SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79792; File No. SR-NYSEARCA-2016-176)

January 13, 2017

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of Shares of the EtherIndex Ether Trust under NYSE Arca Equities Rule 8.201

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on December 30, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change 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 following under NYSE Arca Equities Rule 8.201: EtherIndex Ether Trust ("Trust"). 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 places

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[1]   15 U.S.C.78s(b)(1).

[2]   15 U.S.C. 78a.

[3]   17 CFR 240.19b-4.

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.   <u>Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change</u>

          1.   <u>Purpose</u>

Under NYSE Arca Equities Rule 8.201, the Exchange may propose to list and/or trade pursuant to unlisted trading privileges ("UTP") "Commodity-Based Trust Shares." [4] The Exchange proposes to list and trade shares ("Shares") of the Trust pursuant to NYSE Arca Equities Rule 8.201. [5]

The sponsor of the Trust is EtherIndex LLC ("Sponsor"), a Delaware limited liability company. Delaware Trust Company is the trustee of the Trust ("Trustee"). The Bank of New York Mellon will be the administrator ("Administrator") and custodian of cash of the Trust ("Cash Custodian"). Coinbase will be the custodian of the ether of the Trust ("Ether Custodian").

According to the Registration Statement, each Share will represent a unit of fractional undivided beneficial interest in and ownership of the Trust. The activities of the Trust will be limited to (i) issuing "Baskets" (as described below) to "Authorized Participants" (as described below) in exchange for the cash or, in the Sponsor's discretion, ether (as described below), (ii) selling ether or transferring ether, at the Sponsor's discretion, as necessary to cover the Sponsor's fee and as necessary to pay Trust expenses not assumed by the Sponsor and other liabilities, (iii)

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[4]   Commodity-Based Trust Shares are securities issued by a trust that represent investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust.

[5]   On November 28, 2016, the Trust filed an amended registration statement ("Registration Statement") on Form S-1 under the Securities Act of 1933 (15 U.S.C. 77a) (File No. 333-212533). The descriptions of the Trust, the Shares and ether contained herein are based, in part, on the Registration Statement.

selling or transferring ether in exchange for Baskets surrendered for redemption by the Authorized Participants, (iv) causing the Administrator to sell ether on the termination of the Trust and (v) engaging in all administrative and custodial procedures necessary to accomplish such activities in accordance with the provisions of relevant agreements.

According to the Registration Statement, the Trust is neither an investment company registered under the Investment Company Act of 1940, as amended,[6] nor a commodity pool for purposes of the Commodity Exchange Act ("CEA"),[7] and neither the Sponsor nor the Trustee is subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the operation of the Trust.

Investment Objective

According to the Registration Statement and as further described below, the Trust's purpose will be to provide shareholders with exposure to the daily change in the U.S. dollar price of ether, before expenses and liabilities of the Trust, as measured by the price of ether in U.S. dollars as reported by the Global Digital Asset Exchange ("GDAX") as of 4:00 p.m., Eastern Time ("E.T."), each day ("GDAX Price").

The Trust will not be actively managed. It will not engage in any activities designed to obtain a profit from, or to ameliorate losses caused by, changes in the market prices of ether.

Ether and the Ethereum Network

According to the Registration Statement, ether is a digital asset similar to bitcoin. It is not issued by any government, bank or central organization but rather is issued by, and transmitted through, the decentralized, open source protocol of the peer-to-peer Ethereum computer network ("Ethereum Network"). The Ethereum Network is a decentralized network of

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[6]   15 U.S.C. 80a-1.

[7]   17 U.S.C. 1.

computers that run applications on a custom built "blockchain" ("Ethereum Blockchain") that enables developers to create markets, store registries of debts or promises, represent the ownership of property and move funds in accordance with instructions given in the past, all without the involvement of an intermediary or counterparty. The Ethereum Blockchain is a decentralized public transaction ledger hosted on the Ethereum Network on which all ether is recorded; the blockchain records ether balances and every ether address associated with a quantity of ether (see "Ethereum Blockchain" below). No single entity owns or operates the Ethereum Network.

According to the Registration Statement, unlike bitcoin, ether was not designed to function purely as a store of value. Instead, ether was meant to pay for specific actions on the Ethereum Network. However, ether's market is currently supported by many of the same online exchanges and the same infrastructure that has developed around the bitcoin network. Users who have historically purchased bitcoin on online exchange platforms can now buy ether on these websites. Ether can be converted to fiat currencies, such as the U.S. dollar, or to bitcoin, at rates determined on ether exchanges or in individual end-user-to-end-user transactions under a barter system. Each ether transaction is broadcast to the Ethereum Network and recorded in the Ethereum Blockchain.

According to the Registration Statement, unlike bitcoin, which has a fixed limit of 21,000,000 bitcoin, no limit has been established on the total supply of ether. The initial creation of ether was in connection with a crowd funding transaction in 2014 in which 60,000,000 ether were pre-sold. Another 12,000,000 ether were created for the benefit of a development fund. All additional ether have been and will be created through the "mining" process (see "Ether Blockchain" below). According to the terms of the 2014 presale, the issuance of ether from

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mining is capped at 18,000,000 ether per year. According to the Registration Statement, it has been reported that approximately 9,700,000 million ether have been created to date through the mining process.

Ethereum Blockchain

According to the Registration Statement, the Ethereum Blockchain is a record of every ether transaction (including the creation or "mining" of new ether) and every Ethereum Network public address associated with a quantity of ether. A beta version of the live blockchain was publicly launched in July 2015, and the initial production version was launched in March 2016.

The Ethereum Blockchain is comprised of a digital file, downloaded and stored, in whole or in part, on all Ethereum Network users' software programs. The Ethereum Network software can interpret the Ethereum Blockchain to determine the exact ether balance, if any, of any public ether address listed in the Ethereum Blockchain which has taken part in a transaction on the Ethereum Network.

Mining is the act of using a computer to run computations designed to help build the next block in the Ethereum Blockchain. As a computer solves a complex computational calculation related to the building of a block, its owner is rewarded with ether.[8] The Ethereum Blockchain includes all blocks that have been solved by miners and is updated to include new blocks as they are solved. As each newly solved block refers back to and connects with the immediately prior solved block, the addition of a new block adds to the Ethereum Blockchain in a manner similar to a new link being added to a chain. Each new block records outstanding ether transactions, and outstanding transactions are settled and validated through such recording. Therefore, the

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[8]   Attached as Exhibit 3, Item 1 is a chart illustrating the supply growth of ether during the period October 2015 through October 2016.

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Ethereum Blockchain represents a complete, transparent and unbroken history of all transactions of the Ethereum Network.

According to the Registration Statement, in June 2016, the DAO, a decentralized autonomous organization using the Ethereum Network, was hacked, resulting in a loss to that organization of approximately 3.6 million ether. In response to this loss, the Ethereum community agreed to create a new "hard fork" on the Ethereum Blockchain which returned the lost ether to the DAO. A hard fork is a change to the underlying Ethereum protocol, which creates new rules for the Ethereum system; all Ethereum clients needed to upgrade, otherwise they would remain on the old blockchain. In creating the hard fork, the intent was to have all users of the Ethereum Network migrate to the new fork, rendering the ether on the old blockchain held by the DAO hacker useless. However, a number of users have continued to develop the old blockchain, now referred to as "Ethereum Classic," resulting in a separate version of ether referred to as "ether classic." Ether classic is now traded on several crypto currency exchanges. The Shares will provide shareholders with exposure to the daily change in the U.S. dollar price of ether, before expenses and liabilities of the Trust, as measured by the GDAX Price and not the price of ether classic.

Uses of Ether Blockchain

According to the Registration Statement, the Ethereum Blockchain is a general-purpose, global blockchain that can govern both financial and non-financial types of application states. Ether can be used to pay for goods and services or can be converted to fiat currencies, such as the U.S. dollar, at rates determined on ether exchanges ("Ether Exchange")[9] or in individual end-

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[9]   An Ether Exchange is an online marketplace with a central limit order book, where market participants may buy, sell and trade ether. The largest Ether Exchanges are typically open on a 24-hour per day, seven-days per week basis, and publish public

user-to-end-user transactions under a barter system.[10] An ether private key controls the transfer

or "spending" of ether from its associated public ether address. An ether "wallet" is a collection

of private keys and their associated public ether addresses.

According to the Registration Statement, while the bitcoin network permits users

primarily to execute value transfers, the Ethereum Network allows users to program any arbitrary

code and execute it, including value transfers. Accordingly, the Ethereum Network may be

viewed as a global, decentralized computer in comparison to the bitcoin network, which is more

similar to a global, decentralized payment network. In addition to value transfers, the Ethereum

Network enables decentralized business logic, known as "smart contracts." A smart contract is a

collection of code (its functions) and data (its state) that resides at a specific address on the

Ethereum Blockchain. Smart contracts can interact with other contracts, make decisions, store

data and send ether to others. Smart contracts are capable of automatically enforcing the terms

of a given agreement among a number of parties. This code can define strict rules and

consequences in the same way that a traditional legal document would, stating the obligations,

benefits and penalties which may be due to either party in various different circumstances. But,

unlike a traditional contract, it can also take information as an input, process that information

through the rules set out in the contract and take any actions required of it as a result.

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market data such as transaction price and volume data. Examples of Ether Exchanges are: (i) Coinbase, a digital currency wallet and platform based in San Francisco where merchants and consumers can transact with certain digital currencies; (ii) Kraken, an online exchange based in San Francisco; (iii) Bitfinex, an online exchange founded in Hong Kong; and (iv) Gemini, a New York-based online exchange that has obtained a BitLicense from the New York Department of Financial Services.

[10]   Attached as Exhibit 3, Item 2 is a chart setting forth a summary of the daily number of ether transactions (i.e., transfers of ether between parties on the Ethereum Network, which is different than and should not be confused with ether exchange-traded volume) from October 2015 through October 2016.

<u>Custody of the Trust's Ether</u>

According to the Registration Statement, the private keys that control the Trust's ether will be secured by the Ether Custodian and stored completely offline in a "cold storage" system. The Ether Custodian's cold storage system is founded on the principles of (i) building defense-in-depth against external threats, (ii) protecting against human error and (iii) guarding against misuse of insider access. The Ether Custodian's cold storage mechanism involves generating private keys on an "air-gapped" computer, i.e., a computer that has never been connected to the internet, then splitting these keys into segments using a special algorithm to ensure no one individual knows how the key was fragmented, and finally distributing these fragments geographically so no one entity can access the cold storage without the other individuals contributing their fragment of the key. The Ether Custodian maintains insurance against theft and electronic compromise in an amount that exceeds the average value of ether and bitcoin that it holds online at any one time.

The Ether Custodian will maintain approximately three times the average of the expected creation and redemption Baskets in ether at all times in a "hot wallet," which is connected to the internet, in order to provide fast access to withdrawal when needed. The average ether amount to be held in the hot wallet will initially be determined by the Sponsor and Authorized Participants. The Sponsor may direct the Ether Custodian to transfer ether from the cold storage system to the hot wallet if additional ether is required for creation and redemption Baskets. It is anticipated that less than five percent of the Trust's ether will be held in the hot wallet. The Ether Custodian will maintain the Trust's remaining ether in its cold storage system and will hold the Trust's ether in the Trust's ether custody account. The Ether Custodian will segregate the Trust's ether

which will be held in unique Ethereum Network public addresses with balances that can be directly verified on the Ethereum Blockchain.

According to the Registration Statement, each Custodian will accept, on behalf of the Trust, cash or the delivery of ether from Authorized Participants into the Trust's custody accounts creation orders. In order for an Authorized Participant to redeem a Basket and receive cash or a distribution of ether from the Trust, the Custodians, upon receiving instructions from the Administrator, will sign transactions necessary to transfer ether out of the Trust's ether custody account for sale or to distribute the ether to the Ethereum Network public address specified by the Authorized Participant.

According to the Registration Statement, the Sponsor will engage an independent audit firm to periodically audit the Ether Custodian's storage of private keys and its internal controls and report to the Sponsor at least annually on such matters. Additionally, the Sponsor will engage an independent audit firm to biannually verify that the Ether Custodian can demonstrate "proof of control" of the private keys that control the Trust's ether. One such "proof of control" audit will be conducted at the end of each calendar year and the other at random.

Ether Market Price

According to the Registration Statement, the value of ether is determined by the value that various market participants place on ether through their transactions. The most common means of determining the value of ether is by surveying one or more Ether Exchanges where ether is traded publicly and transparently (e.g., GDAX, Poloniex or Kraken).[11] On each online

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[11]   Attached as Exhibit 3, Item 3 is a chart comparing the ether price on Coinbase, Kraken, Gemini, Poloniex, Cexlo and Bitfinex during the period May 27, 2016 through October 21, 2016. Attached as Exhibit 3, Item 4 is a chart comparing the ether price, in 15 minute intervals, on Coinbase, Kraken and Bitfinex during the period of November 21, 2016 and into November 22, 2016.

Ether Exchange, ether is traded with publicly disclosed valuations for each executed trade, measured by one or more fiat currencies such as the U.S. dollar or euro or by the widely used digital asset bitcoin.

According to the Trust, since its initial trading, ether has experienced one-day (i.e., the greatest one-day change in ether price experienced on any trading day), one-month (i.e., the greatest change in ether price experienced during any calendar month), one-year (i.e., the greatest change in ether price experienced during any calendar year) and since-inception[12] changes of 67.5% (or $2.93), 214.8% (or $2.04), 2,748.5% (or $20.56) and 32,416% (or $21.33), respectively. All changes listed represent increases in the price of ether.[13]

The Trust

According to the Registration Statement, the Trust's assets will consist of ether. The Trust will occasionally hold cash for short periods in connection with the creation and redemption process, and to pay certain fees, expenses and liabilities. The ether held by the Ether Custodian on behalf of the Trust will only be transferred out of the Trust's ether custody account in the following circumstances: (i) transferred to pay the Sponsor's fee; (ii) transferred to be sold for cash or distributed to Authorized Participants in connection with the redemption of Baskets; (iii) transferred to the Trust's expense account to be sold on an as-needed basis to pay Trust

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[12]   For purposes of this data, the Trust has used August 8, 2015 as the inception date.

[13]   Attached as Exhibit 3, Item 5 is a chart illustrating the changes in the price of ether during the period September 2015 into October 2016. Attached as Exhibit 3, Item 6 is a chart comparing three-month volatility in the price of ether compared to three-month volatility in the prices of bitcoin, gold, silver, WTI crude oil, copper, natural gas, soybeans and coffee ("Comparison Commodities") during the period July 2016 through September 2016. Attached as Exhibit 3, Item 7 is a chart comparing the six-month volatility in the price of ether compared to the six-month volatility in the prices of the Comparison Commodities during the period April 2016 through September 2016. Attached as Exhibit 3, Item 8 is a chart comparing the twelve-month volatility in the price of ether compared to the twelve-month volatility in the prices of the Comparison Commodities during the period October 2016 through September 2016.

expenses not assumed by the Sponsor; or (iv) sold on behalf of the Trust in the event the Trust terminates and liquidates its assets or as otherwise required by law or regulation.

According to the Registration Statement, while the Sponsor will not exercise day-to-day oversight over the Trust, the Sponsor will engage the Administrator and the Custodians to assist in implementing the creation and redemption process for the Trust. The Sponsor will assume certain administrative and marketing expenses incurred by the Trust. The Trust will pay the Sponsor a fee.

Net Asset Value

On each business day, the Administrator will calculate the net asset value ("NAV") of the Trust as measured at 4:00 p.m., E.T., using the GDAX Price. The NAV of the Trust is the asset value of the Trust less its liabilities (which include accrued but unpaid fees and expenses) divided by the number of outstanding Shares as of 4:00 p.m., E.T., each business day.

In the event that the GDAX Price is unavailable or the Sponsor determines that the GDAX Price is not an appropriate basis for evaluation of the Trust's ether, the Sponsor will instruct the Administrator to use as an alternative basis for calculating the Trust's NAV either (i) the price of ether in U.S. dollars as reported by Kraken Bitcoin Exchange as measured at 4:00 p.m., E.T., on each business day, (ii) if the Sponsor determines that the Kraken Bitcoin Exchange price is not an appropriate basis for evaluation of the Trust's ether, the price of ether in U.S. dollars as reported by the Gemini Exchange as measured at the 4:00 p.m., E.T., on each business day or (iii) if the Sponsor determines that the Kraken Bitcoin Exchange and the Gemini Exchange prices are not appropriate bases for evaluation of the Trust's ether, the Sponsor's good faith estimate of the market price of ether. Any determination that the GDAX Price or the price on the other exchanges mentioned above is not an appropriate basis for calculating the Trust's

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NAV would be based upon extraordinary criteria, such as a disruption in the operation of the exchange, material reporting or calculation inaccuracies by the exchange or a material decrease in trading volume not experienced by other exchanges. In determining fair market value for ether, the Sponsor may consider the market price for ether on other Ether Exchanges or in other forums for which ether prices are published publicly.

The Sponsor will publish the Trust's NAV on the Trust's website as soon as practicable after calculation by the Administrator. To the extent that the NAV has been calculated using a price per ether other than the GDAX Price for such business day, the publication on the Trust's website will note the valuation methodology and the price per ether resulting from such calculation.

According to the Registration Statement, Authorized Participants, or their clients or customers, may have an opportunity to realize a riskless profit if they can create a Basket at a discount to the public trading price of the Shares or can redeem a Basket at a premium over the public trading price of the Shares. The Sponsor expects that the exploitation of such arbitrage opportunities by Authorized Participants and their clients and customers will tend to cause the public trading price to track the NAV closely over time.

Creation and Redemption of Shares

According to the Registration Statement, the Trust will issue and redeem Baskets, each equal to a block of 10,000 Shares, principally in exchange for the delivery to the Trust or the distribution by the Trust of the amount of cash, or at the discretion of the Sponsor, ether represented by the NAV of the Baskets being created or redeemed, the amount of which will be based on the combined ether represented by the number of Shares included in the Baskets being created or redeemed determined on the day the order to create or redeem Baskets is properly

received. The Trust will issue and redeem Shares in Baskets to and from Authorized

Participants. The size of a Basket is subject to change.

Orders to create and redeem Baskets may be placed only by Authorized Participants.[14] A

transaction fee may be imposed to offset transfer and other transaction costs associated with

creation or redemption.

Creation Procedures

On any business day, an Authorized Participant may place an order with the Transfer

Agent to create one or more Baskets. Purchase orders must be placed by 1:00 p.m., E.T. The

day on which the Transfer Agent receives a valid purchase order is the purchase order date.

Purchase orders are irrevocable.

The total payment required to create each Basket is determined by calculating the NAV

of 10,000 Shares as of the closing time of the NYSE Arca on the purchase order date. Baskets

will be issued as of 9:30 a.m., E.T., on the business day immediately following the purchase

order date at the applicable NAV as of the closing time of NYSE Arca on the purchase order

date, but only if the required payment has been timely received.

Orders to purchase Baskets must be placed no later than 1:00 p.m., E.T., but the total

payment required to create a Basket will not be determined until 4:00 p.m., E.T., on the date the

purchase order is received. Authorized Participants therefore will not know the total amount of

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14   An Authorized Participant must: (1) be a registered broker-dealer or other securities
        market participant, such as a bank or other financial institution, which is not required to
        register as a broker-dealer to engage in securities transactions and (2) be a participant in
        Depository Trust Company ("DTC"). To become an Authorized Participant, a person
        must enter into an "Authorized Participant Agreement" with the Administrator and the
        Sponsor on behalf of the Trust. The Authorized Participant Agreement provides the
        procedures for the creation and redemption of Baskets as well as the amount of ether
        required for delivery or distribution for such creations and redemptions.

the payment required to create a Basket at the time they submit an irrevocable purchase order for the Basket.

The payment required to create a Basket typically will be made in cash, but it may also be made partially or wholly in-kind at the discretion of the Sponsor if the Authorized Participant requests to convey ether directly to the Trust. To the extent the Authorized Participant places an in-kind order to create, the Authorized Participant must deliver ether directly to the Ether Custodian and an amount of cash (or ether) referred to as the Balancing Amount[15] each no later than 1:00 p.m., E.T., on the date the purchase order is received. The amount of ether delivered by the Authorized Participant must be in an amount equal to the number of ether necessary to create a Basket as of 4:00 p.m., E.T., on the date the purchase order is received. Upon delivery of the ether to the Ether Custodian and the Balancing Amount to the Cash Custodian (or the ether component of the Balancing Amount, if applicable, to the Ether Custodian), the Administrator will cause the Trust to issue a Basket to the Authorized Participant.

According to the Registration Statement, the Sponsor acting by itself or through the Administrator may reject a creation order if: (i) it is not in proper form; (ii) it is determined by the Sponsor not to be in the best interest of the shareholders; (iii) the acceptance or receipt of the creation order would have adverse tax consequences to the Trust or shareholders; (iv) the acceptance or receipt of the creation order would, in the opinion of counsel to the Sponsor, be unlawful; (v) if circumstances outside the control of the Sponsor or its designee make it, for all practical purposes, not feasible, as determined by the Sponsor in its sole discretion, to process

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15   The Balancing Amount is an amount equal to the difference between the NAV of the Shares (per Basket) and the "Deposit Amount," which is an amount equal to the market value of ether (per Basket) which, for this purpose, is calculated in the same manner as the Trust values ether. The Balancing Amount serves to compensate for any difference between the NAV per Basket and the Deposit Amount.

creations of Baskets; or (vi) for any other reason set forth in the Authorized Participant Agreement entered into with that Authorized Participant.

Redemption Procedures

According to the Registration Statement, the procedures by which an Authorized Participant can redeem one or more Baskets will mirror the procedures for the creation of Baskets. On any business day, an Authorized Participant may place an order with the Transfer Agent to redeem one or more Baskets. Redemption orders must be placed no later than 1:00 p.m., E.T. The day on which the Transfer Agent receives a valid redemption order is the redemption order date. Redemption orders are irrevocable.

By placing a redemption order, an Authorized Participant agrees to deliver the Baskets to be redeemed through DTC's book-entry system to the Trust not later than 1:00 p.m., E.T., on the business day immediately following the redemption order date.

The redemption proceeds from the Trust consist of the "cash redemption amount" and, if making an in-kind redemption, ether. The cash redemption amount is equal to the NAV of the number of Baskets of the Trust requested in the Authorized Participant's redemption order as of the closing time of NYSE Arca on the redemption order date. The Cash Custodian will distribute the cash redemption amount at 4:00 p.m., E.T., on the business day immediately following the redemption order date through DTC to the account of the Authorized Participant as recorded on DTC's book-entry system. At the discretion of the Sponsor and if the Authorized Participant requests to receive ether directly, some or all of the redemption proceeds may be distributed to the Authorized Participant in-kind.

The redemption proceeds due from the Trust are delivered to the Authorized Participant at 4:00 p.m., E.T., on the business day immediately following the redemption order date if, by

such time on such business day immediately following the redemption order date, the Trust's DTC account has been credited with the Baskets to be redeemed. If the Trust's DTC account has not been credited with all of the Baskets to be redeemed by such time, the redemption distribution will be delivered to the extent of whole Baskets received. Any remainder of the redemption distribution is delivered on the next business day to the extent of remaining whole Baskets received if the Sponsor receives the fee applicable to the extension of the redemption distribution date which the Sponsor may, from time to time, determine and the remaining Baskets to be redeemed are credited to the Trust's DTC account by 4:00 p.m., E.T., on such next business day. Any further outstanding amount of the redemption order shall be cancelled.

To the extent that Authorized Participant places an in-kind order to redeem a Basket, the Ether Custodian will deliver, on the business day immediately following the day the redemption order is received, ether to the Authorized Participant in an amount equal to the number of ether necessary to redeemed [sic] a Basket as of 4:00 p.m., E.T.

Availability of Information

The Trust's website will provide an intra-day indicative value ("IIV") per Share updated every 15 seconds, as calculated by the Exchange or a third party financial data provider during the Exchange's Core Trading Session. The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during the NYSE Arca Core Trading Session to reflect changes in the value of the Trust's ether holdings during the trading day.

The IIV disseminated during the NYSE Arca Core Trading Session should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during

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the NYSE Arca Core Trading Session by one or more major market data vendors. In addition, the IIV will be available through on-line information services.

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the mid-point of the bid-ask price[16] in relation to the NAV as of the time the NAV is calculated ("Bid-Ask Price") and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The Trust will also disseminate the Trust's holdings on a daily basis on the Trust's website. The price of ether will be made available by one or more major market data vendors, updated at least every 15 seconds during the Exchange's Core Trading Session.

The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. In addition, ether prices are available from automated quotation systems, published or other public sources or on-line information services. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association ("CTA").

Quotation and last sale information for ether will be widely disseminated through a variety of major market data vendors. The spot price of ether is available on a 24-hour basis from major market data vendors. Information relating to trading, including price and volume information, in ether will be available from major market data vendors and from the exchanges

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[16]   The bid-ask price of the Trust is determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day NAV.

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on which ether are traded. The normal trading hours for ether exchanges are 24-hours per day, 365-days per year.

The Trust will provide website disclosure of its ether holdings daily. The website disclosure of the Trust's portfolio composition will occur at the same time as the disclosure by the Sponsor of the portfolio composition to Authorized Participants so that all market participants are provided portfolio composition information at the same time. Therefore, the same portfolio information will be provided on the public website as well as in electronic files provided to Authorized Participants. Accordingly, each investor will have access to the current portfolio composition of the Trust through the Trust's website.

Trading Rules

The Trust will be subject to the criteria in NYSE Arca Equities Rule 8.201, including 8.201(e), for initial and continued listing of the Shares. A minimum of 100,000 Shares will be required to be outstanding at the start of trading. With respect to application of Rule 10A-3 under the Act, the Trust will rely on the exception contained in Rule 10A-3(c)(7). The Exchange believes that the anticipated minimum number of Shares outstanding at the start of trading is sufficient to provide adequate market liquidity.

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. Trading in the Shares on the Exchange will occur in accordance with NYSE Arca Equities Rule 7.34(a). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, 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.

Further, NYSE Arca Equities Rule 8.201 sets forth certain restrictions on Equity Trading Permit Holders ("ETP Holders") acting as registered Market Makers in the Shares to facilitate surveillance. Pursuant to NYSE Arca Equities Rule 8.201(g), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its trading in the underlying ether. Commentary .04 of NYSE Arca Equities Rule 6.3 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).

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule.[17]

The Exchange will halt trading in the Shares if the NAV of the Trust is not calculated or disseminated daily. The Exchange may halt trading during the day in which an interruption occurs to the dissemination of the IIV. If the interruption to the dissemination of the IIV persists

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[17]   See NYSE Arca Equities Rule 7.12.

past the trading day in which it occurs, 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.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[18] 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 Intermarket Surveillance Group ("ISG"), and the Exchange or FINRA, on behalf of the

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[18] 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.

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 comprehensive surveillance sharing agreement ("CSSA").[19]

Also, pursuant to NYSE Arca Equities Rule 8.201(g), the Exchange is able to obtain information regarding trading in the Shares and the underlying ether through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades through ETP Holders which they effect on any relevant market.

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 (i) the description of the portfolio and (ii) limitations on portfolio holdings or reference assets shall constitute continued listing requirements for listing the Shares on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the 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 Equities Rule 5.5(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 purchases

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[19]   For the list of current members of ISG, see https://www.isgportal.org/home.html.

and redemptions of Shares in Baskets (including noting that the Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(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) how [sic] information regarding how GDAX Price and the IIV are disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) 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 IIV will not be calculated or publicly disseminated; 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 Registration Statement. 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 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)[20] 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.

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[20]   15 U.S.C. 78f(b)(5).

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.201. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets 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. In addition, the Exchange may obtain information regarding trading in the Shares from markets that are members of ISG or with which the Exchange has in place a CSSA. Also, pursuant to NYSE Arca Equities Rule 8.201(g), the Exchange is able to obtain information regarding trading in the Shares and the underlying ether through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades through ETP Holders which they effect on any relevant market.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that there is a considerable amount of ether price and ether market information available on public websites and through professional and subscription services. Investors may obtain on a 24-hour basis ether pricing information based on the spot price for ether from various financial information service providers. The closing price and settlement prices of ether are readily available from the Ether Exchanges and other publicly available websites. In addition, such prices are published in public sources or on-line information services. The Trust will provide website disclosure of its ether holdings daily.

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The IIV will be widely disseminated on a per Share basis every 15 seconds during the NYSE Arca Core Trading Session by one or more major market data vendors. In addition, the IIV will be available through on-line information services. The Exchange represents that the Exchange may halt trading during the day in which an interruption to the dissemination of the IIV occurs. If the interruption to the dissemination of the IIV persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants. The NAV per Share will be calculated daily and made available to all market participants at the same time. One or more major market data vendors will disseminate for the Trust on a daily basis information with respect to the recent NAV per Share and Shares outstanding.

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 an additional type of exchange-traded product 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 relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a CSSA. In addition, as noted above, investors will have ready access to information regarding the Trust's ether holdings, IIV and quotation and last sale information for the Shares.

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 an additional type of exchange-traded product, and the first such product based on ether, which will enhance competition among market participants, to the benefit of investors and the marketplace.

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

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

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

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

IV.   Solicitation of Comments

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

Electronic comments:

•   Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or

•   Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEARCA-2016-176 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-2016-176. This file number should be included on the subject line if e-mail 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 (http://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 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-NYSEARCA-2016-176 and should be submitted on or before [insert date 21 days from publication in the <u>Federal</u> <u>Register</u>].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Eduardo A. Aleman
Assistant Secretary

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[21]   17 CFR 200.30-3(a)(12).