

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100307; File No. SR-NYSEARCA-2024-53)

June 10, 2024

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to List and Trade Shares of the ProShares Ethereum ETF

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 June 6, 2024, 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 ProShares Ethereum ETF (the “Fund”) under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares). 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 Fund, which is a series of the ProShares Trust III (the “Trust”)⁴ pursuant to NYSE Arca Rule 8.201-E, which governs the listing and trading of Commodity Based Trust Shares.⁵

According to the Registration Statement, the Trust will not be registered as an investment company under the Investment Company Act of 1940⁶ and is not required to register thereunder. The Trust is not a commodity pool for purposes of the Commodity Exchange Act.⁷

The Exchange represents that the Shares satisfy the requirements of NYSE Arca Rule 8.201-E and thereby qualify for listing on the Exchange.⁸

Operation of the Trust and Fund⁹

The Trust will issue the Shares which, according to the Registration Statement, represent units of fractional undivided beneficial interest in and ownership of the Fund. The Trust is a

⁴ The Trust is a Delaware statutory trust. On April 12, 2024, the Trust filed with the Commission an initial registration statement (the “Registration Statement”) on Form S-1 under the Securities Act of 1933 (15 U.S.C. 77a). The description of the operation of the Trust herein is based, in part, on 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.

⁵ Commodity-Based Trust Shares are securities issued by a trust that represents investors’ discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the trust.

⁶ 15 U.S.C. 80a-1.

⁷ 17 U.S.C. 1.

⁸ With respect to the application of Rule 10A-3 (17 CFR 240.10A-3) under the Act, the Trust relies on the exemption contained in Rule 10A-3(c)(7).

⁹ The description of the operation of the Trust, the Fund, the Shares, and the ether market contained herein is based, in part, on the Registration Statement. See note 4, *supra*.

Delaware statutory trust that operates pursuant to a trust agreement dated as of April 10, 2024.

Delaware Trust Company (the “Trustee”) is the trustee of the Trust. ProShare Capital Management LLC (the “Sponsor”) is the sponsor of the Trust and the Fund. Coinbase Custody Trust Company, LLC (the “Ether Custodian”) will maintain custody of the Fund’s ether. The Bank of New York Mellon will be the custodian for the Fund’s cash holdings (in such role, the “Cash Custodian”) and the administrator of the Trust (in such role, the “Administrator”).

According to the Registration Statement, the investment objective of the Fund is to reflect the performance of ether as measured by the Bloomberg Ethereum Index (the “Index”), less the Trust’s expenses and liabilities. The Index is designed to measure the performance of ether traded in U.S. Dollars (“USD”) and seeks to provide a representative proxy for the ether market. The closing Index price is calculated at 4:00 p.m. E.T. daily. The Index is owned and administered by Bloomberg Index Services Limited (the “Index Provider”).

The Fund’s only assets will be ether and cash. The Fund does not seek to hold any non-ether digital assets and has expressly disclaimed ownership of any such assets in the event the Fund ever involuntarily comes into possession of such assets.¹⁰ The Fund will not use derivatives that may subject the Fund to counterparty and credit risks. The Fund will process creations and redemptions in cash. The Fund’s only recurring ordinary expense is expected to be the Sponsor’s management fee (the “Sponsor Fee”).

¹⁰ The Fund may, from time to time, passively receive, by virtue of holding ether, certain rights to receive a new digital asset (“Incidental Rights”) through a fork of the Ethereum network or an airdrop of assets. Any virtual currency (other than ether) acquired through an Incidental Right is “IR Virtual Currency.” With respect to a fork, airdrop, or similar event, the Sponsor will cause the Fund to irrevocably abandon the Incidental Rights and/or IR Virtual Currency associated with such event. Such assets are not and shall never be considered assets of the Fund and will not be taken into account for purposes of determining the Fund’s NAV or NAV per Share. Neither the Trust, nor the Sponsor, nor the Ether Custodian, nor any other person associated with the Trust will, directly or indirectly, engage in action where any portion of the Trust’s ether becomes subject to the Ethereum proof-of-stake validation or is used to earn additional ether or generate income or other earnings.

Custody of the Fund’s Ether

The Fund’s Ether Custodian will maintain custody of the Fund’s ether, other than that which is maintained in a trading account (the “Trading Balance”) with Coinbase, Inc. (the “Prime Execution Agent,” which is an affiliate of the Ether Custodian), in accounts that are required to be segregated from the assets held by the Ether Custodian as principal and the assets of its other customers.¹¹ The Fund’s ether holdings and cash holdings from time to time may be temporarily held with the Prime Execution Agent in the Trading Balance for certain limited purposes, including in connection with creations and redemptions of Creation Units (as defined below), and the sale of ether to pay the Sponsor’s Fee and any other Fund expenses not assumed by the Sponsor, to the extent applicable, and in extraordinary circumstances, in connection with the liquidation of the Fund’s ether.

The Ether Custodian provides safekeeping of ether using a multi-layer cold storage security platform designed to provide offline security of the ether held by the Ether Custodian. The Prime Execution Agent holds the ether associated with customer entitlements across a combination of omnibus cold wallets, omnibus “hot wallets” (meaning wallets whose private keys are generated and stored online, in Internet-connected computers or devices) or in omnibus accounts in the Prime Execution Agent’s name on a trading venue (including third-party venues and the Prime Execution Agent’s own execution venue) where the Prime Execution Agent executes orders to buy and sell ether on behalf of its clients.

¹¹ The Sponsor will maintain ownership and control of ether in a manner consistent with good delivery requirements for spot commodity transactions.

Valuation of the Fund’s Ether

The net assets of the Fund and its Shares are valued on a daily basis with reference to the Index, which is designed to measure the performance of ether traded in USD. The Index is calculated daily using Digital Asset Research (“DAR”) pricing and is published after review and quality checks. The “DAR Close Price” is a time-weighted average price derived from eligible, non-outlier trades that occur within a 30-minute window prior to 4:00 p.m. E.T. Intraday Index values will be calculated and published on the Bloomberg Terminal from 6:15 a.m. E.T. to 4:00 p.m. E.T.

DAR takes pricing from eligible trading platforms based on DAR’s vetting methodology, which aims to identify trustworthy trading platforms and encourage best practices by gathering, recording, and comparing a series of quantitative and qualitative data points. DAR’s methodology is reviewed quarterly and updated as required to reflect the maturing digital asset marketplace and the needs of its participants. The Index Provider administers the Index according to three guiding principles:

- *Data Integrity.* Pricing Sources¹² are selected for liquidity and reliability and approved for use following risk and suitability assessments. Cryptocurrencies must meet minimum thresholds for daily traded USD-value.
- *Representative.* The Index seeks to provide a proxy for the Ethereum market.
- *Continuity.* The Index is intended to be responsive to the changing nature of the market in a manner that does not completely reshape the character of the Index from year to year.

¹² The “Pricing Sources” are the trading venues included in the Index.

The ether Pricing Sources used by the Index Provider have, at a minimum, represented to the Index Provider that they have documents compliance programs that include, but are not limited to, AML and KYC policies, and have provided the Index Provider with an organizational and/or ownership chart.

In determining the Fund’s Net Asset Value (“NAV”), the Administrator values the ether held by the Fund based on the price set by the Index as of 4:00 p.m. E.T.

The Sponsor, in its sole discretion, may cause the Fund to price its portfolio based upon an index, benchmark, or standard other than the Index at any time, with prior notice to the shareholders, if investment conditions change or the Sponsor believes that another index, benchmark, or standard better aligns with the Fund’s investment objective and strategy. The Sponsor may make this decision for a number of reasons, including, but not limited to, a determination that the Index price of ether differs materially from the global market price of ether and/or that third parties are able to purchase and sell ether on public or private markets not included among the Pricing Sources, and such transactions may take place at prices materially higher or lower than the Index price. The Sponsor, however, is under no obligation whatsoever to make such changes in any circumstance. In the event that the Sponsor intends to establish the Fund’s NAV by reference to an index, benchmark, or standard other than the Index, it will provide shareholders with notice in a prospectus supplement and/or a current report on Form 8-K or in the Fund’s annual or quarterly reports.¹³

¹³ The Sponsor will provide notice of any such changes in the Trust’s periodic or current reports and, if the Sponsor makes such a change other than on an ad hoc or temporary basis, will file a proposed rule change with the Commission.

Net Asset Value

The Fund's NAV means the total assets of the Fund, which will consist solely of ether and cash, less total liabilities of the Fund. The Administrator determines the NAV of the Fund on each day that the Exchange is open for regular trading, as promptly as practical after 4:00 p.m. ET. The NAV of the Fund is the aggregate value of the Fund's assets less its estimated accrued but unpaid liabilities (which include accrued expenses). In determining the Fund's NAV, the Administrator values the ether held by the Fund based on the price set by the Index as of 4:00 p.m. ET. The Administrator also determines the NAV per Share by dividing the NAV by the number of Shares then outstanding.

Indicative Optimized Portfolio Value ("IOPV")

The IOPV is an indicator of the value of the Fund's net assets at the time the IOPV is disseminated. The IOPV is calculated and disseminated at least every 15 seconds throughout the trading day. The IOPV is generally calculated using the prior day's closing net assets of the Fund as a base and updating throughout the trading day changes in the value of ether based on the intraday Index. One or more major market data vendors will widely disseminate the IOPV, updated every 15 seconds each trading day as calculated by the Exchange or a third-party financial data provider during the Exchange's Core Trading Session (9:30 a.m. to 4:00 p.m., E.T.).

Creation and Redemption of Shares

The Fund creates and redeems Shares from time to time, but only in one or more "Creation Units." These transactions will take place in exchange for cash. "Authorized Participants" are the only persons that may place orders to create and redeem Creation Units. Each Authorized Participant must be registered as a broker-dealer under the Exchange Act and

regulated by the FINRA, or exempt from being, or otherwise not required to be, so regulated or registered, and must be qualified to act as a broker or dealer in the states or other jurisdictions where the nature of its business so requires.

The Fund will engage in ether transactions for converting cash into ether (in association with purchase orders) and ether into cash (in association with redemption orders). The Fund will conduct its ether purchase and sale transactions by, in its sole discretion, choosing to trade directly with third parties (each, an “Ether Trading Counterparty”),¹⁴ who are not registered broker-dealers, pursuant to written agreements between such Ether Trading Counterparties and the Fund, or choosing to trade through the Prime Execution Agent through its Coinbase Prime service pursuant to the Prime Execution Agent Agreement. Initially, the Fund expects to conduct its ether purchase and sale transactions solely through the Prime Execution Agent through its Coinbase Prime service. Over time, the Fund also expects to conduct these transactions by trading directly with Ether Trading Counterparties. Ether Trading Counterparties may be added at any time, subject to the discretion of the Sponsor. 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 otherwise direct the Fund or a third party with respect to purchasing, holding, delivering, or receiving ether as part of the creation or redemption process.

¹⁴ The Ether Trading Counterparties with which the Sponsor will engage in ether transactions are unaffiliated third-parties that are not acting as agents of the Fund, the Sponsor, or the Authorized Participant, and all transactions will be done on an arms-length basis. There is no contractual relationship between the Fund, the Sponsor, or the Ether Trading Counterparty. When seeking to sell ether on behalf of the Fund, the Sponsor will seek to sell ether at commercially reasonable price and terms to any of the approved Ether Trading Counterparties. Once agreed upon, the transaction will generally occur on an “over-the-counter” basis.

The Fund will create Shares by receiving ether from a third party that is not the Authorized Participant and the Fund—not the Authorized Participant—is responsible for selecting the third party to deliver the ether. 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 Fund or acting at the direction of the Authorized Participant with respect to the delivery of the ether to the Fund. The Fund will redeem Shares by delivering ether to a third party that is not the Authorized Participant and the Fund—not the Authorized Participant—is responsible for selecting the third party to receive the ether. 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 Fund or acting at the direction of the Authorized Participant with respect to the receipt of the ether from the Fund. The third party will be unaffiliated with the Trust, the Fund and the Sponsor. The Prime Execution Agent facilitates the purchase and sale or settlement of the Fund’s ether transactions. Ether Trading Counterparties settle trades with the Fund using their own accounts at the Prime Execution Agent when trading with the Fund.

Creation of Shares

On any business day,¹⁵ an Authorized Participant may place an order with the Transfer Agent to create one or more Creation Units. By placing a creation order, an Authorized Participant agrees to facilitate the deposit of ether with the Ether Custodian. For a creation of Creation Units, the Authorized Participant will be required to submit the purchase order by an early order cutoff time (the “Creation Early Order Cutoff Time”). The Creation Early Order Cutoff Time is 2:00 p.m. E.T. on the business day prior to trade date. The date on which the

¹⁵ For purposes of processing creation and redemption orders, a “business day” means any day other than a day when the Exchange is closed for regular trading.

order is received will determine the estimated cash amount (the “Creation Unit Amount”) the Authorized Participant needs to deposit and the basket ether amount (the “Creation Unit Ether Amount”) the Fund needs to purchase from the Ether Trading Counterparty or through the Prime Execution Agent. The final cash amounts will be determined after the NAV of the Fund is struck and the Fund’s ether transactions have settled.

The Creation Unit Amount necessary for the creation of a Creation Unit changes from day to day. On each business day, the Administrator will adjust the cash amount constituting the Creation Unit Amount and the quantity of ether constituting the Creation Unit Ether Amount as appropriate to reflect sales of ether, any loss of ether that may occur, and accrued expenses. The computation is made by the Sponsor as promptly as practicable after 4:00 p.m. E.T. The Administrator will determine the Creation Unit Amount for a given day by multiplying the NAV by the number of Shares in each Creation Unit and determine the Creation Unit Ether Amount for a given day by dividing the Creation Unit Amount for that day by that day’s Index. The Creation Unit Amount and the Creation Unit Ether Amount so determined will be made available to all Authorized Participants and Ether Transaction Counterparties on the Sponsor’s website for the Shares.

Redemption of Shares

The procedures by which an Authorized Participant can redeem one or more Creation Units mirror the procedures for the creation of Creation Units. On any business day, an Authorized Participant may place an order to redeem one or more Creation Units. For a redemption of Creation Units, the Authorized Participant will be required to submit a redemption order by an early order cutoff time (the “Redemption Early Order Cutoff Time”). The Redemption Early Order Cutoff Time is 6:00 p.m. E.T. on the business day prior to trade date.

On the date of the Redemption Early Order Cutoff Time, the Sponsor 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. Also on the date of the Redemption Order Early Cutoff, the Sponsor instructs the Ether Custodian to prepare to move the associated ether from the Fund’s Vault Balance¹⁶ with the Ether Custodian to the Fund’s Trading Balance with the Prime Execution Agent.

For settlement of a redemption, the Authorized Participant delivers the necessary Shares to the Fund, an Ether Trading Counterparty or the Prime Execution Agent, as applicable, delivers the cash to the Trust associated with the Fund’s sale of ether, the Fund delivers ether to the Ether Trading Counterparty’s account at the Prime Execution Agent or directly to the Prime Execution Agent, as applicable, and the Fund delivers cash to the Authorized Participant. With respect to a redemption order, between the Fund 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 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 be entitled to the dollar amount of any such difference.

Background

Ethereum is free software that is hosted on computers distributed throughout the globe. Ethereum employs an array of computer code-based logic, called a protocol, to create a unified

¹⁶ The Fund’s “Vault Balance” is the Fund’s ether that is required to be segregated from the assets held by the Ether Custodian as principal and the assets of its other customers.

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 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, 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, which are recorded on a distributed, public recordkeeping system or ledger known as a 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 spot trading platforms or in individual peer-to-peer transactions. By combining the recordkeeping system of the Ethereum blockchain with a flexible scripting language that can be used to implement a wide variety of instructions, the Ethereum network is intended to act as a public computational layer on top of which users can build their own public software programs, as an alternative to centralized web services. On the Ethereum network, ether is the unit of account that users pay for the computational resources consumed by running programs of their choice.

Previously, U.S. retail investors have lacked a U.S. regulated, U.S. exchange-traded vehicle to gain direct exposure to ether. Instead, current options include: (i) facing the counter-party risk, legal uncertainty, technical risk, and complexity associated with accessing spot ether directly, or (ii) over-the-counter ether funds (“OTC Ether 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 spot ether) to gain exposure to ether.¹⁷

To this point, the lack of an exchange-traded product (“ETP”) that holds spot ether (a “Spot Ether ETP”) exposes U.S. investor assets to significant risk because investors who would otherwise seek exposure through a Spot Ether ETP are forced to find alternative exposure through generally riskier means. For example, investors in OTC Ether Funds are not afforded the benefits and protections of regulated Spot Ether ETPs, resulting in retail investors potentially suffering losses due to drastic movements in the premium/discount of OTC Ether Funds. Additionally, many U.S. investors who held their digital assets in accounts at FTX,¹⁸ Celsius Network LLC,¹⁹ BlockFi Inc.,²⁰ and Voyager Digital Holdings, Inc.²¹ have become unsecured creditors in the insolvencies of those entities. The Sponsor believes that, if a Spot Ether ETP had been available to U.S. investors, 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 the transparent, regulated, and well-understood structure of a Spot Ether ETP. The Sponsor thus believes that the approval of a Spot Ether ETP would represent a major step towards protection of U.S. investors.

¹⁷ 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 ether ETPs.

¹⁸ See FTX Trading Ltd., et al., Case No. 22-11068.

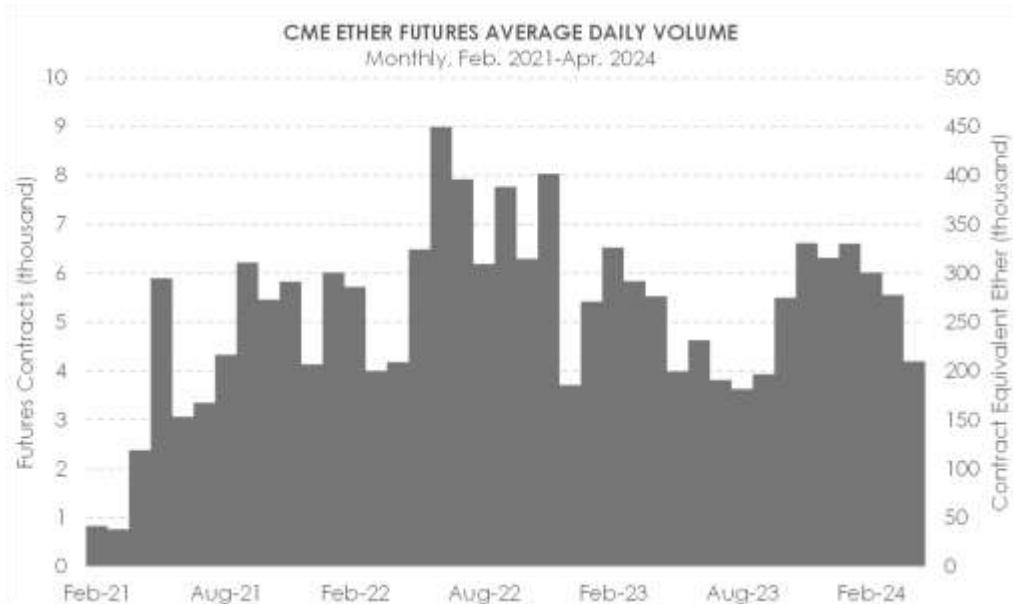
¹⁹ See Celsius Network LLC, et al., Case No. 22-10964.

²⁰ See BlockFi Inc., Case No. 22-19361.

²¹ See Voyager Digital Holdings, Inc., et al., Case No. 22-10943.

CME Ether Futures Market

The Chicago Mercantile Exchange (“CME”) began offering trading in ether futures on February 8, 2021.²² Each contract represents fifty ether and is based on the CME CF Ether Reference Rate. The contracts trade and settle like other cash settled commodity futures contracts.



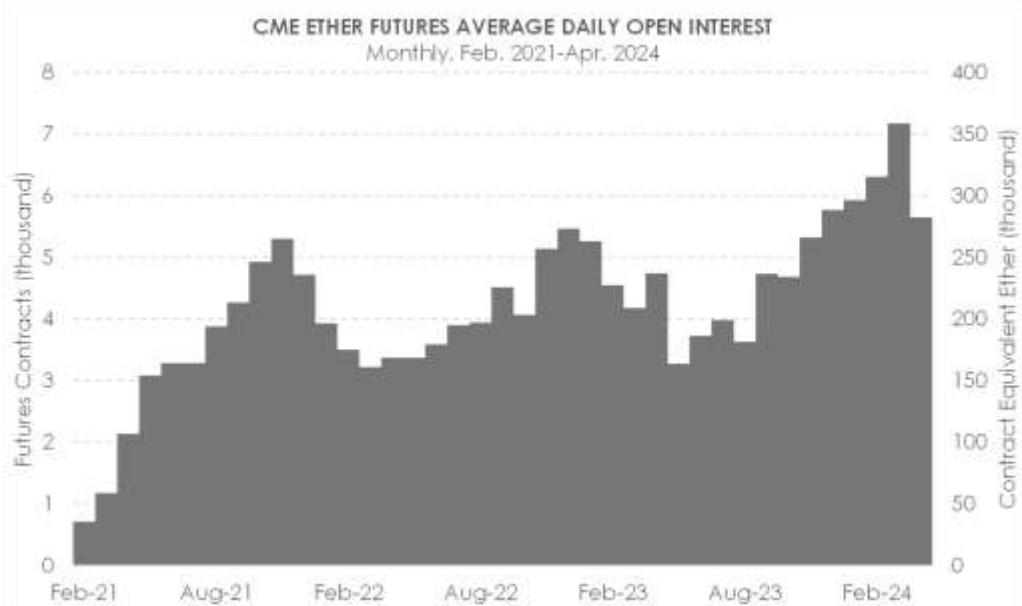
Most measurable metrics related to CME ether futures have trended up since launch. For example, there were 92,278 CME ether futures contracts traded in April 2024 (approximately \$14.9 billion) compared to 105,005 contracts (\$10.1 billion), 83,568 contracts (\$12.8 billion), and 49,938 contracts (\$6.0 billion) traded in April 2023, April 2022, and April 2021, respectively.²³

Average daily open interest was 5,650 CME ether futures contracts in April 2024 (approximately \$920 million) compared to 4,737 contracts (\$459 million), 3,371 contracts (\$521

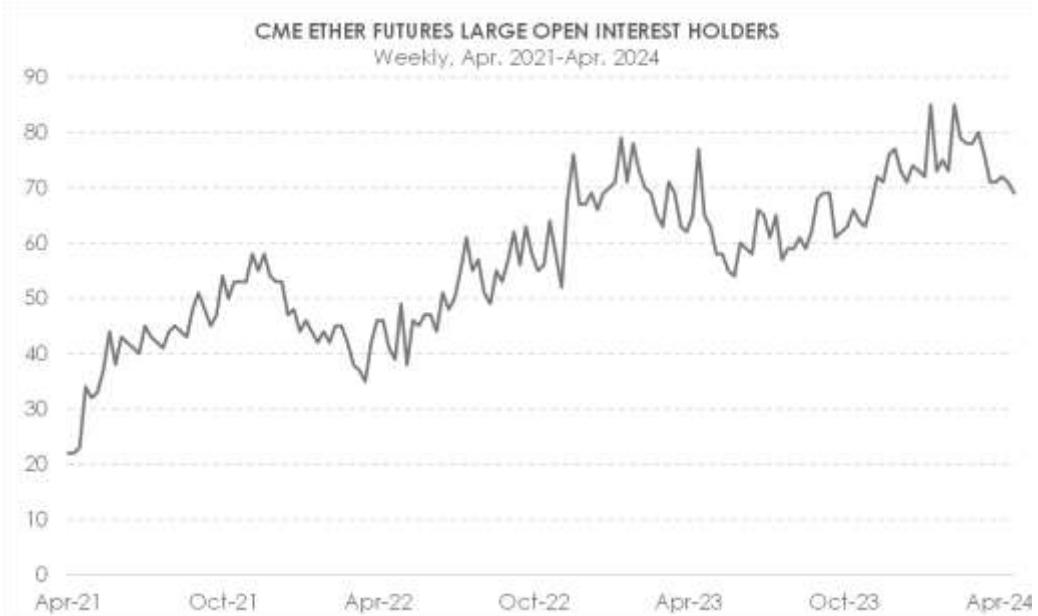
²² See “CME Group Announces Launch of Ether Futures,” February 8, 2021

²³ Source: Bloomberg

million), and 2,134 contracts (\$253 million) in April 2023, April 2022, and April 2021 respectively.²⁴



The number of large open interest holders has increased as well, as demonstrated in the figure that follows.²⁵



²⁴ Source: Bloomberg

²⁵ A large open interest holder in ether futures is an entity that holds at least 25 contracts, or the equivalent of 1,250 ether. Source: The Block

The Commodity Futures Trading Commission (“CFTC”) regulates the CME ether futures market, and both the Exchange and CME are members of the Intermarket Surveillance Group (“ISG”).²⁶

Applicable Standard

On May 23, 2024, the Commission approved the listing and trading of shares of the Grayscale Ethereum Trust and the Bitwise Ethereum ETF under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares); the iShares Ethereum Trust under Nasdaq Rule 5711(d) (Commodity-Based Trust Shares); and the VanEck Ethereum Trust, the ARK 21Shares Ethereum ETF, the Invesco Galaxy Ethereum ETF, the Fidelity Ethereum Fund, and the Franklin Ethereum ETF under Cboe BZX Rule 14.11(e)(4) (Commodity-Based Trust Shares) (collectively, the “Spot Ether ETPs”).²⁷ In the Spot Ether ETP Approval Order, the Commission found that the proposed rule changes to list the Spot Ether ETPs demonstrated that there were “sufficient ‘other means’ of preventing fraud and manipulation,” including that:

[B]ased on the record before the Commission and the Commission’s own correlation analysis, the Commission concludes that fraud or manipulation that impacts prices in spot ether markets would likely similarly impact CME ether futures prices, such that a surveillance-sharing agreement with the CME can be reasonably expected to

²⁶ For a list of the current members and affiliate members of ISG, see <https://www.isgportal.com/>.

²⁷ Securities Exchange Act Release No. 100224 (May 23, 2024) (SR-NYSEARCA-2023-70; SR-NYSEARCA-2024-31; SR- NASDAQ-2023-045; SR-CboeBZX-2023-069; SR-CboeBZX-2023-070; SR-CboeBZX-2023- 087; SR-CboeBZX-2023-095; SR-CboeBZX-2024-018) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Shares of Ether-Based Exchange-Traded Products) (the “Spot Ether ETP Approval Order”).

assist in surveilling for fraud and manipulation that may impact the [Spot Ether ETPs].²⁸

The Fund is structured and will operate in a manner materially the same as the Spot Ether ETPs. The Sponsor believes that the Exchange’s ability to obtain information regarding trading in ether futures from the CME, which, like the Exchange, is a member of the ISG, would assist the Exchange in detecting potential fraud or manipulation with respect to trading in the Shares. The Sponsor thus believes that, for reasons similar to those set forth in the Spot Ether ETP Approval Order, listing and trading Shares of the Fund would be consistent with the requirements of the Act.

Availability of Information

The NAV per Share will be calculated and 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 CTA. The IOPV will be calculated every 15 seconds throughout the core trading session each trading day.

The Sponsor will cause information about the Shares to be posted to the Fund’s website (www.proshares.com): (1) the NAV and NAV per Share for each Exchange trading day, posted at end of day; (2) the daily holdings of the Fund, before 9:30 a.m. E.T. on each Exchange trading day; (3) the Fund’s effective prospectus, in a form available for download; and (4) the Shares’ ticker and CUSIP information, along with additional quantitative information updated on a daily basis for the Fund. For example, the Fund’s website will include (1) the prior Business Day’s trading volume, the prior Business Day’s reported NAV and closing price, and a calculation of the premium and discount of the closing price or mid-point of the bid/ask spread at the time of

²⁸ Spot Ether ETP Approval Order at 16-17.

NAV calculation (“Bid/Ask Price”) against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters. The Fund’s website will be publicly available prior to the public offering of Shares and accessible at no charge.

Investors may obtain on a 24-hour basis ether pricing information based on the Index, spot ether market prices and ether futures price from various financial information service providers. Current ether spot market prices are also available with bid/ask spreads from ether trading platforms, including the Pricing Sources of the Index.

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.

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 Fund.²⁹ Trading in Shares of the Fund 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.

²⁹ See NYSE Arca Rule 7.12-E.

The Exchange may halt trading during the day in which an interruption to the dissemination of the IOPV or intraday Index value occurs.³⁰ If the interruption to the dissemination of the IOPV or intraday Index persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange’s existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. E.T. in accordance with NYSE Arca Rule 7.34-E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6-E, the minimum price variation (“MPV”) for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.201-E. The trading of the Shares will be subject to NYSE Arca Rule 8.201-E(g), which sets forth certain restrictions on Equity Trading Permit Holders (“ETP Holders”) acting as registered Market Makers in Commodity-Based Trust Shares to facilitate surveillance.³¹ The

³⁰ A limit up/limit down condition in the futures market would not be considered an interruption requiring the Fund to be halted.

³¹ Under NYSE Arca Rule 8.201-E(g), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its accounts for trading in the underlying commodity, related futures or options on futures, or any other related derivatives. Commentary .04 of

Exchange represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A-3 under the Act,³² as provided by NYSE Arca Rule 5.3-E. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

Surveillance

The Exchange represents that trading in the Shares of the Fund will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.³³ 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.

NYSE Arca Rule 11.3-E requires an ETP Holder acting as a registered Market Maker, and its affiliates, in the Shares to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares). As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder. To the extent the Exchange may be found to lack jurisdiction over a subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts, the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

³² 17 CFR 240.10A-3. See note 8, supra.

³³ 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.

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. In addition, the Exchange may obtain information regarding trading in the Shares and ether derivatives 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 any underlying ether, ether futures contracts, options on ether futures, or any other ether derivatives in connection with ETP Holders' proprietary trades, or customer trades effected through ETP Holders on any relevant market. Under NYSE Arca Rule 8.201-E(g), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its accounts for trading in any underlying commodity, related futures or options on futures, or any other related derivatives. Commentary .04 of NYSE Arca Rule 11.3-E requires an ETP Holder acting as a registered Market Maker, and its affiliates, in the Shares to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares). As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder. To the extent the Exchange may be found to lack jurisdiction over a subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts and that subsidiary or affiliate is a member of another

regulatory organization, the Exchange could obtain information regarding the activities of such subsidiary or affiliate through a surveillance sharing agreement with that regulatory organization.

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

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

The Sponsor has represented to the Exchange that it will advise the Exchange of any failure by the Fund 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 Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5-E(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an “Information Bulletin” of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) the procedures for creations of Shares in Creation Units; (2) 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; (3) information regarding how the value of the IOPV and NAV are disseminated; (4) the possibility that trading spreads and the resulting premium or discount on the Shares may widen during the Opening and Late Trading Sessions, when an updated IOPV

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.

In addition, the Information Bulletin will reference that the Fund is subject to various fees and expenses as described in the annual report. The Information Bulletin will disclose that information about the Shares of the Fund is publicly available on the Fund's website.

The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)³⁴ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.201-E. Further, the Exchange has demonstrated its ability to share information with the CME, pursuant to common ISG membership, can be reasonably expected to assist the Exchange in surveilling for fraudulent and manipulative acts and practices with respect to trading in the Shares, such that there are sufficient means of preventing fraud and manipulation sufficient to satisfy the requirements of Section 6(b)(5) of the Exchange Act. As

³⁴ 15 U.S.C. 78f(b)(5).

discussed above, the results of the Sponsor's comprehensive correlation analysis support that prices on the spot ether and CME ether futures markets generally move in close alignment; accordingly, it is likely that fraud or manipulation that impacts prices in spot ether markets would likely similarly impact CME ether futures prices.

The proposed rule change is also designed to prevent fraudulent and manipulative acts and practices because the Trust is structured similarly to and will operate in materially the same manner as the Spot Ether ETPs previously approved by the Commission. The Exchange further believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because, as noted by the Commission in the Spot Ether ETP Approval Order, the Exchange's ability to obtain information regarding trading in the Shares and futures from markets and other entities that are members of the ISG (including the CME) would assist the Exchange in detecting and deterring misconduct. In particular, the CME ether futures market is a large, surveilled, and regulated market that is closely connected with the spot market for ether and through which the Exchange could obtain information to assist in detecting and deterring potential fraud or manipulation.

The Exchange has in place surveillance procedures that are adequate to properly monitor Exchange trading in the Shares in all trading sessions and to deter and detect attempted manipulation of the Shares or other 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 ether futures with the CME and other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares

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

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The Fund's website will also include a form of the prospectus for the Fund that may be downloaded. The website will include the Shares' ticker and CUSIP information, along with additional quantitative information updated on a daily basis for the Fund. The Fund's website will include (1) daily trading volume, the prior Business Day's reported NAV and closing price, and a calculation of the premium and discount of the closing price or mid-point of the Bid/Ask Price against the NAV; and (ii) 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 Fund's website will be publicly available prior to the public offering of Shares and accessible at no charge.

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

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of a new type of exchange-traded product based on the price of 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 purposes of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of a new type of Commodity-Based Trust Share based on the price of ether that would 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-2024-53 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-2024-53. 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-2024-53 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.³⁵

Sherry R. Haywood,

Assistant Secretary.

³⁵

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