Electronic Statements

- Use the Commission's internet submission form (*https://www.sec.gov/rules/submitcomments.htm*); or
- Send an email message to *rule-comments@sec.gov*. Please include File Number 265–32 on the subject line; or

Paper Statements

- Send paper statements to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. 265–32. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method. The Commission will post all statements on the SEC's website at *www.sec.gov*.

Statements also 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. (ET). All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Julie Z. Davis, Senior Special Counsel, Office of the Advocate for Small Business Capital Formation, at (202) 551–5407, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Persons needing special accommodations because of a disability should notify the contact person listed in the section above entitled **FOR FURTHER INFORMATION CONTACT**. The agenda for the meeting includes matters relating to rules and regulations affecting small and emerging companies and their investors under the federal securities laws.

Dated: September 2, 2021.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2021–19416 Filed 9–8–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92861; File No. SR–DTC–2021–014]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change To Provide Settlement Services for Transactions Entered Into Under the Proposed Securities Financing Transaction Clearing Service of the National Securities Clearing Corporation

September 2, 2021.

On July 22, 2021, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–DTC–2021–014 (''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The Proposed Rule Change was published for comment in the **Federal Register** on August 11, 2021.[3] The Commission has received no comment letters on the Proposed Rule Change.

Section 19(b)(2) of the Act [4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for the Proposed Rule Change is September 25, 2021.

The Commission is extending the 45-day period for Commission action on the Proposed Rule Change. The Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change so that it has sufficient time to consider and take action on the Proposed Rule Change.

Accordingly, pursuant to Section 19(b)(2) of the Act [5] and for the reasons stated above, the Commission designates November 9, 2021 as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove proposed rule change SR–DTC–2021–014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–19419 Filed 9–8–21; 8:45 am]

BILLING CODE 8011–01–P

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

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 92572 (August 5, 2021), 86 FR 44077 (August 11, 2021) (SR–DTC–2021–014) (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92865; File No. SR–NASDAQ–2021–066]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Valkyrie XBTO Bitcoin Futures Fund Under Nasdaq Rule 5711(g)

September 2, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 23, 2021, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On August 25, 2021, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, 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 Valkyrie XBTO Bitcoin Futures Fund (the ''Trust'') under Nasdaq Rule 5711(g) (''Commodity Futures Trust Shares''). The shares of the Trust are referred to herein as the ''Shares.''

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

[2] 17 CFR 240.19b–4.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The ETF community has worked for many years to obtain the approval of an exchange tradeable product that provides investors with the important opportunity to gain exposure to digital currencies such as bitcoin. Since March 2017, the Commission has disapproved more than a dozen such proposals and failed to act on many others that were filed and later withdrawn. During that period, digital assets have gained substantial traction in the global and domestic economy; have become a sought-after investment tool for a rapidly-expanding number of institutional and individual investors; and have spurred significant investment and improvement in all aspects of digital currency ownership, including storage, security, payments, and exchange.[3]

Nasdaq believes that bitcoin and its surrounding ecosystem have evolved sufficiently to support the approval of a Bitcoin Futures ETF because the concerns the Commission has identified previously have been addressed. To that end, Nasdaq believes that its current proposal differs from previous filings recently submitted due to significant developments in the domestic bitcoin futures market, including:

(1) In previous disapproval orders, the Commission expressed concern over a bitcoin fund holding physical bitcoin, but the Trust instead will pursue its investment objective solely by holding CME Bitcoin Futures that are cash-settled and traded on the Chicago Mercantile Exchange, Inc. (the ''CME''), which was self-certified with the Commodity Futures Trading Commission (the ''CFTC'') (aside from holding cash and Money Market Instruments, as defined herein);

(2) The Commission expressed concern in previous disapproval orders about self-regulation and the oversight necessary to maintain and promote the fair and transparent trading of listed products, including bitcoin futures. Specifically, the Commission expressed concern with the listing exchange's ability to deter fraud and manipulation in compliance with Section 6(b)(5) of the Act. The Commission stated that this could be addressed by entering into a surveillance agreement with a ''regulated market of significant size.'' Since the previous disapproval orders, both the bitcoin and bitcoin futures markets have developed to the point that the CME Bitcoin Futures market is a ''regulated market of significant size,'' for purposes of compliance with Section 6(b)(5) of the Act.

(3) The CME's compliance with the CFTC's Core Principles (detailed further herein) also serves to strengthen the Trust's resistance to fraud and manipulation and should appropriately address the Commission's concerns regarding investor protection. The CME Bitcoin Futures contract is cash settled, is not readily subject to manipulation or distortion, and is subject to real-time trade monitoring and comprehensive and accurate trade reconstruction.

Background

The Exchange proposes to list and trade Shares of the Trust under Nasdaq Rule 5711(g), which governs the listing and trading of Commodity Futures Trust Shares on the Exchange.[4] The Shares will be offered by the Trust, which was established as a Delaware statutory trust on May 18, 2021. According to the Draft Registration Statement (as defined below), the Trust will not be registered as an investment company under the Investment Company Act of 1940 and is not required to register under such act.[5] The Trust is registered as a commodity pool under the Commodity Exchange Act (''CEA'').[6] The Shares of the Trust will be registered with the Commission by means of the Trust's registration statement on Form S–1 (the ''Registration Statement'') under the Securities Act of 1933, as amended (the ''Securities Act''). The Registration Statement will be effective as of the date of any offer and sale pursuant to the Registration Statement. A draft registration statement (the ''Draft Registration Statement'') was filed confidentially with the Commission on May 21, 2021.[7]

Valkyrie Funds LLC (the ''Sponsor'') serves as the Trust's sponsor and commodity pool operator. Vident Investment Advisory, LLC (the ''Sub-Advisor'') serves as the Trust's sub-advisor and commodity trading advisor. XBTO Trading, LLC is the research provider for the Sponsor and the Sub-Advisor. Delaware Trust Company (the ''Trustee'') serves as the trustee for the Trust. The Sponsor is currently considering third-party service providers for the roles of Administrator, Transfer Agent, Custodian and Marketing Agent, as described in the Draft Registration Statement.

The Bitcoin Industry and Market

Bitcoin

Bitcoin is the digital asset that is native to, and created and transmitted through the operations of, the peer-to-peer Bitcoin Network, a decentralized network of computers that operates on cryptographic protocols. No single entity owns or operates the Bitcoin Network, the infrastructure of which is collectively maintained by a decentralized user base. The Bitcoin Network allows people to exchange tokens of value, called bitcoin, which are recorded on a public transaction ledger known as the Blockchain. Bitcoin can be used to pay for goods and services, or it can be converted to fiat currencies, such as the U.S. dollar, at rates determined on bitcoin trading platforms or in individual end-user-to-end-user transactions under a barter system.

The Bitcoin Network is decentralized and does not require governmental authorities or financial institution intermediaries to create, transmit, or determine the value of bitcoin. In addition, no party may easily censor transactions on the Bitcoin Network. As a result, the Bitcoin Network is often

[3] For example, Coinbase (COIN) alone sports an enterprise market capitalization of around $67 billion and it recently reported over 68 million individual accounts holding $180 billion of digital currencies, and $462 billion in quarterly notional value of trading volume.

[4] Nasdaq Rule 5711(g)(iii) defines Commodity Futures Trust Shares as ''a security that (A) is issued by a trust (''Trust'') that (1) is a commodity pool as defined in the Commodity Exchange Act and regulations thereunder, and that is managed by a commodity pool operator registered with the Commodity Futures Trading Commission, and (2) holds positions in futures contracts that track the performance of a specified commodity, or interests in a commodity pool which, in turn, holds such positions; and (B) is issued and redeemed daily in specified aggregate amounts at net asset value.''

[5] 15 U.S.C. 80a–1.

[6] 7 U.S.C. 1.

[7] *See* Draft Registration Statement on Form S–1 confidentially filed with the Commission on May 21, 2021 (file no. 377–04910). The descriptions of the Trust and the Shares contained herein are based, in part, on information in the Draft Registration Statement.

referred to as decentralized and censorship resistant.

The value of bitcoin is determined by the supply of and demand for bitcoin. New bitcoins are created and rewarded to the parties providing the Bitcoin Network's infrastructure (''miners'') in exchange for their expending computational power to verify transactions and add them to the Blockchain. The Blockchain is effectively a decentralized database that includes all blocks that have been solved by miners, and is updated to include new blocks as they are solved. Each bitcoin transaction is broadcast to the Bitcoin Network and, when included in a block, recorded in the Blockchain. Each new block records outstanding bitcoin transactions, and outstanding transactions are settled and validated through such recording. The Blockchain represents a complete, transparent, and unbroken history of all transactions of the Bitcoin Network.

The method for creating new bitcoin is mathematically controlled in a manner so that the supply of bitcoin grows at a limited rate pursuant to a pre-set schedule. The number of bitcoin awarded for solving a new block is automatically halved every 210,000 blocks. Thus, the current fixed reward for solving a new block is 6.25 bitcoin per block; the reward decreased from twenty-five bitcoin in July 2016 and 12.5 in May 2020. It is estimated to halve again at the start of 2024. This deliberately controlled rate of bitcoin creation means that the number of bitcoin in existence will never exceed twenty-one million and that bitcoin cannot be devalued through excessive production unless the Bitcoin Network's source code (and the underlying protocol for bitcoin issuance) is altered. As of January 1, 2021, approximately 18,587,000 bitcoin have been mined. It is estimated that more than ninety percent of the twenty-one million bitcoin will have been produced by 2022.

Bitcoin Network

The first step in directly using the Bitcoin Network for transactions is to download specialized software referred to as a ''bitcoin wallet.'' A user's bitcoin wallet can run on a computer or smartphone and can be used both to send and to receive bitcoin. Within a bitcoin wallet, a user can generate one or more unique ''bitcoin addresses,'' which are conceptually similar to bank account numbers. After establishing a bitcoin address, a user can send or receive bitcoin from his or her bitcoin address to another user's address. Sending bitcoin from one bitcoin address to another is similar in concept to sending a bank wire from one person's bank account to another person's bank account, provided, however, that such transactions are not managed by an intermediary and erroneous transactions generally may not be reversed or remedied once sent.

The amount of bitcoin associated with each bitcoin address, as well as each bitcoin transaction to or from such address, is transparently reflected in the Blockchain and can be viewed by websites that operate as ''blockchain explorers.'' Copies of the Blockchain exist on thousands of computers on the Bitcoin Network. Anyone can view the blockchain as it is available to observe without restriction. A user's bitcoin wallet will either contain a copy of the blockchain or be able to connect with another computer that holds a copy of the blockchain. The innovative design of the Bitcoin Network protocol allows each Bitcoin user to trust that their copy of the Blockchain will generally be updated consistent with each other user's copy because it is extraordinarily unlikely that the Blockchain could be retroactively changed.

When a Bitcoin user wishes to transfer bitcoin to another user, the sender must first have the recipient's Bitcoin address. The sender then uses his or her Bitcoin wallet software to create a proposed transaction to be added to the Blockchain. The proposal would reduce the amount of bitcoin allocated to the sender's address and increase the amount allocated to the recipient's address, in each case by the amount of bitcoin desired to be transferred. The proposal is completely digital in nature, similar to a file on a computer, and it can be sent to other computers participating in the Bitcoin Network.

Bitcoin Transactions

A bitcoin transaction contains the sender's bitcoin address, the recipient's bitcoin address, the amount of bitcoin to be sent, a transaction fee, and the sender's digital signature. Bitcoin transactions are secured by a type of cryptography known as public-private key cryptography, represented by the bitcoin addresses and digital signature in a transaction's data file. Each Bitcoin Network address, or wallet, is associated with a unique ''public key'' and ''private key'' pair, both of which are lengthy alphanumeric codes, derived together and possessing a unique relationship.

The public key is visible to the public and analogous to the Bitcoin Network address. The private key is a secret and may be used to digitally sign a transaction in a way that proves the transaction has been signed by the holder of the public-private key pair, without having to reveal the private key. A user's private key must be kept in accordance with appropriate controls and procedures to ensure that it is used only for legitimate and intended transactions. If an unauthorized third person learns of a user's private key, that third person could forge the user's digital signature and send the user's bitcoin to any arbitrary bitcoin address, thereby stealing the user's bitcoin. Similarly, if a user loses his private key and cannot restore such access (*e.g.,* through a backup), the user may permanently lose access to the bitcoin contained in the associated address.

The Bitcoin Network incorporates a system to prevent double-spending of a single bitcoin. To prevent the possibility of double-spending a single bitcoin, each validated transaction is recorded, time stamped and publicly displayed in a ''block'' in the Blockchain, which is publicly available. Thus, the Bitcoin Network provides confirmation against double-spending by memorializing every transaction in the Blockchain, which is publicly accessible and downloaded in part or in whole by all users of the Bitcoin Network software program. Any user may validate, through their Bitcoin wallet or a blockchain explorer, that each transaction in the Bitcoin Network was authorized by the holder of the applicable private key. Bitcoin Network mining software consistent with reference software requirements typically validates each such transaction before including it in the Blockchain. This cryptographic security ensures that bitcoin transactions may not generally be counterfeited, although it does not protect against the ''real world'' theft or coercion of use of a Bitcoin user's private key, including the hacking of a Bitcoin user's computer or a service provider's systems.

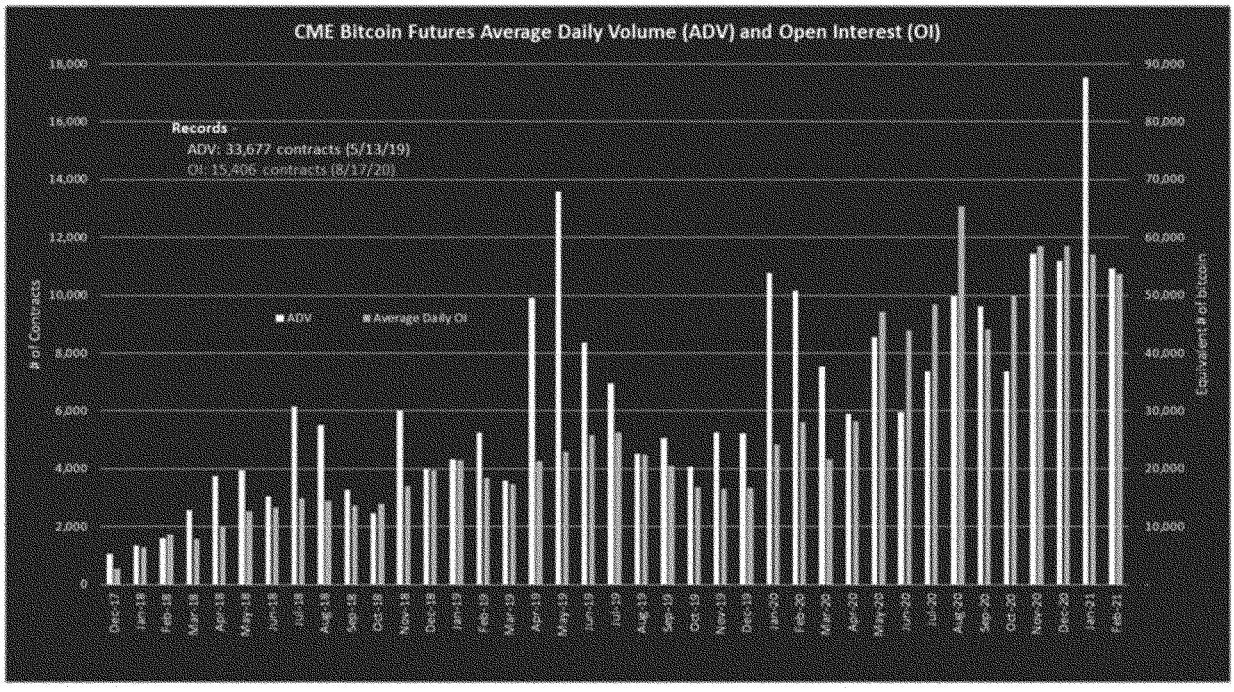
A Bitcoin transaction between two parties is settled when recorded in a block added to the Blockchain. Validation of a block is achieved by confirming the cryptographic hash value included in the block's solution and by the block's addition to the longest confirmed Blockchain on the Bitcoin Network. For a transaction, inclusion in a block on the Blockchain constitutes a ''confirmation'' of a Bitcoin transaction. As each block contains a reference to the immediately preceding block, additional blocks appended to and incorporated into the Blockchain constitute additional confirmations of the transactions in such prior blocks, and a transaction included in a block for the first time is confirmed once against

double-spending. The layered confirmation process makes changing historical blocks (and reversing transactions) exponentially more difficult the further back one goes in the Blockchain.

To undo past transactions in a block recorded on the Blockchain, a malicious actor would have to exert tremendous computer power in re-solving each block in the Blockchain starting with and after the target block and broadcasting all such blocks to the Bitcoin Network. The Bitcoin Network is generally programmed to consider the longest Blockchain containing solved and valid blocks to be the most accurate Blockchain. In order to undo multiple layers of confirmation and alter the Blockchain, the malicious actor would have to re-solve all of the old blocks sought to be regenerated and be able to continuously add new blocks to the Blockchain at a speed that would have to outpace that of all of the other miners on the Bitcoin Network, who would be continuously solving for and adding new blocks to the Blockchain. There are no known reports of malicious parties taking control of the Bitcoin Network or undoing past transactions in a block recorded on the Blockchain.

Bitcoin Futures

The CME began offering trading in Bitcoin Futures in 2017. Each contract represents five bitcoin and is based on the CME CF Bitcoin Reference Rate (the ''CME CF BRR'').[8] The contracts trade and settle like other cash-settled commodity futures contracts. Nearly every measurable metric related to CME Bitcoin Futures has trended consistently up since launch and/or accelerated upward in the past year.[9] For example, there was approximately $2.7 billion in trading in Bitcoin Futures in March 2021 compared to $118 million, $70 million, and $262 million in total trading in March 2018, March 2019 and March 2020, respectively. Bitcoin Futures traded over $63 billion in notional amount on the CME in March 2021 and represented $2.5 billion in average daily open interest compared to $151 million in March 2020. This general upward trend in trading volume and open interest is captured in the following chart:



[8] According to CME, the CME CF Bitcoin Reference Rate aggregates the trade flow of major bitcoin spot exchanges during a specific calculation window into a once-a-day reference rate of the U.S. dollar price of bitcoin. Calculation rules are geared toward maximum transparency and real-time replicability in underlying spot markets, including Bitstamp, Coinbase, Gemini, itBit, and Kraken. For additional information, refer to *https://www.cmegroup.com/trading/cryptocurrency-indices/cf-bitcoin-reference-rate.html?redirect=/trading/cf-bitcoin-reference-rate.html.*

[9] The recent launch of a bitcoin futures-based mutual fund from ProShares, the Bitcoin Strategy ProFund (BTCFX), has increased approximately 14% since its July launch.

Prior to listing a new commodity futures contract, a designated contract market must either submit a self-certification to the CFTC that the contract complies with the CEA and CFTC regulations or voluntarily submit the contract for CFTC approval. This process applies to all futures contracts and all commodities underlying the futures contracts, whether the new futures contracts are related to oil, gold, or any other commodity.[10] On December 1, 2017, it was announced [11] that the CME had self-certified with the CFTC new contracts for bitcoin futures products.[12] The CME Bitcoin Futures [13] trade and settle like any other cash-settled commodity futures contracts.[14] Like other futures products on the CME, Bitcoin Futures are subject to oversight by the CFTC, and the CME itself is empowered to enforce its own rulebook as it relates to the Bitcoin Futures. Furthermore, the CME has a surveillance team that monitors the trading of Bitcoin futures at all times along with the underlying bitcoin spot exchanges with which the CME has a surveillance agreement.

As such, the Exchange is proposing to list and trade Shares of the Trust under Nasdaq Rule 5711(g), which governs the listing and trading of Commodity Futures Trust Shares on the Exchange.

Investment Objective

According to the Draft Registration Statement, the investment objective of the Trust is for the Shares to reflect the performance of bitcoin as represented by the CME CF BRR, less the Trust's liabilities and expenses.

Investment Strategy

The Trust pursues its investment objective primarily by investing in Bitcoin Futures. Futures are financial contracts, the value of which depends on, or is derived from, the underlying reference asset. In the case of Bitcoin Futures, the underlying reference asset is Bitcoin. Futures contracts may be cash-settled or physically-settled. When a cash-settled future expires, if the value of the underlying asset exceeds the futures price, the seller pays to the purchaser cash in the amount of that excess, and if the futures price exceeds the value of the underlying asset, the purchaser pays to the seller cash in the amount of that excess. When a physically-settled future expires, the seller is obligated to deliver the underlying asset to the purchaser in exchange for the futures price agreed to at the outset of the contract. The only Bitcoin Futures in which the Trust invests are cash-settled Bitcoin Futures traded on commodity exchanges registered with the CFTC.

At expiration, the cash settlement amount for the Bitcoin Futures held by the Trust will be determined by comparing the price at which the Trust purchased the futures contract on the relevant futures exchange with the reference rate specified by that exchange on the expiration date. For example, the CME has specified that the reference rate for its Bitcoin Futures will be a volume-weighted composite of Bitcoin prices on multiple Bitcoin exchanges. The Trust does not invest in Bitcoin or other digital assets directly.

The Trust seeks to purchase a number of Bitcoin Futures so that the total value of the Bitcoin underlying the Bitcoin Futures held by the Trust is as close to 100% of the net assets of the Trust (the ''Target Exposure'') as it is reasonably practicable to achieve, although as described further in the Draft Registration Statement, there can be no assurance that the Trust will be able to achieve or maintain the Target Exposure. The Trust intends to execute these purchases on commodity exchanges registered with the CFTC through futures commission merchants (''FCMs''). An FCM is a brokerage firm that solicits or accepts orders to buy or sell futures contracts and accepts money or other assets from customers to support such orders. The Trust does not intend to hold short positions in any futures, and accordingly, the most an investor could lose is the amount of his or her investment in the Trust. Although the Trust's Bitcoin Futures will provide leverage to the extent that they give the Trust exposure to an amount of underlying Bitcoin with a greater value than the amount of collateral the Trust is required to post, the Trust does not intend to provide investors with exposure to an amount of Bitcoin in excess of the Trust's net assets. The Trust will engage in active and frequent trading of Bitcoin Futures in seeking to maintain the Target Exposure.

In addition to the Trust's investments in Bitcoin Futures, the Trust expects to have significant holdings of cash and high-quality, short-term debt instruments that have terms-to-maturity of less than 397 days, such as U.S. government securities and repurchase agreements (the ''Money Market Instruments''). The Money Market Instruments are intended to provide liquidity, to serve as collateral for the Trust's Bitcoin Futures and to support the Trust's use of leverage through the Trust's Bitcoin Futures. The amount of Money Market Instruments held by the Trust may change over time and will be determined primarily by the amount needed to seek to achieve or maintain the Target Exposure.

The Trust will generally hold its investments in Bitcoin Futures during periods in which the price of Bitcoin is flat or declining as well as during periods in which the price of Bitcoin is rising, and the Advisor will generally not seek to change the Trust's Target Exposure based on daily price changes. For example, if the Trust's positions in Bitcoin Futures are declining in value, the Trust generally will not close out its positions except in order to meet redemption requests. As a result, any decrease in value of the Bitcoin Futures in which the Trust invests will result in a decrease in the Trust's net asset value (''NAV'').

Calculation of the Trust's NAV

According to the Draft Registration Statement, the NAV of the Trust will be determined in accordance with Generally Accepted Accounting Principles (''GAAP'') as the total value of bitcoin held by the Trust, plus any cash or other assets, less any liabilities including accrued but unpaid expenses. The NAV per Share will be determined by dividing the NAV of the Trust by the number of Shares outstanding.

The NAV of the Trust is typically determined as of 4:00 p.m. (Eastern time) on each day the Shares trade on the Exchange (a ''Business Day''). The Trust's daily activities are generally not reflected in the NAV determined for the Business Day on which the transactions are effected (the trade date), but rather on the following Business Day.

Bitcoin Futures traded on a U.S. exchange are generally valued using the

[10] Section 1a(9) of the CEA defines commodity to include, among other things, ''all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.'' The definition of commodity is broad. 7 U.S.C. 1a(9).

[11] *See* ''CFTC Statement on Self-Certification of Bitcoin Products by CME, CFE and Cantor Exchange,'' dated December 1, 2017, available at *http://www.cftc.gov/PressRoom/PressReleases/pr7654-17.*

[12] Bitcoin is a commodity as defined in Section 1a(9) of the CEA. 7 U.S.C. 1a(9). *See* In re Coinflip, Inc., No. 15–29 (CFTC Sept. 17, 2015), available at *http://www.cftc.gov/ucm/groups/public/@lrenforcementactions/documents/legalpleading/enfcoinfliprorder09172015.pdf.*

[13] The CME Bitcoin Futures are also cash-settled futures contracts based on the CME CF BRR, which is based on an aggregation of trade flow from several bitcoin spot exchanges, that will expire on a monthly and quarterly basis. CME Futures began trading on December 17, 2017.

[14] The CME is registered with the CFTC and seek to provide a neutral, regulated marketplace for the trading of derivatives contracts for commodities, such as futures, options and certain swaps. The CME is a member of the Intermarket Surveillance Group.

last traded price before the NAV calculation time on the date with respect to which the NAV is being determined. Money Market Instruments will generally be valued at their market price using market quotations or information provided by a pricing service.

For more information regarding the valuation of Trust investments in calculating the Trust's NAV, see the Draft Registration Statement.

Preventing Fraudulent and Manipulative Practices

Applicable Standard of Review

In disapproving prior proposals to list and trade shares of various bitcoin trusts and bitcoin-based trust issued receipts, the Commission noted that such proposals did not adequately demonstrate that they were designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest, consistent with Section 6(b)(5) of the Act.[15] The Commission does not apply a ''cannot be manipulated'' standard, but instead seeks to examine whether a proposal meets the requirements of the Act.[16] The Commission has explained that a proposal could satisfy the requirements of the Act in the first instance by demonstrating that the listing exchange has entered into a comprehensive surveillance sharing agreement (''CSSA'') with a regulated market of significant size relating to the underlying assets.[17] The Commission has also recognized that a listing exchange would not necessarily need to enter into a CSSA with a regulated significant market if the underlying commodity market inherently possessed a unique resistance to manipulation beyond the protections that are utilized by traditional commodity or securities markets or if the listing exchange could demonstrate that there were sufficient ''other means to prevent fraudulent and manipulative acts and practices.'' [18] While the earliest of the prior disapproval orders applied these standards to a commodity-trust based on bitcoin, the Commission has stated its belief that these standards are also appropriate for an ETP based on Bitcoin Futures.[19]

The Commission has noted that information sharing agreements with primary markets trading index components underlying a derivative product are an important part of a self-regulatory organization's ability to monitor for trading abuses in derivative products.[20] In addition, the Commission's approval orders for commodity-futures ETPs note the ability of an ETP listing exchange to share surveillance information either through surveillance sharing agreements or through membership by the listing exchange and the relevant futures exchanges in the Intermarket Surveillance Group (''ISG'').[21] While the Commission in those orders did not explicitly undertake an analysis of whether the related futures markets were of ''significant size,'' the exchanges proposing commodity-futures ETPs on a single reference asset or benchmark generally made representations regarding the trading volume of the futures markets, and the Commission was in each of those cases dealing with a large futures market that had been trading for a number of years before an exchange proposed an ETP based on those futures.[22] And where the Commission has considered a proposed ETP based on futures that had only recently begun trading, the Commission specifically addressed whether the futures on which the ETP was based—which were futures on an index of well-established commodity futures—were illiquid or susceptible to manipulation.[23]

As described below, the Exchange believes the structure and operation of the Trust are designed to prevent fraudulent and manipulative acts and practices, to protect investors and the public interest, and to respond to the specific concerns that the Commission has identified with respect to potential fraud and manipulation in the context of a bitcoin ETP. In particular, the Exchange believes that it has addressed the Commission's previously stated concern that the Exchange must have entered into a surveillance-sharing agreement with a regulated market of significant size as evidence of the Trust's resistance to manipulation. In addition, the Exchange believes that Bitcoin Futures market has sufficiently developed since the prior disapproval orders such that the market for Bitcoin Futures now resembles the markets for other commodities at the time the related commodity futures-based ETP was approved for listing. Finally, the Exchange believes it has demonstrated that the Trust possesses other means to prevent fraud or manipulation through the CME's use of the CME CF BRR as the reference rate for Bitcoin Futures contracts. The Exchange also believes that listing of the Trust's Shares on the Exchange will provide investors with such an opportunity to obtain exposure to bitcoin within a regulated environment.

Surveillance Sharing Agreements With a Market of Significant Size

In previous orders rejecting the listing of Bitcoin ETFs, the Commission noted its concerns that the bitcoin market could be subject to manipulation.[24] In these orders, the Commission cited numerous precedents [25] in which 19b–4 listing applications were approved based on findings that the particular market was either inherently resistant to manipulation or that the listing exchange had entered into a surveillance sharing agreement with a

[15] *See, e.g.,* Order Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, to BZX Rule 14.11(e)(4), To List and Trade Shares Issued by the Winklevoss Bitcoin Trust, Securities Exchange Act Release No. 80206 (Mar. 10, 2017), 82 FR 14076 (Mar. 16, 2017) (SR–BatsBZX–2016–30) (''Winklevoss I Order''); Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, to List and Trade Shares of the Winklevoss Bitcoin Trust, Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (Aug. 1, 2018) (SR–BatsBZX–2016–30) (''the Winklevoss II Order''); Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the Bitwise Bitcoin ETF Trust Under NYSE Arca Rule 8.201–E, Securities Exchange Act Release No. 87267 (October 9, 2019), 84 FR 55382 (October 16, 2019) (SR–NYSEArca–2019–01) (the ''Bitwise Order''); Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, to Amend NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares) and to List and Trade Shares of the United States Bitcoin and Treasury Investment Trust Under NYSE Arca Rule 8.201–E, Securities Exchange Act Release No. 88284 (February 26, 2020), 85 FR 12595 (Mar. 3, 2020) (SR–NYSEArca–2019–39) (the ''Wilshire Phoenix Order''); Order Disapproving a Proposed Rule Change to List and Trade the Shares of the ProShares Bitcoin ETF and the ProShares Short Bitcoin ETF, Securities Exchange Act Release No. 83904 (August 22, 2018), 83 FR 43934 (August 28, 2018) (SR–NYSEArca–2017–139); Order Disapproving a Proposed Rule Change Relating to Listing and Trading of the Direxion Daily Bitcoin Bear 1X Shares, Direxion Daily Bitcoin 1.25X Bull Shares, Direxion Daily Bitcoin 1.5X Bull Shares, Direxion Daily Bitcoin 2X Bull Shares, and Direxion Daily Bitcoin 2X Bear Shares Under NYSE Arca Rule 8.200–E, Securities Exchange Act Release No. 83912 (August 22, 2018), 83 FR 43912 (August 28, 2018) (SR–NYSEArca–2018–02); Order Disapproving a Proposed Rule Change to List and Trade the Shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF, Securities Exchange Act Release No. 83913 (August 22, 2018), 83 FR 43923 (August 28, 2018) (SR–CboeBZX–2018–01) (the ''GraniteShares Order'').

[16] *See* Winklevoss II Order, 84 FR at 37582.

[17] *See* Wilshire Phoenix Order, 85 FR at 12596–97.

[18] *See* Winklevoss II Order, 84 FR at 37580, 37582–91; Bitwise Order, 84 FR at 55383, 55385–406; Wilshire Phoenix Order, 85 FR at 12597.

[19] *See* GraniteShares Order, 83 FR 43925.

[20] *Id* at 43926.

[21] *Id* at 43926, n. 35.

[22] *Id* at 43927.

[23] *Id.*

[24] *See* Winklevoss I Order and Winklevoss II Order.

[25] For an extensive listing of such precedents, *see* Winklevoss I Order, at 14083 n. 96.

market of significant size.[26] The Commission noted that, for commodity-trust ETPs ''there has been in every case at least one significant, regulated market for trading futures in the underlying commodity—whether gold, silver, platinum, palladium or copper—and the ETP listing exchange has entered into surveillance sharing agreements with, or held [ISG] membership in common with, that market.'' [27]

The CME [28] is a member of the ISG, the purpose of which is ''to provide a framework for the sharing of information and the coordination of regulatory efforts among exchanges trading securities and related products to address potential intermarket manipulations and trading abuses.'' [29] Membership of a relevant futures exchange in ISG is sufficient to meet the surveillance sharing requirement.[30]

The Commission has previously noted that the existence of a surveillance sharing agreement by itself is not sufficient for purposes of meeting the requirements of Section 6(b)(5); the surveillance sharing agreement must be with a market of significant size.[31] The Commission has provided an example of how it interprets the terms ''significant market'' and ''market of significant size,'' though that definition is meant to be illustrative and not exclusive: ''the terms 'significant market' and 'market of significant size' . . . include a market (or group of markets) as to which (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP so that a surveillance sharing agreement would assist the ETP listing market in detecting and deterring misconduct and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.'' [32]

As discussed below, the Exchange maintains that the CME is a ''market of significant size'' as it satisfies both elements of the example provided by the Commission.

Attempts To Manipulate the ETP Could Only Occur on the CME

The first element of what constitutes a ''significant market'' or ''market of significant size'' is that there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on a market (or group of markets) to successfully manipulate the ETP so that a surveillance sharing agreement would assist the ETP listing market in detecting and deterring misconduct. The Commission has stated that establishing a lead-lag relationship (*i.e.,* that price formation occurs on the lead market and informs or causes the price on the lagging market) between the Bitcoin Futures market and the spot market is central to understanding whether it is reasonably likely that a would-be manipulator of the ETP would need to trade on the Bitcoin Futures market to successfully manipulate prices on those spot platforms that feed into the proposed ETP's pricing mechanism.[33]

The Exchange believes that a lead-lag relationship between the Bitcoin Futures market and the spot market currently exists. There is robust evidence of this relationship that has become available since the Commission's prior disapproval orders. First, the Bitcoin Futures market has grown considerably since the Commission's Wilshire Phoenix Disapproval Order, which is evidenced by plentiful empirical data. Second, the staff of the Commission has itself acknowledged the maturity of the Bitcoin Futures market such that it has indicated its comfort with allowing investment companies registered under the Investment Company Act of 1940 to invest in Bitcoin Futures in certain circumstances. Finally, current academic research builds upon and supplements the findings of previous studies reviewed by the Commission that a lead-lag relationship can be statistically observed in relatively recent data sets of the Bitcoin Futures and spot market data.

Growth of the Bitcoin Futures Market

Since the dates of the GraniteShares Order (the most recent disapproval order related to a Bitcoin Futures ETP) and the Wilshire Phoenix Order (the most recent disapproval order related to a spot bitcoin ETP), there has been steady and robust growth observed on the CME Bitcoin Futures market. The following chart displays such development in terms of trading volumes and open interest:

TRADE DATA ON CME BITCOIN FUTURES [34]

	Daily average for week including August 24, 2018 (week of the GraniteShares order)	*Daily average for week including February 26, 2020 (week of the Wilshire Phoenix order)* [35]	*Daily average for the week ending May 28, 2021*
Trading Volume—Notional Amount	$117,000,000	$354,750,000	$2,412,000,000
Trading Volume—Number of Contracts	3,629	7,731	12,610
Open Interest—Notional Amount	$95,400,000	$250,250,000	$1,662,600,000
Open Interest—Number of Contracts	2,956	5,407	8,677

[26] The Exchange to date has not entered into surveillance sharing agreements with any cryptocurrency platform. However, the CME, which calculates the CME CF BRR, and which has offered contracts for bitcoin futures products since 2017, is, as noted below, a member of the ISG. In addition, each Constituent Platform has entered into a data sharing agreement with CME. *See https://docs-cfbenchmarks.s3.amazonaws.com/CME+CF+Constituent+Exchanges+Criteria.pdf.*

[27] *See* Winklevoss II Order, at 37594.

[28] The CME is regulated by the CFTC, which has broad reaching anti-fraud and anti-manipulation authority including with respect to the bitcoin market since bitcoin has been designated as a commodity by the CFTC. *See* A CFTC Primer on Virtual Currencies (October 17, 2017), available at *https://www.cftc.gov/sites/default/files/idc/groups/public/documents/file/labcftc_primercurrencies100417.pdf* (the ''CFTC Primer on Virtual Currencies'') (''The CFTC's jurisdiction is implicated when a virtual currency is used in a derivatives contract or if there is fraud or manipulation involving a virtual currency traded in interstate commerce.''). *See also* 7 U.S.C. Sec. 7(d)(3) (''The board of trade shall list on the contract market only contracts that are not readily susceptible to manipulation.'').

[29] *See https://isgportal.org/overview.*

[30] *See, e.g.,* Winklevoss II Order, at 37594.

[31] *See, e.g.,* Winklevoss II Order, at 37589–90.

[32] *See, e.g.,* Winklevoss II Order, at 37594; and *see* GraniteShares Order, n. 85 and accompanying text.

[33] *See* Wilshire Phoenix Order at 12612.

[34] Figures calculated by the Exchange based on data available at *https://www.cmegroup.com/ftp/bitcoinfutures/.* Each Bitcoin Futures contract represents 5 bitcoin.

[35] Data for February 28, 2020 was not available and thus not included in calculating the daily averages.

The table above unequivocally demonstrates that the Bitcoin Futures market has grown at an accelerating pace since the prior disapproval orders, likely as a result of the entry of institutional participants into both the Bitcoin Futures market and the spot bitcoin market (*e.g.,* Tesla, MicroStrategy, etc. have taken substantial bitcoin positions). Accordingly, the Exchange maintains that because the Bitcoin Futures market has grown to resemble other futures markets, a lead-lag relationship that exists in other mature futures markets has also likely developed between the Bitcoin Futures market and the bitcoin spot market.[36] Such a relationship is demonstrated through analytical models or other methods that show that the activities in one market cause the price formation on the other market, and there is an emerging consensus among academics that such a lead-lag relationship in fact exists.

Recent Statements by the Staff of the Commission

The Staff of the Commission's Division of Investment Management recently issued its *Staff Statement on Funds Registered under the Investment Company Act Investing in the Bitcoin Futures Market.*[37] In that statement, the Staff stated that mutual funds registered under the Investment Company Act of 1940 could invest in the Bitcoin Futures market so long as the fund had an appropriate investment strategy and its prospectus contained full disclosure of material risks. In reaching such a determination, the Staff noted that while previously the Bitcoin Futures market was in a nascent state with limited trading volume, ''[t]he Bitcoin futures market has developed since then, with increased trading volumes and open-interest positions. In addition, the Bitcoin futures market consistently has produced a reportable price for Bitcoin futures. The Bitcoin futures market also has not presented the custody challenges associated with some cryptocurrency-based investing because the futures are cash-settled.'' [38] In support of this finding, the Staff cited to the same CME data cited above regarding trading volumes and open-interest.[39] While the statement did not go so far as to reach a conclusion that the Bitcoin Futures market is a significant market or market of significant size related to bitcoin in the context of the requirements of Exchange Act Section 6(b)(5), the Staff's own observations regarding the maturity of the Bitcoin Futures market is strong evidence that concerns previously raised regarding price manipulation in that market have been significantly reduced.

Third-Party Research

In the most recent denial order, the Commission found that academic evidence on whether a lead-lag relationship between the Bitcoin Futures market and spot market was ''mixed'' and could not conclude based on that research that a would-be manipulator of a proposed ETP would transact on the CME Bitcoin Futures market.[40] The Commission critiqued the choices made by the authors of such research regarding ''time period, futures contracts, spot market platforms, spot market prices, and analytic methodologies.'' The Exchange notes that the studies cited in that denial order generally analyzed data sets covering the first several years of the Bitcoin Futures market's existence and therefore may not be indicative of current market behavior. While scholarship stating the price discovery takes place in the bitcoin spot market continues to be produced,[41] the majority of the academic literature, including more recent studies with more recent data sets, supports the proposition that price discovery does take place in the Bitcoin Futures market and therefore a lead-lag relationship exists between the spot and futures markets.

In ''What Role do Futures Markets Play in Bitcoin Pricing? Causality, Cointegration and Price Discovery from a Time-Varying Perspective?'',[42] the authors investigated the existence of causal relationships, cointegration and price discovery between bitcoin spot and futures markets from December 2017 to June/July 2019 from a time-varying perspective. The study's authors applied both a time-varying Granger causality approach and Hasbrouck information share approach to explore the causal relationship between bitcoin spot and futures markets.[43] As the authors explain therein, the time-varying approach taken for this study is an important distinction from other studies that have reached an opposite conclusion, as it is now well known in econometrics literature that some possible cointegration relationships may be missed if the underlying model formulation is constrained to be time invariant.[44] This study, like others before it, reached the conclusion that the CME futures market, apart from some short-period exceptions, appears to dominate the underlying spot market under both a Granger and Hasbrouck analysis.

In ''Fractional Cointegration in Bitcoin Spot and Futures Markets'', the authors concluded that, with the exception of the extraordinary market events in early months of the Covid-19 pandemic period, ''the futures market dominates in the price discovery for bitcoin.'' [45] The dataset reviewed in that analysis involved 1-min intraday data of bitcoin spot and futures prices in the US dollar from December 18, 2017 to July 31, 2020. Unlike other research previously reviewed by the Commission that used Granger and/or Hasbrouck analysis to determine price formation, the authors of this study used a fractionally cointegrated vector autoregressive model (''FCVAR'') to determine which of the spot and futures price contributes more to price discovery. According to the study, the FCVAR model ''is more general [than the CVAR model] and less restricted when analyzing the relationship between different variables'' in that it allows for fractional values for the order of cointegration, whereas a CVAR model allows only integers. The study found that while studies using a nonfractional CVAR model significantly overestimate the price discovery of the futures market, the FCVAR model still

[36] While the Exchange believes that the size of the bitcoin futures market relative to the spot market has also grown, data on the global bitcoin exchanges is difficult to state with certainty.

[37] *See* Staff Statement on Funds Registered Under the Investment Company Act Investing in the Bitcoin Futures Market (May 11, 2021), available at *https://www.sec.gov/news/public-statement/staff-statement-investing-bitcoin-futures-market#_ftnref5.*

[38] *Id.*

[39] *Id* at n. 4.

[40] *See* Wilshire Phoenix Order at 12612–13.

[41] *See, e.g.,* Jui-Cheng Hung, Hung-Chun Liu, and J. Jimmy Yang, ''Trading Activity and Price Discovery in Bitcoin Futures Markets'' (March 2021). The Exchange maintains that the vector error correction model and the modified information shares model used in this study are inferior to the Granger and Hasbrouck models used in other studies for determining price-discovery over longer periods. Even so, the authors of this study find that ''Bitcoin futures contracts launched by the CME exhibit superior competitiveness in the price discovery relative to those by CBOE.''

[42] Yang Hu, Yang Greg Hou and Les Oxley, International Review of Financial Analysis 72 (September 2020). The Exchange notes that while the Commission has reviewed a working draft of this study in a previous denial order, the study has since been peer-reviewed and published.

[43] *Id* at 3. According to the study, ''Granger causality is widely used to formally test for lead-lag relationships (temporal ordering) to determine which market (the spot or the futures prices) leads the other.'' The time-varying procedures employed in assessing the Granger causality allowed the study to determine whether the causal relationship varies over the time studied.

[44] *Id* at 2.

[45] Jinhong Wu et al., ''Fractional Cointegration in Bitcoin Spot and Futures Markets'', Journal of Futures Markets, 1–17 (April 2021).

concurred with the finding that the futures market leads the spot market.

The research results discussed above build upon the already emerging academic consensus,[46] demonstrated using multiple analytical models, that the Bitcoin Futures market does lead the spot market such that a would-be manipulator would necessarily conclude that it must trade in the futures market to successfully manipulate the spot price of bitcoin.

The Trust Will Not Be the Predominant Influence on Prices in the Bitcoin Spot and Futures Markets

The second element to determine whether a market or group of markets is of ''significant size'' requires that it is unlikely that trading in the ETP would be the predominant influence on prices in that market. The Exchange also believes that trading in the Shares would not be the predominant force on prices in the Bitcoin Futures market (or spot market) for a number of reasons, including the significant volume in the Bitcoin Futures market, the size of bitcoin's market cap (approximately $1 trillion), and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid.

According to data from CoinRoutes from February 2021, the cost to buy or sell $5 million worth of bitcoin averages roughly 10 basis points with a market impact of 30 basis points.[47] For a $10 million market order, the cost to buy or sell is roughly 20 basis points with a market impact of 50 basis points. Stated another way, a market participant could enter a market buy or sell order for $10 million of bitcoin and only move the market 0.5%. More strategic purchases or sales (such as using limit orders and executing through OTC bitcoin trade desks) would likely have less obvious impact on the market—which is consistent with MicroStrategy,[48] Tesla [49] and Square [50] being able to collectively purchase billions of dollars in bitcoin without resulting in significant price movements.

The results from a study conducted by CF Benchmarks simulating to determine the extent of ''slippage'' (*i.e.,* the difference between the expected price of a trade and the price at which the trade was actually executed) offer further evidence that trading in the Shares is unlikely to be the predominant influence in either the bitcoin spot or futures market.[51] The CF Benchmarks Analysis simulated the purchase of 50 bitcoins a day for 686 days (an amount chosen specifically to replicate hypothetical trades by a bitcoin ETP) and found that the maximum amount of slippage on a particular day was 0.3%, with the remainder of values between 0% and 0.15%. Thus, according to CF Benchmarks, the slippage in this study could be described as having been largely negligible or, at most, minor during the observation period.[52] While the study focused on the impact of a hypothetical ETP in the bitcoin spot market, arbitrage mechanisms in the spot and futures market dictate that it would be unlikely for a Bitcoin Futures ETP such as the Trust to overrun the Bitcoin Futures market without also overrunning the bitcoin spot market. Accordingly, the CF Benchmarks analysis further bolsters the Exchange's contention that the Trust and other similar ETPs would be unlikely to overrun the market.

As such, the combination of Bitcoin Futures leading price discovery, the overall size of the bitcoin market, and the ability for market participants, including authorized participants creating and redeeming in-kind with the Trust, to buy or sell large amounts of bitcoin without significant market impact will help prevent the Shares from becoming the predominant force on pricing in either the bitcoin spot or Bitcoin Futures markets, satisfying part (b) of the test outlined above.

For these reasons, the Exchange believes that all evidence strongly suggests that the CME Bitcoin Futures market has matured to a ''market of significant size'' for purposes of the Commission's standard of review as (a) a would-be manipulator of either bitcoin or Bitcoin Futures would necessarily have to execute its scheme on the CME in order to manipulate the ETP; and (b) the proposed ETP is unlikely to be the predominant influence on prices in that market as the absolute size of both the futures and spot markers have grown tremendously since the prior disapproval orders.

Other Means To Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange maintains that the CME CF BRR is not readily susceptible to manipulation due to the design of the methodology, which adequately protects the Trust from potential price manipulation in the Bitcoin Futures and spot bitcoin markets.[53] The use of medians in the methodology reduces the effect of outlier prices on one or more constituent exchange.[54] The volume-weighting of medians filters out high numbers of small trades that may otherwise control the value of a non-volume weighted median.[55] The use of twelve non-weighted partitions assures that price information is sourced equally over the entire observation period.[56] Influencing the rate would therefore require trading activity during multiple partitions on several exchanges over an extended period, which would prove a costly and an operationally intensive undertaking. The methodology is designed to remove the reliance on any single contributing exchange, where

[46] *See, e.g.,* Burcu Kapar and Jose Olmo, ''An Analysis of Price Discovery Between Bitcoin Futures and Spot Markets'', Economics Letters 174 (January 2019) (''. . . [T]he Bitcoin futures market dominates the price discovery process.''); Erdinc Akyildirim, ''The Development of Bitcoin Futures: Exploring the Interactions Between Cryptocurrency Derivatives'', Finance Research Letters 34 (May 2020) (''While analysing breakpoints in efficiency, we verify the view that Bitcoin futures dominate price discovery relative to spot markets.''); Alexander Chang, William Herrmann and William Chai, ''Efficient Price Discovery in the Bitcoin Markets'', Wilshire Phoenix (October 2020) (''[W]e conclude that the CME bitcoin futures contribution to price formation was greater than the contribution from the related spot markets made up of the Constituent Exchanges, indicating that the futures lead the spot markets and thus contribute more to price formation. . . .[T]his analysis was performed using a methodology similar to the one employed by the Division of Economic and Risk Analysis at the SEC to evaluate the IEX exchange's contribution to price formation in the equities markets.'') available at *https://www.wilshirephoenix.com/efficient-price-discovery-in-the-bitcoin-markets/.*

[47] These statistics are based on samples of bitcoin liquidity in USD (excluding stablecoins or Euro liquidity) based on executable quotes on Coinbase Pro, Gemini, Bitstamp, Kraken, LMAX Exchange, BinanceUS, and OKCoin during February 2021.

[48] *See* Form 10–Q submitted by MicroStrategy Incorporated for the quarterly period ended September 30, 2020 at 8: *https://www.sec.gov/ix?doc=/Archives/edgar/data/1050446/000156459020047995/mstr-10q_20200930.htm.*

[49] *See* Form 10–K submitted by Tesla, Inc. for the fiscal year ended December 31, 2020 at 23: *https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/000156459021004599/tsla-10k_20201231.htm.*

[50] *See* Form 10–Q submitted by Square, Inc. for the quarterly period ended September 30, 2020 at 51: *https://www.sec.gov/ix?doc=/Archives/edgar/data/1512673/000151267320000012/sq-20200930.htm.*

[51] *See* CF Benchmarks, ''An Analysis of the Suitability of the CME CF BRR for the Creation of Regulated Financial Products,'' December 2020 (the ''CF Benchmarks Analysis''), available at: *https://docsend.com/view/kizk7rarzaba6jxf.*

[52] *Id.*

[53] *See* CME CR Cryptocurrency Reference Rates Methodology Guide (Version 9.0) (July 31, 2021), available at *https://docs-cfbenchmarks.s3.amazonaws.com/CME+CF+Reference+Rates+Methodology.pdf.*

[54] *Id* at 6.

[55] *Id.*

[56] *Id* at 13.

delayed or missing data from an exchange does not cause a calculation failure.

In accordance with the methodology, if for any constituent exchange the absolute percentage deviation of the volume-weighted median trade price in comparison with the median of the volume-weighted median trade prices of all constituent exchanges exceeds a given threshold (currently set at 10% and defined in the methodology), all relevant transactions of that constituent exchange are flagged as potentially erroneous and are disregarded in the calculation of CME CF BRR for that calculation day.[57] Furthermore, for inclusion in the CME CF BRR's calculation, a constituent exchange's bitcoin U.S. Dollar spot trading volume must meet the minimum threshold (currently, 3% relative contribution over two (2) consecutive quarters) as detailed in the methodology.[58] The criteria collectively cause the constituent exchanges to deliver transparent and consistent trade and order data to CF Benchmarks via an API with sufficient reliability, detail and timeliness.[59]

Furthermore, the constituent exchanges maintain fair and transparent market conditions to impede illegal, unfair or manipulative trading practices, and comply with applicable law and regulations including, capital markets regulations, money transmission regulations, client money custody requirements, know-your-client (KYC) requirements, and anti-money-laundering (AML) regulations.[60] The constituent exchanges are also required to cooperate with inquiries and investigations of the administrator (CF Benchmarks) and execute a data sharing agreement with CME.[61]

Core Principles Certification of CME BTC Futures Contracts

The CME Bitcoin Futures comply with all Core Principles of the CEA. In adhering to the Core Principles [62] applicable to all Designated Contract Markets (''DCM''), the CME certified that the CME Bitcoin Futures met specific Core Principles as they apply to futures contracts traded on a DCM. This compliance results in the Trust's core asset being a well-regulated instrument that is not readily susceptible to manipulation. The following Core Principles are of particular relevance to the analysis of this filing.

Contracts Not Readily Subject to Manipulation

In certifying the CME BTC Futures Contracts to the CFTC, the CME was required to include an analysis describing the contract, a discussion of the market research it conducted and note that the contract was designed to meet the risk management needs of prospective users and promote price discovery of bitcoin. The CME consulted with market users to obtain their views and opinions during the contract's design process to ensure that the contract's terms and conditions reflected the underlying cash market and would perform the intended risk management and/or price discovery functions.

Since the CME BTC Futures Contract is cash settled by reference to the CME CF BRR, the CME CF BRR's methodology was provided to the CFTC with supporting information showing how the CME CF BRR is reflective of the underlying cash market, is not readily subject to manipulation or distortion, and is based on a cash price series that is reliable, acceptable, publicly available and timely (as defined in paragraphs (c)(2) and (c)(3) of Appendix C to part 38 of the CFTC's Regulations).[63]

Prevention of Market Disruption

The Core Principles also required CME to certify that it has the ability to prevent manipulation, price distortion, and disruptions of the cash-settlement process through market surveillance, compliance, and enforcement practices and procedures. This would include the ability to conduct real-time trade monitoring and comprehensive and accurate trade reconstruction. Such trade monitoring also allows for the detection of developing market anomalies, such as abnormal price movements and unusual trading volumes, and position-limit violations. CME rules grant exchanges broad powers to intervene to prevent or reduce market disruptions. Once a threatened or actual disruption is detected, the CME may take steps to prevent the disruption or reduce its severity. CME's program includes automated trading alerts to detect market anomalies and position-limit violations as they develop and before market disruptions occur or become more serious. CFTC guidance also requires a DCM to have access to its traders' position and transaction data in the underlying reference market. The CME has, through an information sharing agreement with CF Benchmarks, the ability to access information about trader positions and transactions in the underlying spot BTC markets that contribute to the CME CF BRR. The CME has also implemented a series of risk controls as outlined in the CFTC Regulation's Acceptable Practices.[64]

Position Limits

The CFTC's Core Principles also call for the use of position limits or position accountability to reduce the threat of market manipulation or congestion. The CME has set a position limit of 2,000 contracts for the CME Bitcoin Futures. As a result of this position limit, an attempt to manipulate the price of the CME Bitcoin Futures, and consequently the shares in the Trust, would yield little benefit due to the limited potential profit available from the trading of 2,000 contracts.

Ongoing Coordination With CFTC on CME Bitcoin Futures

Since the launch of CME Bitcoin Futures, the CME has worked with the CFTC on a regular and frequent basis to assess the trading in the contract and ensure that the market is free from fraud and manipulation. CFTC staff, in the recent past, has actively engaged CME in reviewing CME's surveillance program for bitcoin products pursuant to part 38 (Designated Contract Markets) of the CFTC's regulations. This engagement has concerned CME's analysis of the trading activities and strategies of bitcoin futures market participants of significant size and outreach to these market participants. It has also concerned CME's ability to obtain transactional information from the constituent exchanges that contribute data to the bitcoin reference rate in addition to CME's continued monitoring of the bitcoin reference rate as a price series, particularly during the index's one-hour calculation window.

Creation and Redemption of Shares

According to the Draft Registration Statement, the Trust will issue and

[57] *Id* at 11.

[58] *See* CME CF Cryptocurrency Pricing Products Constituent Exchange Criteria (Version 5.0) (May 20, 2020) at 4, available at *https://docs-cfbenchmarks.s3.amazonaws.com/CME+CF+Constituent+Exchanges+Criteria.pdf.*

[59] *Id.*

[60] *Id.*

[61] *Id.*

[62] 17 CFR part 38.

[63] *Id.* at Appendix C paragraphs (c)(2) and (c)(3).

[64] These risk controls include: (1) Dynamic circuit breakers, which monitor for significant price movements within a trading session by defining an upper and lower limit of how far bitcoin futures can move (10%) in any one hour rolling window and, if triggered, matching is suspended for 2 minutes; (2) velocity logic, which is designed to detect market movement of a predefined number of ticks either up or down within a predefined time and, if triggered, matching is suspended for 10 seconds; (3) daily price limits, which is the maximum daily price range permitted for BTC futures (+/− 30% from prior day settlement); and (4) initial margin (currently set at 35% of notional value for outright positions) charged for all open positions based on expected volatility over a two-day close out period.

redeem Shares on a continuous basis at the NAV per Share only in large, specified blocks each consisting of a certain number of Shares (each such block of shares called a ''Creation Unit,'' and collectively, the ''Creation Units'') in transactions with broker-dealers and large institutional investors that have entered into participation agreements (''Authorized Participants''). It is currently anticipated that a Creation Unit will consist of 50,000 Shares, although this number may change from time to time. It is currently expected that the Trust's Creation Units will generally be issued and redeemed for cash. Except when aggregated in Creation Units, the Shares are not redeemable securities. Once created, Shares of the Trust may trade on the secondary market in amounts less than a Creation Unit.

Creation Procedures. On any Business Day, an Authorized Participant may place an order to create one or more Creation Units. Purchase orders must be placed by 2:00 p.m. (Eastern time). The cut-off time may be earlier if, for example, the Exchange or another exchange material to the valuation or operation of the Trust closes before the cut-off time. If a purchase order is received prior to the applicable cut-off time, the day on which the Marketing Agent receives a valid purchase order is the purchase order date. If the purchase order is received after the applicable cut-off time, the purchase order date will be the next Business Day. Purchase orders are irrevocable. By placing a purchase order, and prior to delivery of such Creation Units, an Authorized Participant's DTC account will be charged the non-refundable transaction fee due for the purchase order.

Redemption Procedures. On any Business Day, an Authorized Participant may place an order with the Marketing Agent to redeem one or more Creation Units. Redemption orders must be received prior to 2:00 p.m. (Eastern time), or earlier if, for example, the Exchange or another exchange material to the valuation or operation of the Trust closes before the cut-off time. If a redemption order is received prior to the applicable cut-off time, the day on which the Marketing Agent receives a valid redemption order is the redemption order date. If the redemption order is received after the applicable cut-off time, the redemption order date will be the next day. Redemption orders are irrevocable. Individual shareholders may not redeem directly from the Trust.

By placing a redemption order, an Authorized Participant agrees to deliver the Creation Units to be redeemed through DTC's book-entry system to the applicable Trust not later than noon (Eastern time), on the first Business Day immediately following the redemption order date (T+1). The Sponsor reserves the right to extend the deadline for the Trust to receive the Creation Units required for settlement up to the second Business Day following the redemption order date (T+2). By placing a redemption order, and prior to receipt of the redemption proceeds, an Authorized Participant must wire to the Custodian the non-refundable transaction fee due for the redemption order or any proceeds due will be reduced by the amount of the fee payable. At its sole discretion, the Sponsor may agree to a delivery date other than T+2. Additional fees may apply for special settlement.

Upon the request of an Authorized Participant made at the time of a redemption order, the Sponsor at its sole discretion may determine, in addition to delivering redemption proceeds, to transfer futures contracts to the Authorized Participant pursuant to an exchange of a futures contract for related position (''EFCRP'') or to a block trade sale of futures contracts to the Authorized Participant.

Availability of Information

The Trust's website (*www.valkyriefunds.io*) will include quantitative information on a per Share basis updated on a daily basis, including (i) the current NAV per Share daily and the prior business day's NAV and the reported closing price; (ii) the mid-point of the bid-ask price[65] 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; and (iii) data in chart format displaying the frequency distribution of discounts and premiums of the daily 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). In addition, on each business day the Trust's website will provide pricing information for the Shares. Also, an estimated value that reflects an estimated intraday value of the Trust's portfolio (the ''Intraday Indicative Value''), will be disseminated.

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 Regular Market Session (9:30 a.m. to 4:00 p.m. (Eastern time)).[66] The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during the Exchange's Regular Market Session to reflect changes in the value of the Trust's NAV during the trading day.

The IIV disseminated during the Exchange's Regular Market 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 the Exchange's Regular Market Session by one or more major market data vendors. In addition, the IIV will be available through on-line information services.

The NAV for the Trust will be calculated by the Sponsor once a day and will be disseminated daily to all market participants at the same time. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA'').

Initial and Continued Listing

The Shares will be subject to Nasdaq Rule 5711(g)(vi), which sets forth the initial and continued listing criteria applicable to Commodity Futures Trust Shares. The Exchange will obtain a representation that the Trust's NAV will be calculated daily and will be made available to all market participants at the same time. Upon termination of the Trust, the Shares will be removed from listing. The Trustee, Delaware Trust Company, is a trust company having substantial capital and surplus and the experience and facilities for handling corporate trust business, as required under Nasdaq Rule 5711(g)(vi)(D) and no change will be made to the trustee without prior notice to and approval of the Exchange.

As required in Nasdaq Rule 5711(g)(vii), the Exchange notes that any registered market maker (''Market Maker'') in the Shares must file with the Exchange, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for trading the underlying commodity, related futures or options on futures, or any other related derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker in the Shares shall trade in the underlying

[65] 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.

[66] The IIV on a per Share basis disseminated during the Regular Market Session should not be viewed as a real-time update of the NAV, which is calculated once a day.

commodity, related futures or options on futures, or any other related derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by Nasdaq Rule 5711(g). In addition to the existing obligations under Exchange rules regarding the production of books and records, the registered Market Maker in the Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or any limited partner, officer or approved person thereof, registered or non-registered employee affiliated with such entity for its or their own accounts in the underlying commodity, related futures or options on futures, or any other related derivatives, as may be requested by the Exchange.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Exchange will allow trading in the Shares from 4:00 a.m. to 8:00 p.m. (Eastern time). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. The Shares of the Trust will conform to the initial and continued listing criteria set forth in Nasdaq Rule 5711(g).

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including without limitation the conditions specified in Nasdaq Rule 4120(a)(9) and the trading pauses under Nasdaq Rules 4120(a)(11) and (12).

Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the futures contracts underlying the Shares; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

As indicated in Commentary .03 to Nasdaq Rule 5711(g), if the IIV or the value of the underlying futures contract is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the value of the underlying futures contract occurs. If the interruption to the dissemination of the IIV or the value of the underlying futures contract 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.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of Shares on the Exchange will be subject to the Exchange's surveillance procedures for derivative products. The Exchange will require the Trust to represent to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Additionally, the Bitcoin Futures will be subject to the rules and surveillance programs of CME and the CFTC.[67] The Exchange or the Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the underlying Bitcoin Futures via ISG from other exchanges who are members or affiliates of the ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[68] The Exchange may also obtain information regarding trading in the spot bitcoin market from exchanges with which the CME or the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to FINRA's Trade Reporting and Compliance Engine (''TRACE'').

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Section 10 of Nasdaq General Rule 9, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how information regarding the IIV is disseminated; (4) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated IIV will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

Additionally, the Information Circular will reference that the Trust is subject to various fees and expenses described in the Draft Registration Statement. The Information Circular will also disclose the trading hours of the Shares. The Information Circular will disclose that information about the Shares will be

[67] The CFTC issued a press release on December 1, 2017, noting the self-certifications from CFE and CME and highlighting the rigorous process that the CFTC had undertaken in its engagement with CFE and CME prior to the self-certification for the Bitcoin Futures. The press release focused on the ongoing surveillances that will occur on each listing exchange, including surveillance based on information sharing with the underlying cash bitcoin exchanges as well as the actions that the CFTC will undertake after the contracts are launched, including monitoring and analyzing the size and development of the market, positions and changes in positions over time, open interest, initial margin requirements, and variation margin payments, stress testing positions, conduct reviews of designated contract markets, derivatives clearing organizations, clearing firms, and individual traders involved in trading and clearing bitcoin futures. For more information, *see http://www.cftc.gov/PressRoom/PressReleases/pr7654-17.*

[68] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.* The Exchange notes that not all components of the Disclosed Portfolio for the Trust may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Not more than 10% of the net assets of the Trust in the aggregate invested in Bitcoin Futures shall consist of Bitcoin Futures whose principal market is not a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

publicly available on the Trust's website.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act [69] in general and Section 6(b)(5) of the Act [70] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Additionally, the Bitcoin Futures will be subject to the rules and surveillance programs of CME and the CFTC. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity Futures Trust Shares. The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the underlying Bitcoin Futures via ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The Exchange may also obtain information regarding trading in the spot bitcoin market via the ISG, from other exchanges who are members or affiliates of the ISG, or from other exchanges with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to TRACE. The Exchange prohibits the distribution of material non-public information by its employees.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. The Exchange further believes that the proposal is designed to prevent fraudulent and manipulative acts and practices in that the Exchange expects that the market for Bitcoin Futures will be sufficiently liquid to support numerous ETPs shortly after launch. This belief is based on numerous conversations with market participants, issuers, and discussions with personnel of CFE. As such, the Exchange believes that the expected liquidity in the market for Bitcoin Futures, combined with the Exchange surveillance procedures related to the Shares, and the broader regulatory structure will prevent trading in the Shares from being susceptible to manipulation.

Because of its innovative features as a cryptoasset, bitcoin has gained wide acceptance as a secure means of exchange in the commercial marketplace and has generated significant interest among investors. In less than a decade since its creation in 2008, bitcoin has achieved significant market penetration, with payments giant PayPal and thousands of merchants and businesses accepting it as a form of commercial payment, as well as receiving official recognition from several governments, including Japan and Australia. Accordingly, investor interest in gaining exposure to bitcoin is increasing exponentially as well. As expected, the total volume of bitcoin transactions in the market continues to grow exponentially.

Despite the growing investor interest in bitcoin, the primary means for investors to gain access to bitcoin exposure remains either through the Bitcoin Futures or direct investment through bitcoin exchanges or over-the-counter trading. For regular investors simply wishing to express an investment viewpoint in bitcoin, investment through the Bitcoin Futures is complex and requires active management, and direct investment in bitcoin brings with it significant inconvenience, complexity, expense and risk. The Shares would therefore represent a significant innovation in the bitcoin market by providing an inexpensive and simple vehicle for investors to gain exposure to bitcoin in a secure and easily accessible product that is familiar and transparent to investors. Such an innovation would help to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest by improving investor access to bitcoin exposure through efficient and transparent exchange-traded derivative products.

In addition to improved convenience, efficiency and transparency, the Trust will also help to prevent fraudulent and manipulative acts and practices by enhancing the security afforded to investors as compared to a direct investment in bitcoin. Despite the extensive security mechanisms built into the Bitcoin network, a remaining risk to owning bitcoin directly is the need for the holder to retain and protect the ''private key'' required to spend or sell bitcoin after purchase. If a holder's private key is compromised or simply lost, their bitcoin can be rendered unavailable—*i.e.,* effectively lost to the investor. Investment vehicles that invest directly in bitcoin or investors that hold their bitcoin through digital wallets or other storage mechanisms must take extraordinary steps in order to protect their bitcoin, such as placing their bitcoin in ''cold storage.'' This risk will be eliminated for the Trust because the exposure to bitcoin is gained through cash-settled Bitcoin Futures that do not present any of the security issues that exist with direct investment in bitcoin.

The Trust expects that it will generally seek to remain fully exposed to Bitcoin Futures even during times of adverse market conditions. Under Normal Market Conditions, the Trust will generally hold only Bitcoin Futures and Money Market Instruments (which are used to collateralize the Bitcoin Futures).

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Trust and the Shares, thereby promoting market transparency. Moreover, the Intraday Indicative Value will be disseminated by one or more major market data vendors at least every 15 seconds during Regular Trading Hours. On each business day, before commencement of trading in Shares during Regular Trading Hours, the Trust will disclose on its website the Disclosed Portfolio that will form the basis for the Trust's calculation of NAV at the end of the business day. Pricing information will be available on the Trust's website including: (1) The prior business day's reported NAV, the Bid/Ask Price of the Trust, and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the

[69] 15 U.S.C. 78f.

[70] 15 U.S.C. 78f(b)(5).

NAV, within appropriate ranges, for each of the four previous calendar quarters.

Additionally, information regarding market price and trading of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information for the Shares will be available on the facilities of the CTA. The Trust's website will include a form of the prospectus for the Trust and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Trust will be halted under the conditions specified in Nasdaq Rule 4120(b). Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Finally, trading in the Shares will be subject to Nasdaq Rule 4120(a)(9), which sets forth circumstances under which Shares of the Trust may be halted and delisting proceedings commenced. In addition, as noted above, investors will have ready access to information regarding the Trust's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

Intraday price quotations on Money Market Instruments of the type held by the Trust are available from major broker-dealer firms and from third-parties, which may provide prices free with a time delay, or ''live'' with a paid fee. For Bitcoin Futures, such intraday information is available directly from the applicable listing venue. Intraday price information is also available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors. Pricing information related to Money Market Instruments will be available through issuer websites and publicly available quotation services such as Bloomberg, Markit and Thomson Reuters.

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 additional types of actively-managed exchange-traded products 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 comprehensive surveillance sharing agreement as well as trade information for certain fixed income instruments as reported to FINRA's TRACE. Not more than 10% of the net assets of the Trust in the aggregate invested in Bitcoin Futures shall consist of Bitcoin Futures whose principal market is not a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Trust's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

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

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change rather will facilitate the listing and trading of additional actively-managed exchange-traded products that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

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

No written comments were either solicited or received.

III. 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 Exchange 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 email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2021–066 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NASDAQ–2021–066. 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 (*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 also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2021–066 and should be submitted on or before September 30, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[71]

J. Matthew DeLesDernier,

Assistant Secretary.

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[71] 17 CFR 200.30–3(a)(12).