

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-99889; File No. SR-NYSEARCA-2024-31)

April 2, 2024

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

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on March 28, 2024, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“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 Bitwise Ethereum ETF (the “Trust”) 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](http://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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 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 Trust<sup>4</sup> pursuant to NYSE Arca Rule 8.201-E, which governs the listing and trading of Commodity Based Trust Shares.<sup>5</sup>

According to the Registration Statement, the Trust will not be registered as an investment company under the Investment Company Act of 1940,<sup>6</sup> and is not required to register thereunder. The Trust is not a commodity pool for purposes of the Commodity Exchange Act.<sup>7</sup>

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

Operation of the Trust<sup>9</sup>

The Trust will issue the Shares which, according to the Registration Statement, represent units of undivided beneficial ownership of the Trust. The Trust is a Delaware statutory trust and

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<sup>4</sup> The Trust is a Delaware statutory trust. On March 28, 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 most recent 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.

<sup>5</sup> 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.

<sup>6</sup> 15 U.S.C. 80a-1.

<sup>7</sup> 17 U.S.C. 1.

<sup>8</sup> 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).

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

will operate pursuant to a trust agreement (the “Trust Agreement”) between Bitwise Investment Advisers, LLC (the “Sponsor” or “Bitwise”) and Delaware Trust Company, as the Trust’s trustee (the “Trustee”). Coinbase Custody Trust Company, LLC will maintain custody of the Trust’s ether (the “Ether Custodian”). Bank of New York Mellon will be the custodian for the Trust’s cash holdings (in such role, the “Cash Custodian”), the administrator of the Trust (in such role, the “Administrator”), and the transfer agent for the Trust (in such role, the “Transfer Agent”).

According to the Registration Statement, the investment objective of the Trust is to seek to provide exposure to the value of ether held by the Trust, less the expenses of the Trust’s operations. In seeking to achieve its investment objective, the Trust will hold ether and establish its Net Asset Value (“NAV”) at the end of every business day by reference to the CME CF Ether Reference Rate - New York Variant (the “Pricing Index”).<sup>10</sup>

The Trust’s only assets will be ether and cash.<sup>11</sup> The Trust does not seek to hold any non-ether crypto assets and has expressly disclaimed ownership of any such assets in the event the

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<sup>10</sup> The Pricing Index is designed to provide a daily, 4:00 p.m. New York time reference rate of the U.S. dollar price of one ether that may be used to develop financial products. The Pricing Index uses the same methodology as the CME CF Ether Reference Rate (“ERR”), which was designed by the CME Group and CF Benchmarks Ltd. (the “Benchmark Provider”) to facilitate the cash settlement of ether futures contracts traded on the Chicago Mercantile Exchange (“CME”). The only material difference between the Pricing Index and ERR is that the ERR measures the U.S. dollar price of one ether as of 4:00 p.m. London time, and the Pricing Index measures the U.S. dollar price of one ether as of 4:00 p.m. Eastern time (“E.T.”). The CME Group also publishes the CME CF Ether Real Time Index (the “CME Ether Real Time Price”), which is a continuous measure of the U.S. dollar price of one ether calculated once per second.

<sup>11</sup> The Trust conducts creations and redemptions of its Shares for cash. Authorized Participants will deliver cash to the Cash Custodian pursuant to creation orders for Shares and the Cash Custodian will hold such cash until such time as it can be converted to ether, which the Trust intends to do on the same business day in which such cash is received by the Cash Custodian. Additionally, the Trust will sell ether in exchange for cash pursuant to redemption orders of its Shares. In connection with such sales, an approved Ether Trading Counterparty (defined below) will send cash to the Cash Custodian. The Cash Custodian will hold such cash until it can be distributed to the redeeming Authorized Participant, which it intends to do on the same business day in which it is received. In connection with the purchases and sales of ether pursuant to its creation and redemption activity, it is possible that the Trust may retain de minimis amounts of cash as a result of rounding differences. The Trust may also initially hold small amounts of cash to initiate Trust operations in the immediate aftermath of its Registration Statement being declared effective. Lastly, the Trust may also sell ether and temporarily hold cash as part of a liquidation of the Trust or to pay certain extraordinary expenses not assumed by the Sponsor. Under the Trust Agreement, the Sponsor has agreed to assume the normal operating expenses of the Trust, subject to certain limitations. For example, the Trust

Trust ever involuntarily comes into possession of such assets.<sup>12</sup> The Trust will not use derivatives that may subject the Trust to counterparty and credit risks. The Trust will process creations and redemptions in cash. The Trust's only recurring ordinary expense is expected to be the Sponsor's unitary management fee (the "Sponsor Fee"), which will accrue daily and will be payable in ether monthly in arrears. The Administrator will calculate the Sponsor Fee on a daily basis by applying an annualized rate to the Trust's total ether holdings, and the amount of ether payable in respect of each daily accrual shall be determined by reference to the Pricing Index. Financial institutions authorized to create and redeem Shares (each, an "Authorized Participant") will deliver, or cause to be delivered, cash in exchange for Shares of the Trust, and the Trust will deliver cash to Authorized Participants when those Authorized Participants redeem Shares of the Trust.

#### Custody of the Trust's Ether

The Trust's Ether Custodian will maintain custody of all of the Trust'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 the Trust Ether Account. The Trading Balance will only be used in the limited circumstances in which the Trust is using the Agent Execution Model to effectuate the purchases and sales of ether. The Ether

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will bear any indemnification or litigation liabilities as extraordinary expenses. In any event, in the ongoing course of business, the amounts of cash retained by the Trust are not expected to constitute a material portion of the Trust's holdings.

<sup>12</sup> The Trust may, from time to time, passively receive, by virtue of holding ether, certain additional digital assets ("IR Assets") or rights to receive IR Assets ("Incidental Rights") through a fork of the Ethereum network or an airdrop of assets. The Trust will not seek to acquire such IR Assets or Incidental Rights. Pursuant to the terms of the Trust Agreement, the Trust has disclaimed ownership in any such IR Assets and/or Incidental Rights to make clear that such assets are not and shall never be considered assets of the Trust and will not be taken into account for purposes of determining the Trust's NAV or NAV per Share.

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.

#### Valuation of the Trust's Ether

The net assets of the Trust and its Shares are valued on a daily basis with reference to the Pricing Index, a standardized reference rate published by CF Benchmarks Ltd. (the “Benchmark Provider”) that is designed to reflect the performance of ether in U.S. dollars. The Pricing Index was created to facilitate financial products based on ether. It serves as a once-a-day benchmark rate of the U.S. dollar price of ether (USD/ETH), calculated as of 4:00 p.m. ET. The Pricing Index aggregates the trade flow of several major ether trading venues, during an observation window between 3:00 p.m. and 4:00 p.m. ET into the U.S. dollar price of one ether at 4:00 p.m. ET. The Pricing Index currently uses substantially the same methodology as the ERR, including utilizing the same constituent ether exchanges, which is the underlying rate to determine settlement of CME ether futures contracts, except that the Pricing Index is calculated as of 4:00 p.m. ET, whereas the ERR is calculated as of 4:00 p.m. London time. The Pricing Index, which was introduced on February 28, 2022, is based on materially the same methodology (except calculation time) as the ERR, which was first introduced on June 4, 2018. The CME Group also publishes the CME CF Ether Real Time Index (the “CME Ether Real Time Price”), which is a continuous measure of the U.S. dollar price of one ether calculated once per second. Each of the Pricing Index, ERR, and the CME Ether Real Time Price are representative of the ether trading activity on the Constituent Platforms,<sup>13</sup> which include, as of the date of this filing, Bitstamp, Coinbase, Gemini, itBit, LMAX, and Kraken.

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<sup>13</sup> The “Constituent Platforms” are the ether trading venues included in the Pricing Index.

The Pricing Index is designed based on the IOSCO Principals for Financial Benchmarks. The Trust uses the Pricing Index to calculate its NAV, which is the aggregate U.S. dollar value of ether in the Trust, based on the Pricing Index, less its liabilities and expenses. “NAV per Share” is calculated by dividing NAV by the number of Shares currently outstanding.

The Sponsor, in its sole discretion, may cause the Trust to price its portfolio based upon an index, benchmark, or standard other than the Pricing 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 Trust’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 Pricing 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 Constituent Platforms, and such transactions may take place at prices materially higher or lower than the Pricing 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 Trust’s NAV by reference to an index, benchmark, or standard other than the Pricing Index, it will provide shareholders with notice in a prospectus supplement and/or through a current report on Form 8-K or in the Trust’s annual or quarterly reports.

#### Net Asset Value

Under normal circumstances, the Trust’s only asset will be ether and, under limited circumstances, cash. The Trust’s NAV and NAV per Share will be determined by the Administrator once each Exchange trading day as of 4:00 p.m. E.T., or as soon thereafter as practicable. The Administrator will calculate the NAV by multiplying the number of ether held by the Trust by the Pricing Index for such day, adding any additional receivables and subtracting

the accrued but unpaid liabilities of the Trust. The NAV per Share is calculated by dividing the NAV by the number of Shares then outstanding. The Administrator will determine the price of the Trust's ether by reference to the Pricing Index, which is published and calculated as set forth above.

#### Intraday Trust Value

The Trust uses the CME Ether Real Time Price to calculate an Indicative Trust Value ("ITV"). One or more major market data vendors will disseminate the ITV, 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.). The ITV will be calculated throughout the trading day by using the prior day's holdings at the close of business and the most recently reported price level of the CME Ether Real Time Price as reported by Bloomberg, L.P. or another reporting service. The ITV will be widely disseminated by one or more major market data vendors during the NYSE Arca Core Trading Session.

#### Creation and Redemption of Shares

The Trust creates and redeems Shares from time to time, but only in one or more Creation Units, which will initially consist of at least 10,000 Shares, but may be subject to change ("Creation Unit"). A Creation Unit is only made in exchange for delivery to the Trust or the distribution by the Trust of an amount of cash, equivalent to the amount of ether represented by the Creation Unit being created or redeemed, the amount of which is representative of the combined NAV of the number of Shares included in the Creation Units being created or redeemed determined as of 4:00 p.m. E.T. on the day the order to create or redeem Creation Units is properly received. Except when aggregated in Creation Units or under extraordinary circumstances permitted under the Trust Agreement, the Shares are not redeemable securities.

Authorized Participants are the only persons that may place orders to create and redeem Creation Units. Authorized Participants must be (1) registered broker-dealers or other securities market participants, such as banks and other financial institutions, that are not required to register as broker-dealers to engage in securities transactions described below, and (2) Depository Trust Company (“DTC”) participants. To become an Authorized Participant, a person must enter into an Authorized Participant Agreement with the Trust and/or the Trust’s marketing agent (the “Marketing Agent”).

According to the Registration Statement, when purchasing or selling ether in response to the purchase of Creation Units or the redemption of Creation Units, which will be processed in cash, the Trust would do so pursuant to either (1) a “Trust-Directed Trade Model,” or (2) an “Agent Execution Model,” which are each described in more detail below.

The Trust intends to utilize the Trust-Directed Trade Model for all purchases and sales of ether and would only utilize the Agent Execution Model in the event that no ether trading counterparty approved by the Sponsor (an “Ether Trading Counterparty”)<sup>14</sup> is able to effectuate the Trust’s purchase or sale of ether. Under the Trust-Directed Trade Model, in connection with receipt of a purchase order or redemption order, the Sponsor, on behalf of the Trust, would be responsible for acquiring ether from an approved Ether Trading Counterparty in an amount equal to the Basket Amount. When seeking to purchase ether on behalf of the Trust, the Sponsor will seek to purchase ether at commercially reasonable price and terms from any of the approved

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<sup>14</sup> 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 Trust, the Sponsor or the Authorized Participant, and all transactions will be done on an arms-length basis. There is no contractual relationship between the Trust, the Sponsor or the Ether Trading Counterparty. When seeking to sell ether on behalf of the Trust, 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.



Ether Trading Counterparties.<sup>15</sup> Once agreed upon, the transaction will generally occur on an “over-the-counter” basis.

Whether utilizing the Trust-Directed Trade Model or the Agent Execution Model, 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 Trust or a third party with respect to purchasing, holding, delivering, or receiving ether as part of the creation or redemption process. Additionally, under either the Trust-Directed Trade Model or the Agent Execution Model, the Trust will create Shares by receiving ether from a third party that is not the Authorized Participant and is not affiliated with the Sponsor or the Trust, and the Trust -- not the Authorized Participant -- is responsible for selecting the third party to deliver the ether. The third party will not be acting as an agent of the Authorized Participant with respect to the delivery of the ether to the Trust or acting at the direction of the Authorized Participant with respect to the delivery of the ether to the Trust. Additionally, the Trust will redeem Shares by delivering ether to a third party that is not the Authorized Participant and is not affiliated with the Sponsor or the Trust, and the Trust -- not the Authorized Participant -- is responsible for selecting the third party to receive the ether. Finally, the third party will not be acting as an agent of the Authorized Participant with respect to the receipt of the ether from the Trust or acting at the direction of the Authorized Participant with respect to the receipt of the ether from the Trust.

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<sup>15</sup> The Sponsor will maintain ownership and control of ether in a manner consistent with good delivery requirements for spot commodity transactions.

Acquiring and Selling Ether Pursuant to Creation and Redemption of Shares Under the Trust-Directed Trade Model

Under the Trust-Directed Trade Model and as set forth in the Registration Statement, on any business day, an Authorized Participant may create Shares by placing an order to purchase one or more Creation Units with the Transfer Agent through the Marketing Agent. Such orders are subject to approval by the Marketing Agent and the Transfer Agent. 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 (“Business Day”). To be processed on the date submitted, creation orders must be placed before 4:00 p.m. E.T. or the close of regular trading on the Exchange, whichever is earlier, but may be required to be placed earlier at the discretion of the Sponsor. A purchase order will be effective on the date it is received by the Transfer Agent and approved by the Marketing Agent (“Purchase Order Date”).

Creation Units are processed in cash. By placing a purchase order, an Authorized Participant agrees to deposit, or cause to be deposited, an amount of cash equal to the quantity of ether attributable to each Share of the Trust (net of accrued but unpaid expenses and liabilities) multiplied by the number of Shares (10,000) comprising a Creation Unit (the “Basket Amount”). The Sponsor will cause to be published each Business Day, prior to the commencement of trading on the Exchange, the Basket Amount relating to a Creation Unit applicable for such Business Day. That amount is derived by multiplying the Basket Amount by the value of ether ascribed by the Pricing Index. However, the Authorized Participant is also responsible for any additional cash required to account for the price at which the Trust agrees to purchase the requisite amount of ether from an Ether Trading Counterparty to the extent it is greater than the Pricing Index price on each Purchase Order Date.

Prior to the delivery of Creation Units, the Authorized Participant must also have wired to the Transfer Agent the nonrefundable transaction fee due for the creation order. Authorized Participants may not withdraw a creation request. If an Authorized Participant fails to consummate the foregoing, the order may be cancelled.

Following the acceptance of a purchase order, the Authorized Participant must wire the cash amount described above to the Cash Custodian, and the Ether Trading Counterparty must deposit the required amount of ether with the Ether Custodian by the end of the day E.T. on the Business Day following the Purchase Order Date. The ether will be purchased from Ether Trading Counterparties that are not acting as agents of the Trust or agents of the Authorized Participant. These transactions will be done on an arms-length basis, and there is no contractual relationship between the Trust, the Sponsor, or the Ether Trading Counterparty to acquire such ether. Prior to any movement of cash from the Cash Custodian to the Ether Trading Counterparty or movement of Shares from the Transfer Agent to the Authorized Participant's DTC account to settle the transaction, the ether must be deposited at the Ether Custodian.

The Ether Trading Counterparty must deposit the required amount of ether by end of day E.T. on the Business Day following the Purchase Order Date prior to any movement of cash from the Cash Custodian or Shares from the Transfer Agent. Upon receipt of the deposit amount of ether at the Ether Custodian from the Ether Trading Counterparty, the Ether Custodian will notify the Sponsor that the ether has been received. The Sponsor will then notify the Transfer Agent that the ether has been received, and the Transfer Agent will direct DTC to credit the number of Shares ordered to the Authorized Participant's DTC account and will wire the cash previously sent by the Authorized Participant to the Ether Trading Counterparty to complete

settlement of the Purchase Order and the acquisition of the ether by the Trust, as described above.

As between the Trust and the Authorized Participant, the expense and risk of the difference between the value of ether calculated by the Administrator for daily valuation using the Pricing Index and the price at which the Trust acquires the ether will be borne solely by the Authorized Participant to the extent that the Trust pays more for ether than the price used by the Trust for daily valuation. Any such additional cash amount will be included in the amount of cash calculated by the Administrator on the Purchase Order Date, communicated to the Authorized Participant on the Purchase Order Date, and wired by the Authorized Participant to the Cash Custodian on the day following the Purchase Order Date. If the Ether Trading Counterparty fails to deliver the ether to the Ether Custodian, no cash is sent from the Cash Custodian to the Ether Trading Counterparty, no Shares are transferred to the Authorized Participant's DTC account, the cash is returned to the Authorized Participant, and the Purchase Order is cancelled.

Under the Trust-Directed Trade Model and according to the Registration Statement, 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 with the Transfer Agent through the Marketing Agent to redeem one or more Creation Units. To be processed on the date submitted, redemption orders must be placed before 4:00 p.m. E.T. or the close of regular trading on the Exchange, whichever is earlier, or earlier as determined by the Sponsor. A redemption order will be effective on the date it is received by the Transfer Agent and approved by the Marketing Agent ("Redemption Order Date"). The redemption procedures allow Authorized Participants to redeem Creation Units and

do not entitle an individual shareholder to redeem any Shares in an amount less than a Creation Unit, or to redeem Creation Units other than through an Authorized Participant. In connection with receipt of a redemption order accepted by the Marketing Agent and Transfer Agent, the Sponsor, on behalf of the Trust, is responsible for selling the ether to an approved Ether Trading Counterparty in an amount equal to the Basket Amount.

The redemption distribution from the Trust will consist of a transfer to the redeeming Authorized Participant, or its agent, of the amount of cash the Trust received in connection with a sale of the Basket Amount of ether to an Ether Trading Counterparty made pursuant to the redemption order. The Sponsor will cause to be published each Business Day, prior to the commencement of trading on the Exchange, the redemption distribution amount relating to a Creation Unit applicable for such Business Day. The redemption distribution amount is derived by multiplying the Basket Amount by the value of ether ascribed by the Pricing Index. However, as between the Trust and the Authorized Participant, the expense and risk of the difference between the value of ether ascribed by the Pricing Index and the price at which the Trust sells the ether will be borne solely by the Authorized Participant to the extent that the Trust receives less for ether than the value ascribed by Pricing Index.

Prior to the delivery of Creation Units, the Authorized Participant must also have wired to the Transfer Agent the nonrefundable transaction fee due for the redemption order.

The redemption distribution due from the Trust will be delivered by the Transfer Agent to the Authorized Participant once the Cash Custodian has received the cash from the Ether Trading Counterparty. The Ether Custodian will not send the Basket Amount of ether to the Ether Trading Counterparty until the Cash Custodian has received the cash from the Ether Trading Counterparty and is instructed by the Sponsor to make such transfer. Once the Ether Trading

Counterparty has sent the cash to the Cash Custodian in an agreed upon amount to settle the agreed upon sale of the Basket Amount of ether, the Transfer Agent will notify Sponsor. The Sponsor will then notify the Ether Custodian to transfer the ether to the Ether Trading Counterparty, and the Transfer Agent will wire the ether proceeds to the Authorized Participant once the Trust's DTC account has been credited with the Shares represented by the Creation Unit from the redeeming Authorized Participant. Once the Authorized Participant has delivered the Shares represented by the Creation Unit to be redeemed to the Trust's DTC account, the Cash Custodian will wire the requisite amount of cash to the Authorized Participant. If the Trust's DTC account has not been credited with all of the Shares of the Creation Unit to be redeemed, the redemption distribution will be delayed until such time as the Transfer Agent confirms receipt of all such Shares. If the Ether Trading Counterparty fails to deliver the cash to the Cash Custodian, the transaction will be cancelled, and no transfer of ether or Shares will occur.

Acquiring and Selling Ether Pursuant to Creation and Redemption of Shares Under the Agent Execution Model

Under the Agent Execution Model, Coinbase, Inc. ("Coinbase Inc." or the "Prime Execution Agent," an affiliate of the Ether Custodian), acting in an agency capacity, would conduct ether purchases and sales on behalf of the Trust with third parties through its Coinbase Prime service pursuant to the Prime Execution Agent Agreement. To utilize the Agent Execution Model, the Trust may maintain some ether or cash in a trading account (the "Trading Balance") with the Prime Execution Agent. The Prime Execution Agent Agreement provides that the Trust does not have an identifiable claim to any particular ether (and cash); rather, the Trust's Trading Balance represents an entitlement to a pro rata share of the ether (and cash) the Prime Execution Agent holds on behalf of customers who hold similar entitlements against the Prime Execution

Agent. In this way, the Trust's Trading Balance represents an omnibus claim on the Prime Execution Agent's ether (and cash) held on behalf of the Prime Execution Agent's customers.

To avoid having to pre-fund purchases or sales of ether in connection with cash creations and redemptions and sales of ether to pay Trust expenses not assumed by the Sponsor, to the extent applicable, the Trust may borrow ether or cash as trade credit ("Trade Credit") from Coinbase Credit, Inc. (the "Trade Credit Lender") on a short-term basis pursuant to the Coinbase Credit Committed Trade Financing Agreement (the "Trade Financing Agreement").

On the day of the Purchase Order Date, the Trust would enter into a transaction to buy ether through the Prime Execution Agent for cash. Because the Trust's Trading Balance may not be funded with cash on the Purchase Order Date for the purchase of ether in connection with the Purchase Order under the Agent Execution Model, the Trust may borrow Trade Credits in the form of cash from the Trade Credit Lender pursuant to the Trade Financing Agreement or may require the Authorized Participant to deliver the required cash for the Purchase Order on the Purchase Order Date. The extension of Trade Credits on the Purchase Order Date allows the Trust to purchase ether through the Prime Execution Agent on the Purchase Order Date, with such ether being deposited in the Trust's Trading Balance.

On the day following the Purchase Order Date (the "Purchase Order Settlement Date"), the Trust would deliver Shares to the Authorized Participant in exchange for cash received from the Authorized Participant. Where applicable, the Trust would use the cash to repay the Trade Credits borrowed from the Trade Credit Lender. On the Purchase Order Settlement Date for a Purchase Order utilizing the Agent Execution Model, the ether associated with the Purchase Order and purchased on the Purchase Order Date is swept from the Trust's Trading Balance with the Prime Execution Agent to the Trust Ether Account with the Ether Custodian pursuant to a

regular end-of-day sweep process. Transfers of ether into the Trust's Trading Balance are off-chain transactions and transfers from the Trust's Trading Balance to the Trust Ether Account are "on-chain" transactions represented on the ether blockchain. Any financing fee owed to the Trade Credit Lender is deemed part of trade execution costs and embedded in the trade price for each transaction.

For a Redemption Order utilizing the Agent Execution Model, on the day of the Redemption Order Date the Trust would enter into a transaction to sell ether through the Prime Execution Agent for cash. The Trust's Trading Balance with the Prime Execution Agent may not be funded with ether on trade date for the sale of ether in connection with the redemption order under the Agent Execution Model, when ether remains in the Trust Ether Account with the Ether Custodian at the point of intended execution of a sale of ether. In those circumstances the Trust may borrow Trade Credits in the form of ether from the Trade Credit Lender, which allows the Trust to sell ether through the Prime Execution Agent on the Redemption Order Date, and the cash proceeds are deposited in the Trust's Trading Balance with the Prime Execution Agent. On the business day following the Redemption Order Date (the "Redemption Order Settlement Date") for a redemption order utilizing the Agent Execution Model where Trade Credits were utilized, the Trust delivers cash to the Authorized Participant in exchange for Shares received from the Authorized Participant. In the event Trade Credits were used, the Trust will use the ether that is moved from the Trust Ether Account with the Ether Custodian to the Trading Balance with the Prime Execution Agent to repay the Trade Credits borrowed from the Trade Credit Lender.

For a redemption of Creation Units utilizing the Agent Execution Model, the Sponsor would instruct the Ether Custodian to prepare to transfer the ether associated with the redemption



order from the Trust Ether Account with the Ether Custodian to the Trust's Trading Balance with the Prime Execution Agent. On the Redemption Order Settlement Date, the Trust would enter into a transaction to sell ether through the Prime Execution Agent for cash, and the Prime Execution Agent credits the Trust's Trading Balance with the cash. On the same day, the Authorized Participant would deliver the necessary Shares to the Trust and the Trust delivers cash to the Authorized Participant.

#### Fee Accrual

According to the Registration Statement, the Trust's only recurring ordinary expense is expected to be the Sponsor Fee, which will accrue daily and will be payable in ether monthly in arrears. The Administrator will calculate the Sponsor Fee on a daily basis by applying an annualized rate to the Trust's total ether holdings, and the amount of ether payable in respect of each daily accrual shall be determined by reference to the Pricing Index.

#### CME Ether Futures Market

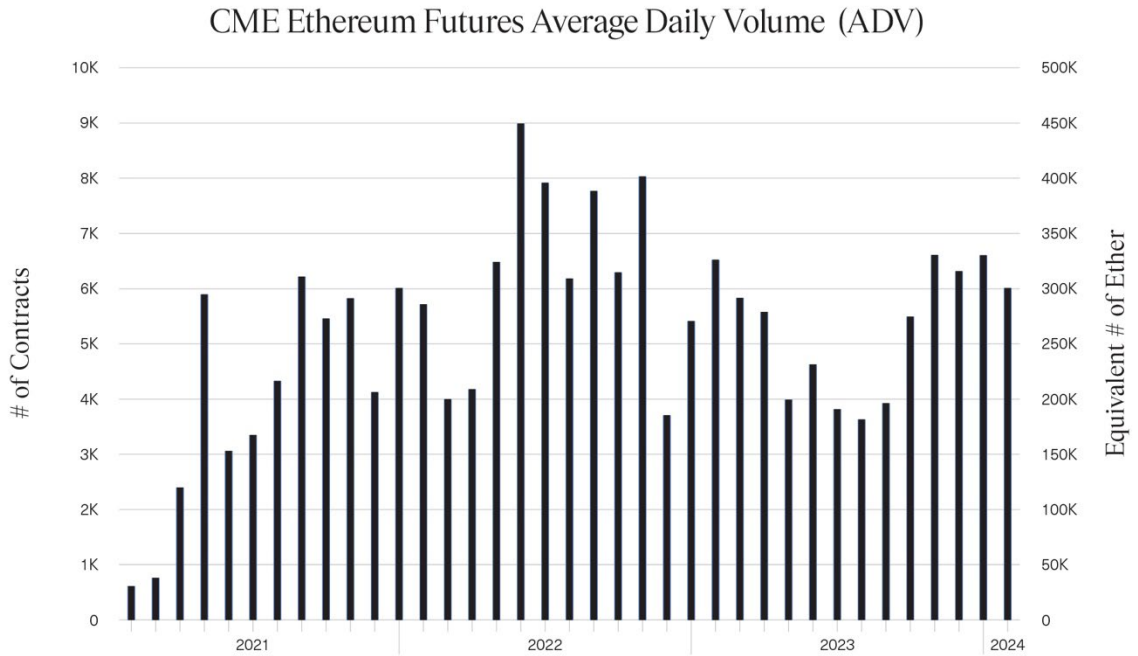
CME began offering trading in ether futures on February 8, 2021.<sup>16</sup> Each contract represents fifty ether and is based on the ERR. The contracts trade and settle like other cash settled commodity futures contracts.

Most measurable metrics related to ether futures have trended up since launch. For example, there were 174,261 ether futures contracts traded in February 2024 (approximately \$24.3 billion) compared to 182,631 contracts (\$14.9 billion), 160,108 contracts (\$23.1 billion),

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<sup>16</sup> See "CME Group Announces Launch of Ether Futures," February 8, 2021, available at [https://www.cmegroup.com/media-room/press-releases/2021/2/08/cme\\_group\\_announceslaunchofetherfutures.html](https://www.cmegroup.com/media-room/press-releases/2021/2/08/cme_group_announceslaunchofetherfutures.html).

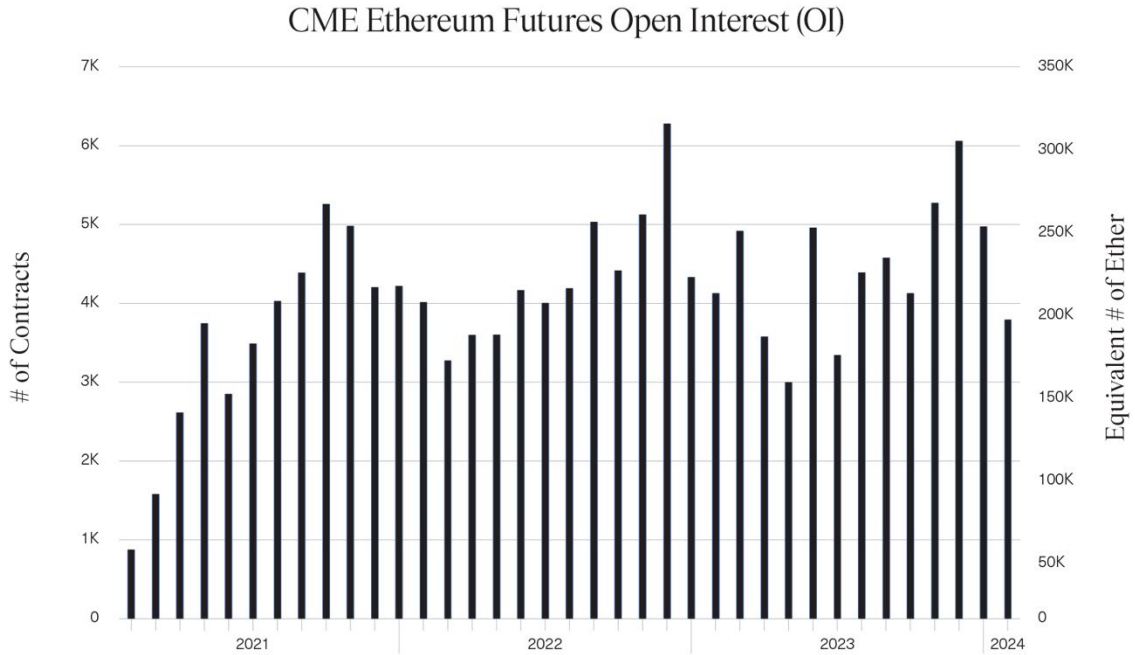
and 17,149 contracts (\$1.5 billion) traded in February 2023, February 2022, and February 2021, respectively.<sup>17</sup>



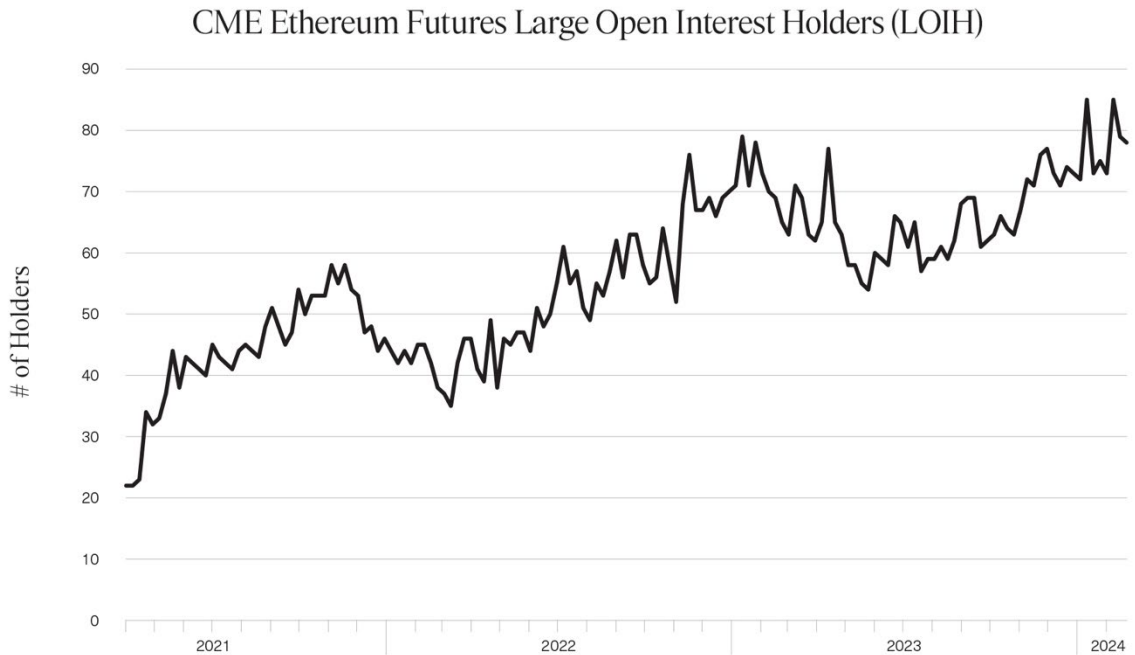
Open interest was 3792 ether futures contracts in February 2024 (approximately \$529 million) compared to 4919 contracts (\$337 million), 4014 contracts (\$578 million), and 877 contracts (\$77 million) in February 2023, February 2022, and February 2021 respectively.<sup>18</sup>

<sup>17</sup> Data from CME Volume and Average Daily Volume Reports, available at <https://www.cmegroup.com/market-data/volume-open-interest.html#volumeTotals>.

<sup>18</sup> Data from CME Open Interest Reports, available at <https://www.cmegroup.com/market-data/volume-openinterest.html#openInterestTools>.



The number of large open interest holders has increased as well, as demonstrated in the figure that follows.<sup>19</sup>



<sup>19</sup> A large open interest holder in ether futures is an entity that holds at least 25 contracts, which is the equivalent of 1250 ether. Data from The Block, available at <https://www.theblock.co/data/crypto-markets/cme-cots/large-open-interest-holders-of-cme-ether-futures>.

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”).<sup>20</sup>

### 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 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.

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<sup>20</sup> For a list of the current members and affiliate members of ISG, see <https://www.isgportal.com/>.

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 counterparty 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.<sup>21</sup>

To this point, the lack of an 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,<sup>22</sup> Celsius Network LLC,<sup>23</sup> BlockFi Inc.,<sup>24</sup> and Voyager Digital Holdings, Inc.<sup>25</sup> 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

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<sup>21</sup> The Exchange notes that the list of countries above is not exhaustive and that securities regulators in a number of additional countries have either approved or otherwise allowed the listing and trading of Spot ETH ETPs.

<sup>22</sup> See FTX Trading Ltd., et al., Case No. 22-11068.

<sup>23</sup> See Celsius Network LLC, et al., Case No. 22-10964.

<sup>24</sup> See BlockFi Inc., Case No. 22-19361.

<sup>25</sup> See Voyager Digital Holdings, Inc., et al., Case No. 22-10943.

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.

### Applicable Standard

The Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts, including spot, Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.<sup>26</sup> However, the Commission recently approved the listing and trading of shares of spot bitcoin exchange-traded products (“Spot Bitcoin ETP”), finding that there were “other means” of preventing fraud and manipulation sufficient to satisfy the requirements of Section 6(b)(5) of the Exchange Act.<sup>27</sup> In the Spot Bitcoin ETP Approval Order, the Commission concluded, through a robust correlation analysis, that fraud or manipulation that impacts prices in spot bitcoin markets would likely similarly impact CME bitcoin futures prices.<sup>28</sup> The Commission further found that,

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<sup>26</sup> See Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (SR-BatsBZX-2016-30) (Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, to List and Trade Shares of the Winklevoss Bitcoin Trust) (“Winklevoss Order”). In the Winklevoss Order, the Commission set forth both the importance and definition of a surveilled, regulated market of significant size, explaining that, for approved commodity-trust ETPs, “there has been in every case at least one significant, regulated market for trading futures on 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 membership in common with, that market.” Winklevoss Order, 83 FR at 37594.

<sup>27</sup> See Securities Exchange Act Release No. 34-99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (SR-NYSEARCA-2021-90; SR-NYSEARCA-2023-44; SRNYSEARCA-2023-58; SR-NASDAQ-2023-016; SR-NASDAQ-2023-019; SR-CboeBZX-2023028; SR-CboeBZX-2023-038; SR-CboeBZX-2023-040; SR-CboeBZX-2023-042; SRCboeBZX-2023-044; SR-CboeBZX-2023-072) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units) (the “Spot Bitcoin ETP Approval Order”).

<sup>28</sup> In the Spot Bitcoin ETP Approval Order, the Commission noted that “[t]he robustness of the Commission’s correlation analysis rests on the pre-requisites of (1) the correlations being calculated with respect to bitcoin futures that trade on the CME, a U.S. market regulated by the CFTC, (2) the lengthy sample period of price returns for both the CME bitcoin futures market and the spot bitcoin market, (3) the frequent intra-day trading data in both the CME bitcoin futures market and the spot bitcoin market over that lengthy sample

because the CME’s surveillance can assist in detecting those impacts on CME bitcoin futures prices, a listing exchange’s comprehensive surveillance sharing agreement (“CSSA”) with the CME can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the Spot Bitcoin ETP.

In support of this proposed rule change to permit the listing and trading of a Spot Ether ETP, the Sponsor has conducted a similarly robust correlation analysis between the spot ether markets and the CME ether futures market to determine if fraud or manipulation that impacts prices in spot ether markets would be likely to similarly impact CME ether futures prices. The Sponsor used stationary time series of price returns data at hourly, five-minute, and one-minute intervals for the spot ETH/USD trading pair on Coinbase and Kraken, as well as for the closest-to-maturity CME ether futures contract, over a lengthy sample period from August 1, 2021 through March 20, 2024. Pearson correlation statistics were calculated for the full sample period, as well as for rolling three-month segments within the sample period. The Sponsor’s correlation analysis utilized frequent intra-day trading data over the sample period on this subset of spot ether platforms and on the CME ether futures market as well.

The results of the Sponsor’s analysis support that the CME ether futures market has been highly correlated with this subset of the spot ether platforms throughout the past two and a half years. The correlation between the CME ether futures market and this subset of spot ether platforms for the full sample period is no less than 98.6% using data at an hourly interval; 90.0% using data at a five-minute interval; and 70.9% using data at a one-minute interval. The rolling three-month correlation results are similar, ranging between 95.7 and 99.3% using data at an

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period, and (4) the consistency of the correlation results throughout the lengthy sample period.” Spot Bitcoin ETP Approval Order, 89 FR at 3010 n.38.

hourly interval; 86.8 and 92.9% using data at a five-minute interval; and 65.0 and 79.5% using data at a one-minute interval.

***Correlations between Certain Spot Ether Markets and the CME Ether Futures Market***

	Coinbase			Kraken		
	Hourly	5 Minutes	1 Minute	Hourly	5 Minutes	1 Minute
Full Sample: 08/01/21 to 03/20/24	98.6	90.0	70.9	98.6	90.3	72.6
Rolling Three-Month Correlations Over the Full Sample Period:						
Maximum	99.3	92.7	78.7	99.3	92.9	79.5
Minimum	95.7	86.8	65.0	95.7	87.2	67.3

The Sponsor believes that the results of its robust correlation analysis constitute empirical evidence that prices generally move in close (although not perfect) alignment between the spot ether market and the CME ether futures market. As a result, the Sponsor believes that fraud or manipulation that impacts prices in spot ether markets would likely similarly impact CME ether futures prices, and therefore, because CME surveillance can assist in detecting those impacts on CME ether futures prices, the Exchange and CME’s common membership in the ISG<sup>29</sup> can be reasonably expected to assist the Exchange in surveilling for fraudulent and manipulative acts and practices in the spot ether markets in satisfaction of the requirement of Section 6(b)(5) of the Exchange Act that there are “other means” of preventing fraud and manipulation.

<sup>29</sup> The Commission has previously recognized that common membership between a listing exchange and a futures market such as the CME in the ISG functions as “the equivalent of a comprehensive surveillance sharing agreement.” See Securities Exchange Act Release No. 87267 (October 9, 2019), 84 FR 55382 (October 16, 2019) (SR-NYSEArca-2019-01) (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).



### Availability of Information

The NAV per Share will be disseminated daily to all market participants at the same time. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The ITV 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 Trust's website (<https://www.bitwiseinvestments.com/>): (1) the NAV and NAV per Share for each Exchange trading day, posted at end of day; (2) the daily holdings of the Trust, before 9:30 a.m. E.T. on each Exchange trading day; (3) the Trust'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 Trust. For example, the Trust's website will include (1) the prior Business Day's trading volume, the prior Business Day's reported NAV and closing price, and a calculation of the premium and discount of the closing price or mid-point of the bid/ask spread at the time of NAV calculation ("Bid/Ask Price") against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters. The Trust's website will be publicly available prior to the public offering of Shares and accessible at no charge.

Investors may obtain on a 24-hour basis ether pricing information based on the Pricing Index, ERR, and CME Ether Real Time Price, 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 Constituent Platforms of the Pricing 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 Trust.<sup>30</sup> Trading in Shares of the Trust will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

The Exchange may halt trading during the day in which an interruption to the dissemination of the ITV or the CME Ether Real Time Index occurs.<sup>31</sup> If the interruption to the dissemination of the ITV or the CME Ether Real Time Price 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

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<sup>30</sup> See NYSE Arca Rule 7.12-E.

<sup>31</sup> A limit up/limit down condition in the futures market would not be considered an interruption requiring the Trust to be halted.

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 (“ETP”) Holders acting as registered Market Makers in Commodity-Based Trust Shares to facilitate surveillance.<sup>32</sup> The Exchange represents that, for initial and continued listing, the Trust will be in compliance with Rule 10A-3 under the Act,<sup>33</sup> as provided by NYSE Arca Rule 5.3-E. A minimum of 100,000 Shares of the Trust will be outstanding at the commencement of trading on the Exchange.

### Surveillance

The Exchange represents that trading in the Shares of the Trust will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market

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<sup>32</sup> 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 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.

<sup>33</sup> 17 CFR 240.10A-3. See note 8, *supra*.

surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>34</sup> The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

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

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

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

All statements and representations made in this filing regarding (a) the description of the portfolios of the Trust, (b) limitations on portfolio holdings or reference assets, or (c) the

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<sup>34</sup> 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.

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

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an “Information Bulletin” of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) the 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 ITV and the Pricing Index is 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 ITV 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 Trust 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 Trust is publicly available on the Trust’s website. The Information Bulletin will also reference the fact that there is no regulated source of last sale

information regarding ether, that the Commission has no jurisdiction over the trading of ether as a commodity, and that the CFTC has regulatory jurisdiction over the trading of ether futures contracts and options on ether futures contracts.

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)<sup>35</sup> 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 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;

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<sup>35</sup> 15 U.S.C. 78f(b)(5).

accordingly, it is likely that fraud or manipulation that impacts prices in spot ether markets would likely similarly impact CME ether futures prices.

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

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The Trust's website will also include a form of the prospectus for the Trust that may be downloaded. The website will include the Shares' ticker and CUSIP information, along with additional quantitative information updated on a daily basis for the Trust. The Trust's website will include (1) 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 Trust's website will be publicly available prior to the public offering of Shares and accessible at no charge.

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

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of a new type of 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](mailto:rule-comments@sec.gov). Please include file number SR-NYSEARCA-2024-31 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-2024-31. 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-2024-31 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.<sup>36</sup>

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

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<sup>36</sup> 17 CFR 200.30-3(a)(12).