

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98567; File No. SR-NYSEARCA-2023-63)

September 27, 2023

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of a Proposed Rule Change to List and Trade Shares of the Grayscale Ethereum Futures Trust (ETH) ETF under NYSE Arca Rule 8.200-E, Commentary .02 (Trust Issued Receipts)

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on September 19, 2023, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to list and trade shares of the Grayscale Ethereum Futures Trust (ETH) ETF under NYSE Arca Rule 8.200-E, Commentary .02 (“Trust Issued Receipts”). The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to list and trade shares (“Shares”) of the Grayscale Ethereum Futures Trust (ETH) ETF (the “Trust”) under NYSE Arca Rule 8.200-E, Commentary .02, which governs the listing and trading of Trust Issued Receipts.⁴

The Trust is managed by Grayscale Advisors, LLC (“Sponsor”). The Sponsor is in the process of becoming registered as a commodity pool operator with the Commodity Futures Trading Commission (“CFTC”) and is in the process of becoming a member of the National Futures Association. The Sponsor has engaged Vident Advisory, LLC, as subadviser, to serve as the Trust’s commodity trading adviser (“CTA”).

The Sponsor is not registered as a broker-dealer but is affiliated with a broker-dealer. The Sponsor has implemented and will maintain a “fire wall” with respect to such broker-dealer affiliate regarding access to information concerning the composition of and/or changes to the portfolio. In the event that (a) the Sponsor becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new sponsor or sub-adviser is registered as a broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or personnel of the broker-dealer affiliate, as applicable, regarding access to information concerning the composition of and/or changes to the portfolio,

⁴ Commentary .02 to NYSE Arca Rule 8.200-E applies to Trust Issued Receipts that invest in “Financial Instruments.” The term “Financial Instruments,” as defined in Commentary .02(b)(4) to NYSE Arca Rule 8.200-E, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars, and floors; and swap agreements.

and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

The Trust's Investment Objective and Strategy

According to the Sponsor, the CME currently offers two Ethereum futures contracts, one contract representing 50 Ether (“ETH Contracts”) and another contract representing 0.10 Ether (“MET Contracts”). ETH Contracts began trading on the CME Globex trading platform on February 8, 2021 under the ticker symbol “ETH” and are cash-settled in U.S. dollars. MET Contracts began trading on the CME Globex trading platform on December 6, 2021 under the ticker symbol “MET” and are also cash-settled in U.S. dollars.⁵

ETH Contracts and MET Contracts each trade six consecutive monthly contracts plus two additional December contract months (if the 6 consecutive months include December, only one additional December contract month is listed). Because ETH Contracts and MET Contracts are exchange-listed, they allow investors to gain exposure to Ether without having to hold the underlying cryptocurrency. Like a futures contract on a traditional commodity or stock index, ETH Contracts and MET Contracts allow investors to hedge investment positions or speculate on the future price of Ether.

According to the Sponsor, the investment objective of the Trust is to have the daily changes in the net asset value (“NAV”) of the Trust’s Shares reflect the daily changes in the price of a specified benchmark (the “Benchmark”). The Benchmark is the average of the closing settlement prices for the first to expire and second to expire ETH Contracts listed on the Chicago Mercantile Exchange, Inc. (“CME”). The first to expire and second to expire ETH Contracts and

⁵ The daily settlements in MET are derived directly from the settlements in ETH for each contract listing. See <https://www.cmegroup.com/confluence/display/EPICSANDBOX/Bitcoin#Bitcoin-NormalDailySettlementProcedure.1>.

MET Contracts are referred to as the Ether Futures Contracts. Under normal market conditions,⁶ the Trust will invest in Ether Futures Contracts and in cash and cash equivalents.⁷

According to the Sponsor, the Trust seeks to maintain its holdings in Ether Futures Contracts with a roughly constant expiration profile. Therefore, the Trust's positions will be changed or "rolled" on a regular basis in order to track the changing nature of the Benchmark by closing out first to expire contracts prior to settlement that are no longer part of the Benchmark, and then entering into second to expire contracts. Accordingly, the Trust will never carry futures positions all the way to cash settlement; the Trust will price only off of the daily settlement prices of the Ether Futures Contracts.⁸ To achieve this, the Trust will roll its futures holdings prior to cash settlement of the expiring contract.

In seeking to achieve the Trust's investment objective, the Sponsor will employ a "neutral" investment strategy that is intended to track the changes in the Benchmark regardless of whether the Benchmark goes up or goes down. The Trust will endeavor to trade in Ether Futures Contracts so that the Trust's average daily tracking error against the Benchmark will be less than 10 percent over any period of 30 trading days. The Trust's "neutral" investment strategy is designed to permit investors generally to purchase and sell the Trust's Shares for the purpose of investing in the Ether Futures Contracts (as discussed below). Such investors may

⁶ The term "normal market conditions" includes, but is not limited to, the absence of: trading halts in the applicable financial markets generally; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as a natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. See NYSE Arca Rule 8.600-E(c)(5).

⁷ The term "cash equivalents" includes short term Treasury bills, money market funds, demand deposit accounts and commercial paper.

⁸ As discussed in more detail below, the CME determines the daily settlements for Bitcoin futures based on trading activity on CME Globex between 14:59:00 and 15:00:00 Central Time (CT), which is the "settlement period."

include participants in the Ether market seeking to hedge the risk of losses in their Ether-related transactions, as well as investors seeking price exposure to the Ether market.

According to the Sponsor, one factor determining the total return from investing in futures contracts is the price relationship between soon to expire contracts and later to expire contracts. If the futures market is in a state of backwardation (i.e., when the price of ETH Contracts and MET Contracts in the future is expected to be less than the current price), the Trust will buy later to expire contracts for a lower price than the sooner to expire contracts that it sells. Hypothetically, and assuming no changes to either prevailing ETH Contracts and MET Contracts' prices or the price relationship between soon to expire contracts and later to expire contracts, the value of a contract will rise as it approaches expiration. Over time, if backwardation remained constant, the performance of a portfolio would continue to be affected. If the futures market is in contango, the Trust will buy later to expire contracts for a higher price than the sooner to expire contracts that it sells. Hypothetically, and assuming no other changes to either prevailing ETH Contracts and MET Contracts' prices or the price relationship between the spot price, soon to expire contracts and later to expire contracts, the value of a contract will fall as it approaches expiration. Over time, if contango remained constant, the performance of a portfolio would continue to be affected. Frequently, whether contango or backwardation exists is a function, among other factors, of the prevailing market conditions of the underlying market and government policy.

The Trust's investments will be consistent with the Trust's investment objective and will not be used to enhance leverage. That is, the Trust's investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2Xs, 3Xs, -2Xs, and -3Xs) of the Trust's Benchmark.

Summary of the Application

The CME is a regulated futures exchange with the requisite oversight, controls, and regulatory scrutiny necessary to maintain, promote, and effectuate fair and transparent trading of its listed products, including the ETH Contracts and MET Contracts. As proposed, under no circumstances will the Trust hold and/or invest in any assets other than ETH Contracts and MET Contracts, cash, and cash equivalents, and as such, would be an investment product similar to any other exchange-traded product (“ETP”) whose component holdings are futures contracts traded on a regulated exchange. Therefore, investors would be afforded all of the protections that exchanges provide, including bilateral surveillance agreements between the listing exchange of the ETP and the listing exchange of the ETP’s futures-based components.

The Ether Industry and Market Transactions

According to the Sponsor and as discussed in further detail below, Ethereum, or ETH, is a digital asset that is created and transmitted through the operations of the peer-to-peer “Ethereum Network,” a decentralized network of computers that operates on cryptographic protocols. No single entity owns or operates the Ethereum Network, the infrastructure of which is collectively maintained by a decentralized user base. The Ethereum Network allows people to exchange tokens of value, called Ether, which are recorded on a public transaction ledger known as a blockchain. ETH can be used to pay for goods and services, including computational power on the Ethereum network, or it can be converted to fiat currencies, such as the U.S. dollar, at rates determined on “Digital Asset Exchanges”⁹ that trade ETH or in individual end-user-to-end-user transactions under a barter system.

⁹ A “Digital Asset Market” is a “Brokered Market,” “Dealer Market,” “Principal-to-Principal Market” or “Exchange Market,” as each such term is defined in the Financial Accounting Standards Board Accounting Standards Codification Master Glossary. The “Digital Asset Exchange Market” is the global exchange market for the trading of ETH, which consists of transactions on electronic Digital Asset Exchanges. A

Furthermore, the Ethereum Network also allows users to write and implement smart contracts -- that is, general-purpose code that executes on every computer in the network and can instruct the transmission of information and value based on a sophisticated set of logical conditions. Using smart contracts, users can create markets, store registries of debts or promises, represent the ownership of property, move funds in accordance with conditional instructions and create digital assets other than ETH on the Ethereum Network. Smart contract operations are executed on the Ethereum Blockchain in exchange for payment of ETH. The Ethereum Network is one of a number of projects intended to expand blockchain use beyond just a peer-to-peer money system.

The Ethereum Network went live on July 30, 2015. Unlike other digital assets, such as Bitcoin, which are solely created through a progressive mining process, 72.0 million ETH were created in connection with the launch of the Ethereum Network. At the time of the network launch, a non-profit called the Ethereum Foundation was the sole organization dedicated to protocol development.

The Ethereum Network is decentralized in that it does not require governmental authorities or financial institution intermediaries to create, transmit, or determine the value of ETH. Rather, following the initial distribution of ETH, ETH is created, burned, and allocated by the Ethereum Network protocol through a process that is currently subject to an issuance and burn rate. The value of ETH is determined by the supply of and demand for ETH on the Digital Asset Exchanges or in private end-user-to-end-user transactions.

“Digital Asset Exchange” is an electronic marketplace where exchange participants may trade, buy and sell ETH based on bid-ask trading. The largest Digital Asset Exchanges are online and typically trade on a 24-hour basis, publishing transaction price and volume data.

New ETH are created and rewarded to the validators of a block in the Ethereum Blockchain for verifying transactions. The Ethereum Blockchain is effectively a decentralized database that includes all blocks that have been validated, and it is updated to include new blocks as they are validated. Each ETH transaction is broadcast to the Ethereum Network and, when included in a block, recorded in the Ethereum Blockchain. As each new block records outstanding ETH transactions, and outstanding transactions are settled and validated through such recording, the Ethereum Blockchain represents a complete, transparent and unbroken history of all transactions of the Ethereum Network.

Among other things, ETH is used to pay for transaction fees and computational services (i.e., smart contracts) on the Ethereum Network; users of the Ethereum Network pay for the computational power of the machines executing the requested operations with ETH. Requiring payment in ETH on the Ethereum Network incentivizes developers to write quality applications and increases the efficiency of the Ethereum Network because wasteful code costs more, while also ensuring that the Ethereum Network remains economically viable by compensating for contributed computational resources.

To date, several ETH-based exchange-traded funds (“ETFs”) that would be registered under the Investment Company Act of 1940 (the “’40 Act”) have filed registration statements with the Commission. These ETFs would hold ETH futures contracts that trade on the CME and settle using the CME CF Ethereum Reference Rate (“ERR”). In other words, these ETFs offer identical exposure to that of the Trust. Therefore, the Sponsor believes that if the Commission allows these ETFs to begin trading, then it should also approve the Trust for trading.

The Trust Will Not Transact in Ether and Will Not Be Required To Retain an Ether Custodian

The Sponsor notes that individual users, institutional investors and investment funds that want to provide exposure to Ether by investing directly in Ether, and therefore must transact in Ether, must use the Ether Network to download specialized software referred to as a “Ether wallet.” This wallet may be used to send and receive Ether through users’ unique “Ether addresses.” The amount of Ether associated with each Ether address, as well as each Ether transaction to or from such address, is captured on the Blockchain. Ether transactions are secured by cryptography known as public-private key cryptography, represented by the Ether addresses and digital signature in a transaction’s data file. Each Ether Network address, or wallet, is associated with a unique “public key” and “private key” pair, both of which are lengthy alphanumeric codes, derived together and possessing a unique relationship. The private key is a secret and must be kept in accordance with appropriate controls and procedures to ensure it is used only for legitimate and intended transactions. If an unauthorized third person learns of a user’s private key, that third person could forge the user’s digital signature and send the user’s Ether to any arbitrary Ether address, thereby stealing the user’s Ether. Similarly, if a user loses his private key and cannot restore such access (e.g., through a backup), the user may permanently lose access to the Ether contained in the associated address.

According to the Sponsor, institutional purchasers of Ether, including other Ether funds that provide exposure to Ether by investing directly in Ether, generally maintain their Ether account with an Ether custodian. Ether custodians are financial institutions that have implemented a series of specialized security precautions, including holding Ether in “cold storage,” to try to ensure the safety of an account holder’s Ether. These Ether custodians must carefully consider the design of the physical, operational, and cryptographic systems for secure

storage of private keys in an effort to lower the risk of loss or theft, and many use a multi-factor security system under which actions by multiple individuals working together are required to access the private keys necessary to transfer such digital assets and ensure exclusive ownership.

The nature of the Ether Futures Contracts that the Trust will hold is such that the Trust will not be required to use an Ether custodian. According to the Sponsor, the Trust will deposit an initial margin amount to initiate an open position in futures contracts. A margin deposit is like a cash performance bond. It helps assure the trader's performance of the futures contracts that he or she purchases or sells. Futures contracts are marked to market at the end of each trading day and the margin required with respect to such contracts is adjusted accordingly. The remainder of the Trust's assets will be held in cash and cash equivalents at the Trust custodian or other financial institutions. The Trust will only hold Ether Futures Contracts described above.

Accordingly, the Trust will not need an Ether custodian because it will never hold actual Ether.

The Structure and Operation of the Trust Satisfies Commission Requirements for Ether-Based Exchange Traded Products

In the context of prior spot digital asset ETP proposal disapproval orders for Bitcoin, the Commission expressed concerns about the underlying Digital Asset Market due to the potential for fraud and manipulation and outlined the reasons why such proposals have been unable to satisfy these concerns (the "Prior Spot Digital Asset ETP Disapproval Orders").¹⁰ In the Prior

¹⁰ See Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To List and Trade Shares of the Winklevoss Bitcoin Trust, Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (Aug. 1, 2018) (SR-BatsBZX-2016-30) (the "Winklevoss Order"); Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the Bitwise Bitcoin ETF Trust Under NYSE Arca Rule 8.201-E, Securities Exchange Act Release No. 87267 (Oct. 9, 2019), 84 FR 55382 (Oct. 16, 2019) (SR-NYSEArca-2019-01) (the "Bitwise Order"); Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, to Amend NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) and to List and Trade Shares of the United States Bitcoin and Treasury Investment Trust Under NYSE Arca Rule 8.201-E, Securities Exchange Act Release No. 88284 (February 26, 2020), 85 FR 12595 (March 3, 2020) (SR-NYSEArca-2019-39) (the "Wilshire Phoenix Order"); Order Disapproving a Proposed Rule Change to List and Trade the Shares of the ProShares Bitcoin ETF and the ProShares Short Bitcoin ETF, Securities Exchange Act Release No. 83904 (Aug. 22, 2018), 83 FR 43934 (Aug. 28, 2018) (SR-

Spot Digital Asset ETP Disapproval Orders, the Commission outlined that a proposal relating to a digital asset-based ETP could satisfy its concerns regarding potential for fraud and manipulation by demonstrating:

- 1) Inherent Resistance to Fraud and Manipulation: that the underlying commodity market is inherently resistant to fraud and manipulation;
- 2) Other Means to Prevent Fraud and Manipulation: that there are other means to prevent fraudulent and manipulative acts and practices that are sufficient; or
- 3) Surveillance Sharing: that the listing exchange has entered into a surveillance sharing agreement with a regulated market of significant size relating to the underlying or reference assets.

As described below, the Sponsor believes the structure and operation of the Trust are designed to prevent fraudulent and manipulative acts and practices, to protect investors and the public interest, and to respond to the specific concerns that the Commission may have with respect to potential fraud and manipulation in the context of an ETH-based ETP.

Surveillance Sharing Agreements with a Market of Significant Size

In the Prior Spot Digital Asset ETP Disapproval Orders, the Commission noted its concerns that the Bitcoin market could be subject to manipulation.¹¹ In these orders, the

NYSEArca-2017-139) (the “ProShares Order”); Order Disapproving a Proposed Rule Change Relating to Listing and Trading of the Direxion Daily Bitcoin Bear 1X Shares, Direxion Daily Bitcoin 1.25X Bull Shares, Direxion Daily Bitcoin 1.5X Bull Shares, Direxion Daily Bitcoin 2X Bull Shares, and Direxion Daily Bitcoin 2X Bear Shares Under NYSE Arca Rule 8.200-E, Securities Exchange Act Release No. 83912 (Aug. 22, 2018), 83 FR 43912 (Aug. 28, 2018) (SR-NYSEArca-2018-02) (the “Direxion Order”); Order Disapproving a Proposed Rule Change to List and Trade the Shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF, Securities Exchange Act Release No. 83913 (Aug. 22, 2018), 83 FR 43923 (Aug. 28, 2018) (SR-CboeBZX-2018-01) (the “GraniteShares Order”).

¹¹ See Winklevoss I Order and Winklevoss II Order. The Sponsor notes that some of the concerns raised are that a significant portion of Bitcoin trading occurs on unregulated platforms and that there is a concentration of a significant number of Bitcoin in the hands of a small number of holders. However, the Sponsor believes that these facts are not unique to Bitcoin and are true of a number of commodity and other markets. For instance, some gold bullion trading takes place on unregulated OTC markets and a significant

Commission cited numerous precedents¹² in which listing proposals were approved based on findings that the particular market was either inherently resistant to manipulation or that the listing exchange had entered into a surveillance sharing agreement with a market of significant size.¹³ The Commission noted that, for commodity-trust ETPs “there has been in every case at least one significant, regulated market for trading futures in the underlying commodity -- whether gold, silver, platinum, palladium or copper -- and the ETP listing exchange has entered into surveillance-sharing agreements with, or held Intermarket Surveillance Group (the “ISG”) membership in common with, that market.”¹⁴

Like the Exchange, the CME¹⁵ is a member of the ISG, the purpose of which is “to provide a framework for the sharing of information and the coordination of regulatory efforts among exchanges trading securities and related products to address potential intermarket

percentage of gold is held by a relative few. According to estimates of the World Gold Council, approximately 22% of total above ground gold stocks are held by private investors and 17% are held by foreign governments. See <https://www.gold.org/goldhub/data/above-ground-stocks>. By comparison, 13.61% of Bitcoin are held by the 86 largest Bitcoin addresses, some of which are known to be cold storage addresses of large centralized cryptocurrency trading platforms. See <https://bitinfocharts.com/top-100-richest-bitcoin-addresses.html>.

¹² For an extensive listing of such precedents, see Winklevoss I Order, 82 FR at 14083 n. 96.

¹³ The Exchange to date has not entered into surveillance sharing agreements with any cryptocurrency platform. However, the CME, which calculates the CME CF BRR, and which has offered contracts for Bitcoin futures products since 2017, is, as noted below, a member of the Intermarket Surveillance Group (“ISG”). In addition, each Constituent Platform has entered into a data sharing agreement with CME. See <https://docs-cfbenchmarks.s3.amazonaws.com/CME+CF+Constituent+Exchanges+Criteria.pdf>.

¹⁴ See Winklevoss II Order, 83 FR at 37594.

¹⁵ The CME is regulated by the CFTC, which has broad reaching anti-fraud and anti-manipulation authority including with respect to the Bitcoin market since Bitcoin has been designated as a commodity by the CFTC. See A CFTC Primer on Virtual Currencies (October 17, 2017), available at: https://www.cftc.gov/sites/default/files/idc/groups/public/documents/file/labcftc_primer_currencies100417.pdf (the “CFTC Primer on Virtual Currencies”) (“The CFTC’s jurisdiction is implicated when a virtual currency is used in a derivatives contract or if there is fraud or manipulation involving a virtual currency traded in interstate commerce.”). See also 7 U.S.C. § 7(d)(3) (“The board of trade shall list on the contract market only contracts that are not readily susceptible to manipulation.”).

manipulations and trading abuses.”¹⁶ Membership of a relevant futures exchange in ISG is sufficient to meet the surveillance-sharing requirement.¹⁷

The Commission has previously noted that the existence of a surveillance-sharing agreement by itself is not sufficient for purposes of meeting the requirements of Section 6(b)(5); the surveillance-sharing agreement must be with a market of significant size.¹⁸ The Commission has also provided an example of how it interprets the terms “significant market” and “market of significant size,” though that definition is meant to be illustrative and not exclusive: “the terms ‘significant market’ and ‘market of significant size’... include a market (or group of markets) as to which (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP so that a surveillance sharing agreement would assist the ETP listing market in detecting and deterring misconduct and it is unlikely that trading in the ETP would be the predominant influence on prices in that market.”¹⁹

Further, as the Commission explained in the order approving the first Bitcoin-based ETP (the “Teucrium Order”), “the CME is a ‘significant market’ related to CME bitcoin futures contracts, which would be the exclusive noncash holdings of the proposed ETP.”²⁰ In the Teucrium Order, the Commission further elaborated that:

¹⁶ See <https://isgportal.org/overview>.

¹⁷ See, e.g., Winklevoss II Order, 83 FR at 37594.

¹⁸ See, e.g., *id.* at 37589–90.

¹⁹ *Id.* at 37594; see also GraniteShares Order, 83 FR at 43930 n. 85 and accompanying text.

²⁰ Securities Exchange Act Release No. 94620 (April 6, 2022), 87 FR 21676 (Apr. 12, 2022) (SR-NYSEArca-2021-53) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of the Teucrium Bitcoin Futures Fund Under NYSE Arca Rule 8.200-E, Commentary .02 (Trust Issued Receipts)).

[w]ith respect to the proposed ETP, the underlying bitcoin assets are CME bitcoin futures contracts. The relevant analysis, therefore, is whether Arca has a comprehensive surveillance-sharing agreement with a regulated market of significant size related to CME bitcoin futures contracts ... [T]aking into consideration the direct relationship between the regulated market with which Arca has a surveillance-sharing agreement and the assets held by the proposed ETP, as well as developments with respect to the CME bitcoin futures market—including the launch of exchange-traded funds registered under the Investment Company Act of 1940 (“1940 Act”) that hold CME bitcoin futures (“Bitcoin Futures ETFs”)—the Commission concludes that the Exchange has the requisite surveillance-sharing agreement.”²¹

Key to the Commission’s approval was that the significant regulated market (i.e., the CME) with which the listing exchange had a surveillance-sharing agreement, was the same market on which the assets in the ETP trade.

The Sponsor believes that the facts and circumstances of this proposal are the same as that of the Teucrium Order. CME Ether Futures Contracts are the exclusive holdings of the Trust. The relevant analysis, therefore, is whether the Exchange has a comprehensive surveillance-sharing agreement with a regulated market of significant size related to CME Ether Futures Contracts, which it does by way of the ISG.

²¹ See id. at 21678.

The Sponsor also believes it is unlikely that the ETP would become the predominant influence on prices in the market. While future inflows to the proposed Trust cannot be predicted, to provide comparable data, the Sponsor examined the change in market capitalization of ETH with net inflows into Grayscale Ethereum Trust (ETH) (the “ETH Trust”), an Ethereum fund that the Sponsor’s affiliate, Grayscale Investments, LLC, manages. The ETH Trust currently trades on OTC Markets and is largest and most liquid ETH investment product in the world.²² From November 1, 2019 to August 31, 2023, the market capitalization of ETH grew from \$20 billion to \$198 billion, a \$178 billion increase. Over the same period, the Trust experienced \$1.2 billion of inflows. The cumulative inflow into the Trust over the stated time period was only 0.6% of the aggregate growth of ETH’s market capitalization.

Additionally, the Trust experienced approximately \$70.2 billion of trading volume from November 1, 2019 to August 31, 2023, only 19% of the CME futures market and 10% of the Index over the same period.

In summary, based on the Commission’s prior reasoning, the Sponsor believes that the Trust satisfies the Commission’s requirements under the Exchange Act because the CME is the same market on which the assets of the Trust trade, and the Trust would not otherwise become the predominant influence in prices in the market.²³

²² To further illustrate the size and liquidity of the Trust, as of September 6, 2023, compared with global commodity ETPs, the Trust would rank 24th in assets under management and 83rd in notional trading volume for the preceding 30 days.

²³ While the Commission also considered the launch of exchange-traded funds registered under the ’40 Act as a reason for its approval in the Teucrium Order, the Sponsor does not believe this distinction is relevant given the otherwise satisfaction of the Significant Market Test.

Settlement of ETH Contracts and MET Contracts

According to the Sponsor, each ETH Contract and MET Contract settles daily to the ETH Contract volume-weighted average price (“VWAP”) of all trades that occur between 2:59 p.m. and 3:00 p.m. Central Time, the settlement period, rounded to the nearest tradable tick.²⁴

ETH Contracts and MET Contracts each expire on the last Friday of the contract month and are settled with cash. The final settlement value is based on the CME CF ERR at 4:00 p.m. London time on the expiration day of the futures contract.

As proposed, the Trust will rollover its soon to expire Ether Futures Contracts to extend the expiration or maturity of its position forward by closing the initial contract holdings and opening a new longer-term contract holding for the same underlying asset at the then-current market price. The Trust does not intend to hold any Ether futures positions into cash settlement.

Net Asset Value

According to the Sponsor, the Trust’s NAV per Share will be calculated by taking the current market value of its total assets, subtracting any liabilities, and dividing that total by the number of Shares.

²⁴ VWAP is calculated based first on Tier 1 (if there are trades during the settlement period); then Tier 2 (if there are no trades during the settlement period); and then Tier 3 (in the absence of any trade activity or bid/ask in a given contract month during the current trading day, as follows. For Tier 1, each contract month settles to its VWAP of all trades that occur between 14:59:00 and 15:00:00 CT, the settlement period, rounded to the nearest tradable tick. If the VWAP is exactly in the middle of two tradable ticks, then the settlement will be the tradable price that is closer to the contract’s prior day settlement price. For Tier 2, if no trades occur on CME Globex between 14:59:00 and 15:00:00 CT, the settlement period, then the last trade (or the contract’s settlement price from the previous day in the absence of a last trade price) is used to determine whether to settle to the bid or the ask during this period. If the last trade price is outside of the bid/ask spread, then the contract month settles to the nearest bid or ask price. If the last trade price is within the bid/ask spread, or if a bid/ask spread is not available, then the contract month settles to the last trade price. For Tier 3, in the absence of any trade activity or bid/ask in a given contract month during the current trading day, the daily settlement price will be determined by applying the net change from the preceding contract month to the given contract month’s prior daily settlement price.

The Administrator of the Trust will calculate the NAV once each trading day, as of the earlier of the close of the New York Stock Exchange or 4:00 p.m. Eastern Standard Time (EST).

According to the Sponsor, to determine the value of Ether Futures Contracts, the Trust's Administrator will use the Ether Futures Contract settlement price on the exchange on which the contract is traded, except that the "fair value" of Ether Futures Contracts (as described in more detail below) may be used when Ether Futures Contracts close at their price fluctuation limit for the day. The Trust's Administrator will determine the value of Trust investments as of the earlier of the close of the New York Stock Exchange or 4:00 p.m. EST. The Trust's NAV will include any unrealized profit or loss on open Ether Futures Contracts and any other credit or debit accruing to the Trust but unpaid or not received by the Trust.

According to the Sponsor, the fair value of the Trust's holdings will be determined by the Trust's Sponsor in good faith and in a manner that assesses the future Ether market value based on a consideration of all available facts and all available information on the valuation date. When an Ether Futures Contract has closed at its price fluctuation limit, the fair value determination will attempt to estimate the price at which such Ether Futures Contract would be trading in the absence of the price fluctuation limit (either above such limit when an upward limit has been reached or below such limit when a downward limit has been reached). Typically, this estimate will be made primarily by reference to exchange traded instruments at 4:00 p.m. EST on settlement day. The fair value of ETH Contracts and MET Contracts may not reflect such security's market value or the amount that the Trust might reasonably expect to receive for the ETH Contracts and MET Contracts upon its current sale.

Indicative Trust Value

According to the Sponsor, in order to provide updated information relating to the Trust for use by investors and market professionals, ICE Data Indices, LLC will calculate an updated Indicative Trust Value (“ITV”). The ITV will be calculated by using the prior day’s closing NAV per Share of the Trust as a base and will be updated throughout the Core Trading Session of 9:30 a.m. E.T. to 4:00 p.m. E.T. to reflect changes in the value of the Trust’s holdings during the trading day.

The ITV will be disseminated on a per Share basis every 15 seconds during the Exchange’s Core Trading Session and be widely disseminated by one or more major market data vendors during the Exchange’s Core Trading Session.²⁵

Creation and Redemption of Shares

According to the Sponsor, the Shares issued by the Trust may only be purchased by Authorized Purchasers and only in blocks of 10,000 Shares called “Creation Baskets.” The amount of the purchase payment for a Creation Basket is equal to the total NAV of Shares in the Creation Basket. Similarly, only Authorized Purchasers may redeem Shares and only in blocks of 10,000 Shares called “Redemption Baskets.” The amount of the redemption proceeds for a Redemption Basket is equal to the total NAV of Shares in the Redemption Basket. The purchase price for Creation Baskets and the redemption price for Redemption Baskets are the actual NAV calculated at the end of the business day when a request for a purchase or redemption is received by the Trust.

²⁵ Several major market data vendors display and/or make widely available ITVs taken from the Consolidated Tape Association (“CTA”) or other data feeds.

“Authorized Purchasers” will be the only persons that may place orders to create and redeem Creation Baskets. Authorized Purchasers must be (1) either registered broker-dealers or other securities market participants, such as banks and other financial institutions, that are not required to register as broker-dealers to engage in securities transactions, and (2) DTC Participants. An Authorized Purchaser is an entity that has entered into an Authorized Purchaser Agreement with the Sponsor.

Creation Procedures

According to the Sponsor, on any “Business Day,” an Authorized Purchaser may place an order with the Transfer Agent to create one or more Creation Baskets. For purposes of processing both purchase and redemption orders, a “Business Day” means any day other than a day when the CME or the New York Stock Exchange is closed for regular trading. Purchase orders for Creation Baskets must be placed by 3:00 p.m. EST or one hour prior to the close of trading on the New York Stock Exchange, whichever is earlier. The day on which the Distributor receives a valid purchase order is referred to as the purchase order date. If the purchase order is received after the applicable cut-off time, the purchase order date will be the next Business Day. Purchase orders are irrevocable.

By placing a purchase order, an Authorized Purchaser agrees to deposit cash with the Custodian.

Redemption Procedures

According to the Sponsor, the procedures by which an Authorized Purchaser can redeem one or more Creation Baskets will mirror the procedures for the creation of Creation Baskets. On any Business Day, an Authorized Purchaser may place an order with the Transfer Agent to redeem one or more Creation Baskets.

The redemption procedures allow Authorized Purchasers to redeem Creation Baskets. Individual shareholders may not redeem directly from the Trust. By placing a redemption order, an Authorized Purchaser agrees to deliver the Creation Baskets to be redeemed through DTC's book entry system to the Trust by the end of the next Business Day following the effective date of the redemption order or by the end of such later business day.

Determination of Redemption Distribution

According to the Sponsor, the redemption distribution from the Trust will consist of an amount of cash, cash equivalents, and/or exchange listed Ether futures that is in the same proportion to the total assets of the Trust on the date that the order to redeem is properly received as the number of Shares to be redeemed under the redemption order is in proportion to the total number of Shares outstanding on the date the order is received.

Delivery of Redemption Distribution

According to the Sponsor, an Authorized Purchaser who places a purchase order will transfer to the Custodian the required amount of cash, cash equivalents, and/or Ether futures by the end of the next business day following the purchase order date or by the end of such later business day, not to exceed three business days after the purchase order date, as agreed to between the Authorized Purchaser and the Custodian when the purchase order is placed (the "Purchase Settlement Date"). Upon receipt of the deposit amount, the Custodian will direct DTC to credit the number of Creation Baskets ordered to the Authorized Purchaser's DTC account on the Purchase Settlement Date.

Availability of Information

The NAV for the Trust's Shares will be disseminated daily to all market participants at the same time. The intraday, closing, and settlement prices of the Ether Futures Contracts will be

readily available from the applicable futures exchange websites, automated quotation systems, published or other public sources, or major market data vendors. Information regarding the 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.

Complete real-time data for the Ether Futures Contracts will be available by subscription through on-line information services. ICE Futures U.S. and CME also provide delayed futures and options on futures information on current and past trading sessions and market news free of charge on their respective websites. The specific contract specifications for Ether Futures Contracts will also be available on such websites, as well as other financial informational sources. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. Quotation information for cash equivalents and commodity futures may be obtained from brokers and dealers who make markets in such instruments. Intra-day price and closing price level information for the Benchmark will be available from major market data vendors. The Benchmark value will be disseminated once every 15 seconds during the Core Trading Session. The Benchmark components and methodology will be made publicly available on the CME's website²⁶ and the Trust's website (www.grayscale.com).

In addition, the Trust's website will display the applicable end of day closing NAV. The daily holdings of the Trust will be available on the Trust's website. The Trust's website will also include a form of the prospectus for the Trust that may be downloaded. The website will include the Shares' ticker and CUSIP information along with additional quantitative information updated on a daily basis, including: (1) the prior Business Day's reported NAV and closing price and a

²⁶ See https://www.cmegroup.com/markets/cryptocurrencies/ether/ether.html?gad=1&gclid=CjwKCAjwjaWoBhAmEiwAXz8DBd0hAnxJD205R-TSC-c44r2Ir7YEsof0NkSOiL1zIwJcv7jsAibNhoCglQQA vD_BwE&gclsrc=aw.ds.

calculation of the premium and discount of the closing price or mid-point of the bid/ask spread at the time of NAV calculation (the “Bid/Ask Price”) against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters. The website disclosure of portfolio holdings will be made daily and will include, as applicable, (i) the name, quantity, price, and market value of the Trust’s holdings, (ii) the counterparty to and value of forward contracts and any other financial instruments tracking the Benchmark, and (iii) the total cash and cash equivalents held in the Trust’s portfolio, if applicable.

The Trust’s website will be publicly available at the time of the public offering of the Shares and accessible at no charge.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Trust.²⁷ Trading in Shares of the Trust will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in ETH and/or MET Contracts and the securities and/or the financial instruments composing the daily disclosed portfolio of the Trust; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

²⁷ See NYSE Arca Rule 7.12-E.

The Exchange may halt trading during the day in which an interruption to the dissemination of the ITV or the value of the Benchmark occurs. The Benchmark value will be disseminated once every 15 seconds during the Core Trading Session. The Benchmark components and methodology will be made publicly available. If the interruption to the dissemination of the ITV, or to the value of the Benchmark persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated and disseminated daily and will be made available to all market participants at the same time.

Trading Rules

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

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.200-E. The trading of the Shares will be subject to NYSE Arca Rule 8.200-E,

Commentary .02(e), which sets forth certain restrictions on Equity Trading Permit Holders (“ETP Holders”) acting as registered Market Makers in Trust Issued Receipts to facilitate surveillance. For initial and continued listing, the Trust will be in compliance with Rule 10A-3 under the Act,²⁸ and the Trust will rely on the exception contained in Rule 10A-3(c)(7).²⁹ A minimum of 50,000 Shares of the Trust will be outstanding at the commencement of trading on the Exchange.

Pursuant to NYSE Arca Rule 8.200-E, Commentary .02(e), the ETP Holder acting as a registered Market Maker in Trust Issued Receipts must file, with the Exchange, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for trading the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives, which the ETP Holder acting as registered Market Maker may have or over which it may exercise investment discretion. No ETP Holder acting as registered Market Maker in the Trust Issued Receipts shall trade in the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives, in an account in which an ETP Holder acting as a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule. In addition to the existing obligations under Exchange rules regarding the production of books and records (see, e.g., Rule 4.4-E), the ETP Holder acting as a registered Market Maker in Trust Issued Receipts shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or registered or non-registered

²⁸ 17 CFR 240.10A-3.

²⁹ See Rule 10A-3(c)(7), 17 CFR 240.10A-3(c)(7) (stating that a listed issuer is not subject to the requirements of Rule 10A-3 if the issuer is organized as an unincorporated association that does not have a board of directors and the activities of the issuer are limited to passively owning or holding securities or other assets on behalf of or for the benefit of the holders of the listed securities).

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

Surveillance

The Exchange represents that trading in the Shares of the Trust will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.³⁰ The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

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

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and the Trust’s holdings 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 the Trust’s holdings from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the Trust’s holdings from markets and other entities that are

³⁰ FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

members of ISG or with which the Exchange has in place a CSSA. The Exchange is also able to obtain information regarding trading in the Shares and the Trust's holdings through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market. The Exchange can obtain market surveillance information, including customer identity information, with respect to transactions (including transactions in futures contracts) occurring on US futures exchanges, which are members of the ISG. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

The Trust will only hold Ether Futures Contracts that are listed on an exchange that is a member of the ISG or is a market with which the Exchange has a CSSA.³¹

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

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

³¹ For a list of the current members of ISG, see www.isgportal.org. The Exchange notes that not all components of the Trust may trade on markets that are members of ISG or with which the Exchange has in place a CSSA.

Information Bulletin

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

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

The Information Bulletin will also disclose the trading hours of the Shares and that the NAV for the Shares will be calculated after 4:00 p.m. E.T. each trading day. The Information

Bulletin will disclose that information about the Shares will be publicly available on the Trust's website.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)³² that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.200-E. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and the Trust's holdings 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 the Trust's holdings from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the Trust's holdings from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. The Exchange is also able to obtain information regarding trading in the Shares and the Trust's holdings through ETP Holders, in connection with such ETP Holders'

³² 15 U.S.C. 78f(b)(5).

proprietary or customer trades which they effect through ETP Holders on any relevant market. The Exchange can obtain market surveillance information, including customer identity information, with respect to transactions (including transactions in Ether Futures Contracts) occurring on US futures exchanges, which are members of the ISG. The intraday, closing prices, and settlement prices of the Ether Futures Contracts will be readily available from the applicable futures exchange websites, automated quotation systems, published or other public sources, or major market data vendors website or on-line information services. 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.

Complete real-time data for the Ether Futures Contracts will be available by subscription from on-line information services. ICE Futures U.S. and CME also provide delayed futures information on current and past trading sessions and market news free of charge on the Trust's website. The specific contract specifications for Ether Futures Contracts will also be available on such websites, as well as other financial informational sources. Information regarding options will be available from the applicable exchanges or major market data vendors. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The ITV will be disseminated on a per Share basis every 15 seconds during the Exchange's Core Trading Session and be widely disseminated by one or more major market data vendors during the NYSE Arca Core Trading Session. The Trust's website will also include a form of the prospectus for the Trust that may be downloaded. The website will include the Share's ticker and CUSIP information along with additional quantitative information updated on a daily basis, including, for the Trust: (1) the prior business day's reported NAV and closing price and a calculation of the premium and discount of the closing price or mid-point of the Bid/Ask Price

against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters. The website disclosure of portfolio holdings will be made daily and will include, as applicable, (i) the name, quantity, price, and market value of Ether Futures Contracts, (ii) the counterparty to and value of forward contracts, and (iii) other financial instruments, if any, and the characteristics of such instruments and cash equivalents, and amount of cash held in the Trust's portfolio, if applicable.

Trading in Shares of the Trust will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in ETH and/or MET Contracts and the securities and/or the financial instruments composing the daily disclosed portfolio of the Trust; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of Trust Issued Receipts based on Ether that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

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

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

competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of Trust Issued Receipts based on Ether and that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

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

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

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

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

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2023-63 on the subject line.

Paper Comments:

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

All submissions should refer to file number SR-NYSEARCA-2023-63. 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-NYSEARCA-2023-63 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.³³

Sherry R. Haywood,

Assistant Secretary.

³³ 17 CFR 200.30-3(a)(12).