

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-102540; File No. SR-NASDAQ-2025-018)

March 7, 2025

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Shares of the Canary HBAR ETF under Nasdaq Rule 5711(d) (Commodity-Based Trust Shares)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on February 21, 2025, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to list and trade shares of the Canary HBAR ETF under Nasdaq Rule 5711(d). On March 4, 2025, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the original filing in its entirety. The proposed rule change, as modified by Amendment No.1, is described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

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

The Exchange proposes to list and trade shares of the Canary HBAR ETF (the “Trust”) under Nasdaq Rule 5711(d) (“Commodity-Based Trust Shares”). The shares of the Trust are referred to herein as the “Shares.” This Amendment No. 1 supersedes the original filing in its entirety.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is available on the Exchange's Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rulefilings>, 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to list and trade the Shares under Nasdaq Rule 5711(d),³ which governs the listing and trading of Commodity-Based Trust Shares on the Exchange. Canary Capital Group LLC is the sponsor of the Trust (the "Sponsor"). The Shares will be registered with the SEC by means of the Trust's registration statement on Form S-1 (the "Registration Statement").⁴ Any statements or representations included in this proposal regarding: (a) the description of the reference assets or trust holdings; (b) limitations on the reference assets or trust holdings; (c) dissemination and availability of the reference asset or intraday indicative value; or

³ The Commission approved Nasdaq Rule 5711 in Securities Exchange Act Release No. 66648 (March 23, 2012), 77 FR 19428 (March 30, 2012) (SR-NASDAQ-2012-013).

⁴ See Registration Statement on Form S-1, dated February 21, 2025, filed with the Commission by the Sponsor on behalf of the Trust. The descriptions of the Trust, the Shares, the Index (as defined below), and HBAR contained herein are based, in part, on information in the Registration Statement. The Registration Statement is not yet effective and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

(d) the applicability of Nasdaq listing rules specified in this proposal shall constitute continued listing standards for the Shares listed on the Exchange.

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”), as amended and/or restated from time to time. CSC Delaware Trust Company, a Delaware corporation, is the trustee of the Trust (the “Trustee”). The Trust is managed and controlled by the Sponsor. U.S. Bancorp Fund Services, LLC will be the administrator (the “Administrator”), U.S. Bancorp Fund Services, LLC will be the transfer agent (the “Transfer Agent”), and U.S. Bank, N.A. will be responsible for the custody of the Trust’s cash (the “Cash Custodian”). BitGo Trust Company, Inc. and Coinbase Custody Trust Company, LLC, (the “Custodians”) will be responsible for custody of the Trust’s HBAR.⁵

The Trust’s investment objective is to seek to provide exposure to the value of the native asset of the Hedera Network (“HBAR”) held by the Trust, less the expenses of the Trust’s operations and other liabilities. In seeking to achieve its investment objective, the Trust will hold HBAR and establish its net asset value (“NAV”) by referencing the price of HBAR in U.S. Dollars as calculated by the CoinDesk Hedera USD CCIX 30min NY Rate a financial data website integrating spot market prices from various digital asset trading platforms (“Pricing Benchmark”). The Pricing Benchmark is calculated by CoinDesk Indices, Inc. (the “Benchmark Provider”) based on an aggregation of executed trade flow of major HBAR trading platforms (“Constituent Platforms”).

⁵ The Trust may engage additional custodians for its HBAR in the future, each of whom may be referred to as a Custodian.

According to the Registration Statement, each Share will represent a fractional undivided beneficial interest in and ownership of the Trust. The Trust's assets will consist only of HBAR and cash. According to the Registration Statement, the Trust is not a fund registered under the Investment Company Act of 1940, as amended.⁶ Further, the Trust is not a commodity pool for purposes of the Commodity Exchange Act of 1936, as amended (the "CEA"), and the Sponsor is not subject to regulation by the Commodity Futures Trading Commission (the "CFTC") as a commodity pool operator or a commodity trading advisor in connection with the Shares.

The Trust will not acquire and will disclaim any incidental right ("IR") or IR asset received, for example as a result of forks or airdrops, and such assets will not be taken into account for purposes of determining the Trust's net asset value ("NAV").

When the Trust sells or redeems its Shares, it will do so in blocks of 10,000 Shares (a "Basket") based on the quantity of HBAR attributable to each Share of the Trust (net of accrued but unpaid expenses and liabilities). The Trust will allow for both an in-kind creation and redemption process, and a cash creation and redemption process. As such, for a creation of Shares, the creation shall be in either the amount of HBAR represented by the Basket being created or the amount of cash needed to purchase the amount of HBAR represented by the Basket being created, as calculated by the Administrator. For a redemption of Shares, the Sponsor shall arrange for either the HBAR represented by the Basket to be redeemed to distributed or the HBAR represented by the Basket to be redeemed and the cash proceeds distributed. Authorized participants will deliver, or facilitate the delivery of, HBAR or cash to the Trust's account with the Custodians or the Cash Custodian, as applicable, in exchange for Shares when they purchase Shares, and the Trust will deliver HBAR or cash to such Authorized

⁶ 15 U.S.C. 80a-1.

Participants when they redeem Shares with the Trust. Authorized Participants may then offer Shares to the public at prices that depend on various factors, including the supply and demand for Shares, the value of the Trust's assets, and market conditions at the time of a transaction. Owners of the beneficial interests of the Shares who buy or sell Shares during the day from their broker may do so at a premium or discount relative to the per Share NAV of the Trust.

Investment Objective

According to the Registration Statement, the Trust's investment objective is to track the performance of HBAR, as measured by the Pricing Benchmark, adjusted for the Trust's expenses and other liabilities. In seeking to achieve its investment objective, the Trust will hold HBAR and will value its Shares daily as of 4:00 p.m. Eastern Time ("ET") using the same methodology used to calculate the Pricing Benchmark. All of the Trust's HBAR will be held by the Custodians. The Pricing Benchmark is calculated by the Benchmark Provider based on an aggregation of executed trade flow of major HBAR trading platforms ("Constituent Platforms").

HBAR and the Hedera Network

According to the Registration Statement, the Hedera Network enables people to interact and transact online efficiently and securely without the need for third-party companies, which often collect and sell their users' personal information. The purpose of the Hedera Network is to provide a stable, trustworthy network for a wide variety of decentralized, enterprise-grade applications. Although the primary purpose of the Hedera Network is not to operate a payments system or store of value, like most public distributed ledger technology ("DLT") networks, the Hedera Network requires a cryptocurrency to properly operate and incentivize consensus and behavior on the network. The Hedera Network's native cryptocurrency is HBAR, which serves two purposes. First, it is used as a mechanism to secure the network against cyberattacks

through the Hedera Network’s distributed consensus process. Additionally, it provides the “fuel” that incentivizes and pays for the computing resources necessary to enable the Hedera Network.

The Hedera Network is built on the hashgraph distributed consensus algorithm, invented by Dr. Leemon Baird and subsequently patented by Swirlds, Inc. in 2016. Swirlds has granted to Hedera an exclusive non-transferable, perpetual right and license to using hashgraph technology for the limited and sole purpose of making the Hedera Network. The hashgraph data structure and consensus algorithm provides a novel platform for distributed consensus.

One central difference between hashgraphs and blockchains is the way that they add transactions to their respective distributed ledgers. Generally on a blockchain, blocks with records of transactions are added to the data-chain one after the other to create a history of the network’s data. If two miners create blocks simultaneously, the blockchain will momentarily fork and the network’s nodes will choose to continue adding to the longest chain, abandoning the shorter chain. The sequential order must be maintained for the network to function and to ensure the ledger consists of just one chain of blocks.

The Hedera Network is governed by the Hedera Governance Council (“Hedera Council”), a rotating group of global organizations that span across multiple industries and geographies. The primary responsibilities of Hedera Council members are to: (i) participate in the governance of the Hedera Network; and (ii) host and maintain a node on the Hedera Network. Hedera Council members contribute their expertise and experience in Hedera Council deliberations and decision-making relating to software updates, Hedera Treasury management, network pricing, regulatory compliance, and other key governance matters.

As of February 20, 2025, the Hedera Council represented the largest owner, holding approximately 10,624,000,000 HBAR, or 21.25% of the total supply of HBAR, most in

unreleased supply yet to be distributed and held in treasury. On December 20, 2024, the Hedera Council announced a grant of 7,000,000,000 HBAR to the Hedera Foundation, representing 14% of the total supply of HBAR. On February 14, 2025, 3,500,000,000 HBAR of the grant was transferred to wallets controlled by the Hedera Foundation. As of February 20, 2025, approximately 41,904,000,000 HBAR, or 83.8% of the total supply of HBAR was in circulation distributed across multiple wallets.

Pricing Benchmark

The net assets of the Trust and its Shares are valued at on a daily basis with reference to the Pricing Benchmark as of 4:00 p.m. ET, which integrates spot market prices from various digital asset trading platforms. The Pricing Benchmark is designed to reflect the performance of HBAR in U.S. dollars. The Trust uses the Pricing Benchmark to calculate its NAV, which is the aggregate U.S. dollar value of HBAR in the Trust, based on the Pricing Benchmark, less its liabilities and expenses. “NAV per Share” is calculated by dividing NAV by the number of Shares currently outstanding.

Custody of the Trust’s Assets

The Custodians will be responsible for custody of the Trust’s HBAR. The Custodians are qualified custodians under Rule 206-4 of the Investment Adviser Act. The Custodians will custody the Trust’s HBAR pursuant to custody agreements. The custody agreements require the Custodians to maintain the Trust’s HBAR in segregated accounts that clearly identify the Trust as owner of the accounts and assets held in the accounts; the segregation will be both from the proprietary property of the Custodians and the assets of any other customer. Such arrangements are generally deemed to be “bankruptcy remote,” that is, in the event of an insolvency of a Custodian, assets held in such segregated accounts would not become property of the

Custodian's estate and would not be available to satisfy claims of creditors of the Custodian. In addition, the Custodians carry fidelity insurance, which covers assets held by the Custodians in custody from risks such as theft of funds. HBAR owned by the Trust will at all times be held by, and in the control of, the Custodians, and transfer of such HBAR to or from the Custodians will occur only in connection with creation and redemptions of Shares.

The Custodians carefully consider the design of the physical, operational and cryptographic systems for secure storage of the Trust's private keys in an effort to lower the risk of loss or theft. The Custodians utilize a variety of security measures to ensure that private keys necessary to transfer digital assets remain uncompromised and that the Trust maintains exclusive ownership of its assets. The operational procedures of the Custodians are reviewed by third-party advisors with specific expertise in physical security. The devices that store the keys will never be connected to the internet or any other public or private distributed network—this is colloquially known as “cold storage.” Only specific individuals are authorized to participate in the custody process, and no individual acting alone will be able to access or use any of the private keys. In addition, no combination of the executive officers of the Sponsor or the investment professionals managing the Trust, acting alone or together, will be able to access or use any of the private keys that hold the Trust's HBAR.

Creation and Redemption of Shares

As stated in the Registration Statement, the Trust creates and redeems Shares from time to time, but only in one or more Baskets. The Trust would allow for both an in-kind creation and redemption process as well as a cash creation and redemption process. As such, Baskets are only made in exchange for delivery to the Trust or the distribution by the Trust of the amount of HBAR or cash represented by the Baskets being created or redeemed (the “Basket Deposit”).

The amount of HBAR required in a Basket Deposit (the “Basket HBAR Deposit”) and amount of cash required in a Basket Deposit (the “Basket Cash Deposit”) are based on the quantity or value of the quantity, as applicable, of HBAR and cash attributable to each Share of the Trust (net of accrued but unpaid Sponsor Fees and any accrued but unpaid Extraordinary Expenses) being created or redeemed determined as of 4:00 p.m. ET on the day the order to create or redeem Baskets is properly received.

“Authorized Participants” are the only persons that may place orders to create and redeem Baskets. Authorized Participants must be (1) registered broker-dealers or other securities market participants, such as banks and other financial institutions, that are not required to register as broker-dealers to engage in securities transactions described below and (2) Depository Trust Company (“DTC”) Participants. To become an Authorized Participant, a person must enter into an Authorized Participant agreement with a distributor (the “Distributor”), who is responsible for working with the Administrator to review and approve, or reject, purchase and redemption orders of Baskets placed by Authorized Participants.

Creation Procedures

On any business day, an Authorized Participant may place an order with the Transfer Agent to create one or more Baskets. For purposes of processing creation and redemption orders, a “business day” means any day other than a day when the Exchange is closed for regular trading. Purchase orders must be placed by the close of the Exchange’s regular market session of 9:30 a.m. to 4:00 p.m. ET (the “Regular Market Session”) on the Exchange or an earlier time as determined and communicated by the Sponsor and its agent. A purchase order will be effective on the date it is received in good order by the Transfer Agent (“Purchase Order Date”).

The manner by which creations are made is dictated by the terms of the Authorized Participant agreement. Creation orders may be denominated and settled in an amount of HBAR (“In-Kind Creation Order”) or cash (“Cash Creation Order”). By placing an In-Kind Creation Order, an Authorized Participant agrees to facilitate (either directly or through its designee) the deposit of HBAR with the Custodian. By placing a Cash Creation Order, an Authorized Participant agrees to facilitate the deposit of cash with the Cash Custodian. In either case, if an Authorized Participant fails to consummate the foregoing, the order will be cancelled or delayed until the full cash deposit has been received. An Authorized Participant may not withdraw a creation order without the prior consent of the Sponsor in its discretion.

Following an Authorized Participant’s In-Kind Creation Order, the Trust’s account at the Custodian must be credited with the required HBAR by the end of the following business day or such later time as may be agreed upon by the Authorized Participant and the Sponsor following the Purchase Order Date. The Authorized Participant or its designee will normally send the required HBAR in an “on chain” transaction over the HBAR network. Upon receipt of the Basket HBAR Deposit amount in the Trust’s account at the Custodian, the Custodian will notify the Transfer Agent, the Distributor, the Authorized Participant, and the Sponsor that the Basket HBAR Deposit amount has been deposited. The Transfer Agent will then direct DTC to credit the number of Shares created to the Authorized Participant’s DTC account.

Following an Authorized Participant’s Cash Creation Order, the Trust’s account at the Cash Custodian must be credited with the Basket Cash Deposit amount by the end of the following business day or such earlier or later time as may be agreed upon by the Authorized Participant and the Sponsor following the Purchase Order Date. Upon receipt of the Basket Cash Deposit amount in the Trust’s account at the Cash Custodian, the Transfer Agent will notify the

Distributor, the Authorized Participant, and the Sponsor that the Basket Cash Amount has been deposited. The Sponsor, on behalf of the Trust, will instruct an HBAR trading counterparty to purchase the amount of HBAR equivalent in value to the cash deposit amount associated with the creation order, with such purchase transaction prearranged to be executed, in the Sponsor's reasonable efforts, at the Pricing Benchmark price used by the Trust to calculate NAV, taking into account any spread, commissions, or other trading costs on the applicable Purchase Order Date. The resulting HBAR will be deposited in the Trust's account with the Custodians. Any slippage incurred (including, but not limited to, any trading fees, spreads, or commissions), on a cash equivalent basis, will be the responsibility of the Authorized Participant and not of the Trust or Sponsor. To the extent the execution price of the HBAR acquired by the trading counterparty exceeds the cash deposit amount, such cash difference will be the responsibility of the Authorized Participant and not the Trust or Sponsor. The Transfer Agent will then direct DTC to credit the number of Shares created to the Authorized Participant's DTC account.

Redemption Procedures

The procedures by which an Authorized Participant can redeem one or more Baskets mirror the procedures for the creation of Baskets with an additional safeguard on HBAR being removed from the HBAR Account at the Custodian. On any business day, an Authorized Participant may place an order with the Transfer Agent to redeem one or more Baskets. Redemption orders must be placed by the close of the Regular Market Session on the Exchange or an earlier time as determined and communicated by the Sponsor and its agent. A redemption order will be effective on the date it is received by the Transfer Agent ("Redemption Order Date").

The manner by which redemptions are made is dictated by the terms of the Authorized Participant agreement. Redemption orders are denominated and settled in HBAR (“In-Kind Redemption Order”) or cash (“Cash Redemption Order”). By placing a Cash Redemption Order, an Authorized Participant agrees to facilitate the deposit of Shares with the Transfer Agent. If an Authorized Participant fails to consummate the foregoing, the order will be cancelled or delayed until the required Shares have been received. An Authorized Participant may not withdraw a redemption order without the prior consent of the Sponsor in its discretion.

In the case of an In-Kind Redemption Order, the redemption distribution from the Trust consists of a movement of HBAR to the redeeming designee of the Authorized Participant, representing the amount of HBAR held by the Trust, net of accrued expenses and other liabilities, evidenced by the Shares being redeemed on the Redemption Order Date. In the case of a Cash Redemption Order, the redemption distribution from the Trust consists of a transfer to the Authorized Participant of an amount of cash that is in the same proportion to the total assets of the Trust, net of accrued expenses and other liabilities, on the Redemption Order Date, as the number of Shares to be redeemed under the purchase order is in proportion to the total number of Shares outstanding on the Redemption Order Date. With respect to either an In-Kind Redemption Order or Cash Redemption Order, the redemption distribution due from the Trust will be delivered once the Transfer Agent notifies the Cash Custodian, the Distributor and the Sponsor that the Authorized Participant has delivered the Shares represented by the Baskets to be redeemed to the Transfer Agent’s DTC account. If the Transfer Agent’s DTC account has not been credited with all of the Shares of the Baskets to be redeemed, the redemption distribution will be cancelled or delayed until such time as the Transfer Agent confirms receipt of all such Shares.

By placing a redemption order, an Authorized Participant agrees to deliver the Baskets to be redeemed through DTC's book-entry system to the Trust by the end of the following business day or such later time as may be agreed upon by the Authorized Participant and the Sponsor following the Redemption Order Date. An Authorized Participant may not withdraw a redemption order without the prior consent of the Sponsor in its discretion.

Net Asset Value

As set forth in the Registration Statement, NAV means the total assets of the Trust including, but not limited to, all HBAR and cash less total liabilities of the Trust. The Administrator determines the NAV of the Trust on each day that the Exchange is open for regular trading, as promptly as practical after 4:00 p.m. ET. The NAV of the Trust is the aggregate value of the Trust's assets less its accrued but unpaid liabilities (which include accrued expenses). In determining the Trust's NAV, the Administrator values the HBAR held by the Trust based on the price set by the Pricing Benchmark as of 4:00 p.m. ET. The Administrator also determines the NAV per Share. The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time.

Availability of Information and Intraday Indicative Value

In addition to the price transparency of the Pricing Benchmark, the Trust will provide information regarding the Trust's HBAR holdings as well as additional data regarding the Trust. The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the prior business day's NAV per Share; (b) the prior business day's Nasdaq official closing price; (c) calculation of the premium or discount of such Nasdaq official closing price against such NAV per Share; (d) data in chart form displaying the frequency

distribution of discounts and premiums of the Exchange's official closing price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (e) the prospectus; and (f) other applicable quantitative information. The Trust will also disseminate the Trust's holdings on a daily basis on the Trust's website. Quotation and last sale information regarding the Shares will be disseminated through the facilities of the relevant securities information processor.

The intraday indicative value ("IIV") will be calculated by using the prior day's closing NAV per Share as a base and updating that value during the Exchange's Regular Market Session to reflect changes in the value of the Trust's HBAR holdings during the trading day. The IIV disseminated during the Regular Market Session should not be viewed as an actual real-time update of the NAV, because NAV per Share is calculated only once at the end of each trading day based upon the relevant end-of-day values of the Trust's investments. The IIV will be widely disseminated on a per-Share basis every 15 seconds during the Regular Market Session through the facilities of the relevant securities information processor by market data vendors. In addition, the IIV will be available through online information services, such as Bloomberg and Reuters.

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

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other

electronic services. Information regarding the previous day's Nasdaq official closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Applicable Standard

The Commission has previously approved or disapproved exchange filings to list and trade series of Trust Issued Receipts, including spot-based Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.⁷ The Commission has also consistently recognized, however, that this is not the *exclusive* means by which an ETP listing exchange can meet this statutory obligation.⁸ A listing exchange

⁷ See Securities Exchange Act Release Nos. 78262 (July 8, 2016), 81 FR 78262 (July 14, 2016) (the “Winklevoss Proposal”). The Winklevoss Proposal was subsequently disapproved by the Commission. See Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the “Winklevoss Order”). Prior orders from the Commission have pointed out that in every prior approval order for Commodity-Based Trust Shares, there has been a derivatives market that represents the regulated market of significant size, generally a Commodity Futures Trading Commission (the “CFTC”) regulated futures market. Further to this point, the Commission’s prior orders have noted that the spot commodities and currency markets for which it has previously approved spot ETPs are generally unregulated and that the Commission relied on the underlying futures market as the regulated market of significant size that formed the basis for approving the series of Currency and Commodity-Based Trust Shares, including gold, silver, platinum, palladium, copper, and other commodities and currencies. The Commission specifically noted in the Winklevoss Order that the approval order issued related to the first spot gold ETP “was based on an assumption that the currency market and the spot gold market were largely unregulated.” See Winklevoss Order at 37592. As such, the regulated market of significant size test does not require that the spot market be regulated in order for the Commission to approve this proposal, and precedent makes clear that an underlying market for a spot commodity or currency being a regulated market would actually be an exception to the norm. These largely unregulated currency and commodity markets do not provide the same protections as the markets that are subject to the Commission’s oversight, but the Commission has consistently looked to surveillance sharing agreements with the underlying futures market in order to determine whether such products were consistent with the Act. See Securities Exchange Act No. 99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (Self-Regulatory Organizations; NYSE Arca, Inc.; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units) (the “Spot Bitcoin ETP Approval Order”); 100224 (May 23, 2024), 89 FR 46937 (May 30, 2024) (Self-Regulatory Organizations; NYSE Arca, Inc.; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Shares of Ether-Based Exchange-Traded Products) (the “Spot ETH ETP Approval Order”).

⁸ See Winklevoss Order, 83 FR at 37580; see Spot Bitcoin ETP Approval Order, 89 FR at 3009; see Spot ETH ETP Approval Order 89 FR at 46938.

could, alternatively, demonstrate that “other means to prevent fraudulent and manipulative acts and practices will be sufficient” to justify dispensing with a surveillance-sharing agreement with a regulated market of significant size.

The Commission recently issued orders granting approval for proposals to list bitcoin- and ether-based commodity trust shares and bitcoin- and ether-based trust issued receipts (these proposed funds are nearly identical to the Trust, but proposed to hold bitcoin and ether, respectively, instead of HBAR) (“Spot Bitcoin ETPs” and “Spot ETH ETPs”). In both the Spot Bitcoin ETP Approval Order and Spot ETH ETP Approval Order, the Commission found that sufficient “other means” of preventing fraud and manipulation had been demonstrated that justified dispensing with a surveillance-sharing agreement with a market of significant size. Specifically, the Commission found that while the Chicago Mercantile Exchange (“CME”) futures market for both bitcoin and ether were not of “significant size” with respect to the spot market, the Exchange demonstrated that other means could be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the proposals.

Both the Exchange and the Sponsor believe that this proposal is sufficient to establish that there are sufficient “other means” of preventing fraud and manipulation that warrant dispensing of the surveillance-sharing agreement with a regulated market of significant size, as was done with both Spot Bitcoin ETPs and Spot ETH ETPs, and that this proposal should be approved.

The Commission has approved numerous series of Trust Issued Receipts,⁹ including Commodity-Based Trust Shares,¹⁰ to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of Section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act.

As noted above, the Commission has recognized that the “regulated market of significant size” standard is not the only means for satisfying Section 6(b)(5) of the Act, specifically providing that a listing exchange could demonstrate that “other means to prevent fraudulent and manipulative acts and practices” are sufficient to justify dispensing with the requisite surveillance-sharing agreement.¹¹ For example, in approving the Spot Bitcoin ETPs, the

⁹ Pursuant to Nasdaq Rule 5720(a), the term “Trust Issued Receipt” means a security (a) that is issued by a trust which holds specified securities deposited with the trust; (b) that, when aggregated in some specified minimum number, may be surrendered to the trust by the beneficial owner to receive the securities; and (c) that pays beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities

¹⁰ Pursuant to Nasdaq Rule 5711(d)(iv), the term “Commodity-Based Trust Shares” means a security (1) that is issued by a trust that holds (a) a specified commodity deposited with the trust, or (b) a specified commodity and, in addition to such specified commodity, cash; (2) 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 (3) 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.

¹¹ See Winklevoss Order at 37580. The Commission has also specifically noted that it “is not applying a ‘cannot be manipulated’ standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.” Id. at 37582

Commission found that there were “sufficient ‘other means’ of preventing fraud and manipulation,” including that:

[B]ased on the record before the Commission and the improved quality of the correlation analysis in the record, including the Commission’s own analysis, the Commission is able to conclude that fraud or manipulation that impacts prices in spot bitcoin markets would likely similarly impact CME bitcoin futures prices. And because the CME’s surveillance can assist in detecting those impacts on CME bitcoin futures prices, the Exchanges’ comprehensive surveillance-sharing agreement with the CME—a U.S. regulated market whose bitcoin futures market is consistently highly correlated to spot bitcoin, albeit not of “significant size” related to spot bitcoin—can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [Spot Bitcoin ETPs].¹²

Today, Coinbase Derivatives, LLC (“Coinbase Derivatives”) offers trading in HBAR futures. Nasdaq has a comprehensive surveillance-sharing agreement with Coinbase Derivatives via its common membership in the Intermarket Surveillance Group (“ISG”).¹³ This facilitates the sharing of information that is available to Coinbase Derivatives through its surveillance of its markets, including its surveillance of Coinbase Derivatives’ HBAR futures market. Similar to the Spot Bitcoin and Spot ETH ETPs previously approved by the SEC, Nasdaq’s ability to obtain information regarding trading in the HBAR futures from other markets that are members of the ISG (specifically Coinbase Derivatives) would assist Nasdaq in detecting and deterring misconduct.

¹² See Securities Exchange Act Release No. 99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Shares of Bitcoin-Based Commodity-Based Trust Shares and Trust Units). The SEC made substantially similar findings in the approval order for Spot ETH ETPs. See Securities Exchange Act Release No. 100224 (May 23, 2024), 89 FR 46937 (May 30, 2024) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Shares of Ether-Based Exchange-Traded Products).

¹³ For a list of the current members and affiliate members of ISG, see <https://isgportal.org/public-members>.

Initial and Continued Listing

The Shares will be subject to Nasdaq Rule 5711(d)(vi), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. The Exchange will obtain a representation that the Trust's NAV per Share will be calculated daily and will be made available to all market participants at the same time. A minimum of 40,000 Shares will be required to be outstanding at the time of commencement of trading on the Exchange. Upon termination of the Trust, the Shares will be removed from listing. The Trustee will be a trust company having substantial capital and surplus and the experience and facilities for handling corporate trust business, as required under Nasdaq Rule 5711(d)(vi)(D) and no change will be made to the Trustee without prior notice to and approval of the Exchange.

As required in Nasdaq Rule 5711(d)(viii), the Exchange notes that any registered market maker ("Market Maker") in the Shares must file with the Exchange, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for trading the underlying commodity, related futures or options on futures, or any other related derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker in the Shares shall trade in the underlying commodity, related futures or options on futures, or any other related derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by Nasdaq Rule 5711(d). In addition to the existing obligations under Exchange rules regarding the production of books and records, the registered Market Maker in the Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or any limited partner, officer or approved person thereof, registered or non-registered employee affiliated with

such entity for its or their own accounts in the underlying commodity, related futures or options on futures, or any other related derivatives, as may be requested by the Exchange.

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

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

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Exchange will allow trading in the Shares from 4:00 a.m. to 8:00 p.m. ET. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. The Shares of the Trust will conform to the initial and continued listing criteria set forth in Nasdaq Rule 5711(d) and will comply with the requirements of Rule 10A-3 of the Act.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including without

limitation the conditions specified in Nasdaq Rule 4120(a)(9) and (10) and the trading pauses under Nasdaq Rules 4120(a)(11) and (12).

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

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

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

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. The surveillance program includes real-time patterns for price and volume movements and post-trade surveillance patterns (e.g., spoofing, marking the close, pinging, phishing). Trading of Shares on the Exchange will be subject to the Exchange's surveillance program for derivative products, as well as cross-market surveillances administered by FINRA, on behalf of the Exchange pursuant to a

regulatory services agreement, which are also designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

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

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares 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, listed HBAR futures, or any other HBAR derivative from such markets and other entities.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an information circular ("Information Circular") of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) the procedures for creations and redemptions of Shares in Baskets (and that Shares are not individually redeemable); (2) Section 10 of Nasdaq General Rule 9, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how information regarding the IIV and NAV is disseminated; (4) the risks

involved in trading the Shares during the pre-market and post-market sessions when an updated IIV will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information. The Information Circular will also discuss any exemptive, no action and interpretive relief granted by the Commission from any rules under the Act.

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

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

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁵ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Commission has approved numerous series of Trust Issued Receipts, including Commodity-Based Trust Shares, to be listed on U.S. national securities exchanges. In order for

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

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

As noted above, the Commission has recognized that the “regulated market of significant size” standard is not the only means for satisfying Section 6(b)(5) of the act, specifically providing that a listing exchange could demonstrate that “other means to prevent fraudulent and manipulative acts and practices” are sufficient to justify dispensing with the requisite surveillance-sharing agreement with the underlying spot market. The Exchange and Sponsor believe that such conditions are present. As discussed above, in approving the Spot Bitcoin ETPs, the Commission found that there were “sufficient ‘other means’ of preventing fraud and manipulation,” including that:

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

Bitcoin ETPs].¹⁶

As discussed above, Coinbase Derivatives offers trading in HBAR futures. Nasdaq has a comprehensive surveillance-sharing agreement with Coinbase Derivatives via its common membership in ISG, which facilitates the sharing of information that is available to Coinbase Derivatives through its surveillance of its markets, including its surveillance of Coinbase Derivatives' HBAR futures market. Similar to the Spot Bitcoin and Spot ETH ETPs previously approved by the SEC, Nasdaq's ability to obtain information regarding trading in the HBAR futures from other markets that are members of the ISG (specifically Coinbase Derivatives) would assist Nasdaq in detecting and deterring misconduct. The Exchange further believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria set forth in Nasdaq Rule 5711(d). The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. As discussed above, the surveillance program includes real-time patterns for price and volume movements and post-trade surveillance patterns (e.g., spoofing, marking the close, pinging, phishing). Trading of Shares on the Exchange will be subject to the Exchange's surveillance program for derivative products, as well as cross-market surveillances administered by FINRA, on behalf of the Exchange pursuant to a regulatory

¹⁶ See Securities Exchange Act Release No. 99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Shares of Bitcoin-Based Commodity-Based Trust Shares and Trust Units). The SEC made substantially similar findings in the approval order for spot ether ETPs. See Securities Exchange Act Release No. 100224 (May 23, 2024), 89 FR 46937 (May 30, 2024) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Shares of Ether-Based Exchange-Traded Products).

services agreement, which are also designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

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

The Exchange will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange may obtain trading information regarding trading in the Shares and any HBAR derivatives from such markets and other entities.

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

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of Shares that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

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

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

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

No written comments were either solicited or received.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR- NASDAQ-2025-018 on the subject line.

Paper Comments:

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

All submissions should refer to file number SR-NASDAQ-2025-018. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office

of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2025-018 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

J. Matthew DeLesDernier,

Deputy Secretary.

¹⁷ 17 CFR 200.30-3(a)(12).