

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100212; File No. SR-NASDAQ-2023-045)

May 22, 2024

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 2 to Proposed Rule Change to List and Trade Shares of the iShares Ethereum Trust Under Nasdaq Rule 5711(d) (Commodity-Based Trust Shares)

On November 21, 2023, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares of the iShares Ethereum Trust under Nasdaq Rule 5711(d), Commodity-Based Trust Shares. The proposed rule change was published for comment in the Federal Register on December 11, 2023.³ On January 24, 2024, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On March 4, 2024, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.⁷ On April 19, 2024, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change in its entirety. On April 23,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 99081 (Dec. 5, 2023), 88 FR 85945. Comments on the proposed rule change are available at: <https://www.sec.gov/comments/sr-nasdaq-2023-045/srnasdaq2023045.htm>.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 99419, 89 FR 5970 (Jan. 30, 2024).

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Securities Exchange Act Release No. 99665, 89 FR 16811 (Mar. 8, 2024).

2024, the Commission published notice of Amendment No. 1 to the proposed rule change.⁸ On May 22, 2024, the Exchange filed Amendment No. 2 to the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment No. 2 amended and superseded the proposed rule change, as modified by Amendment No. 1, in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 2, 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 iShares Ethereum Trust (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. 2 supersedes the Amendment No 1 in its entirety.

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.

⁸ See Securities Exchange Act Release No. 100016, 89 FR 33414 (Apr. 29, 2024).

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

1. Purpose

(a) Purpose

The Exchange proposes to list and trade the Shares under Nasdaq Rule 5711(d),⁹ which governs the listing and trading of Commodity-Based Trust Shares on the Exchange. iShares Delaware Trust Sponsor LLC, a Delaware limited liability company and an indirect subsidiary of BlackRock, Inc. (“BlackRock”), 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”).¹⁰

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 the Sponsor, BlackRock Fund Advisors (the “Trustee”) as the trustee of the Trust and will appoint Wilmington Trust, National Association, as Delaware Trustee of the Trust (the “Delaware Trustee”) by such time that the Registration Statement is effective. The Trust issues Shares representing fractional undivided beneficial interests in its net assets. The assets of the Trust will consist only of ether (“ether” or “ETH”) held by a custodian on behalf of the Trust, except under limited circumstances when transferred through the Trust’s prime broker temporarily (described below), and cash. Neither the Trust, nor the Sponsor, nor the Ether Custodian (as defined below), nor any other person

⁹ 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).

¹⁰ See Registration Statement on Form S-1, dated November 15, 2023, filed with the Commission by the Sponsor on behalf of the Trust. The descriptions of the Trust 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.

associated with the Trust will, directly or indirectly, engage in action where any portion of the Trust's ETH becomes subject to the Ethereum proof-of-stake validation or is used to earn additional ETH or generate income or other earnings.

From time to time, the Trust may be entitled to or come into possession of rights to acquire, or otherwise establish dominion and control over, any virtual currency (for avoidance of doubt, other than ether) or other asset or right, which rights are incident to the Trust's ownership of ether and arise without any action of the Trust, or of the Sponsor or Delaware Trustee on behalf of the Trust ("Incidental Rights") and/or virtual currency tokens, or other assets or rights, acquired by the Trust through the exercise (subject to the applicable provisions of the Trust Agreement) of any Incidental Right ("IR Virtual Currency") by virtue of its ownership of ether, generally through a fork in the Ethereum blockchain, an airdrop offered to holders of ether or other similar event.

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

Coinbase Custody Trust Company, LLC (the "Ether Custodian"), is the custodian for the Trust's ether holdings, and maintains a custody account for the Trust ("Custody Account"); Coinbase, Inc. (the "Prime Execution Agent"), an affiliate of the Ether Custodian, is the prime broker for the Trust and maintains a trading account for the Trust ("Trading Account"); and The Bank of New York Mellon is the custodian for the Trust's cash holdings (the "Cash Custodian" and together with the Ether Custodian, the "Custodians") and the administrator of the Trust (the "Trust Administrator"). Under the Trust Agreement, the Trustee may delegate all or a portion of

its duties to any agent, and has delegated the bulk of the day-to-day responsibilities to the Trust Administrator and certain other administrative and record-keeping functions to its affiliates and other agents. The Trust is not an investment company registered under the Investment Company Act of 1940, as amended (the “1940 Act”).

The investment objective of the Trust is to reflect generally the performance of the price of ether. The Trust seeks to reflect such performance before payment of the Trust’s expenses and liabilities. The Shares are intended to constitute a simple means of making an investment similar to an investment in ether through the public securities market rather than by acquiring, holding and trading ether directly on a peer-to-peer or other basis or via a digital asset platform. The Shares have been designed to remove the obstacles represented by the complexities and operational burdens involved in a direct investment in ether, while at the same time having an intrinsic value that reflects, at any given time, the investment exposure to the ether owned by the Trust at such time, less the Trust’s expenses and liabilities. Although the Shares are not the exact equivalent of a direct investment in ether, they provide investors with an alternative method of achieving investment exposure to ether through the public securities market, which may be more familiar to them.

Custody of the Trust’s Ether and Creation and Redemption

An investment in the Shares is backed by ether held by the Ether Custodian on behalf of the Trust. All of the Trust’s ether will be held in the Custody Account, other than the Trust’s ether which is temporarily maintained in the Trading Account under limited circumstances, i.e., in connection with creation and redemption Basket¹¹ activity or sales of ether deducted from the

¹¹ The Trust issues and redeems Shares only in blocks of 40,000 or integral multiples thereof. A block of 40,000 Shares is called a “Basket.” These transactions take place in exchange for ether.

Trust's holdings in payment of Trust expenses or the Sponsor's fee (or, in extraordinary circumstances, upon liquidation of the Trust). The Custody Account includes all of the Trust's ether held at the Ether Custodian, but does not include the Trust's ether temporarily maintained at the Prime Execution Agent in the Trading Account from time to time. The Ether Custodian will keep all of the private keys associated with the Trust's ether held in the Custody Account in "cold storage".¹² The hardware, software, systems, and procedures of the Ether Custodian may not be available or cost-effective for many investors to access directly.

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

The Authorized Participants will deliver only cash to create shares and will receive only cash when redeeming shares. Further, Authorized Participants will not directly or indirectly purchase, hold, deliver, or receive ether as part of the creation or redemption process or

¹² The term "cold storage" refers to a safeguarding method by which the private keys corresponding to the Trust's ether are generated and stored in an offline manner, subject to layers of procedures designed to enhance security. Private keys are generated by the Ether Custodian in offline computers that are not connected to the internet so that they are more resistant to being hacked.

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

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

In connection with cash creations and cash redemptions, the Authorized Participants will submit orders to create or redeem Baskets exclusively in exchange for cash. The Trust will engage in ether transactions to convert cash into ether (in association with creation orders) and ether into cash (in association with redemption orders). The Trust will conduct its ether purchase and sale transactions by, in its sole discretion, choosing to trade directly with designated third parties (each, an “Ether Trading Counterparty”), who are not registered broker-dealers pursuant to written agreements between each such Ether Trading Counterparty and the Trust, or choosing to trade through the Prime Execution Agent acting in an agency capacity with third parties through its Coinbase Prime service¹³ pursuant to the Prime Execution Agent Agreement. Ether

¹³ The Coinbase Prime service is an execution service pursuant to which Coinbase will execute ether orders for the Trust by accessing liquidity from sources such as ether trading platforms, which can include

Trading Counterparties settle trades with the Trust using their own accounts at the Prime Execution Agent when trading with the Trust.

For a creation of a Basket, the Authorized Participant will be required to submit the creation order by an early order cutoff (“Creation Early Cutoff Time”). The Creation Early Cutoff Time will initially be 6:00 p.m. ET on the business day prior to trade date.

On the date of the Creation Early Cutoff Time for a creation order, the Trust will choose, in its sole discretion, to enter into a transaction with an Ether Trading Counterparty or the Prime Execution Agent to buy ether in exchange for the cash proceeds from such creation order. On settlement date for a creation, the Trust delivers Shares to the Authorized Participant in exchange for cash received from the Authorized Participant. Also, on or around the settlement date, the Ether Trading Counterparty or Prime Execution Agent, as applicable, deposits the required ether pursuant to its trade with the Trust into the Trust’s Trading Account in exchange for cash. In the event the Trust has not been able to successfully execute and complete settlement of an ether transaction by the settlement date of the creation order, the Authorized Participant will be given the option to (1) cancel the creation order, or (2) accept that the Trust will continue to attempt to complete the execution, which will delay the settlement date of the creation order. With respect to a creation order, as between the Trust and the Authorized Participant, the Authorized Participant is responsible for the dollar cost of the difference between the ether price utilized in calculating NAV per Share on trade date and the price at which the Trust acquires the ether to the extent the price realized in buying the ether is higher than the ether price utilized in the NAV.

Coinbase’s own platform, and other liquidity providers. Trades can be executed according to an algorithm or on the basis of firm quotes sought by requests-for-quote (“RFQ”) for a two-way price sent to liquidity providers. Algorithmic trades can be self-directed or executed by Coinbase’s high touch execution desk, Coinbase Execution Services.

To the extent the price realized in buying the ether is lower than the price utilized in the NAV, the Authorized Participant shall get to keep the dollar impact of any such difference.

Because the Trust's Trading Account may not be funded with cash on trade date for the purchase of ether associated with a cash creation order, the Trust may borrow trade credits ("Trade Credits") in the form of cash from Coinbase Credit, Inc. (the "Trade Credit Lender"), an affiliate of the Prime Execution Agent, under the trade financing agreement ("Trade Financing Agreement") or may require the Authorized Participant to deliver the required cash for the creation order on trade date. The extension of Trade Credits on trade date allows the Trust to purchase ether through the Prime Execution Agent on trade date, with such ether being deposited in the Trust's Trading Account. On settlement date for a creation order, the Trust delivers Shares to the Authorized Participant in exchange for cash received from the Authorized Participant. To the extent Trade Credits were utilized, the Trust uses the cash to repay the Trade Credits borrowed from the Trade Credit Lender. On settlement date for a creation order, the ether purchased is swept from the Trust's Trading Account to the Trust's Custody Account pursuant to a regular end-of-day sweep process.

For a redemption of a Basket, the Authorized Participant will be required to submit a redemption order by an early order cutoff (the "Redemption Early Cutoff Time"). The Redemption Early Cutoff Time will initially be 6:00 p.m. ET on the business day prior to trade date. On the date of the Redemption Early Cutoff Time for a redemption order, the Trust may choose, in its sole discretion, to enter into a transaction with an Ether Trading Counterparty or the Prime Execution Agent, to sell ether in exchange for cash. After the Redemption Early Cutoff Time, the Trust instructs the Ether Custodian to prepare to move the associated ether from the Trust's Custody Account to the Trust's Trading Account. On settlement date for a

redemption order, the Authorized Participant delivers the necessary Shares to the Trust, and on or around settlement date, an Ether Trading Counterparty or Prime Execution Agent, as applicable, delivers the cash associated with the Trust's sale of ether to the Trust in exchange for the Trust's ether, and the Trust delivers cash to the Authorized Participant. In the event the Trust has not been able to successfully execute and complete settlement of an ether transaction by the settlement date, the Authorized Participant will be given the option to (1) cancel the redemption order, or (2) accept that the Trust will continue to attempt to complete the execution, which will delay the settlement date. With respect to a redemption order, between the Trust and the Authorized Participant, the Authorized Participant will be responsible for the dollar cost of the difference between the ether price utilized in calculating the NAV per Share on trade date and the price realized in selling the ether to raise the cash needed for the cash redemption order to the extent the price realized in selling the ether is lower than the ether price utilized in the NAV. To the extent the price realized in selling the ether is higher than the price utilized in the NAV, the Authorized Participant will get to keep the dollar impact of any such difference.

The Trust may use financing in connection with a redemption order when ether remains in the Trust's Custody Account at the point of intended execution of a sale of ether. In those circumstances, the Trust may borrow Trade Credits in the form of ether from the Trade Credit Lender, which allows the Trust to sell ether through the Prime Execution Agent on trade date, and the cash proceeds are deposited in the Trust's Trading Account. On settlement date for a redemption order, the Trust delivers cash to the Authorized Participant in exchange for Shares received from the Authorized Participant. In the event financing was used, the Trust will use the ether moved from the Trust's Custody Account to the Trading Account to repay the Trade Credits borrowed from the Trade Credit Lender.

Net Asset Value

The net asset value (“NAV”) of the Trust is used by the Trust in its day-to-day operations to measure the net value of the Trust’s assets. The NAV of the Trust will be equal to the total assets of the Trust, which will consist of ether and cash, less total liabilities of the Trust, each determined by the Trustee pursuant to policies established from time to time by the Trustee or its affiliates as described herein.

The Sponsor has the exclusive authority to determine the Trust’s NAV, which it has delegated to the Trustee under the Trust Agreement. The Trustee has delegated to the Trust Administrator the responsibility to calculate the NAV and the NAV per Share for the Trust, based on a pricing source selected by the Trustee. In determining the Trust’s NAV per Share, the Trust Administrator will value the ether held by the Trust based on the index price, unless the Sponsor in its sole discretion determines that the index is unreliable. The CME CF Ether-Dollar Reference Rate -New York Variant for the Ether-U.S. Dollar trading pair (the “CF Benchmarks Index”) shall constitute the index (“the “Index”), unless the CF Benchmarks Index is not available or the Sponsor in its sole discretion determines that the CF Benchmarks Index is unreliable and therefore determines not to use the CF Benchmarks Index as the Index. If the CF Benchmarks Index is not available or the Sponsor determines, in its sole discretion, that the CF Benchmarks Index is unreliable, (together a “Fair Value Event”), the Trust’s holdings may be fair valued on a temporary basis in accordance with the fair value policies approved by the Trustee. If the CF Benchmarks Index is not used as the Index price, owners of the beneficial interests of Shares (the “Shareholders”) will be notified in a prospectus supplement or on the Trust’s website and, if this index change is on a permanent basis, a filing with the SEC under Rule 19b-4 of the Act will be required.

A Fair Value Event value determination will be based upon all available factors that the Sponsor or Trustee deems relevant at the time of the determination, and may be based on analytical values determined by the Sponsor or Trustee using third-party valuation models.

Fair value policies approved by the Trustee will seek to determine the fair value price that the Trust might reasonably expect to receive from the current sale of that asset or liability in an arm's-length transaction on the date on which the asset or liability is being valued consistent with "Relevant Transactions".¹⁴ In the instance of a Fair Value Event and pursuant the Sponsor's fair valuation policies and procedures Volume Weighted Average Prices ("VWAP") or Volume Weighted Median Prices ("VWMP") from another index administrator ("Secondary Index") would be utilized. If a Secondary Index is not available or the Sponsor in its sole discretion determines the Secondary Index is unreliable, then the price set by the Trust's principal market as of 4:00 p.m. ET, on the valuation date would be utilized.

In the event the principal market price is not available or the Sponsor in its sole discretion determines the principal market valuation is unreliable, then the Sponsor will use its best judgment to determine a good faith estimate of fair value. The Trustee identifies and determines the Trust's principal market (or in the absence of a principal market, the most advantageous market) for ether consistent with the application of fair value measurement framework in FASB ASC 820-10.¹⁵ The principal market is the market where the reporting entity would normally

¹⁴ A "Relevant Transaction" is any cryptocurrency versus U.S. dollar spot trade that occurs during the observation window between 3:00 p.m. and 4:00 p.m. ET on a "Constituent Platform" in the ETH/USD pair that is reported and disseminated by a Constituent Platform through its publicly available application programming interface and observed by the "Index Administrator", as such terms are defined below.

¹⁵ See FASB (Financial Accounting Standards Board) Accounting standards codification (ASC) 820-10. For financial reporting purposes only, the Trustee has adopted a valuation policy that outlines the methodology for valuing the Trust's assets. The policy also outlines the methodology for determining the principal market (or in the absence of a principal market, the most advantageous market) in accordance with FASB ASC 820-10.

enter into a transaction to sell the asset or transfer the liability. The principal market must be available to and be accessible by the reporting entity. The reporting entity is the Trust.

Net Asset Value Calculation and Index

On each Business Day (as defined below), as soon as practicable after 4:00 p.m. ET, the Trust Administrator evaluates the value of ether held by the Trust as reflected by the CF Benchmarks Index and determines the NAV per Share. For purposes of making these calculations, a Business Day means any day other than a day when Nasdaq is closed for regular trading (“Business Day”).

The CF Benchmarks Index employed by the Trust is calculated on each Business Day by aggregating the notional value of ether trading activity across major ether spot platforms. The CF Benchmarks Index is designed based on the IOSCO Principles for Financial Benchmarks. The administrator of the CF Benchmarks Index is CF Benchmarks Ltd. (the “Index Administrator”). The CF Benchmarks Index serves as a once-a-day benchmark rate of the U.S. dollar price of ether (USD/ETH), calculated as of 4:00 p.m. ET. The CF Benchmarks Index aggregates the trade flow of several ether platforms, during an observation window between 3:00 p.m. and 4:00 p.m. ET into the U.S. dollar price of one ether at 4:00 p.m. ET. Specifically, the CF Benchmarks Index is calculated based on the “Relevant Transactions” of all of its constituent ether platforms, which are currently: Bitstamp, Coinbase, Gemini, itBit, Kraken, and LMAX Digital (the “Constituent Platforms”), and which may change from time to time.

If the CF Benchmarks Index is not available or the Sponsor determines, in its sole discretion, that the CF Benchmarks Index is unreliable and so should not be used, the Trust's holdings may be fair valued in accordance with the policy approved by the Trustee.¹⁶

Intraday Indicative Value

In order to provide updated information relating to the Trust for use by Shareholders, the Trust intends to publish an intraday indicative value per Share ("IIV") using the CME CF Ether-Dollar Real Time Index.¹⁷ One or more major market data vendors will provide an IIV updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's regular market session of 9:30 a.m. to 4:00 p.m. ET (the "Regular Market Session"). The 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 based on the CME CF Ether-Dollar Real Time Index to reflect changes in the value of the Trust's NAV per Share during the trading day.

The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Market Session by one or more major market data vendors. In addition, the IIV will be available through online information services. All aspects of the Index methodology are publicly available at the website of Index Administrator, CF Benchmarks (<https://www.cfbenchmarks.com>).

¹⁶ If the Sponsor determines that the CF Benchmarks Index is unreliable and so should not be used on a permanent basis, the Exchange will file a 19b-4 application to use a new index instead of the CF Benchmarks Index.

¹⁷ The CME CF Ether-Dollar Real Time Index is a once a second benchmark index price for ether that aggregates order data from ether-USD markets operated by major cryptocurrency platforms that conform to certain constituent platform criteria.

Creation and Redemption of Shares

The Trust issues and redeems Baskets¹⁸ on a continuous basis. Baskets are only issued or redeemed in exchange for an amount of cash determined by the Trustee on each day that Nasdaq is open for regular trading. No Shares are issued unless the Cash Custodian has allocated to the Trust's account the corresponding amount of cash. The amount of cash necessary for the creation of a Basket, or to be received upon redemption of a Basket, will decrease over the life of the Trust, due to the payment or accrual of fees and other expenses or liabilities payable by the Trust. Baskets may be created or redeemed only by Authorized Participants, who pay a transaction fee for each order to create or redeem Baskets to BlackRock Investments, LLC ("BRIL"), an affiliate of the Trustee and a wholly owned subsidiary of BlackRock, Inc., which has been retained by the Trust to perform certain order processing, Authorized Participant communications, and related services in connection with the issuance and redemption of Baskets.

The Sponsor will maintain ownership and control of the ether in a manner consistent with good delivery requirements for spot commodity transactions.

Overview of the Ethereum Industry

Ethereum is free software that is hosted on computers distributed throughout the globe. It employs an array of computer code-based logic, called a protocol, to create a unified understanding of ownership, commercial activity, and economic logic. This allows users to engage in commerce without the need to trust any of its participants or counterparties. Ethereum

¹⁸ Baskets will be offered continuously at the NAV per Share for 40,000 Shares. Therefore, a Basket of Shares would be valued at NAV per Share multiplied by the Basket size and the value of ether required to be delivered in exchange for a creation of a Basket would equal the dollar value of the NAV per Share multiplied by the Basket size for such creations. The Trust may change the number of Shares in a Basket. Only Authorized Participants may purchase or redeem Baskets. Shares will be offered to the public from time to time at varying prices that will reflect the price of ether and the trading price of the Shares on Nasdaq at the time of the offer.

code creates verifiable and unambiguous rules that assign clear, strong property rights to create a platform for unrestrained business formation and free exchange. No single intermediary or entity operates or controls the Ethereum network (referred to as “decentralization”), the transaction validation and recordkeeping infrastructure of which is collectively maintained by a disparate user base. The Ethereum network allows people to exchange tokens of value, or ether (“ETH”), which are recorded on a distributed public recordkeeping system or ledger known as a blockchain (the “Ethereum Blockchain”), and which can be used to pay for goods and services, including computational power on the Ethereum network, or converted to fiat currencies, such as the U.S. dollar, at rates determined on digital asset platforms or in individual peer-to-peer transactions. Furthermore, by combining the recordkeeping system of the Ethereum Blockchain with a flexible scripting language that is programmable and can be used to implement sophisticated logic and execute a wide variety of instructions, the Ethereum network is intended to act as a foundational infrastructure layer on top of which users can build their own custom software programs, as an alternative to centralized web servers. In theory, anyone can build their own custom software programs on the Ethereum network. In this way, the Ethereum network represents a project to expand blockchain deployment beyond a peer-to-peer private money system into a flexible, distributed alternative computing infrastructure that is available to all. On the Ethereum network, ETH is the unit of account that users pay for the computational resources consumed by running their programs.

Up to now, U.S. retail investors have lacked a U.S. regulated, U.S. exchange-traded vehicle to gain exposure to ETH. Instead, current options include: (i) facing the counter-party risk, legal uncertainty, technical risk, and complexity associated with accessing spot ether or (ii) over-the-counter ether funds (“OTC ETH Funds”) with high management fees and potentially

volatile premiums and discounts. Meanwhile, investors in other countries, including Germany, Switzerland and France, are able to use more traditional exchange listed and traded products (including exchange-traded funds holding physical ETH) to gain exposure to ETH. Investors across Europe have access to products which trade on regulated exchanges and provide exposure to a broad array of spot crypto assets. U.S. investors, by contrast, are left with fewer and more risky means of getting ether exposure.¹⁹

To this point, the lack of an ETP that holds spot ETH (a “Spot ETH ETP”) exposes U.S. investor assets to significant risk because investors that would otherwise seek cryptoasset exposure through a Spot ETH ETP are forced to find alternative exposure through generally riskier means. For example, investors in OTC ETH Funds are not afforded the benefits and protections of regulated Spot ETH ETPs, resulting in retail investors suffering losses due to drastic movements in the premium/discount of OTC ETH Funds. An investor who purchased the largest OTC ETH Fund in January 2021 and held the position at the end of 2022 would have suffered a 30% loss due to the change in the premium/discount, even if the price of ETH did not change. Many retail investors likely suffered losses due to this premium/discount in OTC ETH Fund trading; all such losses could have been avoided if a Spot ETH ETP had been available. Additionally, many U.S. investors that held their digital assets in accounts at FTX,²⁰ Celsius Network LLC,²¹ BlockFi Inc.²² and Voyager Digital Holdings, Inc.²³ have become unsecured

¹⁹ The Exchange notes that the list of countries above is not exhaustive and that securities regulators in a number of additional countries have either approved or otherwise allowed the listing and trading of Spot ETH ETPs.

²⁰ See FTX Trading Ltd., et al., Case No. 22-11068.

²¹ See Celsius Network LLC, et al., Case No. 22-10964.

²² See BlockFi Inc., Case No. 22-19361.

²³ See Voyager Digital Holdings, Inc., et al., Case No. 22-10943.

creditors in the insolvencies of those entities. If a Spot ETH ETP was available, it is likely that at least a portion of the billions of dollars tied up in those proceedings would still reside in the brokerage accounts of U.S. investors, having instead been invested in a transparent, regulated, and well-understood structure – a Spot ETH ETP. To this point, approval of a Spot ETH ETP would represent a major win for the protection of U.S. investors in the cryptoasset space. The Trust, like all other series of Commodity-Based Trust Shares, is designed to protect investors against the risk of losses through fraud and insolvency that arise by holding digital assets, including ETH, on centralized platforms.

Applicable Standard

The Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts,²⁴ including spot based Commodity-Based Trust Shares,²⁵ 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.²⁶ 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 (“CFTC”)

²⁴ 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.

²⁵ 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.

²⁶ See Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the “Winklevoss Order”).

regulated futures market.²⁷ 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 exchange

²⁷ See streetTRACKS Gold Shares, Exchange Act Release No. 50603 (Oct. 28, 2004), 69 FR 64614, 64618–19 (Nov. 5, 2004) (SR-NYSE-2004-22) (the “First Gold Approval Order”); iShares COMEX Gold Trust, Exchange Act Release No. 51058 (Jan. 19, 2005), 70 FR 3749, 3751, 3754–55 (Jan. 26, 2005) (SR-Amex-2004-38); iShares Silver Trust, Exchange Act Release No. 53521 (Mar. 20, 2006), 71 FR 14967, 14968, 14973–74 (Mar. 24, 2006) (SR-Amex-2005-072); ETFS Gold Trust, Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993, 22994–95, 22998, 23000 (May 15, 2009) (SR-NYSEArca-2009-40); ETFS Silver Trust, Exchange Act Release No. 59781 (Apr. 17, 2009), 74 FR 18771, 18772, 18775–77 (Apr. 24, 2009) (SR-NYSEArca-2009-28); ETFS Palladium Trust, Exchange Act Release No. 61220 (Dec. 22, 2009), 74 FR 68895, 68896 (Dec. 29, 2009) (SR-NYSEArca-2009-94) (notice of proposed rule change included NYSE Arca’s representation that “[t]he most significant palladium futures exchanges are the NYMEX and the Tokyo Commodity Exchange,” that “NYMEX is the largest exchange in the world for trading precious metals futures and options,” and that NYSE Arca “may obtain trading information via the Intermarket Surveillance Group,” of which NYMEX is a member, Exchange Act Release No. 60971 (Nov. 9, 2009), 74 FR 59283, 59285–86, 59291 (Nov. 17, 2009)); ETFS Platinum Trust, Exchange Act Release No. 61219 (Dec. 22, 2009), 74 FR 68886, 68887–88 (Dec. 29, 2009) (SR-NYSEArca-2009-95) (notice of proposed rule change included NYSE Arca’s representation that “[t]he most significant platinum futures exchanges are the NYMEX and the Tokyo Commodity Exchange,” that “NYMEX is the largest exchange in the world for trading precious metals futures and options,” and that NYSE Arca “may obtain trading information via the Intermarket Surveillance Group,” of which NYMEX is a member, Exchange Act Release No. 60970 (Nov. 9, 2009), 74 FR 59319, 59321, 59327 (Nov. 17, 2009)); Sprott Physical Gold Trust, Exchange Act Release No. 61496 (Feb. 4, 2010), 75 FR 6758, 6760 (Feb. 10, 2010) (SR-NYSEArca-2009-113) (notice of proposed rule change included NYSE Arca’s representation that the COMEX is one of the “major world gold markets,” that NYSE Arca “may obtain trading information via the Intermarket Surveillance Group,” and that NYMEX, of which COMEX is a division, is a member of the Intermarket Surveillance Group, Exchange Act Release No. 61236 (Dec. 23, 2009), 75 FR 170, 171, 174 (Jan. 4, 2010)); Sprott Physical Silver Trust, Exchange Act Release No. 63043 (Oct. 5, 2010), 75 FR 62615, 62616, 62619, 62621 (Oct. 12, 2010) (SR-NYSEArca-2010-84); ETFS Precious Metals Basket Trust, Exchange Act Release No. 62692 (Aug. 11, 2010), 75 FR 50789, 50790 (Aug. 17, 2010) (SR-NYSEArca-2010-56) (notice of proposed rule change included NYSE Arca’s representation that “the most significant gold, silver, platinum and palladium futures exchanges are the COMEX and the TOCOM” and that NYSE Arca “may obtain trading information via the Intermarket Surveillance Group,” of which COMEX is a member, Exchange Act Release No. 62402 (Jun. 29, 2010), 75 FR 39292, 39295, 39298 (July 8, 2010)); ETFS White Metals Basket Trust, Exchange Act Release No. 62875 (Sept. 9, 2010), 75 FR 56156, 56158 (Sept. 15, 2010) (SR-NYSEArca-2010-71) (notice of proposed rule change included NYSE Arca’s representation that “the most significant silver, platinum and palladium futures exchanges are the COMEX and the TOCOM” and that NYSE Arca “may obtain trading information via the Intermarket Surveillance Group,” of which COMEX is a member, Exchange Act Release No. 62620 (July 30, 2010), 75 FR 47655, 47657, 47660 (Aug. 6, 2010)); ETFS Asian Gold Trust, Exchange Act Release No. 63464 (Dec. 8, 2010), 75 FR 77926, 77928 (Dec. 14, 2010) (SR-NYSEArca-2010-95) (notice of proposed rule change included NYSE Arca’s representation that “the most significant gold futures exchanges are the COMEX and the Tokyo Commodity Exchange,” that “COMEX is the largest exchange in the world for trading precious metals futures and options,” and that NYSE Arca “may obtain trading information via the Intermarket Surveillance Group,” of which COMEX is a member, Exchange Act Release No. 63267 (Nov. 8, 2010), 75 FR 69494, 69496, 69500–01 (Nov. 12, 2010)); Sprott Physical Platinum and Palladium Trust, Exchange Act Release No. 68430 (Dec. 13, 2012), 77 FR 75239, 75240–41 (Dec. 19, 2012) (SR-NYSEArca-2012-111) (notice of proposed rule change included NYSE Arca’s representation that “[f]utures on platinum and palladium are traded on two major exchanges: The New York Mercantile Exchange ... and Tokyo Commodities Exchange” and that NYSE Arca “may obtain trading information via the Intermarket Surveillance Group,” of which COMEX is a member, Exchange Act Release No. 68101 (Oct. 24, 2012), 77 FR 65732, 65733, 65739 (Oct. 30, 2012)); APMEX Physical—

traded products (“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 First Gold Approval Order “was based on an assumption that the currency market and the spot gold market were largely unregulated.”²⁸

As such, the regulated market of significant size test does not require that the spot ether 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

1 oz. Gold Redeemable Trust, Exchange Act Release No. 66930 (May 7, 2012), 77 FR 27817, 27818 (May 11, 2012) (SR-NYSEArca-2012-18) (notice of proposed rule change included NYSE Arca’s representation that NYSE Arca “may obtain trading information via the Intermarket Surveillance Group,” of which COMEX is a member, and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross- reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the “major world gold markets,” Exchange Act Release No. 66627 (Mar. 20, 2012), 77 FR 17539, 17542–43, 17547 (Mar. 26, 2012)); JPM XF Physical Copper Trust, Exchange Act Release No. 68440 (Dec. 14, 2012), 77 FR 75468, 75469–70, 75472, 75485–86 (Dec. 20, 2012) (SR-NYSEArca-2012-28); iShares Copper Trust, Exchange Act Release No. 68973 (Feb. 22, 2013), 78 FR 13726, 13727, 13729–30, 13739–40 (Feb. 28, 2013) (SR-NYSEArca-2012-66); First Trust Gold Trust, Exchange Act Release No. 70195 (Aug. 14, 2013), 78 FR 51239, 51240 (Aug. 20, 2013) (SR-NYSEArca-2013-61) (notice of proposed rule change included NYSE Arca’s representation that FINRA, on behalf of the exchange, may obtain trading information regarding gold futures and options on gold futures from members of the Intermarket Surveillance Group, including COMEX, or from markets “with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement,” and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the “major world gold markets,” Exchange Act Release No. 69847 (June 25, 2013), 78 FR 39399, 39400, 39405 (July 1, 2013)); Merk Gold Trust, Exchange Act Release No. 71378 (Jan. 23, 2014), 79 FR 4786, 4786–87 (Jan. 29, 2014) (SR-NYSEArca-2013-137) (notice of proposed rule change included NYSE Arca’s representation that “COMEX is the largest gold futures and options exchange” and that NYSE Arca “may obtain trading information via the Intermarket Surveillance Group,” including with respect to transactions occurring on COMEX pursuant to CME and NYMEX’s membership, or from exchanges “with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement,” Exchange Act Release No. 71038 (Dec. 11, 2013), 78 FR 76367, 76369, 76374 (Dec. 17, 2013)); Long Dollar Gold Trust, Exchange Act Release No. 79518 (Dec. 9, 2016), 81 FR 90876, 90881, 90886, 90888 (Dec. 15, 2016) (SR-NYSEArca-2016-84).

²⁸ See Winklevoss Order at 37592.

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. With this in mind, the CME ether futures (“CME Ether Futures”) market, as described below, is the proper market to consider in determining whether there is a related regulated market of significant size.

Recently, the Commission issued an order granting approval for proposals to list bitcoin-based commodity trust and bitcoin-based trust units (these funds are nearly identical to the Trust, but hold bitcoin and CME bitcoin futures (“CME Bitcoin Futures”) instead of ether) (“Spot Bitcoin ETPs”).²⁹ In considering the Spot Bitcoin ETPs, the Commission determined in the Spot Bitcoin ETP Approval Order that the Exchanges’ comprehensive surveillance-sharing agreement with the CME—a U.S. regulated market whose bitcoin futures market is consistently highly correlated to spot bitcoin can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the proposals.

Specifically, the Commission stated:

[B]ased on the record before the Commission and the improved quality of the correlation analysis in the record...the Commission is able to conclude that fraud or manipulation that impacts prices in spot bitcoin markets would likely similarly impact CME bitcoin futures prices. And because the CME’s surveillance can assist in detecting those impacts on CME bitcoin futures prices, the Exchanges’ comprehensive surveillance-sharing agreement with the CME—a U.S. regulated market whose bitcoin futures market is consistently highly correlated to spot bitcoin, albeit not of “significant size” related to spot bitcoin—can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [p]roposals.³⁰

²⁹ See Exchange Act Release No. 99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (Self-Regulatory Organizations; NYSE Arca, Inc.; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units) (the “Spot Bitcoin ETP Approval Order”).

³⁰ See the Spot Bitcoin ETP Approval Order at 3011-3012.

The Exchange and Sponsor applaud the Commission for allowing the launch of Exchange Traded Funds (“ETFs”) registered under the Investment Company Act of 1940, as amended (the “1940 Act”) that provide exposure to ether primarily through CME Ether Futures. Allowing such products to list and trade is a productive first step in providing U.S. investors and traders with transparent, exchange-listed tools for expressing a view on ether.

On October 2, 2023 the SEC approved nine ETH-based ETFs for trading.³¹ The ETFs hold CME Ether Futures and settle using the CME CF Ethereum Reference Rate (“ERR”), which is priced based on the spot ETH markets Coinbase, Kraken, LMAX, Bitstamp, Gemini, and itBit, essentially the same spot markets that are included in the Index that the Trust uses to value its ETH holdings. Given that the Commission has approved ETFs that offer exposure to CME Ether Futures, which themselves are priced based on the underlying spot ETH market, the Sponsor believes that the Commission must also approve ETPs that offer exposure to spot ETH, like the Trust.

Based on the foregoing, the Exchange and Sponsor believe that any objective review of the proposals to list spot ether ETPs, like the Trust, compared to the ETH Futures ETFs would lead to the conclusion that any concerns related to preventing fraudulent and manipulative acts and practices related to spot ether ETPs would apply equally to the spot markets underlying the CME Ether Futures held by an ETH Futures ETF. Both the Exchange and Sponsor believe that the CME Ether Futures market is a regulated market of significant size and that such manipulation concerns are mitigated, as described extensively below. After allowing the listing

³¹ These ETFs included the Bitwise Ethereum Strategy ETF, Bitwise Bitcoin & Ether Equal Weight Strategy ETF, Hashdex Ether Strategy ETF, ProShares Ether Strategy ETF, ProShares Bitcoin & Ether Strategy ETF, ProShares Bitcoin & Ether Equal Weight Strategy ETF, Valkyrie Bitcoin & Ethereum Strategy ETF, VanEck Ethereum Strategy ETF, and Volatility Shares Ethereum Strategy ETF (collectively, the “ETH Futures ETFs”).

and trading of ETH Futures ETFs that hold primarily CME Ether Futures, however, the only consistent outcome would be approving spot ether ETPs on the basis that the CME Ether Futures market is a regulated market of significant size.

The Sponsor believes that because the CME Ether Futures market is priced based on the underlying spot ETH market, any fraud or manipulation in the spot market would necessarily affect the price of CME Ether Futures, thereby affecting the net asset value of an ETP holding spot ETH or an ETF holding CME Ether Futures, as well as the price investors pay for such product's shares. Accordingly, either CME surveillance can detect spot-market fraud that affects both futures ETFs and spot ETPs, or that surveillance cannot do so for either type of product. Having approved ETH Futures ETFs in part on the basis of such surveillance, the Commission has clearly determined that CME surveillance can detect spot-market fraud that would affect spot ETPs, and the Sponsor thus believes that it must also approve spot ETH ETPs on that basis.

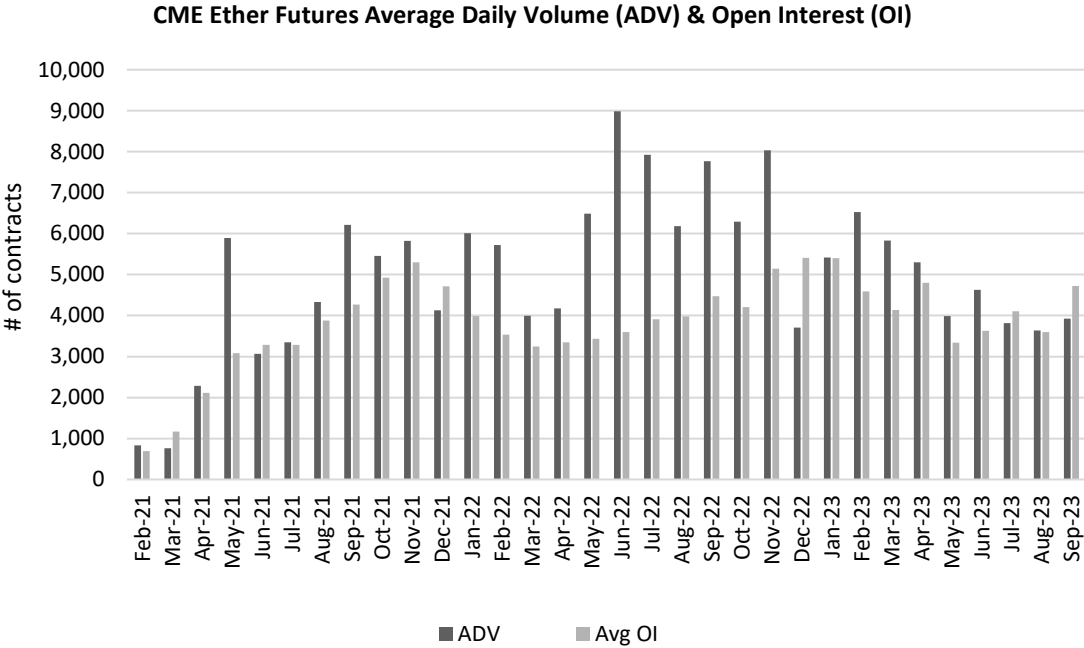
In summary, both the Exchange and the Sponsor believe that this proposal and the included analysis are sufficient to establish that the CME Ether Futures market represents a regulated market of significant size as it relates both to the CME Ether Futures market and to the spot ETH market and that this proposal should be approved.

CME Ether Futures

CME began offering trading in CME Ether Futures in February 2021. Each contract represents 50 ETH and is based on the CME CF Ether-Dollar Reference Rate.³² The contracts trade and settle like other cash-settled commodity futures contracts. Most measurable metrics related to CME Ether Futures have generally trended up since launch, although some metrics

³² The CME CF Ether-Dollar Reference Rate is based on a publicly available calculation methodology based on pricing sourced from several crypto exchanges and trading platforms, including Bitstamp, Coinbase, Gemini, itBit, Kraken, and LMAX Digital.

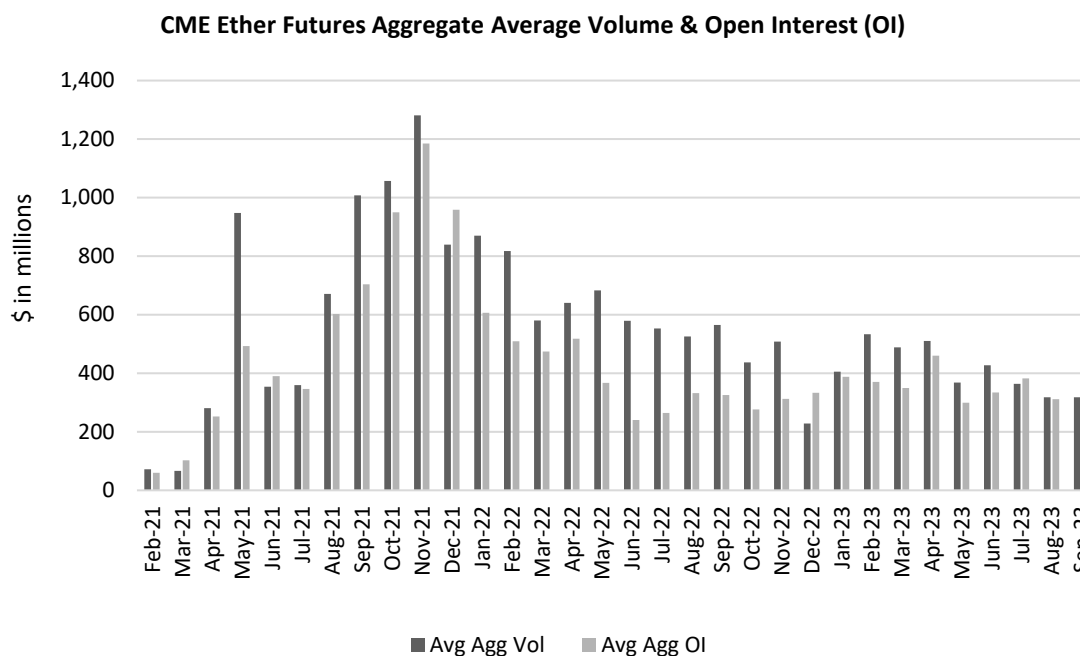
have slowed recently. For example, there were 78,571 CME Ether Futures contracts traded in September 2023 (approximately \$6.3 billion) compared to 163,114 (\$11.9 billion) and 130,546 (\$21.2 billion) contracts traded in September 2022, and September 2022 respectively.³³ The daily correlation between the spot ETH and the CME Ether Futures is 0.9993 from the period of 10/13/22 through 10/13/23.³⁴ The number of large open interest holders³⁵ and unique accounts trading CME Ether Futures have both increased, even in the face of heightened ETH price volatility.



³³ Source: Bloomberg, BlackRock calculations. Data as of 10/18/2023 for period shown (2/8/2021 to 9/30/2023).

³⁴ Source: S&P Ethereum Index, S&P CME Ether Futures Index (Spot).

³⁵ A large open interest holder in CME Ether Futures is an entity that holds at least 25 contracts, which is the equivalent of 1250 ether. At a price of approximately \$1,867 per ether on 7/31/2023, more than 59 firms had outstanding positions of greater than \$2.3 million in CME Ether Futures.



Preventing Fraudulent and Manipulative Practices

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;³⁶ and

³⁶ The Exchange believes that ETH is resistant to price manipulation and that “other means to prevent fraudulent and manipulative acts and practices” exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of ETH trading render it difficult and prohibitively costly to manipulate the price of ETH. The fragmentation across ETH platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of ETH prices through continuous trading activity challenging. To the extent that there are ETH platforms engaged in or allowing wash trading or other activity intended to manipulate the price of ETH on other markets, such pricing does not normally impact prices on other platforms because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the ETH markets and the presence of arbitrageurs in those markets means that the manipulation of the price of ETH price on any single venue would require manipulation of the global ETH price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular ETH platform or Over-the Counter platform (“OTC platform”). As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

(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 and that this filing sufficiently demonstrates that the CME Ether Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

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

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance sharing agreement in place³⁷ with a regulated market of significant size. Both the Exchange and CME are members of the Intermarket Surveillance Group (“ISG”).³⁸ The only remaining issue to be addressed is whether the CME Ether Futures market constitutes a market of significant size, which both the Exchange and the Sponsor believe that it does. The terms “significant market” and “market of significant size” include a market (or group

³⁷ As previously articulated by the Commission, “The standard requires such surveillance-sharing agreements since “they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.” The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.” The Commission has historically held that joint membership in the Intermarket Surveillance Group (“ISG”) constitutes such a surveillance sharing agreement. See Securities Exchange Act Release No. 88284 (February 26, 2020), 85 FR 12595 (March 3, 2020) (SR-NYSEArca-2019-39) (the “Wilshire Phoenix Disapproval”).

³⁸ For a list of the current members and affiliate members of ISG, see <https://www.isgportal.com/>.

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 manipulate the ETP, so that a surveillance sharing agreement would assist the listing exchange 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.³⁹

The Commission has also recognized that the “regulated market of significant size” standard is not the only means for satisfying Section 6(b)(5) of the Act, specifically providing that a listing exchange could demonstrate that “other means to prevent fraudulent and manipulative acts and practices” are sufficient to justify dispensing with the requisite surveillance sharing agreement.⁴⁰

(A) Reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP

The significant market test requires that there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct. In light of the similarly high correlation between spot ETH/CME Ether Futures and spot bitcoin/CME Bitcoin Futures, applying the same rationale that the Commission applied to a Spot bitcoin ETP in the Spot Bitcoin ETP Approval Order also indicates that this test is satisfied for this proposal. As noted above, in the Spot Bitcoin ETP Approval Order, the SEC concluded that: ...fraud or manipulation that impacts prices in spot bitcoin markets would likely

³⁹ See Wilshire Phoenix Disapproval.

⁴⁰ 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.

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...can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [p]roposals.⁴¹ The assumptions from this statement are also true for CME Ether Futures. CME Ether Futures pricing is based on pricing from spot ether markets. The statement from the Spot Bitcoin ETP Approval Order that the surveillance-sharing agreement with the CME “can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [p]roposals” makes clear that the Commission believes that CME’s surveillance can capture the effects of trading on the relevant spot markets on the pricing of CME Bitcoin Futures. This same logic would extend to CME Ether Futures markets where CME’s surveillance would be able to capture the effects of trading on the relevant spot markets on the pricing of CME Ether Futures.

(B) Predominant Influence on Prices in Spot and CME Ether Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices in the CME Ether Futures market or spot market for a number of reasons. First, because the Trust would not hold CME Ether Futures contracts, the only way that it could be the predominant force on prices in that market is through the spot markets that CME Ether Futures contracts use for pricing.⁴² The Sponsor notes that ETH total 24-hour spot trading

⁴¹ See the Spot Bitcoin ETP Approval Order at 3011-3012.

⁴² This logic is reflected by the court in *Grayscale Investments, LLC v. SEC*, 82 F.4th 1239 (D.C. Cir. 2023) (the “Grayscale Decision”). Specifically, the court found that “Because Grayscale owns no futures contracts, trading in Grayscale can affect the futures market only through the spot market...But Grayscale holds just 3.4 percent of outstanding bitcoin, and the Commission did not suggest Grayscale can dominate the price of bitcoin.”

volume has averaged \$9.1B over the year ending October 16, 2023,⁴³ with approximately \$1.7B occurring on venues whose trades are included in the Constituent Platforms.⁴⁴ The Sponsor expects that the Trust would represent a very small percentage of this daily trading volume in the spot ETH market even in its most aggressive projections for the Trust’s assets and, thus, the Trust would not have an impact on the spot market and therefore could not be the predominant force on prices in the CME Ether Futures market. Second, much like the CME Bitcoin Futures market, the CME Ether Futures market has progressed and matured significantly. As the court found in the Grayscale Decision “Because the spot market is deeper and more liquid than the futures market, manipulation should be more difficult, not less.” The Exchange and Sponsor agree with this sentiment and believe it applies equally to the spot ETH and CME Ether Futures markets.

(C) Other Means to Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that “other means to prevent fraudulent and manipulative acts and practices” are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present.

As noted in the Surveillance section, the surveillance program includes real-time patterns for price and volume movements and post-trade surveillance patterns (e.g., spoofing, marking the close, pinging, phishing). In addition to the Exchange’s existing surveillance, a new pattern will be added to surveil for significant deviation in the Commodity-Based Trust Shares’ price from

⁴³ Source: CoinGecko.

⁴⁴ Source: CoinGecko, The Block, and BlackRock calculations.

the underlying asset's price. The Exchange will use the trade data from an external vendor that consolidates the real-time data from multiple ether platforms.

Trading of Shares on the Exchange will be subject to the Exchange's surveillance program for derivative products, as well as cross-market surveillances administered by Financial Industry Regulatory Authority ("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 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 from such markets and other entities.

Spot and Proxy Exposure to Ether

Exposure to ether through an ETP also presents certain advantages for retail investors compared to buying spot ether directly. The most notable advantage from the Sponsor's perspective is the elimination of the need for an individual retail investor to either manage their own private keys or to hold ether through a cryptocurrency platform that lacks sufficient

protections. Typically, retail platforms hold most, if not all, retail investors' ether in "hot" (internet connected) storage and do not make any commitments to indemnify retail investors or to observe any particular cybersecurity standard. Meanwhile, a retail investor holding spot ether directly in a self-hosted wallet may suffer from inexperience in private key management (e.g., insufficient password protection, lost key, etc.), which point of failure could cause them to lose some or all of their ether holdings. Thus, with respect to custody of the Trust's ether assets, the Trust presents advantages from an investment protection standpoint for retail investors compared to owning spot ether directly or via a digital asset platform.

Availability of Information

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the prior Business Day's NAV per Share; (b) the prior Business Day's Nasdaq official closing price; (c) calculation of the premium or discount of such Nasdaq official closing price against such NAV per Share; (d) data in chart form displaying the frequency distribution of discounts and premiums of the 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 NAV per Share for the Trust will be calculated by the Trust Administrator once a day and will be disseminated daily to all market participants at the same time. Quotation and last sale information regarding the Shares will be disseminated through the facilities of the relevant securities information processor. Also, an estimated value that reflects an estimated IIV will be disseminated. For more information on the IIV, including the calculation methodology, see "Intraday Indicative Value" above.

The IIV disseminated during the Exchange's Regular Market Session should not be viewed as an actual real time update of the NAV per Share, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Market Session by one or more major market data vendors. In addition, the IIV will be available through online information services.

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

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

Initial and Continued Listing

The Shares will be subject to Nasdaq Rule 5711(d)(vi), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. 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 80,000 Commodity-Based Trust Shares, or the equivalent of 2 Baskets, will be required to be outstanding at the time of commencement of trading on the Exchange. Upon termination of the Trust, the Shares will be removed from listing. The Delaware 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 Delaware 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 ether, CME Ether Futures contracts, options on CME Ether Futures, or any other ether derivative through members acting as registered Market Makers, in connection with their proprietary or customer trades.

As a general matter, the Exchange has regulatory jurisdiction over its members, and their associated persons. The Exchange also has regulatory jurisdiction over any person or entity controlling a member, as well as a subsidiary or affiliate of a member that is in the securities business. A subsidiary or affiliate of a member organization that does business only in commodities would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory 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 ether underlying the Shares; or (2) whether other unusual

conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

If the 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). In addition to the Exchange's existing surveillance, a new pattern will be added to surveil for significant deviation in the Commodity-Based Trust Shares' price from the underlying asset's price. The Exchange will use the trade data from an external vendor that consolidates the real-time data from multiple other platforms. Trading of Shares on the Exchange will be subject to the Exchange's surveillance program for derivative products, as well as cross-market surveillance 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 and ether derivatives from such markets and other entities. The Exchange also may obtain information regarding trading in the Shares and listed ether derivatives via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

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 ether, that the Commission has no jurisdiction over the trading of ether as a commodity, and that the CFTC has regulatory jurisdiction over the trading of CME Ether Futures contracts and options on CME Ether Futures contracts.

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 the proposal is consistent with Section 6(b) of the Act⁴⁵ in general and Section 6(b)(5) of the Act⁴⁶ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

⁴⁵ 15 U.S.C. 78f.

⁴⁶ 15 U.S.C. 78f(b)(5).

The Commission has approved numerous series of Trust Issued Receipts,⁴⁷ including Commodity-Based Trust Shares,⁴⁸ 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 because this filing sufficiently demonstrates that the CME Ether Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

Designed to Prevent Fraudulent and Manipulative Acts and Practices

In order for a proposal to list and trade a series of Commodity-Based Trust Shares to be deemed consistent with the Act, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place with a regulated market of significant size. Both the Exchange and CME are members of ISG.⁴⁹ As such, the only remaining issue to be addressed is whether the CME Ether Futures market constitutes a market of significant size, which the Exchange believes that it does. The terms “significant market” and “market of significant size” include a market (or group of markets) as to which: (a) there is a

⁴⁷ See Exchange Rule 5720.

⁴⁸ Commodity-Based Trust Shares, as described in Exchange Rule 5711(d), are a type of Trust Issued Receipt.

⁴⁹ For a list of the current members and affiliate members of ISG, see <https://www.isgportal.com/>.

reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange 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.⁵⁰

The Commission has also recognized that the “regulated market of significant size” standard is not the only means for satisfying Section 6(b)(5) of the Act, specifically providing that a listing exchange could demonstrate that “other means to prevent fraudulent and manipulative acts and practices” are sufficient to justify dispensing with the requisite surveillance-sharing agreement.⁵¹

(a) Reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP

The significant market test requires that there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct. In light of the similarly high correlation between spot ETH/CME Ether Futures and spot bitcoin/CME Bitcoin Futures, applying the same rationale that the Commission applied to a Spot Bitcoin ETP in the Spot Bitcoin ETP Approval Order also indicates that this test is satisfied for this proposal. As noted above, in the Spot Bitcoin ETP Approval Order, the SEC concluded 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

⁵⁰ See Wilshire Phoenix Disapproval.

⁵¹ 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.

assist in detecting those impacts on CME Bitcoin Futures prices, the Exchanges' comprehensive surveillance-sharing agreement with the CME...can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [p]roposals.⁵² The assumptions from this statement are also true for CME Ether Futures. CME Ether Futures pricing is based on pricing from spot ether markets. The statement from the Spot Bitcoin ETP Approval Order that the surveillance-sharing agreement with the CME "can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [p]roposals" makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of CME Bitcoin Futures. This same logic would extend to CME Ether Futures markets where CME's surveillance would be able to capture the effects of trading on the relevant spot markets on the pricing of CME Ether Futures.

(b) Predominant Influence on Prices in Spot and CME Ether Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices in CME Ether Futures market or spot market for a number of reasons. First, because the Trust would not hold CME Ether Futures contracts, the only way that it could be the predominant force on prices in that market is through the spot markets that CME Ether Futures contracts use for pricing.⁵³ The Sponsor notes that ETH total 24-hour spot trading volume has averaged \$9.1B over the year ending October 16, 2023,⁵⁴ with approximately \$1.7B

⁵² See the Spot Bitcoin ETP Approval Order at 3011-3012.

⁵³ This logic is reflected by the court in the Grayscale Decision. Specifically, the court found that "Because Grayscale owns no futures contracts, trading in Grayscale can affect the futures market only through the spot market...But Grayscale holds just 3.4 percent of outstanding bitcoin, and the Commission did not suggest Grayscale can dominate the price of bitcoin."

⁵⁴ Source: CoinGecko.

occurring on venues whose trades are included in the sponsor's benchmark.⁵⁵ The Sponsor expects that the Trust would represent a very small percentage of this daily trading volume in the spot ETH market even in its most aggressive projections for the Trust's assets and, thus, the Trust would not have an impact on the spot market and therefore could not be the predominant force on prices in the CME Ether Futures market. Second, much like the CME Bitcoin Futures market, the CME Ether Futures market has progressed and matured significantly. As the court found in the Grayscale Decision "Because the spot market is deeper and more liquid than the futures market, manipulation should be more difficult, not less." The Exchange and sponsor agree with this sentiment and believe it applies equally to the spot ETH and CME Ether Futures markets.

(c) Other Means to Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that "other means to prevent fraudulent and manipulative acts and practices" are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present.

As noted in the Surveillance section, the surveillance program includes real-time patterns for price and volume movements and post-trade surveillance patterns (e.g., spoofing, marking the close, pinging, phishing). In addition to the Exchange's existing surveillance, a new pattern will be added to surveil for significant deviation in the Commodity-Based Trust Shares' price from the underlying asset's price. The Exchange will use the trade data from an external vendor that consolidates the real-time data from multiple ether platforms.

⁵⁵ Source: CoinGecko, The Block, and BlackRock calculations.

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 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 from such markets and other entities.

Designed to Protect Investors and the Public Interest

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past several years, U.S. investor exposure to ETH through OTC ETH Funds is greater than \$5 billion. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors through premium/discount volatility and management fees for OTC ETH Funds. The Exchange believes that, as described above, the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, such concerns

are now at the very least outweighed by investor protection concerns. As such, the Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to ETH in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks and costs associated with investing in ETH Futures ETFs and operating companies that are imperfect proxies for ETH exposure; and (iv) providing an alternative to custodial spot ETH.

Commodity-Based Trust Shares – Nasdaq Rule 5711(d)

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5711(d). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series. The Exchange may obtain information regarding trading in the Shares and listed ETH derivatives via the ISG, from other exchanges who are

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

Availability of Information

The Exchange also believes that the proposal promotes market transparency in that a large amount of information is currently available about ETH and will be available regarding the Trust and the Shares. In addition to the price transparency of the CF Benchmarks Index, the Trust will provide information regarding the Trust's ETH 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 Nasdaq official closing price against the NAV per Share, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (e) the prospectus; and (f) other applicable quantitative information. The NAV per Share for the Trust will be calculated by the Trust Administrator once a day and will be disseminated daily to all market participants at the same time. Quotation and last sale information regarding the Shares will be disseminated through the facilities of the relevant securities information processor. Also, an estimated value that reflects an estimated IIV will be disseminated. For more information on the IIV, including the calculation methodology, see "Intraday Indicative Value" above.

The IIV disseminated during the Exchange's Regular Market Session should not be viewed as an actual real time update of the NAV per Share, which will be calculated only once at

the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Market Session by one or more major market data vendors. In addition, the IIV will be available through online information services.

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

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

In sum, the Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act, that this filing sufficiently demonstrates that the CME Ether Futures market represents a regulated market of significant size, and that on the whole the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by investor protection issues that would be resolved by approving this proposal.

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

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the 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. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2023-045 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-2023-045. 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-2023-045 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.⁵⁶

J. Matthew DeLesDernier,

Deputy Secretary.

⁵⁶ 17 CFR 200.30-3(a)(12).