Martha Redding
Associate General Counsel
Assistant Secretary

October 4, 2019

<u>**VIA E-MAIL**</u>

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

Re: <u>Securities Exchange Act Rel. 34-86195 (SR-NYSEArca-2019-39)</u>

Dear Secretary:

NYSE Arca, Inc. filed the attached Amendment No. 1 to the above-referenced filing on October 4, 2019.

Sincerely,

Encl. (Amendment No. 1 to SR-NYSEArca-2019-39)

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 83

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

File No.* SR - 2019 - * 39

Amendment No. (req. for Amendments *) 1

Filing by NYSE Arca, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * ☐	Amendment * ☑	Withdrawal ☐	Section 19(b)(2) * ☑	Section 19(b)(3)(A) * ☐	Section 19(b)(3)(B) * ☐

Rule

Pilot ☐	Extension of Time Period for Commission Action * ☐	Date Expires *	19b-4(f)(1) ▣	19b-4(f)(4) ▣
			19b-4(f)(2) ▣	19b-4(f)(5) ▣
			19b-4(f)(3) ▣	19b-4(f)(6) ▣

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * ☐ Section 806(e)(2) * ☐	Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document ▣   Exhibit 3 Sent As Paper Document ▣

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposal to amend NYSE Arca Rule 8.201-E and list and trade the shares of the United States Bitcoin and Treasury Investment Trust under NYSE Arca Rule 8.201-E

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Samir   Last Name * Patel

Title * Senior Counsel, NYSE Group Inc.

E-mail * ▮▮▮▮▮▮▮▮

Telephone * ▮▮▮▮▮   Fax ▮▮▮▮▮

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date 10/04/2019

By David De Gregorio

Senior Counsel

(Name *)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

David De Gregorio,

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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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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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 Advance 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, security-based swap submission, or advance notice 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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Exhibit Sent As Paper Document
☐

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

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document
☐

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

Exhibit 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.

1. Text of the Proposed Rule Change

    (a)   Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] NYSE Arca, Inc. ("NYSE Arca" or the "Exchange"), proposes (1) to amend NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) to provide for issuance and redemption of such securities for the underlying commodity and/or cash, and (2) to list and trade the shares of the United States Bitcoin and Treasury Investment Trust under NYSE Arca Rule 8.201-E, as proposed to be amended.

        This Amendment No. 1 to SR-NYSEArca-2019-39 replaces SR-NYSEArca-2019-39 as originally filed and supersedes such filing in its entirety.

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

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

    (c)   Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the board of the Exchange. No further action is required under the Exchange's governing documents. Therefore, the Exchange's internal procedures with respect to the proposed rule change are complete.

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

Samir Patel	Michael Cavalier
Senior Counsel	Counsel
NYSE Group, Inc.	NYSE Group, Inc.

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

[2]   17 CFR 240.19b-4.

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

    (a) Purpose

    The Exchange proposes (1) amend NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) to provide for issuance and redemption of such securities for the underlying commodity and/or cash, and (2) to list and trade shares ("Shares") of the United States Bitcoin and Treasury Investment Trust (the "Trust") under NYSE Arca Rule 8.201-E, which governs the listing and trading of Commodity-Based Trust Shares.

    Proposed Amendment to NYSE Arca Rule 8.201-E

    Under NYSE Arca Rule 8.201-E, the Exchange may propose to list and/or trade pursuant to unlisted trading privileges ("UTP") "Commodity-Based Trust Shares."[3] Rule 8.201-E(c)(1) currently states that such securities are issued by a trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity, and may be redeemed in the same specified minimum number by a holder for the quantity of the underlying commodity. The Exchange proposes to amend Rule 8.201-E(c)(1) to provide that Commodity-Based Trust Shares may be issued and redeemed for the underlying commodity and/or cash.

    The Commission has previously approved listing and trading on the Exchange of Commodity-Based Trust Shares that permit issuance and redemption of shares for cash in whole or part.[4] The Exchange believes the

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[3]   Commodity-Based Trust Shares are securities issued by a trust that represents investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust. Rule 8.201-E (c)(1) defines the term "Commodity-Based Trust Shares" as follows: "The term "Commodity-Based Trust Shares" means a security (a) that is issued by a trust ("Trust") that holds a specified commodity deposited with the Trust; (b) that is issued by such Trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such Trust which will deliver to the redeeming holder the quantity of the underlying commodity."

[4]   See, e.g., Securities Exchange Act Release Nos. 61496 (February 4, 2010), 75 FR 6758 (February 10, 2010) (SR-NYSEArca-2009-113) (approving listing on the Exchange of Sprott Physical Gold Trust); 63043 (October 5, 2010), 75 FR 62615 (October 12, 2010) (SR-NYSEArca-2010-84) (approving listing on the Exchange of the Sprott Physical Silver Trust); 68430 (December 13, 2012) (SR-NYSEArca-2012-111) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Units of the Sprott Physical Platinum and Palladium Trust Pursuant to NYSE Arca Equities Rule 8.201; 82448 (January 5,

proposed change will provide a trust issuing Commodity-Based Trust Shares and holding a specified commodity with the flexibility to issue or redeem shares partially or wholly for cash. Such alternative would allow a trust to structure the procedures for issuance and redemption of shares in manner that as determined by the issuer, may provide operational efficiencies and accommodate investors who may wish to deliver or receive cash rather than the underlying commodity upon requesting the issuance or redemption of shares. The Exchange, therefore, believes the proposed change will facilitate the listing and trading of additional types of exchange-traded derivative securities products that will enhance competition among market participants, to the benefit of investors and the marketplace.[5]

The Exchange further proposes to amend Rule 8.201-E (c)(2) to state that the term "commodity" is defined in Section 1(a)(9) of the Commodity Exchange Act (rather than Section 1(a)(4) as currently stated in Rule 8.201-E(c)(2)) to

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2018) (SR-NYSEArca-2017-131) (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); 66930 (May 7, 2012), 77 FR 27817 (May 11, 2012) (SR-NYSEArca-2012-18) (order approving listing and trading shares of the APMEX Physical-1 oz. Gold Redeemable Trust); 50603 October 28, 2004 (SR-NYSE-2004-22) (Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 1 and No. 2 Thereto to the Proposed Rule Change by the New York Stock Exchange, Inc. Regarding Listing and Trading of streetTRACKS® Gold Shares).

[5] The Commodity Futures Trading Commission ("CFTC") has stated that bitcoin and other virtual currencies are encompassed in the definition of commodities under the Commodity Exchange Act ("CEA") (17 U.S.C. 1). See "In the Matter of Coinflip, Inc." (CFTC Docket 15-29 (September 17, 2015)) (order instituting proceedings pursuant to Sections 6(c) and 6(d) of the CEA, making findings and imposing remedial sanctions) ("Coinflip"), in which the CFTC stated the following:

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

In Coinflip, the CFTC further concluded that Bitcoin is a virtual currency that is a commodity, "distinct from 'real' currencies, which are the coin and paper money of the United States or another country that are designated as legal tender, circulate, and are customarily used and accepted as a medium of exchange in the country of issuance." See CFTC No. 15-29 (2015), 2015 CFTC LEXIS 20, at *1 n.2.

reflect an amendment to the Commodity Exchange Act included in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.[6]

United States Bitcoin and Treasury Investment Trust (the "Trust")

Description of the Trust

The Shares will be issued by the Trust, a Delaware statutory trust. The Trust will operate pursuant to a trust agreement (the "Trust Agreement") between Wilshire Phoenix Funds, LLC (the "Sponsor") and Delaware Trust Company, as the Trust's trustee (the "Trustee").[7] UMB Bank N.A. will act as custodian for the Trust's cash and U.S. treasury assets (the "Cash and Treasury Custodian") and UMB Fund Services, Inc. will act as the administrator of the Trust (the "Administrator") to perform various administrative, accounting and recordkeeping functions on behalf of the Trust. Broadridge Corporate Issuer Solutions, Inc., will act as the transfer agent for the Trust's Shares. Coinbase Custody Trust Company, LLC will act as the Bitcoin custodian for the Trust (the "Bitcoin Custodian") to maintain custody of the Trust's Bitcoin assets in cold storage.

According to the Registration Statement, the investment objective of the Trust is for the Shares to closely reflect the Bitcoin Treasury Index (the "BTI" or "Index"), less the Trust's liabilities and expenses. The Shares will provide investors with exposure to Bitcoin in a manner that is efficient and convenient while also reducing the volatility typically associated with Bitcoin without the use of derivatives or leverage methods.

The Trust will have no assets other than (a) Bitcoin and (b) short-term U.S. Treasury securities with a maturity of less than one year ("T-Bills"). The Trust will also hold U.S. dollars for short periods of time in connection with (i) the maturity of any T-Bills, (ii) the purchase and sale of Bitcoin and/or T-Bills, and (iii) the payment of redemptions, if any, and fees and expenses of the Trust. Calculated on a daily basis, the "Bitcoin Price" (as defined below) is used to determine the Index's monthly weighting between the "Bitcoin Component" and the "Treasury Component" (as described below). The amount of Bitcoin and T-Bills held by the Trust will be determined by the Index. On a monthly basis, following the calculation of the weighting of the components of the Index, the Trust will rebalance its holdings in Bitcoin and T-Bills in order to closely replicate the Index.

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[6]   Public Law 111-203, 124 Stat. 1900 (2010).

[7]   On May 21, 2019, the Trust filed Amendment 3 to Form S-1 under the Securities Act of 1933 (File No. 333-229187) (the "Registration Statement"). The description of the operation of the Trust herein is based, in part, on the Registration Statement.

Upon the maturity of any T-Bill, the Trust will receive U.S. dollars representing principal and interest. The portion of the cash that represents interest on the T-Bills will be used to pay, in full or in part, the sponsor's fee, redemptions and any additional fees and expenses of the Trust.

Assets of the Trust

According to the Registration Statement, Bitcoin will be held by the Bitcoin Custodian on behalf of the Trust, and T-Bills and U.S. dollars will be held by the Cash and Treasury Custodian on behalf of the Trust. The amount of Bitcoin and T-Bills held by the Trust will be determined by the Index. The Trust's assets, other than Bitcoin, will consist of T-Bills to be purchased by the Cash and Treasury Custodian. The Trust will also hold U.S. dollars for short periods of time in connection with (i) the maturity of any T-Bills, (ii) the purchase and sale of Bitcoin and/or T-Bills, and (iii) the payment of redemptions, if any, and fees and expenses of the Trust.

Custody of the Trust's Bitcoin

The Bitcoin Custodian is a New York-state chartered trust company operating under the direct supervision of the New York State Department of Financial Services and is subject to the anti-money laundering requirements of the Financial Crimes Enforcement Network ("FinCEN"). In addition, the Bitcoin Custodian is a qualified custodian under the Investment Advisers Act of 1940. The Bitcoin Custodian will operate pursuant to the terms and provisions of the custody agreement between the Trust and the Bitcoin Custodian (the "Bitcoin Custodian Agreement"). Under the Bitcoin Custodian Agreement, the Bitcoin Custodian will be responsible for the safety and security of the Trust's Bitcoin as well as overseeing the process of deposit, withdrawal, sale and purchase of the Trust's Bitcoin. The Sponsor expects that the Bitcoin Custodian's custodial operations will maintain custody and access of the private keys associated with the Trust's Bitcoin.[8] The Bitcoin Custodian will custody the Bitcoin in accordance with the terms of the Bitcoin Custodian Agreement. The Bitcoin Custodian will maintain a secured and segregated custody account in the name of the Trust (the "Bitcoin Custody Account"). The Trust's auditor will have daily read-only access to the Bitcoin Custody Account, and the Bitcoin Custodian will, within five (5) Business Days after the Trust's monthly rebalancing of its assets, provide the Sponsor and

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[8]   According to the Registration Statement, the term "cold storage" refers to a safeguarding method by which the private keys corresponding to Bitcoin 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.

the Administrator with an attestation, executed by an executive officer of the Bitcoin Custodian, verifying the amount of Bitcoin that the Bitcoin Custodian is holding in the Bitcoin Custody Account on behalf of the Trust. The Trust's Bitcoin will be stored in the Bitcoin Custody Account on behalf of the Trust. The Bitcoin Custodian will utilize certain "Security Procedures" when the Trust is required to deposit or withdraw Bitcoin to or from the Bitcoin Custody Account. This deposit and withdrawal process provides additional levels of security including, but not limited to, passwords, encryption of private keys, multi-factor authentication process, multi-signature wallets and telephone call-backs during the administration and operation of the Bitcoin Custody Account.

According to the Registration Statement, the Trust has obtained insurance for the Bitcoin held by the Trust, through the Bitcoin Custodian. Currently, the Bitcoin Custodian, either directly or through an affiliate, procures fidelity (also known as crime) insurance to protect the organization from risks such as theft of funds. Specifically, the fidelity insurance coverage program provides coverage for the theft of funds held in hot or cold storage and provides a limit in excess of $200,000,000. The Bitcoin Custodian's insurance coverage program is provided by a syndicate of industry-leading insurers that are highly rated by AM Best.[9] To the extent the value of the Trust's Bitcoin holdings exceeds the total insurance coverage provided by the Bitcoin Custodian's insurance coverage program, the Sponsor will use commercially reasonable efforts to procure additional insurance coverage with the goal of maintaining insurance coverage at a one-to-one ratio with the Trust's Bitcoin holdings such that for every dollar of Bitcoin held by the Trust there is an equal amount of insurance coverage.

Custody of U.S. Dollars and T-Bills

The Cash and Treasury Custodian will operate pursuant to the terms and provisions of the custody agreement between the Trust and the Cash and Treasury Custodian (the "Cash and Treasury Custodian Agreement").

According to the Registration Statement, under the Cash and Treasury Custodian Agreement, the Cash and Treasury Custodian will be responsible for maintaining an account that holds T-Bills and U.S. dollars (the "Cash Account"). Pursuant to a request from the Trust, the Cash and Treasury Custodian will establish and maintain the Cash Account in the name of the Trust that will hold U.S. dollars and T-Bills. The Cash and Treasury Custodian deposits and withdraws U.S. dollars to and from the Trust's Cash Account at the instruction of the Trust's Administrator or Sponsor, as applicable. The Cash and Treasury Custodian is responsible for administering the Cash Account.

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[9] AM Best is a global credit rating agency with a unique focus on the insurance industry. Credit ratings issued by AM Best are a recognized indicator of insurer financial strength and creditworthiness.

The Bitcoin Treasury Index

The Index is based on a pairing of notional components and is not an investment product. The Index is calculated and published by Solactive AG (the "Index Calculation Agent").[10] The level of the Index is published on each Business Day at approximately 5:00 p.m. Eastern time and will be available through various market data vendors, and is currently available on Bloomberg L.P. and Thompson Reuters Company under the ticker "UBTX". "Business Day" means any day other than a Saturday or Sunday on which the New York Stock Exchange is scheduled to be open for business. The Index has two components: (1) a notional component representing Bitcoin (the "Bitcoin Component") and (2) a notional component representing T-Bills (the "Treasury Component").

On a monthly basis, the Index rebalances its weighting of the Bitcoin Component and the Treasury Component utilizing a mathematically derived passive rules-based methodology that is based on the daily volatility of the Bitcoin Price (as defined below). The price of Bitcoin used to determine the weighting of the Bitcoin Component and the Treasury Component of the Index, as well as the value of Bitcoin held by the Trust, will be based on the Chicago Mercantile Exchange ("CME") CF Bitcoin Reference Rate ("CME CF BRR") (the "Bitcoin Reference Rate," and the price of Bitcoin based on the Bitcoin Reference Rate (the "Bitcoin Price")).

Following the calculation of the weighting of the components of the Index, the Trust will rebalance its holdings in Bitcoin and T-Bills in order to closely replicate the Index.

Bitcoin Component of the Index

According to the Registration Statement, Bitcoin is a digital asset that is decentralized and issued by, and transmitted using cryptographic security through, an open source digital protocol platform known as the "Bitcoin Network." The Bitcoin Network is an online end-user to end-user network that hosts the public transaction ledger, known as the "Bitcoin Blockchain," and the source coding comprising the basis for the cryptographic and algorithmic protocols governing the Bitcoin Network. No single entity owns or operates the Bitcoin Network, and its infrastructure is collectively maintained by a decentralized user base. Bitcoin may be converted into U.S. dollars, other fiat currencies, or other crypto assets, at rates determined in individual end-user-to-end-user transactions under a barter

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[10]   The Index is a passive rules-based index and the Index Calculation Agent provides calculation services only. The Index Calculation Agent is not affiliated with the Sponsor and has represented that it and its employees are subject to market abuse laws and the Index Calculation Agent has established and maintains processes and procedures to prevent the use and dissemination of material non-public information regarding the Index.

system, or on Bitcoin exchanges. They can also be used to pay for certain goods and services. The Bitcoin Network does not rely on either governmental authorities or financial institutions to create, transmit or determine the value of Bitcoin. Rather, Bitcoin is created and allocated by the Bitcoin Network protocol through a "mining" process subject to a strict issuance schedule. The value of Bitcoin is determined by the supply of and demand for Bitcoin on Bitcoin exchanges (and in private end-user-to-end-user transactions), as well as the number of merchants that accept them. Third-party service providers such as Bitcoin exchanges and third-party payment processing services may charge significant fees for processing transactions and for converting, or facilitating the conversion of, Bitcoin to or from fiat currency.

The Bitcoin Blockchain is the digital transaction ledger on which Bitcoin is "stored" and reflected. The Bitcoin Blockchain is a decentralized digital file stored on the computers of each user of the Bitcoin Network. It records the transaction history of all Bitcoin in existence and allows the Bitcoin Network to verify the association of each Bitcoin with the "digital wallet" that owns them through transparent transaction reporting. The Bitcoin Network and Bitcoin software programs can interpret the Bitcoin Blockchain to determine the exact Bitcoin balance of any digital wallet listed in the Bitcoin Blockchain as having taken part in a transaction on the Bitcoin Network.

Additionally, the Bitcoin Blockchain is made up of a digital file that is downloaded and stored, in whole or in part, on the software programs of all Bitcoin users. The file includes all blocks that have been solved by validators and it is updated to include new blocks as they are solved. As each newly solved block refers back to and "connects" with the solved block immediately prior to it, the addition of a new block adds to the Bitcoin Blockchain in a manner akin to a new link being added to a chain. The Bitcoin Blockchain represents a complete, transparent and unbroken history of all transactions on the Bitcoin Network.

According to the Registration Statement, generally, every Bitcoin transaction is broadcast to the Bitcoin Network and recorded in the Bitcoin Blockchain. However, there are certain "Off-Blockchain transactions." These transactions involve the transfer of control or ownership of a specific digital wallet holding Bitcoin, or of the reallocation of ownership of certain Bitcoin in a pooled-ownership digital wallet. Generally, information and data regarding Off-Blockchain transactions is not publicly available. This is unlike true Bitcoin transactions, which are publicly recorded and available on the Bitcoin Blockchain. Thus, according to the Registration Statement, Off-Blockchain transactions are not truly Bitcoin transactions, as they do not involve the transfer of transaction data on the Bitcoin Network and do not reflect a movement of Bitcoin between addresses recorded in the Bitcoin Blockchain. Off-Blockchain transactions may include transactions on centralized exchanges.

Bitcoin Exchange Market

According to the Registration Statement, online Bitcoin exchanges represent a substantial percentage of Bitcoin transactional activity and thus offer the most data with respect to prevailing Bitcoin valuations. There are currently several Bitcoin exchanges operating globally. These include established trading platforms such as itBit, Coinbase Pro, Bitstamp, Kraken and Gemini. These Bitcoin trading platforms provide various options for buying and selling Bitcoin. In parallel to the open Bitcoin exchanges, informal "over-the-counter" or "OTC markets" for Bitcoin trading also exist as a result of the peer-to-peer nature of the Bitcoin Network, which allows direct transactions between any seller and buyer.

Bitcoin futures contracts are traded on the CME and ICE Futures US. However, the Trust will not hold or trade in commodity futures contracts or other derivative contracts regulated by the Commodities Exchange Act,[11] as administered by the Commodity Futures Trading Commission.

The Bitcoin Price (i.e., the Bitcoin Reference Rate)

The CME CF BRR was created to facilitate financial products based on Bitcoin.[12] It serves as a once-a-day reference rate of the U.S. dollar price of Bitcoin (USD/BTC). The CME CF BRR is the rate on which bitcoin futures contracts are cash-settled in U.S. dollars at the CME[13] and serves as a reference rate in the settlement of financial derivatives based on the price of Bitcoin. The CME CF BRR may also serve as a reference rate in the net asset value ("NAV") calculation of exchange traded products ("ETPs").[14] According to the Registration Statement, the Administrator of the Trust will utilize the CME CF BRR when valuing the Bitcoin held by the Trust.

The CME CF BRR, which has been calculated and published since November 2016, aggregates the trade flow of several Bitcoin spot exchanges (the "Constituent Platforms"), during a calculation window into the U.S. dollar price of one Bitcoin as of 4:00 p.m. London time. Specifically, the CME CF BRR is calculated based on the "Relevant Transactions" (as defined below) of all

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[11]   7 U.S.C. 1.

[12]   Andrew Paine and William J. Knottenbelt, *Analysis of the CME CF Bitcoin Reference Rate and Real Time Index*, Oct. 2016, available at https://www.cmegroup.com/trading/files/bitcoin-white-paper.pdf, Section 2 ("Paine & Knottenbelt").

[13]   While the Trust uses the CME CF BRR to calculate the value of its bitcoin assets, in no event will the Trust be trading in Bitcoin futures contracts.

[14]   See https://www.cmegroup.com/trading/files/bitcoin-white-paper.pdf.

Constituent Platforms, as follows:[15]

> 1. All Relevant Transactions are added to a joint list, recording the trade price and size for each transaction.
>
> 2. The list is partitioned into a number of equally-sized time intervals.
>
> 3. 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.[16]
>
> 4. The CME CF BRR is then determined by the equally-weighted average of the volume-weighted medians of all partitions.

The CME CF BRR does not include any futures prices in its methodology. A "Relevant Transaction" is any "cryptocurrency versus legal tender spot trade that occurs during the "Time Weighted Average Price ("TWAP") Period" on a Constituent Platform in the BTC/USD pair that is reported and disseminated by the calculation agent for the CME CF BRR (the "BRR Calculation Agent"). The CME CF BRR is administered by the administrator for the CME CF BRR (the "BRR Administrator"). The mathematical representation of the CME CF BRR Methodology is attached as Exhibit 3A.

Calculation of Net Asset Value

The Trust's NAV will be determined daily by the Administrator at 4:00 p.m., E.T. on any Business Day or as soon thereafter as practicable. The NAV of the Trust will equal the value of the total assets of the Trust, including Bitcoin, T-Bills and U.S. dollars, less the liabilities and expenses of the Trust. The NAV per Share will be equal to the Trust's NAV divided by the number of outstanding Shares. The NAV for the Trust's Shares will be disseminated daily to all market participants at the same time.

In accordance with the Trust's valuation policy and procedures, the Administrator will determine the price of the Trust's Bitcoin by reference to the Bitcoin

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[15] For a description of the CME CF BRR methodology, see https://www.cmegroup.com/education/bitcoin/cme-cf-cryptocurrency-reference-rate-methodology.html#2-overview ("BRR Methodology").

[16] See Paine & Knottenbelt, Section 2.2.2 ("Volume-weighting of medians filters out high numbers of small trades that may otherwise dominate a non-volume-weighted median."). This assists in mitigating any series of small, frequent trades placed on any of the Constituent Platforms that could be used to manipulate the price of Bitcoin. See BRR Methodology, Section 7.

Reference Rate (as described below), which is published between 4:00 p.m. and 4:30 p.m., London time, on every day of the year, including weekends. Similarly, the Administrator will determine the fair value of T-Bills based on the price of each T-Bill held by the Trust plus any cash, which will be held in U.S. dollars, as of 4:00 p.m., E.T., on any Business Day. The Trust's NAV will be determined by the Administrator on a GAAP basis. Because the Trust rebalances monthly, in the periods between such monthly rebalancing, as a result of changes in the value of Bitcoin, among other factors, the value of Bitcoin relative to the value of the other assets of the Trust may diverge from the Index. Accordingly, the Trust's NAV and NAV per Share are tracked, in part, by reference to the Bitcoin Reference Rate.

Indicative Fund Value

In order to provide updated information relating to the Trust for use by investors and market professionals, an updated "Indicative Fund Value" ("IFV") will be calculated by using the prior day's closing net assets of the Trust as a base and updating throughout the Exchange's Core Trading Session of 9:30 a.m. E.T. to 4:00 p.m. E.T. to reflect changes in the value of the assets of the Trust.

For purposes of IFV, the value of the Bitcoin assets of the Trust will be based on the CME CF Bitcoin Real Time Index (the "CME CF BRTI").   The CME CF BRTI is calculated in real time based on the Relevant Order Books of all Constituent Platforms.[17] A "Relevant Order Book" is the universe of the currently unmatched limit orders to buy or sell in the BTC/USD pair that is reported and disseminated by the BRR Calculation Agent. Like the CME CF BRR, the CME CF BRTI is administered by the BRR Administrator.

The IFV will be disseminated on a per Share basis every 15 seconds during the Exchange's Core Trading Session and be widely disseminated by one or more major market data vendors during the NYSE Arca Core Trading Session.[18]

Creation of Shares

The Shares shall represent beneficial interests in, and ownership of, the Trust. The Sponsor shall have the power and authority, in its sole discretion, without action or approval by the Shareholders, to cause the Trust to issue Shares from time to time. The Trust shall issue Shares solely in exchange for cash in U.S. Dollars.

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[17]   For a description of the CME CF BRTI methodology, see https://www.cryptofacilities.com/cms/storage/resources/cme-cf-real-time-index-methodology.pdf.

[18]   Several major market data vendors display and/or make widely available IFVs taken from the Consolidated Tape Association ("CTA") or other data feeds.

The Trust may offer and sell Shares of the Trust from time to time through underwriters, placement agents or distributors (each, a "Share Placement") or such other means as the Sponsor may determine. The Sponsor also reserves the right to issue Shares of the Trust from time to time through direct placements. The Trust may not issue additional Shares unless the net proceeds per Share to be received by the Trust are not less than 100% of the most recently calculated NAV per Share immediately prior to, or upon, the determination of the pricing of such issuance.

Any net proceeds received in connection with the offer and sale of Shares shall be used to purchase Bitcoin and/or T-Bills, as applicable, in proportions consistent with the allocation of the Bitcoin Holdings and the Treasury and Cash Holdings of the Trust, as of the applicable date of sale. For this purpose, "Bitcoin Holdings" shall mean the sum of the value of the Bitcoin held by the Trust, and "Treasury and Cash Holdings" shall mean the value of the T-Bills and U.S. dollars held by the Trust. In the event that the Trust has no assets at the time of the sale of the initial Shares under the Registration Statement, then any net proceeds received in connection with the offer and sale of such initial Shares shall be used to purchase Bitcoin and/or T-Bills, as applicable, in proportions consistent with the weighting of the Bitcoin Component and the Treasury Component of the Index as of the date of such sale.

Redemption of Shares

According to the Registration Statement, upon at least five (5) Business Days' prior written notice, a shareholder may redeem all or a portion of its Shares on the last Business Day of each calendar month. All redemptions will be based on the NAV of Shares submitted for redemption, determined as of the last Business Day of the applicable calendar month.

In general, redemptions will be deemed to occur on a "first-in first-out" basis among Shares held by a particular shareholder. A redemption notice is irrevocable unless otherwise agreed by the Sponsor in writing.

In general, the final redemption of Shares will be paid in cash within five (5) Business Days after the applicable redemption date. Shareholders will be entitled to receive their applicable redemption amount in cash, which is the NAV of the Shares, determined as of the applicable redemption date. The Administrator shall calculate the applicable redemption amount and instruct the Cash and Treasury Custodian to pay from the Cash Account the applicable redemption amount to each redeeming Shareholder.

Potential Manipulation in the Bitcoin Market

In prior orders relating to the listing of certain ETPs on U.S. exchanges, the Commission Staff expressed its concern that the world-wide market for Bitcoin

may be subject to potential manipulation.[19]

The Sponsor acknowledges that, numerous markets, commodity or otherwise, have historically been subject to manipulation.[20] According to the Registration Statement, the Trust's structure, together with the use of the CME CF BRR will provide investors with exposure to the Bitcoin market without a number of the risks from which other Bitcoin related products previously submitted for registration have suffered, and particularly mitigate the effects of potential manipulation of the Bitcoin market.

In order for this proposed rule change to be approved, the Commission must determine that the proposal is consistent with the requirements of Section 6(b)(5) of the Act and that the Exchange's rules are designed to prevent fraudulent and manipulative acts and practices.[21] The Commission has previously stated that

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[19] See Securities Exchange Act Release No. 80206 (Mar. 10, 2017), 82 FR 14076 (Mar. 16, 2017) (SR-BatsBZX-2016-30) (Order Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, to BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, To List and Trade Shares Issued by the Winklevoss Bitcoin Trust) ("*Winklevoss I*"); and Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (SR-BatsBZX-2016-30) (Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To List and Trade Shares of the Winklevoss Bitcoin Trust) ("*Winklevoss II*"); see also Securities Exchange Act Release No. 83912 (August 22, 2018), 83 FR 43912 (August 28, 2018) (SR-NYSEArca-2018-02) (Order Disapproving a Proposed Rule Change Relating to Listing and Trading of the Direxion Daily Bitcoin Bear 1X Shares, Direxion Daily Bitcoin 1.25X Bull Shares, Direxion Daily Bitcoin 1.5X Bull Shares, Direxion Daily Bitcoin 2X Bull Shares, and Direxion Daily Bitcoin 2X Bear Shares Under NYSE Arca Rule 8.200-E).

[20] Spot and futures markets for other well-established commodities have previously been subject to manipulation concerns. See CFTC v. Amaranth Advisors, LLC, et al., 07-cv-6682 (S.D.N.Y. 2007); see also CFTC Press Release 5692-09, August 12, 2009 (available at: www.cftc.gov/PressRoom/PressReleases/pr5692-09) (Amaranth Advisors, LLC, and Amaranth Advisors (Calgary) ULC, entered into a consent order settling charges for attempting to manipulate the price of natural gas futures contracts traded on the New York Mercantile Exchange (NYMEX) on February 24, and April 26, 2006); see CFTC Press Release 7000-14, September 15, 2014 (available at: www.cftc.gov/PressRoom/PressReleases/pr7000-14) (Consent order settling charges for attempting to manipulate the price of natural gas futures contracts traded on the NYMEX on February 24, and April 26, 2006); see Craig Pirrong, *The Economics of Commodity Market Manipulation: A Survey,* 5 J. Commodity Mkts. 1, 13 (2017) (explaining that "[t]he subject of market manipulation has bedeviled commodity markets since the dawn of futures trading") ("Pirrong").

[21] 15 U.S.C.S. § 78f (LEXIS through Pub. L No. 116-8); 17 CFR 240.6a-1.

such a proposed rule change must offer evidence to demonstrate that either (i) the Bitcoin market is inherently resistant to fraud and manipulation, or (ii) the Exchange must have surveillance-sharing agreements with significant markets for trading the underlying commodity or derivatives on that commodity and those markets must be regulated.[22]

As discussed in more detail below, the Sponsor believes that the CME CF BRR is inherently resistant to manipulation. In addition, as discussed below, significant regulated markets for trading Bitcoin derivatives are members of the Intermarket Surveillance Group ("ISG") and the Exchange or the Financial Industry Regulatory Authority ("FINRA"), on behalf of the Exchange, may communicate with such markets as necessary in conducting market surveillance.

As the Commission has previously acknowledged, trading in a Bitcoin-based ETP on a national securities exchange may provide additional protection to investors,[23] as opposed to trading in an unregulated Bitcoin spot market. The Sponsor also believes that listing of the Trust's Shares on the Exchange will provide investors with such an opportunity to obtain exposure to Bitcoin within a regulated environment.

The Resistance of the CME CF BRR to Market Manipulation

As noted above, one of the ways that the requirements of Section 6(b)(5) of the Exchange Act can be met is by demonstrating that the applicable market is

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[22] See *Winklevoss II*, at 37580 and 37581 (noting that ". . . if BZX had demonstrated that Bitcoin and Bitcoin markets are inherently resistant to fraud and manipulation, comprehensive surveillance-sharing agreements with significant, regulated markets would not be required, as the function of such agreements is to detect and deter fraud and manipulation."). See Craig Pirrong, *The Economics of Commodity Market Manipulation: A Survey,* 5 J. Commodity Mkts. 1, 13 (2017), generally, for a discussion of the economics of commodity market manipulation. For a discussion of commodity market manipulation in the U.S. historical context, see Philip M. Johnson, Commodity Market Manipulation, 38 Wash. & Lee L. Rev. 725 (1981).

[23] See Securities Exchange Act Release No. 83913 (August 22, 2018), 83 FR 43923 (August 28, 2018) (SR-CboeBZX-2018-001) (Order Disapproving a Proposed Rule Change to List and Trade the Shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF). See also, Hester M. Pierce, U.S. Sec. Exch. Comm'n, Dissent of Commissioner Hester M. Pierce to Release No. 34-83723 (July 26, 2018), https://www.sec.gov/news/public-statement/peirce-dissent-34-83723 ("An ETP based on bitcoin would offer investors indirect exposure to bitcoin through a product that trades on a regulated securities market and in a manner that eliminates some of the frictions and worries of buying and holding bitcoin directly. If we were to approve the ETP at issue here, investors could choose whether to buy it or avoid it.").

inherently resistant to fraud and manipulation.[24]

The Sponsor notes that, in connection with the Commission's analysis of whether a market is inherently resistant to manipulation, the Commission has in certain circumstances focused not on the market as a whole but instead on the significant subset of the market that has a meaningful impact on the particular ETP. For instance, orders approving listing applications of ETPs that invest in gold bullion focused on the spot and futures market,[25] even though gold is traded on a number of different market segments. Focusing on the spot market is appropriate because the spot market is the market to which the particular ETP would look to determine its NAV. Using the example of gold, it would not be proper to use the price of gold in the jewelry market or gold coin market to value the NAV of a gold bullion ETP, even though by volume gold bought in such markets equals or surpasses gold purchased in all other segments of the market, including investment and "Central Banks," which are more likely to purchase gold at the spot market.[26]

The Trust utilizes the CME CF BRR to determine the NAV of the Bitcoin held by the Trust. While Bitcoin is listed and traded on a number of markets and platforms, the CME CF BRR exclusively utilizes its Constituent Platforms to determine the value of the CME CF BRR. Since (i) the Trust uses the CME CF BRR to determine its NAV, (ii) the CME CF BRR is what determines the ratio of Bitcoin to Treasuries held by the Trust, and (iii) the CME CF BRR is determined based on the price of Bitcoin on the Constituent Platform and no other exchanges, the Sponsor maintains that the proper "market" that one should evaluate to determine whether the "market" is inherently resistant to manipulation is the segment of the market formed by the Constituent Platforms.

The Sponsor found that price discovery is substantially similar among each of the Constituent Platforms.[27] As shown in the chart included as Exhibit 3B to this proposed rule change, none of the Constituent Platforms exhibit a statistically significant average difference from the CME CF BRR. During the 3:00 p.m. to 4:00 p.m. London time CME CF BRR observation window, volume of Bitcoin trading among the five Constituent Platforms was split as follows: 10.7% was on Gemini, 11.9% of was on itBit, 18.9% was on Kraken, 25.4% was on Bitstamp

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[24] See *Winklevoss II*, at 37580.

[25] See, e.g., Securities Exchange Act Release No. 51058 (January 19, 2005) 70 FR 3749 (January 26, 2005) (SR-Amex-2004-38) (iShares COMEX Gold Trust I).

[26] See World Gold Council, Goldhub, Gold supply and demand statistics, available at https://www.gold.org/goldhub/data/gold-supply-and-demand-statistics.

[27] All statistical analysis provided herein was performed solely by the Sponsor. The Sponsor did not engage any third-parties in connection with such statistical analysis in an effort to insure quality and integrity. Any data utilized for any statistical analysis provided in this proposal will be made available to the Commission upon request.

and 33.1% was on Coinbase.[28] The Constituent Platforms also show a substantially similar degree of price volatility, with the standard deviation of the difference of 4:00 p.m. London time exchange prices from the CME CF BRR being 1.12-1.13%.[29] When the 4:00 p.m. London time snapshot prices do deviate from the CME CF BRR, they are generally in the same direction (occurring 86.5% of the time).[30] The Sponsor maintains that the foregoing data also supports the conclusion that robust arbitrage trading and liquidity provision occurs among the Constituent Platforms.

An independent examination of the methodology (Paine & Knottenbelt) of the CME CF BRR, supports the Sponsor's assertion that the CME CF BRR is not susceptible to manipulation.[31] The use of a volume-weighted average median price determined over twelve five-minute windows in a specific 60-minute period over any Constituent Platform makes any attempt to manipulate the CME CF BRR unlikely. Further, the capital necessary to maintain a significant presence on any Constituent Platform makes manipulation of the CME CF BRR unlikely. The linkage between the Bitcoin markets and the presence of arbitrageurs (as evidenced in the data set forth above) in those markets means that the manipulation of the price of Bitcoin on any Constituent Platform would likely require overcoming the liquidity supply of such arbitrageurs who are potentially eliminating any cross-market pricing differences.

The Presence of Surveillance Sharing Agreements

In previous orders rejecting the listing of Bitcoin ETFs, the Commission noted its concerns that the Bitcoin market could be subject to manipulation.[32] In these

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[28] Analysis performed by the Sponsor using data provided by Kaiko//Challenger Deep.

[29] Analysis performed by the Sponsor using data provided by Kaiko//Challenger Deep.

[30] Analysis performed by the Sponsor using data provided by Kaiko//Challenger Deep.

[31] "The chosen specification makes the BRR highly resistant against manipulation. The use of medians likely reduces the effect of outlier prices on one or more exchanges. Volume-weighting of medians filters [out high numbers of small trades] that may otherwise dominate a non-volume-weighted median. The use of 12 non-weighted partitions assures that price information is sourced equally over the entire observation period. Influencing the BRR would therefore require price manipulation…over an extended period of time." Paine & Knottenbelt, Section 2.2.2.

[32] See *Winklevoss I* and *Winklevoss II*, supra note 19. The Sponsor represents that some of the concerns raised are that a significant portion of Bitcoin trading occurs on unregulated platforms and that there is a concentration of a significant number of Bitcoin in the hands of a small number of holders. However, these aspects are not unique to Bitcoin and are present in a number of commodity and other

orders, the Commission cited numerous precedents[33] in which 19b-4 listing applications were approved based on findings that the particular market was either inherently resistant to manipulation or that the listing exchange had entered into a surveillance sharing agreement with a market of significant size.[34] The Commission noted that, for commodity-trust ETPs "there has been in every case at least one significant, regulated market for trading futures in the underlying commodity—whether gold, silver, platinum, palladium or copper—and the ETP listing exchange has entered into surveillance-sharing agreements with, or held Intermarket Surveillance Group ("ISG") membership in common with, that market."[35]

The CME[36] is a member of the ISG, the purpose of which is "to provide a framework for the sharing of information and the coordination of regulatory efforts among exchanges trading securities and related products to address

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markets. For instance, some gold bullion trading takes place on unregulated OTC markets and a significant percentage of gold is held by a relative few (according to estimates of the World Gold Council, approximately 21.3% of total above-ground gold stocks are held by private investors and 17.2% are held by foreign governments; by comparison, 15.7% of Bitcoin are held by the 100 largest Bitcoin addresses, some of which are known to be cold storage addresses of large centralized cryptocurrency trading platforms). See https://www.gold.org/goldhub/data/above-ground-stocks for gold data cited in this note and https://bitinfocharts.com/top-100-richest-bitcoin-addresses.html for Bitcoin data.

[33] For an extensive listing of such precedents, see *Winklevoss I*, at 14083 n.96.

[34] The Exchange to date has not entered into surveillance sharing agreements with any cryptocurrency platform. However, the CME, which calculates the CME CF BRR, and which has offered contracts for Bitcoin futures products since 2017, is, as noted below, a member of the ISG. In addition, each Constituent Platform has entered into a data sharing agreement with CME. See https://www.cmegroup.com/education/constituent-exchanges-criteria.html.

[35] See *Winklevoss II*, at 37594.

[36] The CME is regulated by the CFTC, which has broad reaching anti-fraud and anti-manipulation authority including with respect to the Bitcoin market since Bitcoin has been designated as a commodity by the CFTC. See A CFTC Primer on Virtual Currencies (October 17, 2017), available at https://www.cftc.gov/sites/default/files/idc/groups/public/documents/file/labcftc_primercurrencies100417.pdf (the "CFTC Primer on Virtual Currencies") ("The CFTC's jurisdiction is implicated when a virtual currency is used in a derivatives contract or if there is fraud or manipulation involving a virtual currency traded in interstate commerce."). See also 7 USC Sec. 7(d)(3) ("The board of trade shall list on the contract market only contracts that are not readily susceptible to manipulation.").

potential intermarket manipulations and trading abuses."[37] Membership of a relevant futures exchange in ISG is sufficient to meet the surveillance-sharing requirement.[38]

The Commission has previously noted that the existence of a surveillance-sharing agreement by itself is not sufficient for purposes of meeting the requirements of Section 6(b)(5); the surveillance-sharing agreement must be with a market of significant size.[39] The Commission has provided an example of how it interprets the terms "significant market" and "market of significant size," though that definition is meant to be illustrative and not exclusive: "the terms 'significant market' and 'market of significant size'…include a market (or group of markets) as to which (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP so that a surveillance sharing agreement would assist the ETP listing market in detecting and deterring misconduct and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market."[40]

As discussed below, the Sponsor maintains that the CME, either alone as the main market for bitcoin futures or as a group of markets together with the Constituent Platforms, is a "market of significant size" as it satisfies both elements of the example provided by the Commission.

Reasonable Likelihood That a Person Manipulating the ETP Would Have to Trade on the Market

The first element of what constitutes a "significant market" or "market of significant size" is that there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on a market (or group of markets) to successfully manipulate the ETP so that a surveillance sharing agreement would assist the ETP listing market in detecting and deterring misconduct.

The Sponsor concludes that the CME meets this element in two ways. First, it is the main market for Bitcoin futures, and compares favorably with other markets that were deemed to be markets of significant size in precedents.[41] One

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[37]   https://www.isgportal.org/isgPortal/public/overview.htm.

[38]   See, e.g., *Winklevoss II*, at 37594.

[39]   See, e.g., *Winklevoss II*, at 37589–90.

[40]   See, e.g., *Winklevoss II,* at *37594*; and see Securities Exchange Act Release No. 83913 (August 22, 2018), 83 FR 43923 (Aug. 28, 2018) (SR-CboeBZX-2018-001) (GraniteShares Bitcoin ETF and GraniteShares Short Bitcoin ETF), n. 85 and accompanying text.

[41]   On September 12, 2019, the CME notified the CFTC of its increase of spot month position limits (in net futures equivalents) for the Bitcoin Futures contracts from 1,000 to 2,000 net contracts. "The increased spot-month position limit certified

particularly salient group of precedents are prior orders approving the listing of ETPs that invest in gold bullion, since the gold market exhibits a number of similarities with the market for Bitcoin. The Sponsor maintains that, like Bitcoin, the primary markets for gold bullion are unstructured OTC markets[42] and the futures market.

As with the OTC gold market, it is not possible to enter into an information sharing agreement with the OTC Bitcoin market.[43] When the Commission approved the listing of gold ETPs and other commodity-trust ETPs, rather than surveillance sharing agreements with the relevant OTC markets, there have been surveillance sharing agreements between the listing exchange and "regulated markets for trading futures on the underlying commodity."[44] It has been widely discussed that manipulating the market for a commodity often involves the futures market for that commodity.[45]

The CME is a member of ISG, is regulated by the CFTC, and is situated very

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herein -- 2,000 net contracts, ie, a notionally deliverable quantity of 10,000 bitcoins -- represents one tenth of one percent of this estimate of the notionally deliverable supply. The [CME] deems this to be adequately stringent to discourage attempted manipulation of the BRR benchmark in connection with final settlements of expiring contracts… Additionally, with the applicable reportable position level remaining at one (1) contract, the amended spot-month position limit certified herein will not in any way weaken the [CME's] ability to conduct effective market surveillance." Letter from Mr. Christopher Bowen, managing director and chief regulatory counsel, CME to Mr. Christopher J. Kirkpatrick, Office of the Secretariat, CFTC, Notification Regarding Increase of Spot Month Position Limits for the Bitcoin Futures Contract, CME Submission No. 19-334 (September 12, 2019).

[42]   "The OTC market has no formal structure and no open-outcry meeting place." Securities Exchange Act Release No 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR-NYSE-2004-22) (streetTRACKS Gold Shares) ("streetTRACKS").

[43]   "It is not possible, however, to enter into an information sharing agreement with the OTC gold market." streetTRACKS, at 64619. See also iShares COMEX Gold Trust, Securities Exchange Act Release No. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR-Amex-2004-38); and Securities Exchange Act Release No. 60971 (November 9, 2009), 74 FR 59283 (November 17, 2009) (SR-NYSEArca-2009-94) (ETFS Palladium Trust).

[44]   See *Winklevoss II*, at 37591.

[45]   See, e.g., Frank Easterbrook, *Monopoly, Manipulation, and the Regulation of Futures Markets*, 59 J. of Bus. S103, S103-S127 (1986); William D. Harrington, *The Manipulation of Commodity Futures Prices*, 55 St. Johns L. Rev. 240, 240-275 (2012); Robert C. Lower, *Disruptions of the Futures Market: A Comment on Dealing With Market Manipulation*, 8 Yale J. on Reg. 391, 391-402 (1991).

much like the COMEX division of NYMEX is with respect to gold ETPs.[46] The CME is subject to a surveillance-sharing agreement arrangement pursuant to which the Exchange can obtain data from the CME.

Additionally, the Sponsor found that the Bitcoin futures market is larger in size (as a percentage of spot trading) than the size of the gold futures markets are in relation to the gold OTC market (expressed as a percentage).[47] Using the most recent data cited by the World Gold Council, an affiliate of the SPDR Gold Shares (GLD), for 2016, the ratio of daily trading volume of Gold futures on COMEX ($28.9 billion) to daily trading volume on gold OTC markets ($167.9 billion, which is the midpoint of the estimated high and low points by the World Gold Council) is approximately 17.2%.[48] In comparison, using data from the CME and the five CME CF BRR Constituent Platforms over the 6-month period of October 1, 2018 to March 31, 2019, the ratio of daily trading volume of BTC futures on the CME ($90.4 million) to the daily trading volume of BTC/USD spot ($149.5 million) is approximately 60.5%.[49]

The Sponsor maintains that another way that the CME meets the first element arises from the fact that the value of the Bitcoin assets held by the Trust is based on the CME CF BRR. Anyone attempting to manipulate the Trust would need to place numerous large sized trades on any of the Constituent Platforms that are used to calculate the CME CF BRR,[50] and if such an attempt was made the BRR Administrator and the CME would be able to detect such manipulative trading patterns.[51] In addition, any platform that is accepted by the CME to become part

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[46] Other applicants have made similar arguments in their respective 19b-4 applications. See VanEck SolidX Bitcoin Trust, Securities Exchange Act Release No. 34-85119 (February 13, 2019), 84 FR 5140 (February 20, 2019) (SR-CboeBZX-2019-004), n. 11 ("VanEck").

[47] Analysis performed by the Sponsor using data available from (i) CME with respect to the CME futures, and (ii) Kaiko//Challenger Deep with respect to BTC/USD spot.

[48] Data available at https://www.gold.org/goldhub/data.

[49] Analysis performed by the Sponsor using data available from (i) CME with respect to the CME futures, and (ii) Kaiko//Challenger Deep with respect to BTC/USD spot. The Sponsor represents that the volume of the bitcoin futures market is also comparable with volumes on other markets deemed to be markets of significant size in a previous Commission approval order. See VanEck, at 5143 (comparing the bitcoin futures market favorably with the freight futures market).

[50] Because the CME CF BRR is calculated based solely on the price data from the Constituent Platforms, manipulating the CME CF BRR must necessarily entail manipulating the price data at one or more Constituent Platforms.

[51] The BRR Calculation Agent receives trading data from the Constituent Platforms through its Automatic Programming Interface ("API"). See

of the constituent trading platforms that are used to calculate the CME CF BRR, including the Constituent Platforms, (1) must enter into a data sharing agreement with the CME, (2) must cooperate with inquiries and investigations of regulators and the BRR Administrator and (3) must submit each of its clients to its Know-Your-Customer ("KYC") procedures;[52] therefore, the CME and the Exchange would be able, in the case of any suspicious trades, to discover all material trade information including the identities of the customers placing the trades.

<u>The CME Has Rigorous Criteria for Constituent Platforms Which It Monitors Regularly</u>

The Sponsor notes that the CME's criteria for each of the Constituent Platforms requires that the platform facilitates spot trading of the relevant cryptocurrency against the corresponding fiat currency (the "Relevant Pair") and makes trade data and order data available through an API with sufficient reliability, detail and timeliness. In addition, (1) the platform's Relevant Pair spot trading volume must meet the minimum thresholds as detailed in the CME CF Cryptocurrency Indices Methodology Guide; (2) the platform must publish policies to ensure fair and transparent market conditions at all times and have processes in place to identify and impede illegal, unfair or manipulative trading practices; (3) the platform must not impose undue barriers to entry or restrictions on market participants, and utilizing the platform must not expose market participants to undue credit risk, operational risk, legal risk or other risks; (4) the platform must comply with applicable law and regulation, including, but not limited to capital markets regulations, money transmission regulations, client money custody regulations, KYC regulations and anti-money-laundering (AML) regulations; and (5) the platform must cooperate with inquiries and investigations of regulators and the BRR Administrator upon request and must execute data sharing agreements with CME.[53]

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https://www.cmegroup.com/education/bitcoin/pricing-products-practice-standards.html (""The [BRR] Administrator will have primary responsibility for all of the following in respect of Bitcoin Pricing Products:…Establishing appropriate monitoring processes and procedures designed to identify any breaches of these Practice Standards and any attempted manipulation or manipulative behavior and reporting any such incidents to the Oversight Committee in a timely manner.")

[52] See https://www.cmegroup.com/education/constituent-exchanges-criteria.html.

[53] See https://www.cmegroup.com/education/constituent-exchanges-criteria.html. The CME monitors the Constituent Platforms to ensure compliance with its criteria and removed two platforms in April 2017 for failing to meet its criteria. See Minutes of the CME CF BRR and BRTI Oversight Committee Meeting for BRR and BRTI held via conference call on 7th June 2017, available at https://www.cmegroup.com/education/bitcoin/cme-cf-brr-and-brti-oversight-meeting-minutes-2017-06.html.

Each of the Constituent Platforms is Subject to Oversight by Federal and State
Financial Regulators

Each of the Constituent Platforms are (i) registered with, and licensed by, the
relevant financial authorities, (ii) subject to compliance with the rigorous
requirements of the U.S. Bank Secrecy Act ("BSA") and implementing AML
regulations, and (iii) subject to the examination and enforcement authority of both
federal and state regulators.[54]

Under applicable FinCEN guidance, virtual currency exchanges such as the
Constituent Platforms are considered "money transmitters" for the purposes of
federal AML law and must be registered with FinCEN.[55] As a result, the
Constituent Platforms must fully comply with BSA and AML requirements,
which include developing, implementing, and maintaining an effective AML
program.[56] In general, an effective AML program requires the Constituent
Platforms to, among other things:

- Perform a comprehensive money laundering risk assessment;

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[54] All of the Constituent Platforms are registered with FinCEN as a money services
business. Additionally, three of the five Constituent Platforms have obtained state
money transmitter licenses, as applicable, and the other two Constituent Platforms
are operated by trust companies chartered by the state of New York, which
subjects it to New York AML requirements and enables it to operate in other
states without a separate money transmitter license. See 3 NYCRR 504.

[55] FinCEN, Application of FinCEN's Regulations to Persons Administering,
Exchanging, or Using Virtual Currencies, FIN-2013-G0001, (Mar. 18, 2013),
https://www.fincen.gov/sites/default/files/shared/FIN-2013-G001.pdf. FinCEN
has prosecuted entities that omit to register with it as a Money Services Business
("MSB") or fail to comply with its regulations aggressively. See, e.g., Release by
Office of Public Affairs, Department of Justice, *Ripple Labs Inc. Resolves
Criminal Investigation*, available at https://www.justice.gov/opa/pr/ripple-labs-
inc-resolves-criminal-investigation; see also Consent to the Assessment of a Civil
Money Penalty, In the Matter of Eric Powers, U.S. Dep't of Treas., No. 2019-01
(Apr. 18, 2019) (enforcement action against a peer-to-peer cryptocurrency
exchanger by FinCEN).

[56] See 31 CFR Part 1022. The effectiveness of AML procedures was noted by
FinCEN Director Kenneth A. Blanco. See Prepared Remarks of FinCEN Director
Kenneth A. Blanco, delivered at the 2018 Chicago-Kent Block (Legal) Tech
Conference, Aug. 09, 2018, available at
https://www.fincen.gov/news/speeches/prepared-remarks-fincen-director-
kenneth-blanco-delivered-2018-chicago-kent-block (reporting that FinCEN now
receives over 1,500 SARs per month describing suspicious activity involving
virtual currency, with reports coming from both MSBs in the virtual currency
industry itself and other financial institutions).

- Designate a qualified AML compliance officer with reporting lines to the board of directors;

- Implement AML procedures, such as a customer identification program to identify customers and the source of virtual currency;

- Perform customer due diligence or enhanced due diligence;

- Monitor transactions and file suspicious activity reports;

- File currency transaction reports and reports of foreign bank and financial accounts;

- Keep records of transactions for inspection by authorities;

- Screen transactions to ensure that they do not violate sanctions imposed by the Treasury Department;

- Perform independent testing of the AML compliance program; and

- Conduct continuing employee education and training.

Further, most states require money transmitters to obtain a license before offering money transmission services in that state. In order to obtain such state licenses, a money transmitter must implement an AML policy and comply with applicable state AML laws.[57]

Since each Constituent Platform must have AML and KYC procedures in place, and anyone intending to trade on that platform must complete the KYC on-boarding process, each of the Constituent Platforms has information that identifies anyone who makes a trade on that platform, meaning that no trades are anonymous or "pseudonymous."[58] As a result of such AML and KYC procedures, together with the data sharing agreements that each of the Constituent Platforms enters into with CME, the CME and the Exchange will be able to ascertain all necessary information about any suspicious trades on each of the Constituent Platforms, including the identity of the customer(s) placing such

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[57] The Sponsor concludes that the presence of robust AML and KYC policies and procedures, among other things, should lead to robust trading data and may inhibit trades placed with the intent of facilitating manipulation of the Bitcoin Price.

[58] The Sponsor notes that all Bitcoin trades are visible publicly, but because trades are made from and to electronic wallets, only the electronic "addresses" of these wallets are available publicly. This form of trading has been called "pseudonymous", meaning that while the wallet addresses are discernable, the identity of the wallet owners is not. Because each Constituent Platform knows the identity of its customers and the wallet addresses they use to trade on the platform, the Constituent Platform can ascertain the identity of the customer making each trade on that platform.

trades.

Trading in the ETP Will Not Be the Predominant Influence on Prices in That Market

The second element to determine whether a market or group of markets is of "significant size" requires that it is unlikely that trading in the ETP would be the predominant influence on prices in that market. As discussed in more detail below, the Sponsor concludes that, given the nature of the Trust and the composition of its assets, trading in the Trust would not be the predominant influence on prices (i) that make up the CME CF BRR, (ii) in the Bitcoin futures market on the CME, or (iii) in the USD/BTC spot market on the Constituent Platforms.

Due to the structure of the Trust, the Trust will only purchase Bitcoin if (1) required to as a result of the monthly rebalancing of its assets or (2) if it sells Shares to new investors. Conversely, the Trust will only sell Bitcoin if required to as a result of the monthly rebalancing of its assets. This means that trading in the Shares will not cause the Trust to purchase or sell Bitcoin and will therefore not influence the price of Bitcoin.

Even though the Trust may purchase Bitcoin from one or more of the Constituent Platforms[59] in connection with the issuance of Shares or a monthly rebalancing of its assets, such purchases will take place only on limited occasions and will not be the "predominant influence" on the market. As noted previously, in no event will the Trust be trading in Bitcoin futures contracts and therefore the purchase or sale of Bitcoin by the Trust will not be the predominant influence on prices in the Bitcoin futures market.

In addition, the Trust's assets consist of (a) Bitcoin and (b) T-Bills in proportions that seek to closely replicate the Index. The Sponsor notes that, because Bitcoin is not the sole asset of the Trust, even if it were possible to influence the price of Bitcoin or the CME CF BRR through trading shares of the Trust, the influence of such trades would be muted by the presence of the T-Bills held by the Trust, and therefore such trading would not be the predominant influence on Bitcoin prices in such market.

Unique Aspects of the Trust Enhancing the Trust's Resistance to Market Manipulation and Volatility

According to the registration statement, the Trust was created as a way for market participants to gain reasonable exposure to Bitcoin through a vehicle that

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[59]   None of the transaction documents relating to the Trust, nor the Trust's or the Sponsor's internal policies, require the Trust to purchase Bitcoin from any of the Constituent Platforms.

mitigates the volatility that has historically been associated with Bitcoin.[60] According to the registration statement, the Trust is designed to utilize a passive rules-based methodology without the use of derivatives or leverage in order to avoid complexity and confusion (often associated with those methods) and to provide for increased transparency to shareholders.

According to the Registration Statement, the Trust will have no assets other than (a) Bitcoin and (b) T-Bills in proportions that seek to closely replicate the Index, which is calculated and published by Solactive AG.

T-Bills are among the most liquid and widely traded assets in the world and are deemed to be risk free. The Sponsor believes that its selection of T-Bills as a constituent of the Trust will dampen the volatility of Bitcoin as it relates to the Trust, and consequently the Shares.

In addition, based on the passive rules-based methodology noted above, as the CME CF BRR becomes more volatile, the Index, and thus the Trust, will have less exposure to Bitcoin and more exposure to T-Bills, and conversely, when the CME CF BRR becomes less volatile, the Index, and thus the Trust, will have more exposure to Bitcoin and less exposure to T-Bills. Therefore, the monthly rebalancing of the Trust's assets will also reduce the effects of Bitcoin volatility on the Trust and the Shares.

The Sponsor maintains that, in contrast to other Bitcoin-related ETP Rule 19b-4 filings previously submitted, because Bitcoin is not the only constituent of the Trust (with the other constituent, T-Bills, being historically stable and risk-free), any potential manipulation of the Trust and the Shares would be extremely difficult and therefore unlikely.

Availability of Information

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The IFV will be available through on-line information services.

In addition, the Trust's website will display the applicable end of day closing NAV. The daily holdings of the Trust will be available on the Trust's website before 9:30 a.m. E.T. The Trust's total portfolio composition will be disclosed each Business Day that NYSE Arca is open for trading, on the Trust's website. The Trust's website will also include a form of the prospectus for the Trust that may be downloaded. The website will include the Shares' ticker and CUSIP information, along with additional quantitative information updated on a daily

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[60]   See, e.g., Statement on Cryptocurrencies and Initial Coin Offerings by Chairman Jay Clayton, Dec. 11, 2017, n. 7; and CFTC Primer on Virtual Currencies pp. 7 and 19 (noting that trading in virtual currencies may involve significant speculation and volatility risk and that the virtual currency marketplace has been subject to substantial volatility and price swings).

basis for the Trust. The Trust's website will include (1) the prior business day's trading volume, the prior business day's reported NAV and closing price, and a calculation of the premium and discount of the closing price or mid-point of the bid/ask spread at the time of NAV calculation ("Bid/Ask Price") against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters. The Trust's website will be publicly available prior to the public offering of Shares and accessible at no charge.

The Index value and price information for T-Bills is available from major market data vendors. The CME CF BRR and CME CF BRTI values are available on the CME website and from major market data vendors. The spot price of Bitcoin also is available on a 24-hour basis from major market data vendors.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Trust.[61] Trading in Shares of the Trust will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

The Exchange may halt trading during the day in which an interruption to the dissemination of the IFV or the value of the Index occurs. If the interruption to the dissemination of the IFV 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. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. E.T. in accordance with NYSE Arca Rule 7.34-E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6-E, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

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[61]   See NYSE Arca Rule 7.12-E.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.201-E. The trading of the Shares will be subject to NYSE Arca Rule 8.201-E(g), which sets forth certain restrictions on Equity Trading Permit ("ETP") Holders acting as registered Market Makers in Commodity-Based Trust Shares to facilitate surveillance. The Exchange represents that, for initial and continued listing, the Trust will be in compliance with Rule 10A-3[62] under the Act, as provided by NYSE Arca Rule 5.3-E. A minimum of 100,000 Shares of the Trust will be outstanding at the commencement of trading on the Exchange.

Surveillance

The Exchange represents that trading in the Shares of the Trust will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[63] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

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

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement ("CSSA").[64] The Exchange is also able to obtain information regarding trading in the Shares in connection with such ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market.

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[62]   17 CFR 240.10A-3.

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

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

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

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

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

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) the risks involved in trading the Shares during the Early and Late Trading Sessions when an updated IFV will not be calculated or publicly disseminated; (2) the procedures for purchases and redemptions of Shares; (3) NYSE Arca Rule 9.2-E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (4) how information regarding the IFV is disseminated; (5) how information regarding portfolio holdings is disseminated; (6) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (7) trading information.

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

customer.

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

(b)   Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[65] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.201-E.

Investing in the Trust will provide investors with exposure to Bitcoin in a manner that is efficient and convenient, while also reducing the volatility typically associated with Bitcoin. The Trust uses the CME CF BRR to determine the value of its Bitcoin assets, its NAV and the ratio of Bitcoin to T-Bills held by the Trust. While Bitcoin is listed and traded on a number of markets and platforms, the CME CF BRR exclusively utilizes its Constituent Platforms to determine the value of the CME CF BRR. Therefore, use of the CME CF BRR would mitigate the effects of potential manipulation of the Bitcoin market. Additionally, the capital necessary to maintain a significant presence on any Constituent Platform would make manipulation of the CME CF BRR unlikely. Bitcoin trades in a well-arbitraged and distributed market. The linkage between the Bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of Bitcoin on any Constituent Platform would likely require overcoming the liquidity supply of such arbitrageurs who are potentially eliminating any cross-market pricing differences.

In addition, the Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange,

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[65]   15 U.S.C. 78f(b)(5).

or both, may obtain trading information regarding trading in the Shares from such markets and other entities.   In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. The Exchange is also able to obtain information regarding trading in the Shares through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market.

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The IFV will be available through on-line information services. In addition, the Trust's website will display the applicable end of day closing NAV. The daily holdings of the Trust will be available on the Trust's website before 9:30 a.m. E.T. The Trust's total portfolio composition will be disclosed each Business Day that NYSE Arca is open for trading, on the Trust's website. The Trust's website will also include a form of the prospectus for the Trust that may be downloaded. The website will include the Shares' ticker and CUSIP information, along with additional quantitative information updated on a daily basis for the Trust. The website will include the Shares' ticker and CUSIP information, along with additional quantitative information updated on a daily basis for the Trust. The Trust's website will include (1) the prior business day's trading volume, the prior business day's reported NAV and closing price, and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters.

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

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

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 a new type of Commodity-Based Trust Share

based in part on the price of Bitcoin that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

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 purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of a new type of Commodity-Based Trust Share based in part on the price of Bitcoin and that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

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

6.   Extension of Time Period for Commission Action

The Exchange does not consent at this time to an extension of any time period for Commission action.

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

Not applicable.

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

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

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

Not applicable.

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

Not applicable.

11.   Exhibits

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

Exhibit 3A - Mathematical Representation of the CME CF BRR Methodology

Exhibit 3B - Bitcoin Prices at 4:00 p.m. London time by Exchange

Exhibit 5- Text of Proposed Amendment to NYSE Arca Rule 8.201-E

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-   ; File No. SR-NYSEARCA-2019-39, Amendment No.1)

[Date]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To (1) Amend NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares), and (2) List and Trade Shares of the United States Bitcoin and Treasury Investment Trust under NYSE Arca Rule 8.201-E

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on October 4, 2019, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes (1) to amend NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) to provide for issuance and redemption of such securities for the underlying commodity and/or cash, and (2) to list and trade the shares of the United States Bitcoin and Treasury Investment Trust under NYSE Arca Rule 8.201-E, as proposed to be amended. This Amendment No. 1 to SR-NYSEArca-2019-39 replaces SR-NYSEArca-2019-39 as originally filed and supersedes such filing in its entirety. The

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

[2]   15 U.S.C. 78a.

[3]   17 CFR 240.19b-4.

proposed change is available on the Exchange's website at www.nyse.com, at the

principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included

statements concerning the purpose of, and basis for, the proposed rule change and

discussed any comments it received on the proposed rule change. The text of those

statements may be examined at the places specified in Item IV below. The Exchange has

prepared summaries, set forth in sections A, B, and C below, of the most significant parts

of such statements.

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

               1.   Purpose

The Exchange proposes (1) amend NYSE Arca Rule 8.201-E (Commodity-Based

Trust Shares) to provide for issuance and redemption of such securities for the underlying

commodity and/or cash, and (2) to list and trade shares ("Shares") of the United States

Bitcoin and Treasury Investment Trust (the "Trust") under NYSE Arca Rule 8.201-E,

which governs the listing and trading of Commodity-Based Trust Shares.

Proposed Amendment to NYSE Arca Rule 8.201-E

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

pursuant to unlisted trading privileges ("UTP") "Commodity-Based Trust Shares."[4]

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[4]   Commodity-Based Trust Shares are securities issued by a trust that represents
        investors' discrete identifiable and undivided beneficial ownership interest in the
        commodities deposited into the Trust. Rule 8.201-E (c)(1) defines the term
        "Commodity-Based Trust Shares" as follows: "The term "Commodity-Based
        Trust Shares" means a security (a) that is issued by a trust ("Trust") that holds a
        specified commodity deposited with the Trust; (b) that is issued by such Trust in a

Rule 8.201-E(c)(1) currently states that such securities are issued by a trust in a specified

aggregate minimum number in return for a deposit of a quantity of the underlying

commodity, and may be redeemed in the same specified minimum number by a holder

for the quantity of the underlying commodity. The Exchange proposes to amend Rule

8.201-E(c)(1) to provide that Commodity-Based Trust Shares may be issued and

redeemed for the underlying commodity and/or cash.

The Commission has previously approved listing and trading on the

Exchange of Commodity-Based Trust Shares that permit issuance and redemption of

shares for cash in whole or part.[5] The Exchange believes the proposed change will

provide a trust issuing Commodity-Based Trust Shares and holding a specified

commodity with the flexibility to issue or redeem shares partially or wholly for cash.

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specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such Trust which will deliver to the redeeming holder the quantity of the underlying commodity."

[5]   See, e.g., Securities Exchange Act Release Nos. 61496 (February 4, 2010), 75 FR 6758 (February 10, 2010) (SR-NYSEArca-2009-113) (approving listing on the Exchange of Sprott Physical Gold Trust); 63043 (October 5, 2010), 75 FR 62615 (October 12, 2010) (SR-NYSEArca-2010-84) (approving listing on the Exchange of the Sprott Physical Silver Trust); 68430 (December 13, 2012) (SR-NYSEArca-2012-111) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Units of the Sprott Physical Platinum and Palladium Trust Pursuant to NYSE Arca Equities Rule 8.201; 82448 (January 5, 2018) (SR-NYSEArca-2017-131) (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); 66930 (May 7, 2012), 77 FR 27817 (May 11, 2012) (SR-NYSEArca-2012-18) (order approving listing and trading shares of the APMEX Physical-1 oz. Gold Redeemable Trust); 50603 October 28, 2004 (SR-NYSE-2004-22) (Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 1 and No. 2 Thereto to the Proposed Rule Change by the New York Stock Exchange, Inc. Regarding Listing and Trading of streetTRACKS® Gold Shares).

Such alternative would allow a trust to structure the procedures for issuance and

redemption of shares in manner that as determined by the issuer, may provide

operational efficiencies and accommodate investors who may wish to deliver or

receive cash rather than the underlying commodity upon requesting the issuance or

redemption of shares. The Exchange, therefore, believes the proposed change will

facilitate the listing and trading of additional types of exchange-traded derivative

securities products that will enhance competition among market participants, to the

benefit of investors and the marketplace.[6]

     The Exchange further proposes to amend Rule 8.201-E (c)(2) to state that the

term "commodity" is defined in Section 1(a)(9) of the Commodity Exchange Act

(rather than Section 1(a)(4) as currently stated in Rule 8.201-E(c)(2)) to reflect an

amendment to the Commodity Exchange Act included in the Dodd-Frank Wall

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[6]   The Commodity Futures Trading Commission ("CFTC") has stated that bitcoin and other virtual currencies are encompassed in the definition of commodities under the Commodity Exchange Act ("CEA") (17 U.S.C. 1). See "In the Matter of Coinflip, Inc." (CFTC Docket 15-29 (September 17, 2015)) (order instituting proceedings pursuant to Sections 6(c) and 6(d) of the CEA, making findings and imposing remedial sanctions) ("Coinflip"), in which the CFTC stated the following:

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

In Coinflip, the CFTC further concluded that Bitcoin is a virtual currency that is a commodity, "distinct from 'real' currencies, which are the coin and paper money of the United States or another country that are designated as legal tender, circulate, and are customarily used and accepted as a medium of exchange in the country of issuance." See CFTC No. 15-29 (2015), 2015 CFTC LEXIS 20, at *1 n.2.

Street Reform and Consumer Protection Act of 2010.[7]

<u>United States Bitcoin and Treasury Investment Trust (the "Trust")</u>

<u>Description of the Trust</u>

The Shares will be issued by the Trust, a Delaware statutory trust. The Trust will operate pursuant to a trust agreement (the "Trust Agreement") between Wilshire Phoenix Funds, LLC (the "Sponsor") and Delaware Trust Company, as the Trust's trustee (the "Trustee").[8] UMB Bank N.A. will act as custodian for the Trust's cash and U.S. treasury assets (the "Cash and Treasury Custodian") and UMB Fund Services, Inc. will act as the administrator of the Trust (the "Administrator") to perform various administrative, accounting and recordkeeping functions on behalf of the Trust. Broadridge Corporate Issuer Solutions, Inc., will act as the transfer agent for the Trust's Shares. Coinbase Custody Trust Company, LLC will act as the Bitcoin custodian for the Trust (the "Bitcoin Custodian") to maintain custody of the Trust's Bitcoin assets in cold storage.

According to the Registration Statement, the investment objective of the Trust is for the Shares to closely reflect the Bitcoin Treasury Index (the "BTI" or "Index"), less the Trust's liabilities and expenses. The Shares will provide investors with exposure to Bitcoin in a manner that is efficient and convenient while also reducing the volatility typically associated with Bitcoin without the use of derivatives or leverage methods.

The Trust will have no assets other than (a) Bitcoin and (b) short-term U.S. Treasury securities with a maturity of less than one year ("T-Bills"). The Trust will also

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[7]   Public Law 111-203, 124 Stat. 1900 (2010).

[8]   On May 21, 2019, the Trust filed Amendment 3 to Form S-1 under the Securities Act of 1933 (File No. 333-229187) (the "Registration Statement"). The description of the operation of the Trust herein is based, in part, on the Registration Statement.

hold U.S. dollars for short periods of time in connection with (i) the maturity of any T-Bills, (ii) the purchase and sale of Bitcoin and/or T-Bills, and (iii) the payment of redemptions, if any, and fees and expenses of the Trust.

Calculated on a daily basis, the "Bitcoin Price" (as defined below) is used to determine the Index's monthly weighting between the "Bitcoin Component" and the "Treasury Component" (as described below). The amount of Bitcoin and T-Bills held by the Trust will be determined by the Index. On a monthly basis, following the calculation of the weighting of the components of the Index, the Trust will rebalance its holdings in Bitcoin and T-Bills in order to closely replicate the Index.

Upon the maturity of any T-Bill, the Trust will receive U.S. dollars representing principal and interest. The portion of the cash that represents interest on the T-Bills will be used to pay, in full or in part, the sponsor's fee, redemptions and any additional fees and expenses of the Trust.

Assets of the Trust

According to the Registration Statement, Bitcoin will be held by the Bitcoin Custodian on behalf of the Trust, and T-Bills and U.S. dollars will be held by the Cash and Treasury Custodian on behalf of the Trust. The amount of Bitcoin and T-Bills held by the Trust will be determined by the Index. The Trust's assets, other than Bitcoin, will consist of T-Bills to be purchased by the Cash and Treasury Custodian. The Trust will also hold U.S. dollars for short periods of time in connection with (i) the maturity of any T-Bills, (ii) the purchase and sale of Bitcoin and/or T-Bills, and (iii) the payment of redemptions, if any, and fees and expenses of the Trust.

Custody of the Trust's Bitcoin

The Bitcoin Custodian is a New York-state chartered trust company operating under the direct supervision of the New York State Department of Financial Services and is subject to the anti-money laundering requirements of the Financial Crimes Enforcement Network ("FinCEN"). In addition, the Bitcoin Custodian is a qualified custodian under the Investment Advisers Act of 1940. The Bitcoin Custodian will operate pursuant to the terms and provisions of the custody agreement between the Trust and the Bitcoin Custodian (the "Bitcoin Custodian Agreement"). Under the Bitcoin Custodian Agreement, the Bitcoin Custodian will be responsible for the safety and security of the Trust's Bitcoin as well as overseeing the process of deposit, withdrawal, sale and purchase of the Trust's Bitcoin. The Sponsor expects that the Bitcoin Custodian's custodial operations will maintain custody and access of the private keys associated with the Trust's Bitcoin.[9] The Bitcoin Custodian will custody the Bitcoin in accordance with the terms of the Bitcoin Custodian Agreement. The Bitcoin Custodian will maintain a secured and segregated custody account in the name of the Trust (the "Bitcoin Custody Account"). The Trust's auditor will have daily read-only access to the Bitcoin Custody Account, and the Bitcoin Custodian will, within five (5) Business Days after the Trust's monthly rebalancing of its assets, provide the Sponsor and the Administrator with an attestation, executed by an executive officer of the Bitcoin

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[9] According to the Registration Statement, the term "cold storage" refers to a safeguarding method by which the private keys corresponding to Bitcoin 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.

Custodian, verifying the amount of Bitcoin that the Bitcoin Custodian is holding in the Bitcoin Custody Account on behalf of the Trust. The Trust's Bitcoin will be stored in the Bitcoin Custody Account on behalf of the Trust. The Bitcoin Custodian will utilize certain "Security Procedures" when the Trust is required to deposit or withdraw Bitcoin to or from the Bitcoin Custody Account. This deposit and withdrawal process provides additional levels of security including, but not limited to, passwords, encryption of private keys, multi-factor authentication process, multi-signature wallets and telephone call-backs during the administration and operation of the Bitcoin Custody Account.

According to the Registration Statement, the Trust has obtained insurance for the Bitcoin held by the Trust, through the Bitcoin Custodian. Currently, the Bitcoin Custodian, either directly or through an affiliate, procures fidelity (also known as crime) insurance to protect the organization from risks such as theft of funds. Specifically, the fidelity insurance coverage program provides coverage for the theft of funds held in hot or cold storage and provides a limit in excess of $200,000,000. The Bitcoin Custodian's insurance coverage program is provided by a syndicate of industry-leading insurers that are highly rated by AM Best.[10] To the extent the value of the Trust's Bitcoin holdings exceeds the total insurance coverage provided by the Bitcoin Custodian's insurance coverage program, the Sponsor will use commercially reasonable efforts to procure additional insurance coverage with the goal of maintaining insurance coverage at a one-to-one ratio with the Trust's Bitcoin holdings such that for every dollar of Bitcoin held by the Trust there is an equal amount of insurance coverage.

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[10]   AM Best is a global credit rating agency with a unique focus on the insurance industry. Credit ratings issued by AM Best are a recognized indicator of insurer financial strength and creditworthiness.

Custody of U.S. Dollars and T-Bills

The Cash and Treasury Custodian will operate pursuant to the terms and provisions of the custody agreement between the Trust and the Cash and Treasury Custodian (the "Cash and Treasury Custodian Agreement").

According to the Registration Statement, under the Cash and Treasury Custodian Agreement, the Cash and Treasury Custodian will be responsible for maintaining an account that holds T-Bills and U.S. dollars (the "Cash Account"). Pursuant to a request from the Trust, the Cash and Treasury Custodian will establish and maintain the Cash Account in the name of the Trust that will hold U.S. dollars and T-Bills. The Cash and Treasury Custodian deposits and withdraws U.S. dollars to and from the Trust's Cash Account at the instruction of the Trust's Administrator or Sponsor, as applicable. The Cash and Treasury Custodian is responsible for administering the Cash Account.

The Bitcoin Treasury Index

The Index is based on a pairing of notional components and is not an investment product. The Index is calculated and published by Solactive AG (the "Index Calculation Agent").[11] The level of the Index is published on each Business Day at approximately 5:00 p.m. Eastern time and will be available through various market data vendors, and is currently available on Bloomberg L.P. and Thompson Reuters Company under the ticker "UBTX". "Business Day" means any day other than a Saturday or Sunday on which the New York Stock Exchange is scheduled to be open for business. The Index has two

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[11] The Index is a passive rules-based index and the Index Calculation Agent provides calculation services only. The Index Calculation Agent is not affiliated with the Sponsor and has represented that it and its employees are subject to market abuse laws and the Index Calculation Agent has established and maintains processes and procedures to prevent the use and dissemination of material non-public information regarding the Index.

components: (1) a notional component representing Bitcoin (the "Bitcoin Component")

and (2) a notional component representing T-Bills (the "Treasury Component").

On a monthly basis, the Index rebalances its weighting of the Bitcoin Component

and the Treasury Component utilizing a mathematically derived passive rules-based

methodology that is based on the daily volatility of the Bitcoin Price (as defined below).

The price of Bitcoin used to determine the weighting of the Bitcoin Component and the

Treasury Component of the Index, as well as the value of Bitcoin held by the Trust, will

be based on the Chicago Mercantile Exchange ("CME") CF Bitcoin Reference Rate

("CME CF BRR") (the "Bitcoin Reference Rate," and the price of Bitcoin based on the

Bitcoin Reference Rate (the "Bitcoin Price")).

Following the calculation of the weighting of the components of the Index, the

Trust will rebalance its holdings in Bitcoin and T-Bills in order to closely replicate the

Index.

Bitcoin Component of the Index

According to the Registration Statement, Bitcoin is a digital asset that is

decentralized and issued by, and transmitted using cryptographic security through, an

open source digital protocol platform known as the "Bitcoin Network." The Bitcoin

Network is an online end-user to end-user network that hosts the public transaction

ledger, known as the "Bitcoin Blockchain," and the source coding comprising the basis

for the cryptographic and algorithmic protocols governing the Bitcoin Network. No

single entity owns or operates the Bitcoin Network, and its infrastructure is collectively

maintained by a decentralized user base. Bitcoin may be converted into U.S. dollars,

other fiat currencies, or other crypto assets, at rates determined in individual end-user-to-

end-user transactions under a barter system, or on Bitcoin exchanges. They can also be used to pay for certain goods and services. The Bitcoin Network does not rely on either governmental authorities or financial institutions to create, transmit or determine the value of Bitcoin. Rather, Bitcoin is created and allocated by the Bitcoin Network protocol through a "mining" process subject to a strict issuance schedule. The value of Bitcoin is determined by the supply of and demand for Bitcoin on Bitcoin exchanges (and in private end-user-to-end-user transactions), as well as the number of merchants that accept them. Third-party service providers such as Bitcoin exchanges and third-party payment processing services may charge significant fees for processing transactions and for converting, or facilitating the conversion of, Bitcoin to or from fiat currency.

The Bitcoin Blockchain is the digital transaction ledger on which Bitcoin is "stored" and reflected. The Bitcoin Blockchain is a decentralized digital file stored on the computers of each user of the Bitcoin Network. It records the transaction history of all Bitcoin in existence and allows the Bitcoin Network to verify the association of each Bitcoin with the "digital wallet" that owns them through transparent transaction reporting. The Bitcoin Network and Bitcoin software programs can interpret the Bitcoin Blockchain to determine the exact Bitcoin balance of any digital wallet listed in the Bitcoin Blockchain as having taken part in a transaction on the Bitcoin Network.

Additionally, the Bitcoin Blockchain is made up of a digital file that is downloaded and stored, in whole or in part, on the software programs of all Bitcoin users. The file includes all blocks that have been solved by validators and it is updated to include new blocks as they are solved. As each newly solved block refers back to and "connects" with the solved block immediately prior to it, the addition of a new block adds

to the Bitcoin Blockchain in a manner akin to a new link being added to a chain. The Bitcoin Blockchain represents a complete, transparent and unbroken history of all transactions on the Bitcoin Network.

According to the Registration Statement, generally, every Bitcoin transaction is broadcast to the Bitcoin Network and recorded in the Bitcoin Blockchain. However, there are certain "Off-Blockchain transactions." These transactions involve the transfer of control or ownership of a specific digital wallet holding Bitcoin, or of the reallocation of ownership of certain Bitcoin in a pooled-ownership digital wallet. Generally, information and data regarding Off-Blockchain transactions is not publicly available. This is unlike true Bitcoin transactions, which are publicly recorded and available on the Bitcoin Blockchain. Thus, according to the Registration Statement, Off-Blockchain transactions are not truly Bitcoin transactions, as they do not involve the transfer of transaction data on the Bitcoin Network and do not reflect a movement of Bitcoin between addresses recorded in the Bitcoin Blockchain. Off-Blockchain transactions may include transactions on centralized exchanges.

Bitcoin Exchange Market

According to the Registration Statement, online Bitcoin exchanges represent a substantial percentage of Bitcoin transactional activity and thus offer the most data with respect to prevailing Bitcoin valuations. There are currently several Bitcoin exchanges operating globally. These include established trading platforms such as itBit, Coinbase Pro, Bitstamp, Kraken and Gemini. These Bitcoin trading platforms provide various options for buying and selling Bitcoin. In parallel to the open Bitcoin exchanges, informal "over-the-counter" or "OTC markets" for Bitcoin trading also exist as a result of

the peer-to-peer nature of the Bitcoin Network, which allows direct transactions between any seller and buyer.

Bitcoin futures contracts are traded on the CME and ICE Futures US. However, the Trust will not hold or trade in commodity futures contracts or other derivative contracts regulated by the Commodities Exchange Act,[12] as administered by the Commodity Futures Trading Commission.

The Bitcoin Price (i.e., the Bitcoin Reference Rate)

The CME CF BRR was created to facilitate financial products based on Bitcoin.[13] It serves as a once-a-day reference rate of the U.S. dollar price of Bitcoin (USD/BTC). The CME CF BRR is the rate on which bitcoin futures contracts are cash-settled in U.S. dollars at the CME[14] and serves as a reference rate in the settlement of financial derivatives based on the price of Bitcoin. The CME CF BRR may also serve as a reference rate in the net asset value ("NAV") calculation of exchange traded products ("ETPs").[15] According to the Registration Statement, the Administrator of the Trust will utilize the CME CF BRR when valuing the Bitcoin held by the Trust.

The CME CF BRR, which has been calculated and published since November 2016, aggregates the trade flow of several Bitcoin spot exchanges (the "Constituent Platforms"), during a calculation window into the U.S. dollar price of one Bitcoin as of

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[12]   7 U.S.C. 1.

[13]   Andrew Paine and William J. Knottenbelt, *Analysis of the CME CF Bitcoin Reference Rate and Real Time Index*, Oct. 2016, available at https://www.cmegroup.com/trading/files/bitcoin-white-paper.pdf, Section 2 ("Paine & Knottenbelt").

[14]   While the Trust uses the CME CF BRR to calculate the value of its bitcoin assets, in no event will the Trust be trading in Bitcoin futures contracts.

[15]   See https://www.cmegroup.com/trading/files/bitcoin-white-paper.pdf.

4:00 p.m. London time. Specifically, the CME CF BRR is calculated based on the

"Relevant Transactions" (as defined below) of all Constituent Platforms, as follows:[16]

1.   All Relevant Transactions are added to a joint list, recording the trade

        price and size for each transaction.

2.   The list is partitioned into a number of equally-sized time intervals.

3.   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.[17]

4.   The CME CF BRR is then determined by the equally-weighted average of

        the volume-weighted medians of all partitions.

The CME CF BRR does not include any futures prices in its methodology. A

"Relevant Transaction" is any "cryptocurrency versus legal tender spot trade that occurs

during the "Time Weighted Average Price ("TWAP") Period" on a Constituent Platform

in the BTC/USD pair that is reported and disseminated by the calculation agent for the

CME CF BRR (the "BRR Calculation Agent"). The CME CF BRR is administered by

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[16]   For a description of the CME CF BRR methodology, see
         https://www.cmegroup.com/education/bitcoin/cme-cf-cryptocurrency-reference-
         rate-methodology.html#2-overview ("BRR Methodology").

[17]   See Paine & Knottenbelt, Section 2.2.2 ("Volume-weighting of medians filters
         out high numbers of small trades that may otherwise dominate a non-volume-
         weighted median."). This assists in mitigating any series of small, frequent trades
         placed on any of the Constituent Platforms that could be used to manipulate the
         price of Bitcoin. See BRR Methodology, Section 7.

the administrator for the CME CF BRR (the "BRR Administrator"). The mathematical

representation of the CME CF BRR Methodology is attached as Exhibit 3A.

Calculation of Net Asset Value

The Trust's NAV will be determined daily by the Administrator at 4:00 p.m., E.T.

on any Business Day or as soon thereafter as practicable. The NAV of the Trust will

equal the value of the total assets of the Trust, including Bitcoin, T-Bills and U.S. dollars,

less the liabilities and expenses of the Trust. The NAV per Share will be equal to the

Trust's NAV divided by the number of outstanding Shares. The NAV for the Trust's

Shares will be disseminated daily to all market participants at the same time.

In accordance with the Trust's valuation policy and procedures, the Administrator

will determine the price of the Trust's Bitcoin by reference to the Bitcoin Reference Rate

(as described below), which is published between 4:00 p.m. and 4:30 p.m., London time,

on every day of the year, including weekends. Similarly, the Administrator will

determine the fair value of T-Bills based on the price of each T-Bill held by the Trust

plus any cash, which will be held in U.S. dollars, as of 4:00 p.m., E.T., on any Business

Day. The Trust's NAV will be determined by the Administrator on a GAAP basis.

Because the Trust rebalances monthly, in the periods between such monthly rebalancing,

as a result of changes in the value of Bitcoin, among other factors, the value of Bitcoin

relative to the value of the other assets of the Trust may diverge from the Index.

Accordingly, the Trust's NAV and NAV per Share are tracked, in part, by reference to

the Bitcoin Reference Rate.

Indicative Fund Value

In order to provide updated information relating to the Trust for use by investors

and market professionals, an updated "Indicative Fund Value" ("IFV") will be calculated

by using the prior day's closing net assets of the Trust as a base and updating throughout

the Exchange's Core Trading Session of 9:30 a.m. E.T. to 4:00 p.m. E.T. to reflect

changes in the value of the assets of the Trust.

For purposes of IFV, the value of the Bitcoin assets of the Trust will be based on

the CME CF Bitcoin Real Time Index (the "CME CF BRTI").   The CME CF BRTI is

calculated in real time based on the Relevant Order Books of all Constituent Platforms.[18]

A "Relevant Order Book" is the universe of the currently unmatched limit orders to buy

or sell in the BTC/USD pair that is reported and disseminated by the BRR Calculation

Agent. Like the CME CF BRR, the CME CF BRTI is administered by the BRR

Administrator.

The IFV will be disseminated on a per Share basis every 15 seconds during the

Exchange's Core Trading Session and be widely disseminated by one or more major

market data vendors during the NYSE Arca Core Trading Session.[19]

Creation of Shares

The Shares shall represent beneficial interests in, and ownership of, the Trust.

The Sponsor shall have the power and authority, in its sole discretion, without action or

approval by the Shareholders, to cause the Trust to issue Shares from time to time. The

Trust shall issue Shares solely in exchange for cash in U.S. Dollars.

The Trust may offer and sell Shares of the Trust from time to time through

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[18]   For a description of the CME CF BRTI methodology, see
        https://www.cryptofacilities.com/cms/storage/resources/cme-cf-real-time-index-methodology.pdf.

[19]   Several major market data vendors display and/or make widely available IFVs
        taken from the Consolidated Tape Association ("CTA") or other data feeds.

underwriters, placement agents or distributors (each, a "Share Placement") or such other means as the Sponsor may determine. The Sponsor also reserves the right to issue Shares of the Trust from time to time through direct placements. The Trust may not issue additional Shares unless the net proceeds per Share to be received by the Trust are not less than 100% of the most recently calculated NAV per Share immediately prior to, or upon, the determination of the pricing of such issuance.

Any net proceeds received in connection with the offer and sale of Shares shall be used to purchase Bitcoin and/or T-Bills, as applicable, in proportions consistent with the allocation of the Bitcoin Holdings and the Treasury and Cash Holdings of the Trust, as of the applicable date of sale. For this purpose, "Bitcoin Holdings" shall mean the sum of the value of the Bitcoin held by the Trust, and "Treasury and Cash Holdings" shall mean the value of the T-Bills and U.S. dollars held by the Trust. In the event that the Trust has no assets at the time of the sale of the initial Shares under the Registration Statement, then any net proceeds received in connection with the offer and sale of such initial Shares shall be used to purchase Bitcoin and/or T-Bills, as applicable, in proportions consistent with the weighting of the Bitcoin Component and the Treasury Component of the Index as of the date of such sale.

Redemption of Shares

According to the Registration Statement, upon at least five (5) Business Days' prior written notice, a shareholder may redeem all or a portion of its Shares on the last Business Day of each calendar month. All redemptions will be based on the NAV of Shares submitted for redemption, determined as of the last Business Day of the applicable calendar month.

In general, redemptions will be deemed to occur on a "first-in first-out" basis among Shares held by a particular shareholder. A redemption notice is irrevocable unless otherwise agreed by the Sponsor in writing.

In general, the final redemption of Shares will be paid in cash within five (5) Business Days after the applicable redemption date. Shareholders will be entitled to receive their applicable redemption amount in cash, which is the NAV of the Shares, determined as of the applicable redemption date. The Administrator shall calculate the applicable redemption amount and instruct the Cash and Treasury Custodian to pay from the Cash Account the applicable redemption amount to each redeeming Shareholder.

Potential Manipulation in the Bitcoin Market

In prior orders relating to the listing of certain ETPs on U.S. exchanges, the Commission Staff expressed its concern that the world-wide market for Bitcoin may be subject to potential manipulation.[20]

The Sponsor acknowledges that, numerous markets, commodity or otherwise,

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[20] See Securities Exchange Act Release No. 80206 (Mar. 10, 2017), 82 FR 14076 (Mar. 16, 2017) (SR-BatsBZX-2016-30) (Order Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, to BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, To List and Trade Shares Issued by the Winklevoss Bitcoin Trust) ("*Winklevoss I*"); and Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (SR-BatsBZX-2016-30) (Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To List and Trade Shares of the Winklevoss Bitcoin Trust) ("*Winklevoss II*"); see also Securities Exchange Act Release No. 83912 (August 22, 2018), 83 FR 43912 (August 28, 2018) (SR-NYSEArca-2018-02) (Order Disapproving a Proposed Rule Change Relating to Listing and Trading of the Direxion Daily Bitcoin Bear 1X Shares, Direxion Daily Bitcoin 1.25X Bull Shares, Direxion Daily Bitcoin 1.5X Bull Shares, Direxion Daily Bitcoin 2X Bull Shares, and Direxion Daily Bitcoin 2X Bear Shares Under NYSE Arca Rule 8.200-E).

have historically been subject to manipulation.[21] According to the Registration

Statement, the Trust's structure, together with the use of the CME CF BRR will provide

investors with exposure to the Bitcoin market without a number of the risks from which

other Bitcoin related products previously submitted for registration have suffered, and

particularly mitigate the effects of potential manipulation of the Bitcoin market.

In order for this proposed rule change to be approved, the Commission must

determine that the proposal is consistent with the requirements of Section 6(b)(5) of the

Act and that the Exchange's rules are designed to prevent fraudulent and manipulative

acts and practices.[22] The Commission has previously stated that such a proposed rule

change must offer evidence to demonstrate that either (i) the Bitcoin market is inherently

resistant to fraud and manipulation, or (ii) the Exchange must have surveillance-sharing

agreements with significant markets for trading the underlying commodity or derivatives

on that commodity and those markets must be regulated.[23]

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[21]   Spot and futures markets for other well-established commodities have previously
        been subject to manipulation concerns. See CFTC v. Amaranth Advisors, LLC, et
        al., 07-cv-6682 (S.D.N.Y. 2007); see also CFTC Press Release 5692-09, August
        12, 2009 (available at: www.cftc.gov/PressRoom/PressReleases/pr5692-09)
        (Amaranth Advisors, LLC, and Amaranth Advisors (Calgary) ULC, entered into a
        consent order settling charges for attempting to manipulate the price of natural gas
        futures contracts traded on the New York Mercantile Exchange (NYMEX) on
        February 24, and April 26, 2006); see CFTC Press Release 7000-14, September
        15, 2014 (available at: www.cftc.gov/PressRoom/PressReleases/pr7000-14)
        (Consent order settling charges for attempting to manipulate the price of natural
        gas futures contracts traded on the NYMEX on February 24, and April 26, 2006);
        see Craig Pirrong, *The Economics of Commodity Market Manipulation: A Survey,*
        5 J. Commodity Mkts. 1, 13 (2017) (explaining that "[t]he subject of market
        manipulation has bedeviled commodity markets since the dawn of futures
        trading") ("Pirrong").

[22]   15 U.S.C.S. § 78f (LEXIS through Pub. L No. 116-8); 17 CFR 240.6a-1.

[23]   See *Winklevoss II*, at 37580 and 37581 (noting that ". . . if BZX had demonstrated
        that Bitcoin and Bitcoin markets are inherently resistant to fraud and
        manipulation, comprehensive surveillance-sharing agreements with significant,

As discussed in more detail below, the Sponsor believes that the CME CF BRR is inherently resistant to manipulation. In addition, as discussed below, significant regulated markets for trading Bitcoin derivatives are members of the Intermarket Surveillance Group ("ISG") and the Exchange or the Financial Industry Regulatory Authority ("FINRA"), on behalf of the Exchange, may communicate with such markets as necessary in conducting market surveillance.

As the Commission has previously acknowledged, trading in a Bitcoin-based ETP on a national securities exchange may provide additional protection to investors,[24] as opposed to trading in an unregulated Bitcoin spot market. The Sponsor also believes that listing of the Trust's Shares on the Exchange will provide investors with such an opportunity to obtain exposure to Bitcoin within a regulated environment.

The Resistance of the CME CF BRR to Market Manipulation

As noted above, one of the ways that the requirements of Section 6(b)(5) of the Exchange Act can be met is by demonstrating that the applicable market is inherently

regulated markets would not be required, as the function of such agreements is to detect and deter fraud and manipulation."). See Craig Pirrong, *The Economics of Commodity Market Manipulation: A Survey,* 5 J. Commodity Mkts. 1, 13 (2017), generally, for a discussion of the economics of commodity market manipulation. For a discussion of commodity market manipulation in the U.S. historical context, see Philip M. Johnson, Commodity Market Manipulation, 38 Wash. & Lee L. Rev. 725 (1981).

[24]   See Securities Exchange Act Release No. 83913 (August 22, 2018), 83 FR 43923 (August 28, 2018) (SR-CboeBZX-2018-001) (Order Disapproving a Proposed Rule Change to List and Trade the Shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF). See also, Hester M. Pierce, U.S. Sec. Exch. Comm'n, Dissent of Commissioner Hester M. Pierce to Release No. 34-83723 (July 26, 2018), https://www.sec.gov/news/public-statement/peirce-dissent-34-83723 ("An ETP based on bitcoin would offer investors indirect exposure to bitcoin through a product that trades on a regulated securities market and in a manner that eliminates some of the frictions and worries of buying and holding bitcoin directly. If we were to approve the ETP at issue here, investors could choose whether to buy it or avoid it.").

resistant to fraud and manipulation.[25]

The Sponsor notes that, in connection with the Commission's analysis of whether a market is inherently resistant to manipulation, the Commission has in certain circumstances focused not on the market as a whole but instead on the significant subset of the market that has a meaningful impact on the particular ETP. For instance, orders approving listing applications of ETPs that invest in gold bullion focused on the spot and futures market,[26] even though gold is traded on a number of different market segments. Focusing on the spot market is appropriate because the spot market is the market to which the particular ETP would look to determine its NAV. Using the example of gold, it would not be proper to use the price of gold in the jewelry market or gold coin market to value the NAV of a gold bullion ETP, even though by volume gold bought in such markets equals or surpasses gold purchased in all other segments of the market, including investment and "Central Banks," which are more likely to purchase gold at the spot market.[27]

The Trust utilizes the CME CF BRR to determine the NAV of the Bitcoin held by the Trust. While Bitcoin is listed and traded on a number of markets and platforms, the CME CF BRR exclusively utilizes its Constituent Platforms to determine the value of the CME CF BRR. Since (i) the Trust uses the CME CF BRR to determine its NAV, (ii) the CME CF BRR is what determines the ratio of Bitcoin to Treasuries held by the Trust, and (iii) the CME CF BRR is determined based on the price of Bitcoin on the Constituent

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[25]   See *Winklevoss II*, at 37580.

[26]   See, e.g., Securities Exchange Act Release No. 51058 (January 19, 2005) 70 FR 3749 (January 26, 2005) (SR-Amex-2004-38) (iShares COMEX Gold Trust I).

[27]   See World Gold Council, Goldhub, Gold supply and demand statistics, available at https://www.gold.org/goldhub/data/gold-supply-and-demand-statistics.

Platform and no other exchanges, the Sponsor maintains that the proper "market" that one

should evaluate to determine whether the "market" is inherently resistant to manipulation

is the segment of the market formed by the Constituent Platforms.

The Sponsor found that price discovery is substantially similar among each of the

Constituent Platforms.[28] As shown in the chart included as Exhibit 3B to this proposed

rule change, none of the Constituent Platforms exhibit a statistically significant average

difference from the CME CF BRR. During the 3:00 p.m. to 4:00 p.m. London time CME

CF BRR observation window, volume of Bitcoin trading among the five Constituent

Platforms was split as follows: 10.7% was on Gemini, 11.9% of was on itBit, 18.9% was

on Kraken, 25.4% was on Bitstamp and 33.1% was on Coinbase.[29] The Constituent

Platforms also show a substantially similar degree of price volatility, with the standard

deviation of the difference of 4:00 p.m. London time exchange prices from the CME CF

BRR being 1.12-1.13%.[30] When the 4:00 p.m. London time snapshot prices do deviate

from the CME CF BRR, they are generally in the same direction (occurring 86.5% of the

time).[31] The Sponsor maintains that the foregoing data also supports the conclusion that

robust arbitrage trading and liquidity provision occurs among the Constituent Platforms.

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[28] All statistical analysis provided herein was performed solely by the Sponsor. The Sponsor did not engage any third-parties in connection with such statistical analysis in an effort to insure quality and integrity. Any data utilized for any statistical analysis provided in this proposal will be made available to the Commission upon request.

[29] Analysis performed by the Sponsor using data provided by Kaiko//Challenger Deep.

[30] Analysis performed by the Sponsor using data provided by Kaiko//Challenger Deep.

[31] Analysis performed by the Sponsor using data provided by Kaiko//Challenger Deep.

An independent examination of the methodology (Paine & Knottenbelt) of the
CME CF BRR, supports the Sponsor's assertion that the CME CF BRR is not susceptible
to manipulation.[32] The use of a volume-weighted average median price determined over
twelve five-minute windows in a specific 60-minute period over any Constituent
Platform makes any attempt to manipulate the CME CF BRR unlikely. Further, the
capital necessary to maintain a significant presence on any Constituent Platform makes
manipulation of the CME CF BRR unlikely. The linkage between the Bitcoin markets
and the presence of arbitrageurs (as evidenced in the data set forth above) in those
markets means that the manipulation of the price of Bitcoin on any Constituent Platform
would likely require overcoming the liquidity supply of such arbitrageurs who are
potentially eliminating any cross-market pricing differences.

The Presence of Surveillance Sharing Agreements

In previous orders rejecting the listing of Bitcoin ETFs, the Commission noted its
concerns that the Bitcoin market could be subject to manipulation.[33] In these orders, the

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[32] "The chosen specification makes the BRR highly resistant against manipulation.
The use of medians likely reduces the effect of outlier prices on one or more
exchanges. Volume-weighting of medians filters [out high numbers of small
trades] that may otherwise dominate a non-volume-weighted median. The use of
12 non-weighted partitions assures that price information is sourced equally over
the entire observation period. Influencing the BRR would therefore require price
manipulation…over an extended period of time." Paine & Knottenbelt, Section
2.2.2.

[33] See *Winklevoss I* and *Winklevoss II*, supra note 20. The Sponsor represents that
some of the concerns raised are that a significant portion of Bitcoin trading occurs
on unregulated platforms and that there is a concentration of a significant number
of Bitcoin in the hands of a small number of holders. However, these aspects are
not unique to Bitcoin and are present in a number of commodity and other
markets. For instance, some gold bullion trading takes place on unregulated OTC
markets and a significant percentage of gold is held by a relative few (according
to estimates of the World Gold Council, approximately 21.3% of total above-
ground gold stocks are held by private investors and 17.2% are held by foreign

Commission cited numerous precedents[34] in which 19b-4 listing applications were

approved based on findings that the particular market was either inherently resistant to

manipulation or that the listing exchange had entered into a surveillance sharing

agreement with a market of significant size.[35] The Commission noted that, for

commodity-trust ETPs "there has been in every case at least one significant, regulated

market for trading futures in the underlying commodity—whether gold, silver, platinum,

palladium or copper—and the ETP listing exchange has entered into surveillance-sharing

agreements with, or held Intermarket Surveillance Group ("ISG") membership in

common with, that market."[36]

The CME[37] is a member of the ISG, the purpose of which is "to provide a

governments; by comparison, 15.7% of Bitcoin are held by the 100 largest Bitcoin addresses, some of which are known to be cold storage addresses of large centralized cryptocurrency trading platforms). See https://www.gold.org/goldhub/data/above-ground-stocks for gold data cited in this note and https://bitinfocharts.com/top-100-richest-bitcoin-addresses.html for Bitcoin data.

[34] For an extensive listing of such precedents, see *Winklevoss I*, at 14083 n.96.

[35] The Exchange to date has not entered into surveillance sharing agreements with any cryptocurrency platform. However, the CME, which calculates the CME CF BRR, and which has offered contracts for Bitcoin futures products since 2017, is, as noted below, a member of the ISG. In addition, each Constituent Platform has entered into a data sharing agreement with CME. See https://www.cmegroup.com/education/constituent-exchanges-criteria.html.

[36] See *Winklevoss II*, at 37594.

[37] The CME is regulated by the CFTC, which has broad reaching anti-fraud and anti-manipulation authority including with respect to the Bitcoin market since Bitcoin has been designated as a commodity by the CFTC. See A CFTC Primer on Virtual Currencies (October 17, 2017), available at https://www.cftc.gov/sites/default/files/idc/groups/public/documents/file/labcftc_primercurrencies100417.pdf (the "CFTC Primer on Virtual Currencies") ("The CFTC's jurisdiction is implicated when a virtual currency is used in a derivatives contract or if there is fraud or manipulation involving a virtual currency traded in interstate commerce."). See also 7 USC Sec. 7(d)(3) ("The board of trade shall list on the contract market only contracts that are not readily susceptible to

framework for the sharing of information and the coordination of regulatory efforts among exchanges trading securities and related products to address potential intermarket manipulations and trading abuses."[38] Membership of a relevant futures exchange in ISG is sufficient to meet the surveillance-sharing requirement.[39]

The Commission has previously noted that the existence of a surveillance-sharing agreement by itself is not sufficient for purposes of meeting the requirements of Section 6(b)(5); the surveillance-sharing agreement must be with a market of significant size.[40] The Commission has provided an example of how it interprets the terms "significant market" and "market of significant size," though that definition is meant to be illustrative and not exclusive: "the terms 'significant market' and 'market of significant size'…include a market (or group of markets) as to which (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP so that a surveillance sharing agreement would assist the ETP listing market in detecting and deterring misconduct and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market."[41]

As discussed below, the Sponsor maintains that the CME, either alone as the main market for bitcoin futures or as a group of markets together with the Constituent

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manipulation.").

[38] https://www.isgportal.org/isgPortal/public/overview.htm.

[39] See, e.g., *Winklevoss II*, at 37594.

[40] See, e.g., *Winklevoss II*, at 37589–90.

[41] See, e.g., *Winklevoss II,* at *37594*; and see Securities Exchange Act Release No. 83913 (August 22, 2018), 83 FR 43923 (Aug. 28, 2018) (SR-CboeBZX-2018-001) (GraniteShares Bitcoin ETF and GraniteShares Short Bitcoin ETF), n. 85 and accompanying text.

Platforms, is a "market of significant size" as it satisfies both elements of the example

provided by the Commission.

> Reasonable Likelihood That a Person Manipulating the ETP Would Have to Trade on the Market

The first element of what constitutes a "significant market" or "market of

significant size" is that there is a reasonable likelihood that a person attempting to

manipulate the ETP would also have to trade on a market (or group of markets) to

successfully manipulate the ETP so that a surveillance sharing agreement would assist the

ETP listing market in detecting and deterring misconduct.

The Sponsor concludes that the CME meets this element in two ways. First, it is

the main market for Bitcoin futures, and compares favorably with other markets that were

deemed to be markets of significant size in precedents.[42] One particularly salient group of

precedents are prior orders approving the listing of ETPs that invest in gold bullion, since

the gold market exhibits a number of similarities with the market for Bitcoin. The

Sponsor maintains that, like Bitcoin, the primary markets for gold bullion are

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[42]   On September 12, 2019, the CME notified the CFTC of its increase of spot month position limits (in net futures equivalents) for the Bitcoin Futures contracts from 1,000 to 2,000 net contracts. "The increased spot-month position limit certified herein -- 2,000 net contracts, ie, a notionally deliverable quantity of 10,000 bitcoins -- represents one tenth of one percent of this estimate of the notionally deliverable supply. The [CME] deems this to be adequately stringent to discourage attempted manipulation of the BRR benchmark in connection with final settlements of expiring contracts… Additionally, with the applicable reportable position level remaining at one (1) contract, the amended spot-month position limit certified herein will not in any way weaken the [CME's] ability to conduct effective market surveillance." Letter from Mr. Christopher Bowen, managing director and chief regulatory counsel, CME to Mr. Christopher J. Kirkpatrick, Office of the Secretariat, CFTC, Notification Regarding Increase of Spot Month Position Limits for the Bitcoin Futures Contract, CME Submission No. 19-334 (September 12, 2019).

unstructured OTC markets[43] and the futures market.

As with the OTC gold market, it is not possible to enter into an information sharing agreement with the OTC Bitcoin market.[44] When the Commission approved the listing of gold ETPs and other commodity-trust ETPs, rather than surveillance sharing agreements with the relevant OTC markets, there have been surveillance sharing agreements between the listing exchange and "regulated markets for trading futures on the underlying commodity."[45] It has been widely discussed that manipulating the market for a commodity often involves the futures market for that commodity.[46]

The CME is a member of ISG, is regulated by the CFTC, and is situated very much like the COMEX division of NYMEX is with respect to gold ETPs.[47] The CME is subject to a surveillance-sharing agreement arrangement pursuant to which the Exchange can obtain data from the CME.

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[43]   "The OTC market has no formal structure and no open-outcry meeting place." Securities Exchange Act Release No 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR-NYSE-2004-22) (streetTRACKS Gold Shares) ("streetTRACKS").

[44]   "It is not possible, however, to enter into an information sharing agreement with the OTC gold market." streetTRACKS, at 64619. See also iShares COMEX Gold Trust, Securities Exchange Act Release No. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR-Amex-2004-38); and Securities Exchange Act Release No. 60971 (November 9, 2009), 74 FR 59283 (November 17, 2009) (SR-NYSEArca-2009-94) (ETFS Palladium Trust).

[45]   See *Winklevoss II*, at 37591.

[46]   See, e.g., Frank Easterbrook, *Monopoly, Manipulation, and the Regulation of Futures Markets*, 59 J. of Bus. S103, S103-S127 (1986); William D. Harrington, *The Manipulation of Commodity Futures Prices*, 55 St. Johns L. Rev. 240, 240-275 (2012); Robert C. Lower, *Disruptions of the Futures Market: A Comment on Dealing With Market Manipulation*, 8 Yale J. on Reg. 391, 391-402 (1991).

[47]   Other applicants have made similar arguments in their respective 19b-4 applications. See VanEck SolidX Bitcoin Trust, Securities Exchange Act Release No. 34-85119 (February 13, 2019), 84 FR 5140 (February 20, 2019) (SR-CboeBZX-2019-004), n. 11 ("VanEck").

Additionally, the Sponsor found that the Bitcoin futures market is larger in size (as a percentage of spot trading) than the size of the gold futures markets are in relation to the gold OTC market (expressed as a percentage).[48] Using the most recent data cited by the World Gold Council, an affiliate of the SPDR Gold Shares (GLD), for 2016, the ratio of daily trading volume of Gold futures on COMEX ($28.9 billion) to daily trading volume on gold OTC markets ($167.9 billion, which is the midpoint of the estimated high and low points by the World Gold Council) is approximately 17.2%.[49] In comparison, using data from the CME and the five CME CF BRR Constituent Platforms over the 6-month period of October 1, 2018 to March 31, 2019, the ratio of daily trading volume of BTC futures on the CME ($90.4 million) to the daily trading volume of BTC/USD spot ($149.5 million) is approximately 60.5%.[50]

The Sponsor maintains that another way that the CME meets the first element arises from the fact that the value of the Bitcoin assets held by the Trust is based on the CME CF BRR. Anyone attempting to manipulate the Trust would need to place numerous large sized trades on any of the Constituent Platforms that are used to calculate the CME CF BRR,[51] and if such an attempt was made the BRR Administrator and the

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[48]   Analysis performed by the Sponsor using data available from (i) CME with respect to the CME futures, and (ii) Kaiko//Challenger Deep with respect to BTC/USD spot.

[49]   Data available at https://www.gold.org/goldhub/data.

[50]   Analysis performed by the Sponsor using data available from (i) CME with respect to the CME futures, and (ii) Kaiko//Challenger Deep with respect to BTC/USD spot. The Sponsor represents that the volume of the bitcoin futures market is also comparable with volumes on other markets deemed to be markets of significant size in a previous Commission approval order. See VanEck, at 5143 (comparing the bitcoin futures market favorably with the freight futures market).

[51]   Because the CME CF BRR is calculated based solely on the price data from the

CME would be able to detect such manipulative trading patterns.[52] In addition, any

platform that is accepted by the CME to become part of the constituent trading platforms

that are used to calculate the CME CF BRR, including the Constituent Platforms, (1)

must enter into a data sharing agreement with the CME, (2) must cooperate with inquiries

and investigations of regulators and the BRR Administrator and (3) must submit each of

its clients to its Know-Your-Customer ("KYC") procedures;[53] therefore, the CME and the

Exchange would be able, in the case of any suspicious trades, to discover all material

trade information including the identities of the customers placing the trades.

> The CME Has Rigorous Criteria for Constituent Platforms Which It Monitors Regularly

The Sponsor notes that the CME's criteria for each of the Constituent Platforms

requires that the platform facilitates spot trading of the relevant cryptocurrency against

the corresponding fiat currency (the "Relevant Pair") and makes trade data and order data

available through an API with sufficient reliability, detail and timeliness. In addition, (1)

the platform's Relevant Pair spot trading volume must meet the minimum thresholds as

detailed in the CME CF Cryptocurrency Indices Methodology Guide; (2) the platform

must publish policies to ensure fair and transparent market conditions at all times and

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Constituent Platforms, manipulating the CME CF BRR must necessarily entail manipulating the price data at one or more Constituent Platforms.

[52]   The BRR Calculation Agent receives trading data from the Constituent Platforms through its Automatic Programming Interface ("API"). See https://www.cmegroup.com/education/bitcoin/pricing-products-practice-standards.html (""The [BRR] Administrator will have primary responsibility for all of the following in respect of Bitcoin Pricing Products:…Establishing appropriate monitoring processes and procedures designed to identify any breaches of these Practice Standards and any attempted manipulation or manipulative behavior and reporting any such incidents to the Oversight Committee in a timely manner.")

[53]   See https://www.cmegroup.com/education/constituent-exchanges-criteria.html.

have processes in place to identify and impede illegal, unfair or manipulative trading

practices; (3) the platform must not impose undue barriers to entry or restrictions on

market participants, and utilizing the platform must not expose market participants to

undue credit risk, operational risk, legal risk or other risks; (4) the platform must comply

with applicable law and regulation, including, but not limited to capital markets

regulations, money transmission regulations, client money custody regulations, KYC

regulations and anti-money-laundering (AML) regulations; and (5) the platform must

cooperate with inquiries and investigations of regulators and the BRR Administrator

upon request and must execute data sharing agreements with CME.[54]

Each of the Constituent Platforms is Subject to Oversight by Federal and State
Financial Regulators

Each of the Constituent Platforms are (i) registered with, and licensed by, the

relevant financial authorities, (ii) subject to compliance with the rigorous requirements of

the U.S. Bank Secrecy Act ("BSA") and implementing AML regulations, and (iii) subject

to the examination and enforcement authority of both federal and state regulators.[55]

Under applicable FinCEN guidance, virtual currency exchanges such as the

Constituent Platforms are considered "money transmitters" for the purposes of federal

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[54]   See https://www.cmegroup.com/education/constituent-exchanges-criteria.html.
The CME monitors the Constituent Platforms to ensure compliance with its
criteria and removed two platforms in April 2017 for failing to meet its criteria.
See Minutes of the CME CF BRR and BRTI Oversight Committee Meeting for
BRR and BRTI held via conference call on 7th June 2017, available at
https://www.cmegroup.com/education/bitcoin/cme-cf-brr-and-brti-oversight-
meeting-minutes-2017-06.html.

[55]   All of the Constituent Platforms are registered with FinCEN as a money services
business. Additionally, three of the five Constituent Platforms have obtained state
money transmitter licenses, as applicable, and the other two Constituent Platforms
are operated by trust companies chartered by the state of New York, which
subjects it to New York AML requirements and enables it to operate in other
states without a separate money transmitter license. See 3 NYCRR 504.

AML law and must be registered with FinCEN.[56] As a result, the Constituent Platforms

must fully comply with BSA and AML requirements, which include developing,

implementing, and maintaining an effective AML program.[57] In general, an effective

AML program requires the Constituent Platforms to, among other things:

- Perform a comprehensive money laundering risk assessment;

- Designate a qualified AML compliance officer with reporting lines to the board of directors;

- Implement AML procedures, such as a customer identification program to identify customers and the source of virtual currency;

- Perform customer due diligence or enhanced due diligence;

- Monitor transactions and file suspicious activity reports;

- File currency transaction reports and reports of foreign bank and

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[56] FinCEN, Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies, FIN-2013-G0001, (Mar. 18, 2013), https://www.fincen.gov/sites/default/files/shared/FIN-2013-G001.pdf. FinCEN has prosecuted entities that omit to register with it as a Money Services Business ("MSB") or fail to comply with its regulations aggressively. See, e.g., Release by Office of Public Affairs, Department of Justice, *Ripple Labs Inc. Resolves Criminal Investigation*, available at https://www.justice.gov/opa/pr/ripple-labs-inc-resolves-criminal-investigation; see also Consent to the Assessment of a Civil Money Penalty, In the Matter of Eric Powers, U.S. Dep't of Treas., No. 2019-01 (Apr. 18, 2019) (enforcement action against a peer-to-peer cryptocurrency exchanger by FinCEN).

[57] See 31 CFR Part 1022. The effectiveness of AML procedures was noted by FinCEN Director Kenneth A. Blanco. See Prepared Remarks of FinCEN Director Kenneth A. Blanco, delivered at the 2018 Chicago-Kent Block (Legal) Tech Conference, Aug. 09, 2018, available at https://www.fincen.gov/news/speeches/prepared-remarks-fincen-director-kenneth-blanco-delivered-2018-chicago-kent-block (reporting that FinCEN now receives over 1,500 SARs per month describing suspicious activity involving virtual currency, with reports coming from both MSBs in the virtual currency industry itself and other financial institutions).

financial accounts;

- Keep records of transactions for inspection by authorities;

- Screen transactions to ensure that they do not violate sanctions imposed by the Treasury Department;

- Perform independent testing of the AML compliance program; and

- Conduct continuing employee education and training.

Further, most states require money transmitters to obtain a license before offering money transmission services in that state. In order to obtain such state licenses, a money transmitter must implement an AML policy and comply with applicable state AML laws.[58]

Since each Constituent Platform must have AML and KYC procedures in place, and anyone intending to trade on that platform must complete the KYC on-boarding process, each of the Constituent Platforms has information that identifies anyone who makes a trade on that platform, meaning that no trades are anonymous or "pseudonymous."[59] As a result of such AML and KYC procedures, together with the data sharing agreements that each of the Constituent Platforms enters into with CME, the CME and the Exchange will be able to ascertain all necessary information about any

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[58]   The Sponsor concludes that the presence of robust AML and KYC policies and procedures, among other things, should lead to robust trading data and may inhibit trades placed with the intent of facilitating manipulation of the Bitcoin Price.

[59]   The Sponsor notes that all Bitcoin trades are visible publicly, but because trades are made from and to electronic wallets, only the electronic "addresses" of these wallets are available publicly. This form of trading has been called "pseudonymous", meaning that while the wallet addresses are discernable, the identity of the wallet owners is not. Because each Constituent Platform knows the identity of its customers and the wallet addresses they use to trade on the platform, the Constituent Platform can ascertain the identity of the customer making each trade on that platform.

suspicious trades on each of the Constituent Platforms, including the identity of the customer(s) placing such trades.

Trading in the ETP Will Not Be the Predominant Influence on Prices in That Market

The second element to determine whether a market or group of markets is of "significant size" requires that it is unlikely that trading in the ETP would be the predominant influence on prices in that market. As discussed in more detail below, the Sponsor concludes that, given the nature of the Trust and the composition of its assets, trading in the Trust would not be the predominant influence on prices (i) that make up the CME CF BRR, (ii) in the Bitcoin futures market on the CME, or (iii) in the USD/BTC spot market on the Constituent Platforms.

Due to the structure of the Trust, the Trust will only purchase Bitcoin if (1) required to as a result of the monthly rebalancing of its assets or (2) if it sells Shares to new investors. Conversely, the Trust will only sell Bitcoin if required to as a result of the monthly rebalancing of its assets. This means that trading in the Shares will not cause the Trust to purchase or sell Bitcoin and will therefore not influence the price of Bitcoin.

Even though the Trust may purchase Bitcoin from one or more of the Constituent Platforms[60] in connection with the issuance of Shares or a monthly rebalancing of its assets, such purchases will take place only on limited occasions and will not be the "predominant influence" on the market. As noted previously, in no event will the Trust be trading in Bitcoin futures contracts and therefore the purchase or sale of Bitcoin by the Trust will not be the predominant influence on prices in the Bitcoin futures market.

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[60]   None of the transaction documents relating to the Trust, nor the Trust's or the Sponsor's internal policies, require the Trust to purchase Bitcoin from any of the Constituent Platforms.

In addition, the Trust's assets consist of (a) Bitcoin and (b) T-Bills in proportions that seek to closely replicate the Index. The Sponsor notes that, because Bitcoin is not the sole asset of the Trust, even if it were possible to influence the price of Bitcoin or the CME CF BRR through trading shares of the Trust, the influence of such trades would be muted by the presence of the T-Bills held by the Trust, and therefore such trading would not be the predominant influence on Bitcoin prices in such market.

<ins>Unique Aspects of the Trust Enhancing the Trust's Resistance to Market Manipulation and Volatility</ins>

According to the registration statement, the Trust was created as a way for market participants to gain reasonable exposure to Bitcoin through a vehicle that mitigates the volatility that has historically been associated with Bitcoin.[61] According to the registration statement, the Trust is designed to utilize a passive rules-based methodology without the use of derivatives or leverage in order to avoid complexity and confusion (often associated with those methods) and to provide for increased transparency to shareholders.

According to the Registration Statement, the Trust will have no assets other than (a) Bitcoin and (b) T-Bills in proportions that seek to closely replicate the Index, which is calculated and published by Solactive AG.

T-Bills are among the most liquid and widely traded assets in the world and are deemed to be risk free. The Sponsor believes that its selection of T-Bills as a constituent of the Trust will dampen the volatility of Bitcoin as it relates to the Trust, and

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[61]   <ins>See</ins>, <ins>e.g.</ins>, Statement on Cryptocurrencies and Initial Coin Offerings by Chairman Jay Clayton, Dec. 11, 2017, n. 7; and CFTC Primer on Virtual Currencies pp. 7 and 19 (noting that trading in virtual currencies may involve significant speculation and volatility risk and that the virtual currency marketplace has been subject to substantial volatility and price swings).

consequently the Shares.

In addition, based on the passive rules-based methodology noted above, as the CME CF BRR becomes more volatile, the Index, and thus the Trust, will have less exposure to Bitcoin and more exposure to T-Bills, and conversely, when the CME CF BRR becomes less volatile, the Index, and thus the Trust, will have more exposure to Bitcoin and less exposure to T-Bills. Therefore, the monthly rebalancing of the Trust's assets will also reduce the effects of Bitcoin volatility on the Trust and the Shares.

The Sponsor maintains that, in contrast to other Bitcoin-related ETP Rule 19b-4 filings previously submitted, because Bitcoin is not the only constituent of the Trust (with the other constituent, T-Bills, being historically stable and risk-free), any potential manipulation of the Trust and the Shares would be extremely difficult and therefore unlikely.

Availability of Information

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The IFV will be available through on-line information services.

In addition, the Trust's website will display the applicable end of day closing NAV. The daily holdings of the Trust will be available on the Trust's website before 9:30 a.m. E.T. The Trust's total portfolio composition will be disclosed each Business Day that NYSE Arca is open for trading, on the Trust's website. The Trust's website will also include a form of the prospectus for the Trust that may be downloaded. The website will include the Shares' ticker and CUSIP information, along with additional quantitative information updated on a daily basis for the Trust. The Trust's website will include (1)

the prior business day's trading volume, the prior business day's reported NAV and

closing price, and a calculation of the premium and discount of the closing price or mid-

point of the bid/ask spread at the time of NAV calculation ("Bid/Ask Price") against the

NAV; and (2) data in chart format displaying the frequency distribution of discounts and

premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate

ranges, for at least each of the four previous calendar quarters. The Trust's website will

be publicly available prior to the public offering of Shares and accessible at no charge.

The Index value and price information for T-Bills is available from major market

data vendors. The CME CF BRR and CME CF BRTI values are available on the CME

website and from major market data vendors. The spot price of Bitcoin also is available

on a 24-hour basis from major market data vendors.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in

exercising its discretion to halt or suspend trading in the Shares of the Trust.[62] Trading in

Shares of the Trust will be halted if the circuit breaker parameters in NYSE Arca Rule

7.12-E have been reached. Trading also may be halted because of market conditions or

for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

The Exchange may halt trading during the day in which an interruption to the

dissemination of the IFV or the value of the Index occurs. If the interruption to the

dissemination of the IFV 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

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[62]   See NYSE Arca Rule 7.12-E.

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

Trading Rules

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

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.201-E. The trading of the Shares will be subject to NYSE Arca Rule 8.201-E(g), which sets forth certain restrictions on Equity Trading Permit ("ETP") Holders acting as registered Market Makers in Commodity-Based Trust Shares to facilitate surveillance. The Exchange represents that, for initial and continued listing, the Trust will be in compliance with Rule 10A-3[63] under the Act, as provided by NYSE Arca Rule 5.3-E. A minimum of 100,000 Shares of the Trust will be outstanding at the commencement of trading on the Exchange.

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[63]   17 CFR 240.10A-3.

Surveillance

The Exchange represents that trading in the Shares of the Trust will be subject to

the existing trading surveillances administered by the Exchange, as well as cross-market

surveillances administered by FINRA on behalf of the Exchange, which are designed to

detect violations of Exchange rules and applicable federal securities laws.[64] The

Exchange represents that these procedures are adequate to properly monitor Exchange

trading of the Shares in all trading sessions and to deter and detect violations of Exchange

rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading

outside their normal patterns, which could be indicative of manipulative or other violative

activity. When such situations are detected, surveillance analysis follows and

investigations are opened, where appropriate, to review the behavior of all relevant

parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate

as needed regarding trading in the Shares with other markets and other entities that are

members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both,

may obtain trading information regarding trading in the Shares from such markets and

other entities. In addition, the Exchange may obtain information regarding trading in the

Shares from markets and other entities that are members of ISG or with which the

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

Exchange has in place a comprehensive surveillance sharing agreement ("CSSA").[65] The

Exchange is also able to obtain information regarding trading in the Shares in connection

with such ETP Holders' proprietary or customer trades which they effect through ETP

Holders on any relevant market.

In addition, the Exchange also has a general policy prohibiting the distribution of

material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description

of the portfolios of the Trust, (b) limitations on portfolio holdings or reference assets, or

(c) the applicability of Exchange listing rules specified in this rule filing shall constitute

continued listing requirements for listing the Shares on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any

failure by the Trust to comply with the continued listing requirements, and, pursuant to its

obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance

with the continued listing requirements. If the Trust is not in compliance with the

applicable listing requirements, the Exchange will commence delisting procedures under

NYSE Arca Rule 5.5-E(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders

in an Information Bulletin of the special characteristics and risks associated with trading

the Shares. Specifically, the Information Bulletin will discuss the following: (1) the risks

involved in trading the Shares during the Early and Late Trading Sessions when an

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

updated IFV will not be calculated or publicly disseminated; (2) the procedures for purchases and redemptions of Shares; (3) NYSE Arca Rule 9.2-E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (4) how information regarding the IFV is disseminated; (5) how information regarding portfolio holdings is disseminated; (6) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (7) trading information.

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

In addition, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the

Trust. The Information Bulletin will also discuss any exemptive, no-action, and

interpretive relief granted by the Commission from any rules under the Act. In addition,

the Information Bulletin will reference that the Trust is subject to various fees and

expenses described in the Registration Statement.

2.   Statutory Basis

The basis under the Act for this proposed rule change is the requirement under

Section 6(b)(5)[66] that an exchange have rules that are designed to prevent fraudulent and

manipulative acts and practices, to promote just and equitable principles of trade, to

remove impediments to, and perfect the mechanism of a free and open market and, in

general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent

fraudulent and manipulative acts and practices and to protect investors and the public

interest in that the Shares will be listed and traded on the Exchange pursuant to the initial

and continued listing criteria in NYSE Arca Rule 8.201-E.

Investing in the Trust will provide investors with exposure to Bitcoin in a manner

that is efficient and convenient, while also reducing the volatility typically associated

with Bitcoin. The Trust uses the CME CF BRR to determine the value of its Bitcoin

assets, its NAV and the ratio of Bitcoin to T-Bills held by the Trust. While Bitcoin is

listed and traded on a number of markets and platforms, the CME CF BRR exclusively

utilizes its Constituent Platforms to determine the value of the CME CF BRR. Therefore,

use of the CME CF BRR would mitigate the effects of potential manipulation of the

Bitcoin market. Additionally, the capital necessary to maintain a significant presence on

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[66]   15 U.S.C. 78f(b)(5).

any Constituent Platform would make manipulation of the CME CF BRR unlikely.

Bitcoin trades in a well-arbitraged and distributed market. The linkage between the

Bitcoin markets and the presence of arbitrageurs in those markets means that the

manipulation of the price of Bitcoin on any Constituent Platform would likely require

overcoming the liquidity supply of such arbitrageurs who are potentially eliminating any

cross-market pricing differences.

In addition, the Exchange has in place surveillance procedures that are adequate

to properly monitor trading in the Shares in all trading sessions and to deter and detect

violations of Exchange rules and applicable federal securities laws. The Exchange or

FINRA, on behalf of the Exchange, or both, will communicate as needed regarding

trading in the Shares with other markets and other entities that are members of the ISG,

and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading

information regarding trading in the Shares from such markets and other entities. In

addition, the Exchange may obtain information regarding trading in the Shares from

markets and other entities that are members of ISG or with which the Exchange has in

place a CSSA. The Exchange is also able to obtain information regarding trading in the

Shares through ETP Holders, in connection with such ETP Holders' proprietary or

customer trades which they effect through ETP Holders on any relevant market.

Quotation and last-sale information regarding the Shares will be disseminated

through the facilities of the CTA. The IFV will be available through on-line information

services. In addition, the Trust's website will display the applicable end of day closing

NAV. The daily holdings of the Trust will be available on the Trust's website before

9:30 a.m. E.T. The Trust's total portfolio composition will be disclosed each Business

Day that NYSE Arca is open for trading, on the Trust's website. The Trust's website will also include a form of the prospectus for the Trust that may be downloaded. The website will include the Shares' ticker and CUSIP information, along with additional quantitative information updated on a daily basis for the Trust. The website will include the Shares' ticker and CUSIP information, along with additional quantitative information updated on a daily basis for the Trust. The Trust's website will include (1) the prior business day's trading volume, the prior business day's reported NAV and closing price, and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters.

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

Trading in Shares of the Trust will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached or because of market conditions or for

reasons that, in the view of the Exchange, make trading in the Shares inadvisable

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 a new type of Commodity-Based Trust Share based in part on

the price of Bitcoin that will enhance competition among market participants, to the

benefit of investors and the marketplace. As noted above, the Exchange has in place

surveillance procedures that are adequate to properly monitor trading in the Shares in all

trading sessions and to deter and detect violations of Exchange rules and applicable

federal securities laws.

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

The Exchange does not believe that the proposed rule change will impose any

burden on competition that is not necessary or appropriate in furtherance of the purpose

of the Act. The Exchange notes that the proposed rule change will facilitate the listing

and trading of a new type of Commodity-Based Trust Share based in part on the price of

Bitcoin and that will enhance competition among market participants, to the benefit of

investors and the marketplace.

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

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

change.

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

Within 45 days of the date of publication of this notice in the Federal Register or

up to 90 days (i) as the Commission may designate if it finds such longer period to be

appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory

organization consents, the Commission will:

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

IV.   Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEARCA-2019-39 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEARCA-2019-39. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule

change between the Commission and any person, other than those that may be withheld

from the public in accordance with the provisions of 5 U.S.C. 552, will be available for

website viewing and printing in the Commission's Public Reference Room, 100 F Street,

NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m.

and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the

principal office of the Exchange. All comments received will be posted without

change. Persons submitting comments are cautioned that we do not redact or edit

personal identifying information from comment submissions. You should submit only

information that you wish to make available publicly. All submissions should refer to

File Number SR-NYSEARCA-2019-39 and should be submitted on or before [insert date

21 days from publication in the Federal Register].

 For the Commission, by the Division of Trading and Markets, pursuant to

delegated authority.[67]

<div style="text-align:center">

Eduardo A. Aleman
Deputy Secretary

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[67] 17 CFR 200.30-3(a)(12).

The Mathematical Representation of the CME CF BRR Methodology is represented below:

Symbol	Name	Description
T	Effective Time	Time at which the BRR is calculated
T	TWAP Period Length	Length of the Time Weighted Average Price (TWAP) period for which trade data is observed (60 minutes)
$\widehat{T}$	Partition Length	Length of each partition (5 minutes)
x_i	Partition Trade	i^{th} price/size trade pair in partition
P_i	Partition Trade Price	i^{th} trade price in partition
s_i	Partition Trade Size	i^{th} trade size in partition
K	Number of Partitions	number of partitions – given by $T/\widehat{T}$
k	Partition Number	k^{th} partition
WM_k	Weighted Median	Size-weighted median for the kth partition
BRR_T	Bitcoin Reference Rate	BRR at time T

Figure 1: Calculation used to determine the CME CF BRR

$$WM_k = p_j \text{ where } x_j \text{ satisfies } \sum_{i=1}^{j-1} s_i < \frac{\sum_{i=1}^{I_k} s_i}{2} \text{ and } \sum_{i=j+1}^{I_k} s_i \leq \frac{\sum_{i=1}^{I_k} s_i}{2}$$

$$\text{If } \sum_{i=j+1}^{I_k} s_i = \frac{\sum_{i=1}^{I_k} s_i}{2} \text{ then } WM_k = \frac{p_j + p_{j+1}}{2} \tag{1}$$

$$BRR_T = \frac{\sum_{k=1}^{K} WM_k}{K}$$

WM_k is thus calculated as the price (P_j) of the jth trade where the jth trade is the trade that lies at 50% of the cumulative size for the partition k. WM_k is calculated for each partition in T and the BRR is found to be the mean WM_k of all the K partitions.

Figure 2[1]
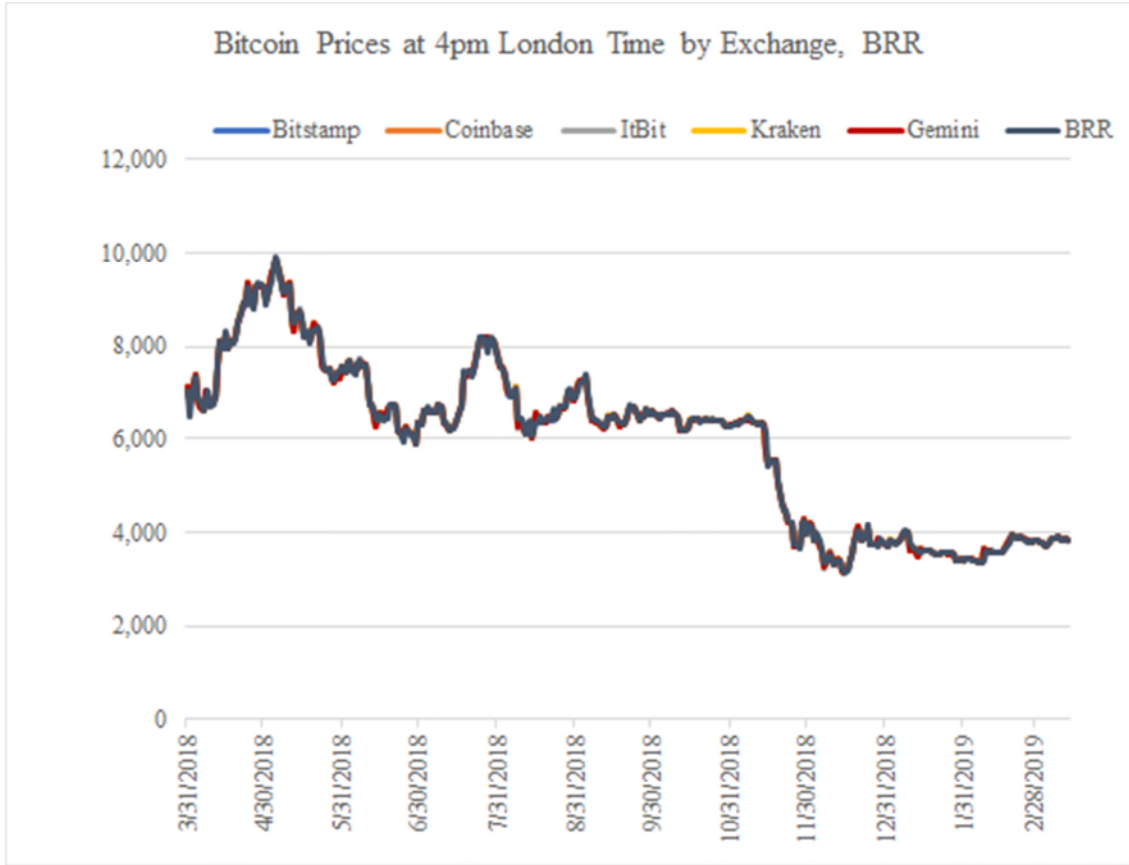
Bitcoin Prices at 4pm London Time by Exchange, BRR

[1]   Analysis performed by the Sponsor using data provided by Kaiko//Challenger Deep.

EXHIBIT 5

Underlining indicates new text;
[brackets] indicate deletions.

Rules of the NYSE Arca, Inc.

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RULE 8-E TRADING OF CERTAIN EQUITY DERIVATIVES

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Section 2. Portfolio Depositary Receipts

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Rule 8.201-E. Commodity-Based Trust Shares

(a) The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Commodity-Based Trust Shares that meet the criteria of this Rule.

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(c) *Definitions.* The following terms as used in the Rules shall, unless the context otherwise requires, have the meaning herein specified:

(1) *Commodity-Based Trust Shares.* The term "Commodity-Based Trust Shares" means a security (a) that is issued by a trust ("Trust") that holds a specified commodity deposited with the Trust; (b) that is issued by such Trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity and/or cash; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such Trust which will deliver to the redeeming holder the quantity of the underlying commodity and/or cash.

(2) *Commodity.* The term "commodity" is defined in Section 1(a)([4]9) of the Commodity Exchange Act.

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