is not the exclusive means by which an ETP listing exchange can meet this statutory obligation.<sup>10</sup> A listing exchange could, alternatively, demonstrate that “other

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<sup>9</sup> See Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the “Winklevoss Order”). Prior orders from the Commission have pointed out that in every prior approval order for Commodity-Based Trust Shares, there has been a derivatives market that represents the regulated market of significant size, generally a Commodity Futures Trading Commission (the “CFTC”) regulated futures market. Further to this point, the Commission’s prior orders have noted that the spot commodities and currency markets for which it has previously approved spot ETPs are generally unregulated and that the Commission relied on the underlying futures market as the regulated market of significant size that formed the basis for approving the series of Currency and Commodity-Based Trust Shares, including gold, silver, platinum, palladium, copper, and other commodities and currencies. The Commission specifically noted in the Winklevoss Order that the approval order issued related to the first spot gold ETP “was based on an assumption that the currency market and the spot gold market were largely unregulated.” See Winklevoss Order at 37592. As such, the regulated market of significant size test does not require that the spot bitcoin and ether markets be regulated in order for the Commission to approve this proposal, and precedent makes clear that an underlying market for a spot commodity or currency being a regulated market would actually be an exception to the norm. These largely unregulated currency and commodity markets do not provide the same protections as the markets that are subject to the Commission’s oversight, but the Commission has consistently looked to surveillance sharing agreements with the underlying futures market in order to determine whether such products were consistent with the Act.

<sup>10</sup> See Winklevoss Order, 83 FR at 37580.

means to prevent fraudulent and manipulative acts and practices will be sufficient” to justify dispensing with a surveillance-sharing agreement with a regulated market of significant size.

Both the Exchange and Chicago Mercantile Exchange (“CME”) are members of the Intermarket Surveillance Group (“ISG”).<sup>11</sup> With this in mind, the CME ether futures (“CME Ether Futures”) market and the CME bitcoin futures (“CME Bitcoin Futures”) market are the proper markets to consider in determining whether there is a related regulated market of significant size. Recently, the Commission issued orders granting approval for proposals to list bitcoin-based (“Spot Bitcoin ETPs”)<sup>12</sup> and ether-based (“Spot Ether ETPs”)<sup>13</sup> commodity trust and trust issued receipts (these funds are nearly identical to the Fund but hold either bitcoin *or* ether instead of bitcoin *and* ether). In the Spot Bitcoin ETP Approval Order, the Commission stated:

[B]ased on the record before the Commission and the improved quality of the correlation analysis in the record...the Commission is able to conclude that fraud or manipulation that impacts prices in spot bitcoin markets would likely similarly impact CME bitcoin futures prices. And because the CME’s surveillance can assist in detecting those impacts on CME bitcoin futures prices, the Exchanges’ comprehensive surveillance-sharing agreement with the CME—a U.S. regulated market whose bitcoin futures market is consistently highly correlated to spot bitcoin, albeit not of “significant size” related to spot bitcoin—can be reasonably

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<sup>11</sup> For a list of the current members and affiliate members of ISG, see [www.isgportal.com](http://www.isgportal.com).

<sup>12</sup> 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”).

<sup>13</sup> 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”).

expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [p]roposals.<sup>14</sup>

In the Spot Ether ETP Approval Order the Commission also concluded that:

based on the record before the Commission and the correlation analyses in the record, including the Commission’s own analysis, the Commission is able to conclude that fraud or manipulation that impacts prices in spot ether markets would likely similarly impact CME ether futures prices. And because the CME’s surveillance can assist in detecting those impacts on CME ether futures prices, the Exchanges’ comprehensive surveillance-sharing agreement with the CME—a U.S.-regulated market whose ether futures market is consistently highly correlated to spot ether, albeit not of “significant size” related to spot ether—can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the Proposals.<sup>15</sup>

As such, the listing exchanges demonstrated “other means to prevent fraudulent and manipulative acts and practices will be sufficient” to justify dispensing with the “regulated market of significant size” test.

The Exchange notes that the Commission has also previously approved the listing and trading of a series of Commodity-Based Trust Shares on another exchange that, like the Fund, holds two commodities.<sup>16</sup> Given this and the above, the Exchange believes the Shares satisfy the requirements of Exchange Rule BZX Rule 14.11(e)(4) and thereby qualify for listing and trading on the Exchange.

#### Franklin Crypto Index ETF

CSC Delaware Trust Company, a subsidiary of the Corporation Service Company, is the trustee (“Trustee”). Bank of New York Mellon is the custodian for the

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<sup>14</sup> See the Spot Bitcoin ETP Approval Order at 3011-3012.

<sup>15</sup> See the Spot Ether ETP Approval Order at 45938.

<sup>16</sup> See Securities Exchange Act No. 82448 (January 5, 2018) 83 FR 1428 (January 11, 2018) (SR-NYSEArca-2017-131) (NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 and Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the Sprott Physical Gold and Silver Trust Under NYSE Arca Rule 8.201-E).

Fund's cash and cash equivalents<sup>17</sup> (the "Cash Custodian") and also serves as the Fund's administrator and transfer agent (the "Administrator" or "Transfer Agent"). Coinbase Custody Trust Company, LLC (the "Custodian") will be responsible for custody of the Fund's bitcoin and ether. According to the Registration Statement, each Share will represent a fractional undivided beneficial interest in the Fund's net assets. The Fund's assets will only consist of bitcoin, ether, cash, and cash equivalents. The "Index" refers to the CF Institutional Digital Asset Index – US-Settlement Price. The Sponsor will not invest the Fund's assets in any other crypto assets other than bitcoin and ether even if other crypto assets are included in the Index. The Exchange would file an amendment to this rule filing if any Index change would require a change to the Fund's investment objective and/or strategy that would result in a materially different allocation of instruments than what is described in this rule filing or the introduction of new instruments.

According to the Registration Statement, the Trust is neither an investment company registered under the 1940 Act,<sup>18</sup> nor a commodity pool for purposes of the Commodity Exchange Act ("CEA"), and neither the Trust, the Fund nor the Sponsor is subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the Shares.

Neither the Trust or the Fund, nor the Sponsor, nor the Custodian, nor any other person associated with the Trust or Fund will, directly or indirectly, engage in action where any portion of the Fund's ether becomes subject to the Ethereum proof-of-stake

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<sup>17</sup> Cash equivalents are short-term instruments with maturities of less than 3 months.

<sup>18</sup> 15 U.S.C. 80a-1



validation or is used to earn additional ether or generate income or other earnings. The Fund will not acquire and will disclaim any incidental right (“IR”) or IR asset received, for example as a result of forks or airdrops, and such assets will not be taken into account for purposes of determining the Fund’s net asset value (“NAV”).

When the Fund sells or redeems its Shares, it will do so in cash transactions in large blocks of 50,000 Shares (a “Creation Basket”) at the Fund’s NAV. For creations, authorized participants will deliver, or facilitate the delivery of, cash to the Fund’s account with the Cash Custodian in exchange for Shares. Upon receipt of an approved creation order, the Sponsor, on behalf of the Fund, will submit to one or more previously onboarded trading partners an order to buy the amount of bitcoin and ether represented by a Creation Basket.<sup>19</sup> Authorized participants may then offer Shares to the public at prices that depend on various factors, including the supply and demand for Shares, the value of the Fund’s assets, and market conditions at the time of a transaction. Shareholders who buy or sell Shares during the day from their broker may do so at a premium or discount relative to the NAV per Share of the Fund.

#### Investment Objective

According to the Registration Statement and as further described below, the investment objective of the Fund is to seek to provide investment results that closely correspond, before Fund expenses and liabilities, to the performance of the Index. The Fund will seek to achieve its investment objective by investing in bitcoin and ether in

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<sup>19</sup> For redemptions, the process will occur in the reverse order. Upon receipt of an approved redemption order, the Sponsor, on behalf of the Fund, will submit an order to sell the amount of bitcoin and ether represented by a Creation Basket and the cash proceeds will be remitted to the authorized participant when the large block of Shares is received by the Transfer Agent.

approximately the same weights as they represent in the Index. The Index is a free float-adjusted market capitalization weighted index of liquid digital assets that are recognized as being in conformance with prevailing markets regulations of major financial jurisdictions as determined by CF Benchmarks Ltd. (the “Index Provider”).

In seeking to achieve its investment objective, the Fund will hold only bitcoin, ether, cash, and cash equivalents. The price of bitcoin and ether within the Index is based on the CME CF Bitcoin Reference Rate – New York Variant for the Bitcoin – U.S. Dollar trading pair (the “CF Bitcoin Reference Rate”) and the CME CF Ether-Dollar Reference Rate - New York Variant for the ether-U.S. Dollar trading pair (the “CF Ether Reference Rate”, and together with the CF Bitcoin Reference Rate, the “CF Reference Rates”).

If a CF Reference Rate is not available or the Sponsor determines, in its sole discretion, that a CF Reference Rate should not be used, the Fund’s holdings may be fair valued in accordance with the policy approved by the Sponsor.<sup>20</sup>

#### The Index

As described in the Registration Statement, the Fund generally seeks to reflect the price of the digital assets included in the Index. Currently, the Index’s only constituent digital assets are bitcoin and ether. The Fund’s investment objective is to seek to provide investment results that closely correspond, before Fund expenses and liabilities, to the performance of the Index. The Fund will seek to achieve its investment objective by

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<sup>20</sup> Any alternative method will only be employed on an ad hoc basis. Any permanent change to the calculation of the NAV would require a proposed rule change under Rule 19b-4.

investing in bitcoin and ether in approximately the same weights as they represent in the Index.

The Index is owned, administered and calculated by the Index Provider. The Index is derived from a rules-based methodology and related ground rules (together, the “Index Rules”), which are overseen by the Index Provider. Eligible constituent digital assets are screened, including for their liquidity, asset turnover and ability to be stored in custody by third parties that have regulatory approval to provide services for the safe keeping of digital assets on behalf of investors. To be eligible for inclusion in the Index, the digital asset (1) must be listed on two or more eligible constituent trading platforms as determined by the Index Provider and (2) must be supported by one or more eligible third-party custodians as determined by the Index Provider. Digital assets that are pegged to the value of any asset, including but not limited to stablecoins, are not eligible for inclusion in the Index. Only markets and trading pairs where a digital asset is listed as either the base asset or quote asset against the U.S. Dollar will be included in calculations for purposes of the liquidity screen. The Index Provider further reserves the right to exclude a digital asset based on one or more factors. The resultant digital assets are deemed to be the investible universe (“Investible Universe”) of digital assets that are eligible for inclusion in the Index. Digital assets within the 95th percentile of the free float-adjusted market capitalization of the Investible Universe that are determined by the Index Provider as being in conformance with prevailing capital markets regulations of major financial jurisdictions including the United States (including that the SEC has approved or permitted an exchange-traded product/fund registered under the Securities Act of 1933 holding such digital asset to list and launch) and that meet certain minimum

liquidity, turnover, and full market capitalization ratios as determined by the Index Provider pursuant to the Index Rules are generally included as constituents in the Index.

The free float supply of each digital asset is determined by the Index Provider in accordance with the Index Rules, with different calculations applying depending on whether the digital asset is determined to be “coin-centric” (such as bitcoin) or “account-centric” (such as ether). The Index is rebalanced and reconstituted quarterly. The Sponsor will seek to reconstitute and rebalance the Fund’s portfolio in accordance with any reconstitution and rebalancing of the Index. Any such reconstitution and rebalancing of the Fund’s portfolio will occur without U.S. registered broker-dealer intermediation.

The price of bitcoin and ether within the Index is based on the respective CF Reference Rate (i.e., the CF Bitcoin Reference Rate and CF Ether Reference Rate). See the below section titled “Net Asset Value” for information on how the CF Reference Rates are calculated.

In addition, the Sponsor notes that an oversight function is implemented by the Index Provider in seeking to ensure that the CF Reference Rates are administered through codified policies for index integrity. CF Reference Rate data and the description of the CF Reference Rates are based on information made publicly available by the Index Provider on its website at <https://www.cfbenchmarks.com>.

#### Net Asset Value

NAV means the total assets of the Fund (which includes bitcoin, ether, cash and cash equivalents) less total liabilities of the Fund. The Administrator will determine the NAV of the Fund on each day that the Exchange is open for regular trading, as promptly as practical after 4:00 p.m. ET. The NAV of the Fund is the aggregate value of the Fund’s

assets less its estimated accrued but unpaid liabilities (which include accrued expenses). In determining the Fund's NAV, the Administrator values the bitcoin and ether held by the Fund based on the CF Reference Rates as of 4:00 p.m. ET. The Administrator also determines the NAV per Share.

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

If one or both of the CF Reference Rates is not available or the Sponsor determines, in its sole discretion, that the CF Bitcoin Reference Rate or the CF Ether Reference Rate should not be used, the Fund's holdings may be fair valued in accordance with the policy approved by the Sponsor.<sup>21</sup>

On each business day, as soon as practicable after 4:00 p.m. ET, the Administrator evaluates the bitcoin and ether held by the Fund as reflected by the CF Reference Rates and determines the NAV of the Fund.

The CF Reference Rates serve as once-a-day benchmark rates of the U.S. dollar price of ether (USD/ETH) and bitcoin (USD/BTC), calculated as of 4:00 p.m. ET. The CF Reference Rates aggregate the trade flow of several ether and bitcoin trading platforms, during an observation window between 3:00 p.m. and 4:00 p.m. ET into the U.S. dollar price of one bitcoin and ether at 4:00 p.m. ET. Specifically, the CF Reference Rates are calculated based on the "Relevant Transactions" (as defined below) of all of its constituent bitcoin and ether trading platforms, which are currently Coinbase, Bitstamp, Kraken, itBit, LMAX Digital and Gemini (the "Constituent Platforms"), as follows:

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<sup>21</sup> Any alternative method will only be employed on an ad hoc basis. Any permanent change to the calculation of the NAV would require a proposed rule change under Rule 19b-4.

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

The Constituent Platforms may change from time to time. The CF Reference Rates do not include any futures prices in their methodologies. A “Relevant Transaction” is any cryptocurrency versus U.S. dollar spot trade that occurs during the observation window between 3:00 p.m. and 4:00 p.m. ET on a Constituent Platform in the XBT/USD and ETH/USD pairs that are reported and disseminated by a Constituent Platform through its publicly available Application Programming Interface (“API”) and observed by the Index Provider.

The Sponsor believes that the use of the CF Reference Rates is reflective of a reasonable valuation of the average spot price of ether and bitcoin and that resistance to manipulation is a priority aim of its design methodology. The methodology: (i) takes an observation period and divides it into equal partitions of time; (ii) then calculates the volume-weighted median of all transactions within each partition; and (iii) the value is

determined from the arithmetic mean of the volume-weighted medians, equally weighted. By employing the foregoing steps, the CF Reference Rates thereby seek to ensure that transactions in ether and bitcoin conducted at outlying prices do not have an undue effect on the value of the CF Reference Rates, large trades or clusters of trades transacted over a short period of time will not have an undue influence on the CF Reference Rates, and the effect of large trades at prices that deviate from the prevailing price are mitigated from having an undue influence on the CF Reference Rates.

#### Availability of Information

The website for the Fund, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV per Share and the reported BZX Official Closing Price;<sup>22</sup> (b) the BZX Official Closing Price in relation to the NAV per Share as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV per Share; (c) data in chart form displaying the frequency distribution of discounts and premiums of the BZX 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 Fund, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The aforementioned information will be published as of the close of business available on the Fund's website at <https://www.franklintempleton.com/investments/options/exchange-traded-funds>, or any successor thereto. The Fund will also disseminate its holdings on a daily basis on its website.

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<sup>22</sup> As defined in Rule 11.23(a)(3), the term "BZX Official Closing Price" shall mean the price disseminated to the consolidated tape as the market center closing trade.

The Intraday Indicative Value (“IIV”) will be calculated by using the prior day’s closing NAV per Share as a base and updating that value during Regular Trading Hours<sup>23</sup> to reflect changes in the value of the Fund’s bitcoin and ether holdings during the trading day, which are based on CME CF Ether-Dollar Real Time Index and CME CF Bitcoin Real Time Index. The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange’s Regular Trading Hours through the facilities of the consolidated tape association (CTA) and Consolidated Quotation System (CQS) high speed lines. In addition, the IIV will be available through online information services, such as Bloomberg and Reuters.

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

As noted above, each CF Reference Rate is calculated daily and aggregates the notional value of trading activity across major spot trading platforms. CF Reference Rate data, the CF Reference Rate value, and the description of the CF Reference Rate are based on information made publicly available by the Index Provider on its website at <https://www.cfbenchmarks.com>.

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, in bitcoin and ether are available from major market data vendors and from the trading platforms on

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<sup>23</sup> Regular Trading Hours is the time between 9:30 a.m. and 4:00 p.m. Eastern Time.



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

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

#### The Custodian

The Custodian carefully considers the design of the physical, operational and cryptographic systems for secure storage of the Fund's private keys in an effort to lower the risk of loss or theft. The Custodian utilizes a variety of security measures to ensure that private keys necessary to transfer digital assets remain uncompromised and that the Fund maintains exclusive ownership of its assets. The Custodian will keep the private keys associated with the Fund's bitcoin and ether in "cold storage"<sup>24</sup> (the "Cold Vault Balance"). The hardware, software, systems, and procedures of the Custodian may not be available or cost-effective for many investors to access directly. 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

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<sup>24</sup> The term "cold storage" refers to a safeguarding method by which the private keys corresponding to bitcoin and/or ether stored on a digital wallet are removed from any computers actively connected to the internet. Cold storage of private keys may involve keeping such wallet on a non-networked computer or electronic device or storing the public key and private keys relating to the digital wallet on a storage device (for example, a USB thumb drive) or printed medium (for example, papyrus or paper) and deleting the digital wallet from all computers.

officers of the Sponsor, acting alone or together, will be able to access or use any of the private keys that hold the Fund's ether and bitcoin.

#### Creation and Redemption of Shares

When the Fund sells or redeems its Shares, it will do so in cash transactions in Creation Baskets that are based on the quantity of bitcoin and ether attributable to each Share of the Fund at the NAV. According to the Registration Statement, on any business day, an authorized participant may place an order to create one or more Creation Baskets. Purchase orders for cash transaction Creation Baskets must be placed by 2:00 p.m. Eastern Time, or the close of regular trading on the Exchange, whichever is earlier. The day on which an order is properly received is considered the purchase order date. The total deposit of cash required is based on the combined NAV of the number of Shares included in the Creation Baskets being created determined as of 4:00 p.m. ET on the purchase order date. The Administrator determines the quantity of bitcoin and ether associated with a Creation Basket for a given day by dividing the number of bitcoin and ether held by the Fund as of the opening of business on that business day, adjusted for the amount of bitcoin and ether constituting estimated accrued but unpaid fees and expenses of the Fund as of the opening of business on that business day, by the quotient of the number of Shares outstanding at the opening of business divided by the number of Shares in a Creation Basket. The procedures by which an authorized participant can redeem one or more Creation Baskets mirror the procedures for the creation of Creation Baskets.

The authorized participants will deliver only cash to create Shares and will receive only cash when redeeming Shares. Further, authorized participants will not directly or indirectly purchase, hold, deliver, or receive bitcoin or ether as part of the

creation or redemption process or otherwise direct the Fund or a third-party with respect to purchasing, holding, delivering, or receiving bitcoin or ether as part of the creation or redemption process.

The Fund will create Shares by receiving ether or bitcoin from a third-party that is not the authorized participant and the Fund—not the authorized participant—is responsible for selecting the third-party to deliver the ether and bitcoin. Further, the third-party will not be acting as an agent of the authorized participant with respect to the delivery of the ether and bitcoin to the Fund or acting at the direction of the authorized participant with respect to the delivery of the bitcoin and ether to the Fund. The Fund will redeem Shares by delivering bitcoin and ether to a third-party that is not the authorized participant and the Fund—not the authorized participant—is responsible for selecting the third-party to receive the ether and bitcoin. Further, the third-party will not be acting as an agent of the authorized participant with respect to the receipt of the ether and bitcoin from the Fund or acting at the direction of the authorized participant with respect to the receipt of the ether and bitcoin from the Fund.

The Sponsor (including its delegates) will maintain ownership and control of the Fund's ether and bitcoin in a manner consistent with good delivery requirements for spot commodity transactions.

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

The Shares will be subject to BZX Rule 14.11(e)(4), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. The Exchange represents that, for initial and continued listing, the Fund must be in compliance with Rule 10A-3 under the Act. A minimum of 100,000 Shares will be

outstanding at the commencement of listing on the Exchange. The Exchange will obtain a representation that the NAV will be calculated daily and that the NAV and information about the assets of the Fund will be made available to all market participants at the same time. The Exchange notes that the Shares will meet the definition of Rule 14.11(e)(4)(C)(i) except that the Fund will hold two commodities (i.e., bitcoin and ether) rather than a single commodity in addition to cash and cash equivalents. Specifically, the Shares will be: (a) issued by a trust that holds (1) two specified commodities<sup>25</sup> deposited with the trust, or (2) two specified commodities and, in addition to such specified commodities, cash; (b) issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodities and/or cash; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodities and/or cash. The Exchange notes that the Commission has previously approved the listing and trading of series of Commodity-Based Trust Shares that hold more than one commodity.<sup>26</sup>

Upon termination of the Fund, the Shares will be removed from listing. The Trustee is a trust company having substantial capital and surplus and the experience and facilities for handling corporate trust business, as required under Rule 14.11(e)(4)(E)(iv)(a) and no change will be made to the trustee without prior notice to

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<sup>25</sup> For purposes of Rule 14.11(e)(4), the term commodity takes on the definition of the term as provided in the Commodity Exchange Act.

<sup>26</sup> See Securities Exchange Act No. 82448 (January 5, 2018) 83 FR 1428 (January 11, 2018) (SR-NYSEArca-2017-131) (NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 and Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the Sprott Physical Gold and Silver Trust Under NYSE Arca Rule 8.201-E).

and approval of the Exchange. The Exchange also notes that, pursuant to Rule 14.11(e)(4)(F), neither the Exchange nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions or delays in calculating or disseminating any underlying commodity value, the current value of the underlying commodity required to be deposited to the Fund in connection with issuance of Commodity-Based Trust Shares; resulting from any negligent act or omission by the Exchange, or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange, its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in an underlying commodity. Finally, as required in Rule 14.11(e)(4)(G), the Exchange notes that any registered market maker (“Market Maker”) in the Shares must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule. In addition to the existing obligations under Exchange rules regarding the production of books and records (see, e.g., Rule 4.2),

the registered Market Maker in Commodity-Based Trust Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, as may be requested by the Exchange.

The Exchange is able to obtain information regarding trading in the Shares and the underlying ether and bitcoin, CME Ether Futures and CME Bitcoin Futures, options on CME Ether Futures and CME Bitcoin Futures, 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, which include any person or entity controlling a Member. To the extent the Exchange may be found to lack jurisdiction over a subsidiary or affiliate of a Member that does business only in commodities or futures contracts, the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

#### Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange,

make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the bitcoin or ether underlying the Shares; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(e)(4)(E)(ii), which sets forth circumstances under which trading in the Shares may be halted.

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

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

#### Trading Rules

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

\$1.00 per share. The Shares of the Fund will conform to the initial and continued listing criteria set forth in BZX Rule 14.11(e)(4).

#### Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.

Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, CME Ether Futures and CME Bitcoin Futures, or any other bitcoin or ether derivative 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, CME Ether Futures and CME Bitcoin Futures, or any other ether or bitcoin derivative from such markets and other entities.<sup>27</sup> The Exchange may obtain information regarding trading in the Shares, CME Ether Futures and CME Bitcoin Futures, or any other ether or bitcoin derivative via ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

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<sup>27</sup> For a list of the current members and affiliate members of ISG, see [www.isgportal.com](http://www.isgportal.com).



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

The Sponsor has represented to the Exchange that it will advise the Exchange of any failure by the Fund or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

#### Information Circular

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

has regulatory jurisdiction over the trading of CME Ether Futures contracts and CME Bitcoin Futures contracts and options on CME Ether Futures contracts and CME Bitcoin Futures contracts.

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

(b) Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act<sup>28</sup> in general and Section 6(b)(5) of the Act<sup>29</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission has approved numerous series of Trust Issued Receipts,<sup>30</sup> including Commodity-Based Trust Shares,<sup>31</sup> to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the

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<sup>28</sup> 15 U.S.C. 78f.

<sup>29</sup> 15 U.S.C. 78f(b)(5).

<sup>30</sup> See Exchange Rule 14.11(f).

<sup>31</sup> Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

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.

The Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts, including spot-based Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.<sup>32</sup> The Commission has also consistently recognized, however, that this is not the exclusive means by which an ETP listing exchange can meet this statutory obligation.<sup>33</sup> A listing exchange could, alternatively, demonstrate that “other means to prevent fraudulent and manipulative acts and practices will be sufficient” to justify dispensing with a surveillance-sharing agreement with a regulated market of significant size.

Both the Exchange and CME are members of the ISG.<sup>34</sup> With this in mind, the CME Ether Futures market and the CME Bitcoin Futures market are the proper markets to consider in determining whether there is a related regulated market of significant size. Recently, the Commission issued orders granting approval for Spot Bitcoin ETPs and

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<sup>32</sup> See supra note 9.

<sup>33</sup> See Winklevoss Order, 83 FR at 37580.

<sup>34</sup> For a list of the current members and affiliate members of ISG, see [www.isgportal.com](http://www.isgportal.com).

Spot Ether ETPs commodity trust and trust issued receipts (these funds are nearly identical to the Fund but hold either bitcoin *or* ether instead of bitcoin *and* ether). In the Spot Bitcoin ETP Approval Order, the Commission stated:

[B]ased on the record before the Commission and the improved quality of the correlation analysis in the record...the Commission is able to conclude that fraud or manipulation that impacts prices in spot bitcoin markets would likely similarly impact CME bitcoin futures prices. And because the CME's surveillance can assist in detecting those impacts on CME bitcoin futures prices, the Exchanges' comprehensive surveillance-sharing agreement with the CME—a U.S. regulated market whose bitcoin futures market is consistently highly correlated to spot bitcoin, albeit not of “significant size” related to spot bitcoin—can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [p]roposals.<sup>35</sup>

In the Spot Ether ETP Approval Order the Commission also concluded that:

based on the record before the Commission and the correlation analyses in the record, including the Commission's own analysis, the Commission is able to conclude that fraud or manipulation that impacts prices in spot ether markets would likely similarly impact CME ether futures prices. And because the CME's surveillance can assist in detecting those impacts on CME ether futures prices, the Exchanges' comprehensive surveillance-sharing agreement with the CME—a U.S.-regulated market whose ether futures market is consistently highly correlated to spot ether, albeit not of “significant size” related to spot ether—can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the Proposals.<sup>36</sup>

As such, the listing exchanges demonstrated “other means to prevent fraudulent and manipulative acts and practices will be sufficient” to justify dispensing with the “regulated market of significant size” test.

The Exchange notes that the Commission has also previously approved the listing and trading of a series of Commodity-Based Trust Shares on another exchange that, like

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<sup>35</sup> See the Spot Bitcoin ETP Approval Order at 3011-3012.

<sup>36</sup> See the Spot Ether ETP Approval Order at 45938.

the Fund, holds two commodities.<sup>37</sup> Given this and the above, the Exchange believes the Shares satisfy the requirements of Exchange Rule BZX Rule 14.11(e)(4) and thereby qualify for listing and trading on the Exchange.

#### Commodity-Based Trust Shares

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

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<sup>37</sup> See Securities Exchange Act No. 82448 (January 5, 2018) 83 FR 1428 (January 11, 2018) (SR-NYSEArca-2017-131) (NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 and Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the Sprott Physical Gold and Silver Trust Under NYSE Arca Rule 8.201-E).

the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

#### Availability of Information

In addition to the price transparency of the Index, the Fund will provide information regarding the Fund's bitcoin and ether holdings as well as additional data regarding the Fund.

The website for the Fund, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV per Share and the reported BZX Official Closing Price;<sup>38</sup> (b) the BZX Official Closing Price in relation to the NAV per Share as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV per Share; (c) data in chart form displaying the frequency distribution of discounts and premiums of the BZX 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 Fund, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The aforementioned information will be published as of the close of business available on the Fund's website at <https://www.franklintempleton.com/investments/options/exchange-traded-funds>, or any successor thereto. The Fund will also disseminate its holdings on a daily basis on its website.

The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value

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<sup>38</sup> As defined in Rule 11.23(a)(3), the term "BZX Official Closing Price" shall mean the price disseminated to the consolidated tape as the market center closing trade.

of the Fund's bitcoin and ether holdings during the trading day, which are based on CME CF Ether-Dollar Real Time Index and CME CF Bitcoin Real Time Index. The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours through the facilities of the consolidated tape association (CTA) and Consolidated Quotation System (CQS) high speed lines. In addition, the IIV will be available through on-line information services such as Bloomberg and Reuters.

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

As noted above, each CF Reference Rate is calculated daily and aggregates the notional value of trading activity across major spot trading platforms. CF Reference Rate data, the CF Reference Rate value, and the description of the CF Reference Rate are based on information made publicly available by the Index Provider on its website at <https://www.cfbenchmarks.com>.

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

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

The proposed rule change is designed to perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a surveillance sharing agreement. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, CME Ether Futures and CME Bitcoin Futures, or any other bitcoin or ether derivative 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, CME Ether Futures and CME Bitcoin Futures, or any other ether or bitcoin derivative from such markets and other entities.<sup>39</sup> The Exchange may obtain information regarding trading in the Shares, CME Ether Futures and CME Bitcoin Futures, or any other ether or bitcoin derivative via ISG,

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<sup>39</sup> For a list of the current members and affiliate members of ISG, see [www.isgportal.com](http://www.isgportal.com).



from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

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

**Item 4. Self-Regulatory Organization's Statement on Burden on Competition**

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

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

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

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

The Exchange does not consent to an extension of the time period for Securities and Exchange Commission (the "Commission") action on the proposed rule change specified in Section 19(b)(2) of the Act.<sup>40</sup>

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

Not applicable.

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<sup>40</sup> 15 U.S.C. 78s(b)(2).

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

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

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

Not applicable.

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

Not applicable.

**Item 11.      Exhibits**

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

Exhibit 2-5.    Not applicable.

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CboeBZX-2024-091]

[Insert date]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change to List and Trade Shares of the Franklin Crypto Index ETF (the “Fund”), a Series of the Franklin Crypto Trust (the “Trust”), Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

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

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

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

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

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

<sup>3</sup> The Trust was formed as a Delaware statutory trust on August 13, 2024. The Fund is operated as a partnership for U.S. federal tax purposes. The Trust and the Fund have no fixed termination date.

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

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

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

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

**1. Purpose**

This Amendment No. 1 to SR-CboeBZX-2024-091 amends and replaces in its entirety the proposal as originally submitted on September 19, 2024. The Exchange submits this Amendment No. 1 in order to clarify certain points and add additional details to the proposal.

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

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

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

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

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

The Commission has approved numerous series of Trust Issued Receipts,<sup>7</sup> including Commodity-Based Trust Shares,<sup>8</sup> to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of Section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest.

The Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts, including spot-based Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.<sup>9</sup> The Commission has also consistently recognized,

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<sup>6</sup> See Pre-Effective Amendment No. 1 to Form S-1 Registration Statement filed on December 11, 2024, submitted to the Commission by the Sponsor on behalf of the Trust (333-281615). The descriptions of the Trust, the Shares, the Fund, and the Index (as defined below) contained herein are based, in part, on information in 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.

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

<sup>8</sup> Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

<sup>9</sup> See Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the "Winklevoss Order"). Prior orders from the Commission have pointed out that in every prior approval order for Commodity-Based Trust Shares, there has been a derivatives market that represents the regulated market of significant size, generally a Commodity Futures Trading Commission (the "CFTC") regulated futures market. Further to this point, the Commission's prior orders have noted that the spot commodities and currency markets for which it has previously

however, that this is not the exclusive means by which an ETP listing exchange can meet this statutory obligation.<sup>10</sup> A listing exchange could, alternatively, demonstrate that “other means to prevent fraudulent and manipulative acts and practices will be sufficient” to justify dispensing with a surveillance-sharing agreement with a regulated market of significant size.

Both the Exchange and Chicago Mercantile Exchange (“CME”) are members of the Intermarket Surveillance Group (“ISG”).<sup>11</sup> With this in mind, the CME ether futures (“CME Ether Futures”) market and the CME bitcoin futures (“CME Bitcoin Futures”) market are the proper markets to consider in determining whether there is a related regulated market of significant size. Recently, the Commission issued orders granting approval for proposals to list bitcoin-based (“Spot Bitcoin ETPs”)<sup>12</sup> and ether-based (“Spot Ether ETPs”)<sup>13</sup> commodity trust and trust issued receipts (these funds are nearly

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approved spot ETPs are generally unregulated and that the Commission relied on the underlying futures market as the regulated market of significant size that formed the basis for approving the series of Currency and Commodity-Based Trust Shares, including gold, silver, platinum, palladium, copper, and other commodities and currencies. The Commission specifically noted in the Winklevoss Order that the approval order issued related to the first spot gold ETP “was based on an assumption that the currency market and the spot gold market were largely unregulated.” See Winklevoss Order at 37592. As such, the regulated market of significant size test does not require that the spot bitcoin and ether markets be regulated in order for the Commission to approve this proposal, and precedent makes clear that an underlying market for a spot commodity or currency being a regulated market would actually be an exception to the norm. These largely unregulated currency and commodity markets do not provide the same protections as the markets that are subject to the Commission’s oversight, but the Commission has consistently looked to surveillance sharing agreements with the underlying futures market in order to determine whether such products were consistent with the Act.

<sup>10</sup> See Winklevoss Order, 83 FR at 37580.

<sup>11</sup> For a list of the current members and affiliate members of ISG, see [www.isgportal.com](http://www.isgportal.com).

<sup>12</sup> 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”).

<sup>13</sup> 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

identical to the Fund but hold either bitcoin *or* ether instead of bitcoin *and* ether). In the Spot Bitcoin ETP Approval Order, the Commission stated:

[B]ased on the record before the Commission and the improved quality of the correlation analysis in the record...the Commission is able to conclude that fraud or manipulation that impacts prices in spot bitcoin markets would likely similarly impact CME bitcoin futures prices. And because the CME's surveillance can assist in detecting those impacts on CME bitcoin futures prices, the Exchanges' comprehensive surveillance-sharing agreement with the CME—a U.S. regulated market whose bitcoin futures market is consistently highly correlated to spot bitcoin, albeit not of “significant size” related to spot bitcoin—can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [p]roposals.<sup>14</sup>

In the Spot Ether ETP Approval Order the Commission also concluded that:

based on the record before the Commission and the correlation analyses in the record, including the Commission's own analysis, the Commission is able to conclude that fraud or manipulation that impacts prices in spot ether markets would likely similarly impact CME ether futures prices. And because the CME's surveillance can assist in detecting those impacts on CME ether futures prices, the Exchanges' comprehensive surveillance-sharing agreement with the CME—a U.S.-regulated market whose ether futures market is consistently highly correlated to spot ether, albeit not of “significant size” related to spot ether—can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the Proposals.<sup>15</sup>

As such, the listing exchanges demonstrated “other means to prevent fraudulent and manipulative acts and practices will be sufficient” to justify dispensing with the “regulated market of significant size” test.

The Exchange notes that the Commission has also previously approved the listing and trading of a series of Commodity-Based Trust Shares on another exchange that, like the Fund, holds two commodities.<sup>16</sup> Given this and the above, the Exchange believes the

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Amendments Thereto, To List and Trade Shares of Ether-Based Exchange-Traded Products) (the “Spot Ether ETP Approval Order”).

<sup>14</sup> See the Spot Bitcoin ETP Approval Order at 3011-3012.

<sup>15</sup> See the Spot Ether ETP Approval Order at 45938.

<sup>16</sup> See Securities Exchange Act No. 82448 (January 5, 2018) 83 FR 1428 (January 11, 2018) (SR-

Shares satisfy the requirements of Exchange Rule BZX Rule 14.11(e)(4) and thereby qualify for listing and trading on the Exchange.

Franklin Crypto Index ETF

CSC Delaware Trust Company, a subsidiary of the Corporation Service Company, is the trustee (“Trustee”). Bank of New York Mellon is the custodian for the Fund’s cash and cash equivalents<sup>17</sup> (the “Cash Custodian”) and also serves as the Fund’s administrator and transfer agent (the “Administrator” or “Transfer Agent”). Coinbase Custody Trust Company, LLC (the “Custodian”) will be responsible for custody of the Fund’s bitcoin and ether. According to the Registration Statement, each Share will represent a fractional undivided beneficial interest in the Fund’s net assets. The Fund’s assets will only consist of bitcoin, ether, cash, and cash equivalents. The “Index” refers to the CF Institutional Digital Asset Index – US-Settlement Price. The Sponsor will not invest the Fund’s assets in any other crypto assets other than bitcoin and ether even if other crypto assets are included in the Index. The Exchange would file an amendment to this rule filing if any Index change would require a change to the Fund’s investment objective and/or strategy that would result in a materially different allocation of instruments than what is described in this rule filing or the introduction of new instruments.

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NYSEArca-2017-131) (NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 and Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the Sprott Physical Gold and Silver Trust Under NYSE Arca Rule 8.201-E).

<sup>17</sup> Cash equivalents are short-term instruments with maturities of less than 3 months.



According to the Registration Statement, the Trust is neither an investment company registered under the 1940 Act,<sup>18</sup> nor a commodity pool for purposes of the Commodity Exchange Act (“CEA”), and neither the Trust, the Fund nor the Sponsor is subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the Shares.

Neither the Trust or the Fund, nor the Sponsor, nor the Custodian, nor any other person associated with the Trust or Fund will, directly or indirectly, engage in action where any portion of the Fund’s ether becomes subject to the Ethereum proof-of-stake validation or is used to earn additional ether or generate income or other earnings. The Fund will not acquire and will disclaim any incidental right (“IR”) or IR asset received, for example as a result of forks or airdrops, and such assets will not be taken into account for purposes of determining the Fund’s net asset value (“NAV”).

When the Fund sells or redeems its Shares, it will do so in cash transactions in large blocks of 50,000 Shares (a “Creation Basket”) at the Fund’s NAV. For creations, authorized participants will deliver, or facilitate the delivery of, cash to the Fund’s account with the Cash Custodian in exchange for Shares. Upon receipt of an approved creation order, the Sponsor, on behalf of the Fund, will submit to one or more previously onboarded trading partners an order to buy the amount of bitcoin and ether represented by a Creation Basket.<sup>19</sup> Authorized participants may then offer Shares to the public at prices that depend on various factors, including the supply and demand for Shares, the value of

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<sup>18</sup> 15 U.S.C. 80a-1

<sup>19</sup> For redemptions, the process will occur in the reverse order. Upon receipt of an approved redemption order, the Sponsor, on behalf of the Fund, will submit an order to sell the amount of bitcoin and ether represented by a Creation Basket and the cash proceeds will be remitted to the authorized participant when the large block of Shares is received by the Transfer Agent.

the Fund's assets, and market conditions at the time of a transaction. Shareholders who buy or sell Shares during the day from their broker may do so at a premium or discount relative to the NAV per Share of the Fund.

#### Investment Objective

According to the Registration Statement and as further described below, the investment objective of the Fund is to seek to provide investment results that closely correspond, before Fund expenses and liabilities, to the performance of the Index. The Fund will seek to achieve its investment objective by investing in bitcoin and ether in approximately the same weights as they represent in the Index. The Index is a free float-adjusted market capitalization weighted index of liquid digital assets that are recognized as being in conformance with prevailing markets regulations of major financial jurisdictions as determined by CF Benchmarks Ltd. (the "Index Provider").

In seeking to achieve its investment objective, the Fund will hold only bitcoin, ether, cash, and cash equivalents. The price of bitcoin and ether within the Index is based on the CME CF Bitcoin Reference Rate – New York Variant for the Bitcoin – U.S. Dollar trading pair (the "CF Bitcoin Reference Rate") and the CME CF Ether-Dollar Reference Rate - New York Variant for the ether-U.S. Dollar trading pair (the "CF Ether Reference Rate", and together with the CF Bitcoin Reference Rate, the "CF Reference Rates").

If a CF Reference Rate is not available or the Sponsor determines, in its sole discretion, that a CF Reference Rate should not be used, the Fund's holdings may be fair valued in accordance with the policy approved by the Sponsor.<sup>20</sup>

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Any alternative method will only be employed on an ad hoc basis. Any permanent change to the

### The Index

As described in the Registration Statement, the Fund generally seeks to reflect the price of the digital assets included in the Index. Currently, the Index's only constituent digital assets are bitcoin and ether. The Fund's investment objective is to seek to provide investment results that closely correspond, before Fund expenses and liabilities, to the performance of the Index. The Fund will seek to achieve its investment objective by investing in bitcoin and ether in approximately the same weights as they represent in the Index.

The Index is owned, administered and calculated by the Index Provider. The Index is derived from a rules-based methodology and related ground rules (together, the "Index Rules"), which are overseen by the Index Provider. Eligible constituent digital assets are screened, including for their liquidity, asset turnover and ability to be stored in custody by third parties that have regulatory approval to provide services for the safe keeping of digital assets on behalf of investors. To be eligible for inclusion in the Index, the digital asset (1) must be listed on two or more eligible constituent trading platforms as determined by the Index Provider and (2) must be supported by one or more eligible third-party custodians as determined by the Index Provider. Digital assets that are pegged to the value of any asset, including but not limited to stablecoins, are not eligible for inclusion in the Index. Only markets and trading pairs where a digital asset is listed as either the base asset or quote asset against the U.S. Dollar will be included in calculations for purposes of the liquidity screen. The Index Provider further reserves the right to exclude a digital asset based on one or more factors. The resultant digital assets are

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calculation of the NAV would require a proposed rule change under Rule 19b-4.

deemed to be the investible universe (“Investible Universe”) of digital assets that are eligible for inclusion in the Index. Digital assets within the 95th percentile of the free float-adjusted market capitalization of the Investible Universe that are determined by the Index Provider as being in conformance with prevailing capital markets regulations of major financial jurisdictions including the United States (including that the SEC has approved or permitted an exchange-traded product/fund registered under the Securities Act of 1933 holding such digital asset to list and launch) and that meet certain minimum liquidity, turnover, and full market capitalization ratios as determined by the Index Provider pursuant to the Index Rules are generally included as constituents in the Index.

The free float supply of each digital asset is determined by the Index Provider in accordance with the Index Rules, with different calculations applying depending on whether the digital asset is determined to be “coin-centric” (such as bitcoin) or “account-centric” (such as ether). The Index is rebalanced and reconstituted quarterly. The Sponsor will seek to reconstitute and rebalance the Fund’s portfolio in accordance with any reconstitution and rebalancing of the Index. Any such reconstitution and rebalancing of the Fund’s portfolio will occur without U.S. registered broker-dealer intermediation.

The price of bitcoin and ether within the Index is based on the respective CF Reference Rate (i.e., the CF Bitcoin Reference Rate and CF Ether Reference Rate). See the below section titled “Net Asset Value” for information on how the CF Reference Rates are calculated.

In addition, the Sponsor notes that an oversight function is implemented by the Index Provider in seeking to ensure that the CF Reference Rates are administered through codified policies for index integrity. CF Reference Rate data and the description of the

CF Reference Rates are based on information made publicly available by the Index Provider on its website at <https://www.cfbenchmarks.com>.

#### Net Asset Value

NAV means the total assets of the Fund (which includes bitcoin, ether, cash and cash equivalents) less total liabilities of the Fund. The Administrator will determine the NAV of the Fund on each day that the Exchange is open for regular trading, as promptly as practical after 4:00 p.m. ET. The NAV of the Fund is the aggregate value of the Fund's assets less its estimated accrued but unpaid liabilities (which include accrued expenses). In determining the Fund's NAV, the Administrator values the bitcoin and ether held by the Fund based on the CF Reference Rates as of 4:00 p.m. ET. The Administrator also determines the NAV per Share.

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

If one or both of the CF Reference Rates is not available or the Sponsor determines, in its sole discretion, that the CF Bitcoin Reference Rate or the CF Ether Reference Rate should not be used, the Fund's holdings may be fair valued in accordance with the policy approved by the Sponsor.<sup>21</sup>

On each business day, as soon as practicable after 4:00 p.m. ET, the Administrator evaluates the bitcoin and ether held by the Fund as reflected by the CF Reference Rates and determines the NAV of the Fund.

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<sup>21</sup> Any alternative method will only be employed on an ad hoc basis. Any permanent change to the calculation of the NAV would require a proposed rule change under Rule 19b-4.

The CF Reference Rates serve as once-a-day benchmark rates of the U.S. dollar price of ether (USD/ETH) and bitcoin (USD/BTC), calculated as of 4:00 p.m. ET. The CF Reference Rates aggregate the trade flow of several ether and bitcoin trading platforms, during an observation window between 3:00 p.m. and 4:00 p.m. ET into the U.S. dollar price of one bitcoin and ether at 4:00 p.m. ET. Specifically, the CF Reference Rates are calculated based on the “Relevant Transactions” (as defined below) of all of its constituent bitcoin and ether trading platforms, which are currently Coinbase, Bitstamp, Kraken, itBit, LMAX Digital and Gemini (the “Constituent Platforms”), as follows:

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

The Constituent Platforms may change from time to time. The CF Reference Rates do not include any futures prices in their methodologies. A “Relevant Transaction” is any cryptocurrency versus U.S. dollar spot trade that occurs during the observation window between 3:00 p.m. and 4:00 p.m. ET on a Constituent Platform in the XBT/USD

and ETH/USD pairs that are reported and disseminated by a Constituent Platform through its publicly available Application Programming Interface (“API”) and observed by the Index Provider.

The Sponsor believes that the use of the CF Reference Rates is reflective of a reasonable valuation of the average spot price of ether and bitcoin and that resistance to manipulation is a priority aim of its design methodology. The methodology: (i) takes an observation period and divides it into equal partitions of time; (ii) then calculates the volume-weighted median of all transactions within each partition; and (iii) the value is determined from the arithmetic mean of the volume-weighted medians, equally weighted. By employing the foregoing steps, the CF Reference Rates thereby seek to ensure that transactions in ether and bitcoin conducted at outlying prices do not have an undue effect on the value of the CF Reference Rates, large trades or clusters of trades transacted over a short period of time will not have an undue influence on the CF Reference Rates, and the effect of large trades at prices that deviate from the prevailing price are mitigated from having an undue influence on the CF Reference Rates.

#### Availability of Information

The website for the Fund, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day’s NAV per Share and the reported BZX Official Closing Price;<sup>22</sup> (b) the BZX Official Closing Price in relation to the NAV per Share as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV

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<sup>22</sup> As defined in Rule 11.23(a)(3), the term “BZX Official Closing Price” shall mean the price disseminated to the consolidated tape as the market center closing trade.

per Share; (c) data in chart form displaying the frequency distribution of discounts and premiums of the BZX 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 Fund, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The aforementioned information will be published as of the close of business available on the Fund's website at <https://www.franklintempleton.com/investments/options/exchange-traded-funds>, or any successor thereto. The Fund will also disseminate its holdings on a daily basis on its website.

The Intraday Indicative Value ("IIV") will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours<sup>23</sup> to reflect changes in the value of the Fund's bitcoin and ether holdings during the trading day, which are based on CME CF Ether-Dollar Real Time Index and CME CF Bitcoin Real Time Index. The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours through the facilities of the consolidated tape association (CTA) and Consolidated Quotation System (CQS) high speed lines. In addition, the IIV will be available through online information services, such as Bloomberg and Reuters.

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

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<sup>23</sup> Regular Trading Hours is the time between 9:30 a.m. and 4:00 p.m. Eastern Time.



As noted above, each CF Reference Rate is calculated daily and aggregates the notional value of trading activity across major spot trading platforms. CF Reference Rate data, the CF Reference Rate value, and the description of the CF Reference Rate are based on information made publicly available by the Index Provider on its website at <https://www.cfbenchmarks.com>.

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, in bitcoin and ether are available from major market data vendors and from the trading platforms on which ether and bitcoin are traded. Depth of book information is also available from ether and bitcoin trading platforms. The normal trading hours for ether and bitcoin trading platforms are 24 hours per day, 365 days per year.

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

#### The Custodian

The Custodian carefully considers the design of the physical, operational and cryptographic systems for secure storage of the Fund's private keys in an effort to lower the risk of loss or theft. The Custodian utilizes a variety of security measures to ensure that private keys necessary to transfer digital assets remain uncompromised and that the

Fund maintains exclusive ownership of its assets. The Custodian will keep the private keys associated with the Fund's bitcoin and ether in "cold storage"<sup>24</sup> (the "Cold Vault Balance"). The hardware, software, systems, and procedures of the Custodian may not be available or cost-effective for many investors to access directly. 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, acting alone or together, will be able to access or use any of the private keys that hold the Fund's ether and bitcoin.

#### Creation and Redemption of Shares

When the Fund sells or redeems its Shares, it will do so in cash transactions in Creation Baskets that are based on the quantity of bitcoin and ether attributable to each Share of the Fund at the NAV. According to the Registration Statement, on any business day, an authorized participant may place an order to create one or more Creation Baskets. Purchase orders for cash transaction Creation Baskets must be placed by 2:00 p.m. Eastern Time, or the close of regular trading on the Exchange, whichever is earlier. The day on which an order is properly received is considered the purchase order date. The total deposit of cash required is based on the combined NAV of the number of Shares included in the Creation Baskets being created determined as of 4:00 p.m. ET on the purchase order date. The Administrator determines the quantity of bitcoin and ether associated with a Creation Basket for a given day by dividing the number of bitcoin and

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<sup>24</sup> The term "cold storage" refers to a safeguarding method by which the private keys corresponding to bitcoin and/or ether stored on a digital wallet are removed from any computers actively connected to the internet. Cold storage of private keys may involve keeping such wallet on a non-networked computer or electronic device or storing the public key and private keys relating to the digital wallet on a storage device (for example, a USB thumb drive) or printed medium (for example, papyrus or paper) and deleting the digital wallet from all computers.

ether held by the Fund as of the opening of business on that business day, adjusted for the amount of bitcoin and ether constituting estimated accrued but unpaid fees and expenses of the Fund as of the opening of business on that business day, by the quotient of the number of Shares outstanding at the opening of business divided by the number of Shares in a Creation Basket. The procedures by which an authorized participant can redeem one or more Creation Baskets mirror the procedures for the creation of Creation Baskets.

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

The Fund will create Shares by receiving ether or bitcoin from a third-party that is not the authorized participant and the Fund—not the authorized participant—is responsible for selecting the third-party to deliver the ether and bitcoin. Further, the third-party will not be acting as an agent of the authorized participant with respect to the delivery of the ether and bitcoin to the Fund or acting at the direction of the authorized participant with respect to the delivery of the bitcoin and ether to the Fund. The Fund will redeem Shares by delivering bitcoin and ether to a third-party that is not the authorized participant and the Fund—not the authorized participant—is responsible for selecting the third-party to receive the ether and bitcoin. Further, the third-party will not be acting as an agent of the authorized participant with respect to the receipt of the ether and bitcoin

from the Fund or acting at the direction of the authorized participant with respect to the receipt of the ether and bitcoin from the Fund.

The Sponsor (including its delegates) will maintain ownership and control of the Fund's ether and bitcoin in a manner consistent with good delivery requirements for spot commodity transactions.

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

The Shares will be subject to BZX Rule 14.11(e)(4), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. The Exchange represents that, for initial and continued listing, the Fund must be in compliance with Rule 10A-3 under the Act. A minimum of 100,000 Shares will be outstanding at the commencement of listing on the Exchange. The Exchange will obtain a representation that the NAV will be calculated daily and that the NAV and information about the assets of the Fund will be made available to all market participants at the same time. The Exchange notes that the Shares will meet the definition of Rule 14.11(e)(4)(C)(i) except that the Fund will hold two commodities (i.e., bitcoin and ether) rather than a single commodity in addition to cash and cash equivalents. Specifically, the Shares will be: (a) issued by a trust that holds (1) two specified commodities<sup>25</sup> deposited with the trust, or (2) two specified commodities and, in addition to such specified commodities, cash; (b) issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodities and/or cash; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's

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<sup>25</sup> For purposes of Rule 14.11(e)(4), the term commodity takes on the definition of the term as provided in the Commodity Exchange Act.

request by such trust which will deliver to the redeeming holder the quantity of the underlying commodities and/or cash. The Exchange notes that the Commission has previously approved the listing and trading of series of Commodity-Based Trust Shares that hold more than one commodity.<sup>26</sup>

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

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<sup>26</sup> See Securities Exchange Act No. 82448 (January 5, 2018) 83 FR 1428 (January 11, 2018) (SR-NYSEArca-2017-131) (NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 and Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the Sprott Physical Gold and Silver Trust Under NYSE Arca Rule 8.201-E).

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

The Exchange is able to obtain information regarding trading in the Shares and the underlying ether and bitcoin, CME Ether Futures and CME Bitcoin Futures, options on CME Ether Futures and CME Bitcoin Futures, 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, which include any person or entity controlling a Member. To the extent the Exchange may be found to lack jurisdiction over a subsidiary or affiliate of a Member that does business only in commodities or futures contracts, the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

#### Trading Halts

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

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

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

#### Trading Rules

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

#### Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.

Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.



The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, CME Ether Futures and CME Bitcoin Futures, or any other bitcoin or ether derivative 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, CME Ether Futures and CME Bitcoin Futures, or any other ether or bitcoin derivative from such markets and other entities.<sup>27</sup> The Exchange may obtain information regarding trading in the Shares, CME Ether Futures and CME Bitcoin Futures, or any other ether or bitcoin derivative via ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

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

The Sponsor has represented to the Exchange that it will advise the Exchange of any failure by the Fund or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

#### Information Circular

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

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<sup>27</sup> For a list of the current members and affiliate members of ISG, see [www.isgportal.com](http://www.isgportal.com).

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

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

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act<sup>28</sup> in general and Section 6(b)(5) of the Act<sup>29</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission has approved numerous series of Trust Issued Receipts,<sup>30</sup> including Commodity-Based Trust Shares,<sup>31</sup> to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of Section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; 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.

The Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts, including spot-based Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive

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<sup>28</sup> 15 U.S.C. 78f.

<sup>29</sup> 15 U.S.C. 78f(b)(5).

<sup>30</sup> See Exchange Rule 14.11(f).

<sup>31</sup> Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.<sup>32</sup> The Commission has also consistently recognized, however, that this is not the exclusive means by which an ETP listing exchange can meet this statutory obligation.<sup>33</sup> A listing exchange could, alternatively, demonstrate that “other means to prevent fraudulent and manipulative acts and practices will be sufficient” to justify dispensing with a surveillance-sharing agreement with a regulated market of significant size.

Both the Exchange and CME are members of the ISG.<sup>34</sup> With this in mind, the CME Ether Futures market and the CME Bitcoin Futures market are the proper markets to consider in determining whether there is a related regulated market of significant size. Recently, the Commission issued orders granting approval for Spot Bitcoin ETPs and Spot Ether ETPs commodity trust and trust issued receipts (these funds are nearly identical to the Fund but hold either bitcoin *or* ether instead of bitcoin *and* ether). In the Spot Bitcoin ETP Approval Order, the Commission stated:

[B]ased on the record before the Commission and the improved quality of the correlation analysis in the record...the Commission is able to conclude that fraud or manipulation that impacts prices in spot bitcoin markets would likely similarly impact CME bitcoin futures prices. And because the CME’s surveillance can assist in detecting those impacts on CME bitcoin futures prices, the Exchanges’ comprehensive surveillance-sharing agreement with the CME—a U.S. regulated market whose bitcoin futures market is consistently highly correlated to spot bitcoin, albeit not of “significant size” related to spot bitcoin—can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [p]roposals.<sup>35</sup>

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<sup>32</sup> See supra note 9.

<sup>33</sup> See Winklevoss Order, 83 FR at 37580.

<sup>34</sup> For a list of the current members and affiliate members of ISG, see [www.isgportal.com](http://www.isgportal.com).

<sup>35</sup> See the Spot Bitcoin ETP Approval Order at 3011-3012.

In the Spot Ether ETP Approval Order the Commission also concluded that:

based on the record before the Commission and the correlation analyses in the record, including the Commission's own analysis, the Commission is able to conclude that fraud or manipulation that impacts prices in spot ether markets would likely similarly impact CME ether futures prices. And because the CME's surveillance can assist in detecting those impacts on CME ether futures prices, the Exchanges' comprehensive surveillance-sharing agreement with the CME—a U.S.-regulated market whose ether futures market is consistently highly correlated to spot ether, albeit not of “significant size” related to spot ether—can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the Proposals.<sup>36</sup>

As such, the listing exchanges demonstrated “other means to prevent fraudulent and manipulative acts and practices will be sufficient” to justify dispensing with the “regulated market of significant size” test.

The Exchange notes that the Commission has also previously approved the listing and trading of a series of Commodity-Based Trust Shares on another exchange that, like the Fund, holds two commodities.<sup>37</sup> Given this and the above, the Exchange believes the Shares satisfy the requirements of Exchange Rule BZX Rule 14.11(e)(4) and thereby qualify for listing and trading on the Exchange.

#### Commodity-Based Trust Shares

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in Exchange Rule 14.11(e)(4). The Exchange believes that its surveillance procedures are adequate to

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<sup>36</sup> See the Spot Ether ETP Approval Order at 45938.

<sup>37</sup> See Securities Exchange Act No. 82448 (January 5, 2018) 83 FR 1428 (January 11, 2018) (SR-NYSEArca-2017-131) (NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 and Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the Sprott Physical Gold and Silver Trust Under NYSE Arca Rule 8.201-E).

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

#### Availability of Information

In addition to the price transparency of the Index, the Fund will provide information regarding the Fund's bitcoin and ether holdings as well as additional data regarding the Fund.

The website for the Fund, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV per Share and the reported BZX Official Closing Price;<sup>38</sup> (b) the

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<sup>38</sup> As defined in Rule 11.23(a)(3), the term "BZX Official Closing Price" shall mean the price disseminated to the consolidated tape as the market center closing trade.

BZX Official Closing Price in relation to the NAV per Share as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV per Share; (c) data in chart form displaying the frequency distribution of discounts and premiums of the BZX 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 Fund, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The aforementioned information will be published as of the close of business available on the Fund's website at <https://www.franklintempleton.com/investments/options/exchange-traded-funds>, or any successor thereto. The Fund will also disseminate its holdings on a daily basis on its website.

The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Fund's bitcoin and ether holdings during the trading day, which are based on CME CF Ether-Dollar Real Time Index and CME CF Bitcoin Real Time Index. The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours through the facilities of the consolidated tape association (CTA) and Consolidated Quotation System (CQS) high speed lines. In addition, the IIV will be available through on-line information services such as Bloomberg and Reuters.

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

As noted above, each CF Reference Rate is calculated daily and aggregates the notional value of trading activity across major spot trading platforms. CF Reference Rate data, the CF Reference Rate value, and the description of the CF Reference Rate are based on information made publicly available by the Index Provider on its website at <https://www.cfbenchmarks.com>.

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

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

The proposed rule change is designed to perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the



Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a surveillance sharing agreement. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, CME Ether Futures and CME Bitcoin Futures, or any other bitcoin or ether derivative 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, CME Ether Futures and CME Bitcoin Futures, or any other ether or bitcoin derivative from such markets and other entities.<sup>39</sup> The Exchange may obtain information regarding trading in the Shares, CME Ether Futures and CME Bitcoin Futures, or any other ether or bitcoin derivative via ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

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

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

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

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<sup>39</sup> For a list of the current members and affiliate members of ISG, see [www.isgportal.com](http://www.isgportal.com).

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

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

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

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

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

**IV. Solicitation of Comments**

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

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-CboeBZX-2024-091 on the subject line.

Paper Comments:

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

All submissions should refer to file number SR-CboeBZX-2024-091. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeBZX-2024-091 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>40</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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