

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 132

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No. \* SR 2025 - \* 016

Amendment No. (req. for Amendments \*) 1

Filing by The Nasdaq Stock Market LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input type="checkbox"/>	Amendment * <input checked="" type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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Rule

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010  
Section 806(e)(1) \*

Section 806(e)(2) \*

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934  
Section 3C(b)(2) \*

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

A proposal to list and trade shares of the Hashdex Nasdaq Crypto Index US ETF under new Nasdaq Rule 5712.

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Sun Last Name \* Kim

Title \* Senior Associate General Counsel

E-mail \* Sun.Kim@Nasdaq.com

Telephone \* (646) 420-7816 Fax


**Signature**

Pursuant to the requirements of the Securities Exchange of 1934, The Nasdaq Stock Market LLC has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 02/27/2025 (Title \*)

By John A. Zecca EVP and Chief Legal Officer  
(Name \*)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.



Date: 2025.02.27 11:29:32 -05'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

**Form 19b-4 Information \***

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SR-NASDAQ-2025-016 A-1 19b-4.doc

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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SR-NASDAQ-2025-016 A-1 Exhibit 1.

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2- Notices, Written Comments, Transcripts, Other Communications**

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

Add Remove View

SR-NASDAQ-2025-016 A-1 Exhibit 5.c

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> the Nasdaq Stock Market LLC (“Nasdaq” or the “Exchange”) proposes to adopt new Nasdaq Rule 5712 to provide for the listing and trading of Commodity- and Digital Asset-Based Investment Interests, which are securities issued by a trust, limited liability company, or other similar entity that holds specified commodities, digital assets, derivative securities products, and/or cash.

The Exchange also proposes to list and trade shares of the Hashdex Nasdaq Crypto Index US ETF (the “Trust”) under proposed Nasdaq Rule 5712. The Trust is currently listed and is trading under Nasdaq Rule 5711(d), and this proposal aims to amend representations regarding the investment objective and strategy of the Trust made in the rule change previously filed with and approved by the Securities and Exchange Commission (“Commission”) relating to the Trust. This Amendment No. 1 supersedes the original filing in its entirety.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

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

<sup>2</sup> 17 CFR 240.19b-4.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors (the “Board”) on January 7, 2025. No other action by Nasdaq is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Sun Kim  
Senior Associate General Counsel  
Nasdaq, Inc.  
646-420-7816

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

a. Purpose

The Exchange proposes to adopt new Rule 5712 to provide for the listing and trading of Commodity- and Digital Asset-Based Investment Interests, which are securities issued by a trust, limited liability company, or other similar entity that holds specified commodities, digital assets, derivative securities products, and/or cash. The Exchange also proposes to list and trade Shares of the Trust under proposed Rule 5712.

The units of the Trust are referred to herein as the “Shares.”<sup>3</sup> The Commission approved the listing and trading of the Shares of the Trust under Nasdaq Rule 5711(d)<sup>4</sup>

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<sup>3</sup> The Shares are listed under the ticker symbol “NCIQ.”

<sup>4</sup> Nasdaq Rule 5711(d) governs the listing and trading of Commodity-Based Trust Shares, which means a security (1) that is issued by a trust that holds (a) a specified commodity deposited with the trust, or (b) a specified commodity and, in addition to such specified commodity, cash; (2) that is issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity and/or cash; and (3) that, when aggregated in the same specified minimum number, may be redeemed at a holder’s request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity and/or cash. See Nasdaq Rule 5711(d)(iv)(A).

on December 19, 2024.<sup>5</sup> This proposal aims to amend representations regarding the investment objective and strategy of the Trust made in the Hashdex Original Filing, and to list and trade the Shares pursuant to proposed Rule 5712. This proposal will supersede the Hashdex Original Filing in its entirety. The Hashdex Original Filing will remain in effect until this proposal is approved by the Commission, at which time the Exchange will transfer the Trust from its current listing standards under Rule 5711(d) into the new listing standards under proposed Rule 5712, and the Trust can implement its amended investment strategy described in this proposal upon such approval.

#### Proposed Listing Rules

Proposed Rule 5712(a) provides that the Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Commodity- and/or Digital Asset-Based Investment Interests that meet the criteria of this rule. The Exchange will file separate proposals under Section 19(b) of the Act before trading, either by listing or pursuant to unlisted trading privileges, Commodity- and/or Digital Asset-Based Investment Interests. All statements or representations contained in such rule filing regarding (a) the description of the index, portfolio, or reference asset, (b) limitations on index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such

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<sup>5</sup> See Securities Exchange Act Release No. 101998 (December 19, 2024), 89 FR 106707 (December 30, 2024) (SR-NASDAQ-2024-028; SR-CboeBZX-2024-091). See also Securities Exchange Act Release Nos. 101218 (Sept. 30, 2024), 89 FR 80970 (Oct. 4, 2024) (SR-NASDAQ-2024-028) (“Amendment No. 1”); and 102309 (January 29, 2025), 90 FR 8961 (February 4, 2025) (SR-NASDAQ-2025-006). SR-NASDAQ-2025-006 updated certain representations made in Amendment No. 1 relating to the service providers and the basket size of the Hashdex Nasdaq Crypto Index US ETF. Amendment No. 1, as amended by SR-NASDAQ-2025-006, will hereinafter be referred to as the “Hashdex Original Filing.”

continued listing requirements. If an issue of Commodity- and/or Digital Asset-Based Investment Interests does not satisfy these requirements, the Exchange may halt trading in the securities and will initiate delisting proceedings under the Rule 5800 Series.

Proposed Rule 5712(b) provides that this rule is applicable only to Commodity- and/or Digital Asset-Based Investment Interests. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the provisions of the Bylaws and all other rules and procedures of the Board shall be applicable to the trading on the Exchange of such securities. Commodity- and/or Digital Asset-Based Investment Interests are included within the definition of “security” or “securities” as such terms are used in the Bylaws and Rules of the Exchange.

Proposed Rule 5712(c)(1) defines a Commodity- and/or Digital Asset-Based Investment Interest as a security (a) that is issued by a trust, limited liability company, or other similar entity (the “Fund”) that holds (1) specified commodities and/or digital assets deposited with the Fund, or (2) specified commodities and/or digital assets and, in addition to such specified commodities and/or digital assets, derivative securities products (i.e., securities that meet the definition of “derivative securities product” in Rule 19b-4(e) under the Act) deposited with the Fund and/or cash; (b) that is issued by such Fund in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity(ies), digital asset(s), derivative securities products, and/or cash; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder’s request by such Fund which will deliver to the redeeming holder the quantity of the underlying commodity(ies), digital asset(s), derivative securities products, and/or cash.

Proposed Rule 5712(c)(2) provides that the term “commodity,” as used in this rule, means commodities as defined in Section 1a(9) of the Commodity Exchange Act.

Proposed Rule 5712(c)(3) defines the term “digital asset,” for purposes of this rule, as any digital representation of value recorded on a cryptographically secured, distributed ledger (i.e., blockchain) or similar technology.

Proposed Rule 5712(d) provides that the Exchange may trade, either by listing or pursuant to unlisted trading privileges, Commodity- and/or Digital Asset-Based Investment Interests based on an underlying commodity(ies), digital asset(s), and/or derivative securities products. Each issue of a Commodity- and/or Digital Asset-Based Investment Interest shall be designated as a separate series and shall be identified by a unique symbol.

Proposed Rule 5712(e)(1) sets forth initial listing criteria for Commodity- and/or Digital Asset-Based Investment Interests. Proposed Rule 5712(e)(1)(i) provides that the Exchange will establish a minimum number of Commodity- and/or Digital Asset-Based Investment Interests required to be outstanding at the time of commencement of trading on the Exchange. Proposed Rule 5712(e)(1)(ii) provides that there shall be no limitation on the percentage of a Fund’s portfolio that may be invested in commodity and/or digital asset holdings, except that, in the aggregate, at least 90% of the weight of such holdings shall, on both an initial and continuing basis, consist of commodities and/or digital assets concerning which the Exchange is able to obtain information via the Intermarket Surveillance Group (“ISG”) from other members of the ISG or via a comprehensive surveillance sharing agreement (“CSSA”).

Proposed Rule 5712(e)(2) and subparagraphs (i) through (viii) thereunder set forth continued listing criteria for Commodity- and/or Digital Asset-Based Investment Interests. Proposed Rule 5712(e)(2) provides that the Exchange will maintain surveillance procedures for securities listed under this rule and will consider the suspension of trading in, and will initiate delisting proceedings under the Rule 5800 Series of, such series under any of the following circumstances:

- if, following the initial twelve-month period following commencement of trading on the Exchange of Commodity- and/or Digital Asset-Based Investment Interests, the Fund has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Commodity- and/or Digital Asset-Based Investment Interests (proposed Rule 5712(e)(2)(i));
- if, following the initial twelve-month period following commencement of trading on the Exchange of Commodity- and/or Digital Asset-Based Investment Interests, the Fund has fewer than 50,000 securities issued and outstanding (proposed Rule 5712(e)(2)(ii));
- if, following the initial twelve-month period following commencement of trading on the Exchange of Commodity- and/or Digital Asset-Based Investment Interests, the market value of all securities issued and outstanding is less than \$1,000,000 (proposed Rule 5712(e)(2)(iii));
- if the value of the underlying commodity(ies) and/or digital asset(s) is no longer calculated or available on at least a 15-second delayed basis from a



source unaffiliated with the sponsor, Fund, custodian or the Exchange  
(proposed Rule 5712(e)(2)(iv));

- if the intraday indicative value is no longer made available on at least a 15-second delayed basis (proposed Rule 5712(e)(2)(v));
- if any of the continued listing requirements set forth in this Rule 5712 are not continuously maintained (proposed Rule 5712(e)(2)(vi));
- if the Exchange submits a rule filing pursuant to Section 19(b) of the Act to permit the listing and trading of a series of Commodity and/or Digital Asset-Based Investment Interests and any of the statements or representations regarding (a) the description of the index, portfolio, or reference asset, (b) limitations on index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing are not continuously maintained (proposed Rule 5712(e)(2)(vii)); or
- if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable (proposed Rule 5712(e)(2)(viii)).

Proposed Rule 5712(e)(3) and the subparagraphs thereunder set forth certain requirements specific to Commodity- and/or Digital Asset-Based Investment Interests issued by a trust. Proposed Rule 5712(e)(3)(i) provides that the stated term of a trust shall be as stated in the trust prospectus; however, a trust may be terminated under such earlier circumstances as may be specified in the trust prospectus. In addition, a trust may terminate in accordance with the provisions of the trust prospectus, which may provide for termination if the value of the trust falls below a specified amount. Proposed Rule

5712(e)(3)(ii) provides for the following requirements on an initial and continued listing basis: (1) that the trustee of a trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business, and that, in cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee; and (2) that no change is to be made in the trustee of a listed issue without prior notice to and approval of the Exchange.

Proposed Rule 5712(f) provides that, upon termination of a Fund issuing securities pursuant to Rule 5712, the Exchange requires that Commodity- and/or Digital Asset-Based Investment Interests issued in connection with the Fund be removed from Exchange listing.

Proposed Rule 5712(g) provides that voting rights shall be as set forth in the applicable prospectus of the Fund issuing Commodity- and/or Digital Asset-Based Investment Interests.

Proposed Rule 5712(h) provides that neither the Exchange nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any underlying commodity value, the current value of the underlying commodity required to be deposited to the Fund in connection with issuance of Commodity- and/or Digital Asset-Based Investment Interests; resulting from any negligent act or omission by the Exchange, or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange, its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government;

communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in an underlying commodity.

Proposed Rule 5712(i) provides that a registered Market Maker<sup>6</sup> in Commodity- and/or Digital Asset-Based Investment Interests must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading that the Market Maker may have or over which it may exercise investment discretion in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives; an underlying digital asset, related digital asset futures or options on digital assets, or any other related digital asset derivatives; or an underlying series of derivative securities products, related future or options on such derivative securities products, or any other related derivatives of such derivative securities products. No Market Maker in Commodity- and/or Digital-Asset Based Investment Interests shall trade in a commodity, or any related derivative in an account that the Market Maker (1) directly or indirectly controls trading activities or has a direct interest in the profits or losses thereof, (2) is required by this rule to disclose to the Exchange, and (3) has not reported to the Exchange.

In addition to the existing obligations under Exchange rules regarding the production of books and records, the Market Maker in Commodity- and/or Digital Asset Based Investment Interests shall make available to the Exchange such books, records, or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the

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<sup>6</sup> “Market Maker” means a dealer that, with respect to a security, holds itself out (by entering quotations in the Nasdaq Market Center) as being willing to buy and sell such security for its own account on a regular and continuous basis and that is registered as such. See Rule 5005(a)(25).

underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity, as may be requested by the Exchange.

Finally, the Exchange proposes to include the following commentary to Rule 5712. Proposed Commentary .01 provides that Exchange members (“Members”) shall provide to all purchasers of newly issued Commodity- and/or Digital Asset-Based Investment Interests a prospectus for the series of Commodity- and/or Digital Asset-Based Investment Interests. Proposed Commentary .02 provides that transactions in Commodity- and/or Digital-Asset Based Investment Interests will occur during the trading hours specified in Equity 4, Rule 4120.

The Exchange also proposes to amend its existing rules to add references to Commodity- and/or Digital Asset-Based Investment Interests, which are intended to align the treatment of the proposed interests with how Commodity-Based Trust Shares are treated under Exchange’s rules. Specifically, the Exchange proposes to amend Rule 5615(a)(6)(B) to include Commodity- and/or Digital Asset-Based Investment Interests listed pursuant to proposed Rule 5712 in the definition of “Derivative Securities” such that Commodity- and/or Digital Asset-Based Investment Interests are among the Derivative Securities that are exempt from the enumerated corporate governance requirements in Rule 5615(a)(6)(A).<sup>7</sup>

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<sup>7</sup> Rule 5615(a)(6)(A) provides that issuers whose only securities listed on Nasdaq are non-voting preferred securities, debt securities or Derivative Securities, are exempt from the requirements relating to Independent Directors (as set forth in Rule 5605(b)), Compensation Committees (as set forth in Rule 5605(d)), Director Nominations (as set forth in Rule 5605(e)), Codes of Conduct (as set forth in Rule 5610), and Meetings of Shareholders (as set forth in Rule 5620(a)). In addition, these issuers are exempt from the requirements relating to Audit Committees (as set forth in Rule 5605(c)), except for the applicable requirements of SEC Rule 10A-3. Notwithstanding, if the issuer also lists its common stock or voting preferred stock, or their equivalent on Nasdaq it will be subject to all the requirements of the Nasdaq 5600 Rule Series.

In addition, the Exchange proposes to amend Equity 4, Rule 4120(a)(9) to add Commodity- and/or Digital Asset-Based Investment Interests to the list of exchange-traded products (“ETPs”) (including Commodity-Based Trust Shares) in which the Exchange may halt trading. The Exchange also proposes to amend Equity 4, Rule 4120(b)(4)(A) to add Commodity- and/or Digital Asset-Based Investment Interests in the definition of “Derivative Securities Product”<sup>8</sup> to make clear that this new ETP type will also be subject to the Exchange’s authority to halt pursuant to Rule 4120(a)(10).

Commodity- and/or Digital Asset-Based Investment Interests listed and traded pursuant to proposed Rule 5712 would be substantially similar to Commodity-Based Trust Shares listed and traded pursuant to current Rule 5711(d), with two main differences. First, whereas Commodity-Based Trust Shares are issued by a trust, Commodity- and/or Digital Asset-Based Investment Interests could be issued, as proposed, by a trust, limited liability company, or other similar entity. Second, whereas Commodity-Based Trust Shares are based on an underlying commodity only, the Exchange proposes that Commodity- and/or Digital Asset-Based Investment Interests could be based on an underlying commodity or commodities, as well as digital assets and derivative securities products.<sup>9</sup> The Exchange believes this flexibility with respect to the structure of the entity issuing Commodity- and/or Digital Asset-Based Investment Interests and the holdings underlying such securities would benefit both issuers and the investing public and would facilitate the availability of a new type of ETP.

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<sup>8</sup> As set forth in Rule 4120(b)(4)(A), Derivative Securities Product currently includes Commodity-Based Trust Shares.

<sup>9</sup> The Exchange notes that the requirement set forth in proposed Rule 5712(c)(1) regarding digital asset holdings is based on a similar provision set forth in current Rule 5735 regarding Managed Fund Shares. See Rule 5735(b)(1)(D)(i).

### The Trust

The Trust is managed and controlled by the Hashdex Asset Management Ltd. (“Sponsor”) and administered by U.S. Bancorp Fund Services, LLC (the “Administrator”). The Shares are registered with the SEC by means of the Trust's registration statement on Form S-1 (the “Registration Statement”).<sup>10</sup>

The Shares are issued by the Trust, a Delaware statutory trust established by the Sponsor. The Trust is operating pursuant to the rules and guidelines set forth in the Trust agreement (“Trust Agreement”). The Trust issues Shares representing fractional undivided beneficial interests in its net assets. The Trust is neither an investment company registered under the Investment Company Act of 1940, as amended (the “1940 Act”), nor a commodity pool under the Commodity Exchange Act.

U.S. Bancorp Fund Services, LLC is the transfer agent for the Trust (“Transfer Agent”). U.S. Bank, N.A. holds the Trust’s cash and/or cash equivalents<sup>11</sup> (“Cash Custodian”). Coinbase Custody Trust Company, LLC and BitGo Trust Company, Inc. are the custodians of the Trust’s digital assets (“Crypto Custodians”, and together with the Cash Custodian, the “Custodians”).<sup>12</sup>

### The Trust’s Investment Objective

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<sup>10</sup> On February 7, 2025, the Trust filed with the Commission a Registration Statement on Form S-1 under the Securities Act of 1933 (15 U.S.C. 77a). The description of the operation of the Trust herein is based, in part, on the most recent Registration Statement.

<sup>11</sup> “Cash equivalents” are limited to short-term treasury bills (90 days or less to maturity), money market funds, and demand deposit accounts.

<sup>12</sup> The Trust may engage additional custodians for its digital assets, each of whom may be referred to as a Crypto Custodian. The Trust may also remove or change current Crypto Custodians, provided that there is at least one Crypto Custodian at all times.

The investment objective of the Trust will be to ensure that the daily changes in the net asset value (“NAV”) of the Shares correspond to the daily changes in the price of the Nasdaq Crypto Settlement Price Index,<sup>13</sup> NCIS (the “NCIS” or “Index”), less expenses and liabilities of the Trust, by investing in the digital asset constituents of the Index (“Index Constituents”).

The Shares are designed to provide a straightforward means of obtaining price exposure to the Index Constituents, as opposed to direct acquisition, holding, and trading of digital assets on a peer-to-peer or other basis or via a digital asset platform. The Shares have been designed to remove the obstacles represented by the complexities and operational burdens involved in a direct investment in digital assets, while at the same time having an intrinsic value that reflects, at any given time, the investment exposure to the Index Constituents held by the Trust at such time, less the Trust’s expenses and liabilities. The Shares provide investors with an alternative method of accessing the digital asset markets through the public securities market.

The Trust gains exposure to the Index Constituents by buying spot digital assets. The Trust maintains cash and/or cash equivalent balances to the extent it is necessary to cover currently due Trust-payable expenses.

If there are no Share redemption orders or currently due Trust-payable expenses, the Trust’s portfolio is expected to consist of solely of Index Constituents, except that the Sponsor may, at its sole discretion, exclude a specific Index Constituent under certain circumstances further described below. The Trust does not invest in any other spot digital asset besides the Index Constituents. The Trust does not invest in tokenized assets

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<sup>13</sup> See <https://indexes.nasdaqomx.com/docs/Nasdaq%20Crypto%20Indexes%20Methodology.pdf>.

or stablecoins. As of December 31, 2024, the Index Constituents and their weightings<sup>14</sup> were as follows:

<b>Constituents</b>	<b>Weight</b>
Bitcoin (BTC)	72.70%
Ether (ETH)	14.48%
Solana (SOL)	4.78%
XRP Ledger (XRP)	5.02%
Cardano (ADA)	1.50%
Chainlink (LINK)	0.51%
Avalanche (AVAX)	0.37%
Litecoin (LTC)	0.37%
Uniswap (UNI)	0.27%

The weighting of each Index Constituent in the Trust's portfolio is generally expected to match the weighting of the Index Constituents in the Index, except when the Sponsor determines to exclude or limit the weight of one or more digital assets from the Trust's portfolio in the rules-based circumstances set forth below. In such cases, the weightings of the digital assets held by the Trust are generally expected to be calculated proportionally to the respective Index Constituents for the remaining Index Constituents.

The Sponsor may, at its discretion, exclude or limit the weighting of Index Constituents in the Trust's portfolio under the following circumstances:

- (1) The inclusion or projected weighting of a digital asset could, in the Sponsor's sole judgment, result in the Trust being required to register as an investment

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<sup>14</sup> The Index Constituents will be weighted according to their relative free float market capitalizations, as described in the next section "The Trust's Benchmark".



company under the Investment Company Act or require the Sponsor to register as an investment adviser under the Investment Advisers Act of 1940;

- (2) None or few of the authorized participants or service providers have the ability to trade or otherwise support the asset in a way that impacts the Trust operations;
- (3) The Sponsor determines, based on available guidance, that the use or trading of the digital asset raises, or is likely to raise, significant governmental, policy, or regulatory concerns or is subject to, or likely to become subject to, a specialized regulatory regime, such as U.S. federal securities or commodities laws or similar laws in other significant jurisdictions;
- (4) The digital asset's underlying code contains, or may contain, material flaws or vulnerabilities; or
- (5) Holding the digital asset would cause the Trust's holdings to be inconsistent with the listing requirements of proposed Rule 5712.

To ensure compliance with proposed Nasdaq Rule 5712, the Sponsor will monitor the weights of the digital assets in the Trust's portfolio and Index Constituents on a daily basis. If the portfolio breaches the requirement, the Sponsor will adjust the portfolio to comply with its listing rule according to the following method:

- The combined allocation of all digital assets other than those eligible under the 90% requirement will be limited to 10% of the portfolio, with their individual weights proportionally adjusted to reflect their relative weightings in the Index.
- The remaining 90% of the portfolio will be redistributed proportionally among the eligible digital assets, based on their respective weights in the Index.

The Sponsor employs a passive investment strategy that is intended to track the changes in the Index regardless of whether the Index goes up or goes down, meaning that the Sponsor does not try to “beat” the Index. The Trust’s passive investment strategy is designed to allow investors to purchase and sell the Shares for the purpose of investing in the Index, whether to hedge the risk of losses in their Index-related transactions or gain price exposure to the Index. Consistent with its investment objective, the Trust will not use its investments to enhance leverage or seek performance that is the multiple or inverse multiple of the Index.

Unless permitted by the Commission, none of the Trust, the Sponsor, any Crypto Custodian, or any other person associated with the Trust will, directly or indirectly, engage in action where any portion of the Trust’s holdings becomes subject to a proof-of-stake validation or is used to earn additional assets or generate income or other earnings through staking.

From time to time, the Trust may be entitled to or come into possession of “Incidental Rights” and/or “IR Virtual Currency” by virtue of its ownership of digital assets, generally through a fork in the Index Constituents blockchains, an airdrop offered to holders of the Index Constituents or other similar event. “Incidental Rights” are rights to acquire, or otherwise establish dominion and control over, any crypto asset (other than the Index Constituents) or other asset or right, which rights are incident to the Trust’s ownership of the Index Constituents and arise without any action of the Trust or of the Sponsor. “IR Virtual Currency” is any crypto asset (other than the Index Constituents), or other assets or rights, acquired through the exercise of any Incidental Right.

With respect to a fork, airdrop or similar event, the Sponsor will cause the Trust

to irrevocably abandon any such Incidental Rights and IR Virtual Currency and no such Incidental Right or IR Virtual Currency shall be taken into account for purposes of determining the NAV of the Trust.

#### The Trust's Benchmark

The Trust will use the Index as a reference to track and measure its performance compared to the price performance of the markets for the Index Constituents and to value the Index Constituents held by the Trust for purposes of calculating the Trust's NAV.

The Index is designed to measure the performance of a portion of the overall crypto asset market. The Index does not track the overall performance of all crypto assets generally, nor the performance of any specific crypto assets. The Index is owned and administered by Nasdaq, Inc. ("Index Provider") and is calculated by CF Benchmarks Limited ("Calculation Agent"), which is experienced in calculating and administering crypto assets indices. The Calculation Agent publishes daily the Index Constituents, the Index Constituents' weightings, the intraday value of the Index (under the ticker NCI), and the daily settlement value of the Index (under the ticker NCIS), which is effectively the Index's closing value.<sup>15</sup>

The Index is derived from a rules-based methodology ("Index Rules"), which is overseen by the Nasdaq Index Management Committee ("NIMC"). The NIMC governs the Index and is responsible for its implementation, administration, and general oversight, including assessing crypto assets for eligibility, adjustments to account for regulatory changes and periodic methodology reviews. Neither the Trust, nor the Sponsor have

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<sup>15</sup> The closing level of the Index is calculated once a day on business days at 4:05 p.m. New York Time. See [https://indexes.nasdaqomx.com/docs/methodology\\_NCI.pdf](https://indexes.nasdaqomx.com/docs/methodology_NCI.pdf) (under "Appendix B: Settlement Times").

control over the Index Rules or the Index administration.

According to the Index Rules, crypto assets are eligible for inclusion in the Index if they satisfy the criteria set forth under the NCI methodology. The Index adjusts its constituents and weightings on a quarterly basis to reflect changes in the crypto asset markets.

Pursuant to the Index Rules, to be eligible for inclusion in the Index, crypto assets must meet the following criteria on a quarterly basis:

- (1) Have active tradable markets listed on at least two Core Crypto Platforms<sup>16</sup> for the entire period since the previous Index reconstitution;
- (2) Be supported by at least one Core Custodian<sup>17</sup> for the entire period since the previous Index reconstitution.
- (3) To be considered for entry to the Index at any Index reconstitution, an asset

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<sup>16</sup> A “Core Crypto Platform” is a crypto asset platform that, in the opinion of the NIMC, exhibits at a minimum the characteristics specified in the Nasdaq Digital Assets Indexes Guidelines for Core Crypto Platforms and Core Custodians (the “Guidelines”), such as (1) having strong forking controls, (2) effective anti-money laundering controls, including surveillance for manipulative trading practices and erroneous transactions, (3) demonstrating robust IT infrastructure and active capacity management, (4) evidencing cooperation with regulators and law enforcement, and be licensed by a public independent governing body. See [https://indexes.nasdaqomx.com/docs/Nasdaq\\_Digital\\_Assets\\_Indexes\\_Guidelines\\_Core\\_Exchange\\_Core\\_Custodians.pdf](https://indexes.nasdaqomx.com/docs/Nasdaq_Digital_Assets_Indexes_Guidelines_Core_Exchange_Core_Custodians.pdf). Such license could be obtained today through bodies such as the New York State Department of Financial Services’ (NYDFS) BitLicense, or other state, national or international regulators. The list of existing Core Crypto Platforms will be recertified by the NIMC at a minimum on an annual basis. The Core Crypto Platforms as of December 31, 2024 are BitStamp, Coinbase, Gemini, itBit, Kraken, and LMAX Digital.

<sup>17</sup> A “Core Custodian” is a crypto assets custodian that, in the opinion of the NIMC, exhibits the characteristics specified in the Guidelines. See [https://indexes.nasdaqomx.com/docs/Nasdaq\\_Digital\\_Assets\\_Indexes\\_Guidelines\\_Core\\_Exchange\\_Core\\_Custodians.pdf](https://indexes.nasdaqomx.com/docs/Nasdaq_Digital_Assets_Indexes_Guidelines_Core_Exchange_Core_Custodians.pdf) (under “Core Custodians”). A Core Custodian might lose eligibility if it does not comply with the specified requirements in the Index methodology or with any other NIMC requirements. The NIMC will review new Core Custodian candidates throughout the year and announce any new additions when approved. The list of existing Core Custodians will be recertified by the NIMC at a minimum on an annual basis. Changes to the list of Core Custodians may be made by the approval of the NIMC and announced accordingly in the case of exceptional events or in order to maintain the integrity of the Index. The Core Custodians as of December 31, 2024 are BitGo, Coinbase, Fidelity, Gemini, Komainu, and Zodia.

must have a median daily trading volume in the USD pair conducted across all Core Crypto Platforms that is no less than 0.5% of the cryptocurrency asset that has the highest median daily trading volume.

- (4) Be eligible for listing in an ETP on SIX Swiss Exchange and Deutsche Börse Xetra as of thirty (30) calendar days prior to the day of inclusion.
- (5) Have free-floating pricing (i.e., not be pegged to the value of any asset).

If a crypto asset meets requirements (1) through (5), it will be considered eligible for Index inclusion.

Notwithstanding inclusion in the eligible list, the NIMC reserves the right to further exclude any additional assets based on one or more factors, including but not limited to its review of general reputational, fraud, manipulation, or security concerns connected to the asset. Assets that, in the sole discretion of the NIMC, do not offer utility, do not facilitate novel use cases, or that do not exhibit technical, structural or cryptoeconomic innovation (e.g., assets inspired by memes or internet jokes) may also be excluded.

The Index will assess any crypto assets resulting from a hard fork or an airdrop under the same criteria as established crypto assets and will only include a new digital asset if it meets the eligibility criteria set forth above.

The Index Constituents are weighted according to their relative free float market capitalizations. The free float market capitalization of an Index Constituent on any given day is defined as the product of an Index Constituent Settlement Price (as defined below)

and its “Circulating Supply”<sup>18</sup> as set in the most recent reconstitution. Weights are calculated by dividing the free float market capitalization of a digital asset by the total free float market capitalization of all Index Constituents at the time of rebalancing.

The Index is reconstituted and rebalanced quarterly, on the first Business Day in March, June, September, and December (each a “Reconstitution Date”). For this purpose, a Business Day means any day other than a day when Nasdaq is closed for regular trading (“Business Day”).

The settlement price of each Index Constituent (“Index Constituent Settlement Price”) is calculated once every trading day<sup>19</sup> by applying a publicly available rules-based pricing methodology (the “Pricing Methodology”) to a diverse collection of pricing sources to provide an institutional-grade reference price for each constituent. The Pricing Methodology is designed to account for variances in price across a wide range of sources, each of which has been vetted according to criteria identified in the methodology. Specifically, the Index Constituent Settlement Price is the Time Weighted Average Price

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<sup>18</sup> The Index will utilize “Circulating Supply” of an Index Constituent for all calculations of free float market capitalization and the determination of constituent weights. “Circulating Supply” is defined as the total supply of all units of a digital asset issued outside of the codebase since the initial block on a digital asset’s blockchain or since the point of inception of the digital asset on a cryptographic distributed ledger that can be “spent” or moved from one deposit address to another that is deemed to be likely to be available for trading as defined by the Calculation Agent and described by the methods in the CF Cryptocurrency Index Family Multi Asset Ground Rules (section 4.2.1 to 4.3.1.2.1). Circulating Supply data will be determined at the block height or ledger number which is the last confirmed block or ledger number at 16:00:00 UTC on the day that is eight (8) business days immediately preceding the relevant Reconstitution Date. Where the Calculation Agent cannot reliably determine any of the respective inputs for the calculation of the Circulating Supply for a given crypto asset that is an Index Constituent then its Circulating Supply shall be approximated. This will be done by applying the Median Free Float Factor (Circulating Supply/Total Supply) that has been determined for that reconstitution of all Index Constituents to the Total Supply (Circulating Supply = Total Supply X Median Free Float Factor). During reconstitution, updated Circulating Supply of crypto assets will be set and will remain fixed until the next reconstitution. The Index fixes Circulating Supply of Index Constituents between reconstitutions in order to preserve the investability property of the Index.

<sup>19</sup> All Index Constituent calculations are performed concurrently with the Index calculation, which takes place at 4:05 p.m. New York time. See supra note 15.

(“TWAP”) calculated across the volume weighted average prices (“VWAPs”) for each minute in the settlement price window, which is between 3:50:00 and 4:00:00 p.m. New York time, on all Core Crypto Platforms. Where there are no transactions observed in any given minute of the settlement price window, that minute is excluded from the calculation of the TWAP.

The Pricing Methodology also utilizes penalty factors to mitigate the impact of anomalous trading activity such as manipulation, illiquidity, large block trading, or operational issues that could compromise price representation. Three types of penalties are applied when three or more contributing Core Crypto Platforms contribute pricing for a constituent asset: abnormal price penalties, abnormal volatility penalties, and abnormal volume penalties. These penalties are defined as adjustment factors to the weight of information from each platform that contributes pricing information based on the deviation of a platform’s price, volatility, or volume from the median across all Core Crypto Platforms. For example, if a Core Crypto Platform’s price is 2.5 standard deviations away from the median price, its price penalty factor will be a  $1/2.5$  multiplier.

The Sponsor believes that the NCIS is a suitable Index for the Trust for pricing the Trust’s assets and as an Index that the Trust tracks. Specifically, the Index would provide reliable pricing for purposes of tracking the actual performance of the crypto asset markets for the Index Constituents. Second, it is administered by a reputable index administrator that is not affiliated with the Sponsor or Trust,<sup>20</sup> which provides assurances

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<sup>20</sup> Nasdaq, Inc. (“Nasdaq”), the Index Provider, adheres to the International Organization of Securities Commissions principles for benchmarks (the “IOSCO Principles”) for many of its indexes via an internal control and governance framework that is audited by an external, independent auditor on an annual basis. Although NCIS is not currently one of the indexes that is required to comply with IOSCO Principles, as a reference rate index, it is administered in a

of accountability and independence. Finally, its Pricing Methodology is designed to resist potential price manipulation from unregulated crypto markets by applying the following safeguards:

- (1) Requiring that constituents are eligible for being listed as an underlying asset of an ETP listed on the SIX Swiss Exchange and the Deutsche Börse Xetra as of thirty (30) calendar days prior to the day of its inclusion;
- (2) Strict eligibility criteria for the Core Crypto Platforms from which the Index data is drawn;
- (3) A diverse collection of trustworthy pricing sources to provide an institutional-grade reference price for the Index Constituents; and
- (4) The use of adjustment factors to mitigate against the impact of any anomalous trading activity on the Index Constituent Settlement Prices.

#### The Index Constituents

The Trust gains exposure to digital assets by investing in the Index Constituents. As of December 31, 2024, the Index Constituents are bitcoin (BTC), ether (ETH), solana (SOL), XRP ledger (XRP), cardano (ADA), chainlink (LINK), avalanche (AVA), litecoin (LTC), and uniswap (UNI). Below, the Sponsor provides a description of each of the Index Constituents as of the date of this proposal.

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manner that is generally consistent with both the IOSCO Principles and the elements of Nasdaq's internal control and governance framework pursuant to IOSCO Principles. NCIS is administered and governed by the NIMC in accordance with the publicly available NCI methodology. The NIMC oversees all aspects of the administration of the NCIS, including the defined processes and controls for the selection and recertification of third parties such as the Core Crypto Platforms and Core Custodians, as well as the validation and reconciliation of Index calculations and pricing data. As discussed above, the list of existing Core Crypto Platforms and Core Custodians will be recertified by the NIMC at a minimum on an annual basis. The NIMC also oversees the identification and mitigation of any potential conflicts of interest, formal complaints, and updates or changes to the Index methodology consistent with the IOSCO Principles.



*Bitcoin (BTC)*

Bitcoin, introduced in 2009, is the first decentralized cryptocurrency and operates on a proof-of-work consensus mechanism. It is designed to facilitate peer-to-peer transactions without relying on intermediaries like banks. Transactions are validated by miners who compete to solve complex cryptographic puzzles, ensuring the integrity and security of the Bitcoin blockchain. Bitcoin's capped supply of 21 million coins adds to its appeal as a deflationary asset, often regarded as "digital gold" due to its scarcity and store of value characteristics.

The Bitcoin blockchain serves as a transparent and immutable ledger, recording all transactions in sequential blocks. It uses the SHA-256 cryptographic hash function to secure its network, and the difficulty of mining adjusts dynamically to maintain block generation approximately every 10 minutes. Beyond its use as a digital currency, Bitcoin is increasingly employed as collateral in decentralized finance (DeFi) applications and is traded in both spot and derivative markets worldwide.

Bitcoin's role as the dominant cryptocurrency has positioned it as a key component of institutional portfolios and investment products. Its market dynamics are influenced by macroeconomic trends, adoption rates, and its regulatory environment, making it a focal point for the broader crypto industry. With a decentralized governance model and a community-driven upgrade process, Bitcoin continues to evolve while adhering to its core principles of decentralization and security.

*Ethereum (ETH)*

Ethereum, launched in 2015, revolutionized blockchain technology by introducing smart contracts, enabling developers to build decentralized applications (DApps). Its

native cryptocurrency, ether (ETH), functions as the fuel for the Ethereum Virtual Machine (EVM), where smart contracts execute automatically upon meeting predefined conditions. Ethereum's transition from proof-of-work to proof-of-stake in 2022 (dubbed "The Merge") significantly reduced its energy consumption and strengthened its scalability and security.

The Ethereum blockchain supports a thriving ecosystem of applications, particularly in decentralized finance (DeFi) and non-fungible tokens (NFTs). DeFi platforms leverage Ethereum's capabilities to enable lending, borrowing, and trading without intermediaries, while NFTs have transformed the way digital ownership and collectibles are conceptualized. Ethereum's programmability and robust network effect have positioned it as a leading blockchain for innovation and adoption.

Ether's value is driven by its utility as a medium for transaction fees (gas), staking rewards, and as a speculative asset. Continuous upgrades, such as the Shapella and Dencun updates, aim to enhance Ethereum's performance, scalability, and user experience. The network's decentralized governance model ensures ongoing improvements while balancing the needs of its diverse user base.

#### *Solana (SOL)*

Solana is a high-performance blockchain designed for scalability and low transaction costs, making it ideal for decentralized applications (DApps) such as gaming and decentralized finance (DeFi). It employs a unique Proof-of-History (PoH) mechanism integrated with Proof-of-Stake (PoS) to achieve high throughput and efficient block validation. Solana's architecture allows for consistent and rapid transaction processing, supporting its role as a leading platform for innovative blockchain solutions.

*XRP Ledger (XRP)*

The XRP Ledger (XRPL) is a decentralized blockchain optimized for fast, cost-efficient global payments. Its unique consensus protocol, distinct from proof-of-work or proof-of-stake, enables secure transaction validation without significant energy consumption. XRP serves as the network's native currency, functioning as a bridge asset for cross-border payments and a tool to prevent spam on the network. With a fixed supply of 100 billion tokens, XRP plays a pivotal role in supporting the network's ecosystem.

*Cardano (ADA)*

Cardano is a research-driven blockchain platform that emphasizes scalability, security, and sustainability. Utilizing the Ouroboros Proof-of-Stake protocol, Cardano supports smart contracts and DApps while ensuring energy efficiency and decentralization. Its native token, ADA, facilitates transactions, staking rewards, and governance, empowering participants to influence the network's development.

*Chainlink (LINK)*

Chainlink is a decentralized oracle network that bridges blockchain-based smart contracts with real-world data. Its LINK token incentivizes node operators to provide accurate data and ensures the integrity of information used in DeFi, gaming, and other blockchain applications. Chainlink's modularity and interoperability make it a cornerstone for expanding blockchain use cases.

*Avalanche (AVAX)*

Avalanche is a high-speed, scalable blockchain ecosystem designed for decentralized applications and custom blockchain networks. Its unique consensus

mechanism, Avalanche Consensus, offers rapid finality and supports interoperable subnets, making it a versatile platform for diverse use cases. AVAX, its native token, is utilized for transaction fees, staking, and network security.

#### *Litecoin (LTC)*

Litecoin, launched in 2011, has a main chain that shares a slightly modified Bitcoin codebase. The practical effects of those codebase differences are lower transaction fees, faster transaction confirmations, and faster mining difficulty retargeting. Utilizing the Scrypt proof-of-work algorithm, Litecoin remains a popular choice for payments and a reliable store of value in the cryptocurrency space.

#### *Uniswap (UNI)*

Uniswap is a leading decentralized exchange protocol that operates on Ethereum. It enables users to trade tokens directly from their wallets without intermediaries, leveraging automated market maker (AMM) mechanisms. The UNI token is central to Uniswap's governance, allowing holders to propose and vote on protocol upgrades and changes.

#### Custody of the Trust's Digital Assets

An investment in the Shares is backed by assets held by the Trust, including the Index Constituents held by the Crypto Custodians on behalf of the Trust. The Crypto Custodians must qualify as Core Custodians by the NIMC and thus satisfy at least the requirements set forth by the NIMC in the NCIS methodology.<sup>21</sup> The Trust may engage

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<sup>21</sup>

See [https://indexes.nasdaqomx.com/docs/Nasdaq\\_Digital\\_Assets\\_Indexes\\_Guidelines\\_Core\\_Exchangees\\_Core\\_Custodians.pdf](https://indexes.nasdaqomx.com/docs/Nasdaq_Digital_Assets_Indexes_Guidelines_Core_Exchangees_Core_Custodians.pdf). As noted above, the Core Custodians as of December 31, 2024 are BitGo, Coinbase, Fidelity, Gemini, Komainu, and Zodia, and the Trust's Crypto Custodians are on this list.

additional custodians and may also remove or change current Crypto Custodians, provided that there is at least one Crypto Custodian who is also a Core Custodian at all times.<sup>22</sup>

The Trust's Crypto Custodians hold and are responsible for maintaining custody of the Trust's digital assets. The Sponsor causes the Trust to maintain ownership and control of the Trust's digital assets in a manner consistent with good delivery requirements for spot commodity transactions.

All of the Trust's digital assets are held in one or more accounts in the name of the Trust (each a "Custody Account" and together the "Custody Accounts"), other than the Trust's assets which are temporarily maintained in a trading account under limited circumstances ("Trading Account"), i.e., in connection with creation and redemption basket activity or sales of digital assets deducted from the Trust's holdings in payment of Trust expenses or the Sponsor's fee (or, in extraordinary circumstances, upon liquidation of the Trust).

The Trust's digital assets and cash holdings from time to time may temporarily be maintained in the Trading Account. The Sponsor intends to execute an agreement so Coinbase Inc. can serve as the Trust's "Prime Execution Agent" ("Prime Execution Agent Agreement"). In this capacity, the Prime Execution Agent facilitates the buying and selling of digital assets by the Trust in response to cash creations and redemptions between the Trust and registered broker-dealers that are Depository Trust Company ("DTC") participants that enter into an authorized participant agreement with the Sponsor

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<sup>22</sup> If the Trust determines to do so, the Exchange will submit a rule filing with the Commission under Rule 19b-4 of the Act

(“Authorized Participants”), and the sale of digital assets to pay the Sponsor’s fee, any other Trust expenses not assumed by the Sponsor, to the extent applicable, and in extraordinary circumstances, in connection with the liquidation of the Trust’s assets.

#### Creation and Redemption of Shares

The Trust issues and redeems “Baskets”<sup>23</sup> on a continuous basis. Baskets are issued or redeemed only in exchange for an amount of cash determined by the Sponsor or the Administrator on each Business Day. No Shares are issued unless the Cash Custodian has allocated to the Trust’s account the corresponding amount of cash. Baskets may be created or redeemed only by Authorized Participants. Each Authorized Participant must be registered as a broker-dealer under the Exchange Act and regulated by Financial Industry Regulatory Authority (“FINRA”), and must be qualified to act as a broker or dealer in the states or other jurisdictions where the nature of its business so requires.

The Authorized Participants deliver only cash to create Shares and receive only cash when redeeming Shares. Further, Authorized Participants do not directly or indirectly purchase, hold, deliver, or receive digital assets as part of the creation or redemption process, or otherwise direct the Trust or a third party with respect to purchasing, holding, delivering, or receiving digital assets as part of the creation or redemption process.

The Trust creates Shares by receiving Index Constituents from a third party that is not the Authorized Participant, and the Trust – not the Authorized Participant – is

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<sup>23</sup> Baskets will be offered continuously at NAV per Share for 10,000 Shares. Therefore, a Basket of Shares would be valued at NAV per Share multiplied by the Basket size and the value of the bitcoin and ether to be acquired by the Trust as part of the creation of a Basket would be based on the dollar value of the NAV per Share multiplied by the Basket size for such creations. Only Authorized Participants may purchase or redeem Baskets.

responsible for selecting the third party to deliver the assets. Further, the third party will not be acting as an agent of the Authorized Participant with respect to the delivery of the Index Constituents to the Trust or acting at the direction of the Authorized Participant with respect to the delivery of the Index Constituents to the Trust. The Trust redeems Shares by delivering Index Constituents to a third party that is not the Authorized Participant, and the Trust – not the Authorized Participant – is responsible for selecting the third party to receive the Index Constituents. Further, the third party does not act as an agent of the Authorized Participant with respect to the receipt of the Index Constituents from the Trust or acting at the direction of the Authorized Participant with respect to the receipt of the Index Constituents from the Trust. The third-party will be unaffiliated with the Trust and the Sponsor.

In connection with cash creations and cash redemptions, the Authorized Participants submit orders to create or redeem Baskets<sup>24</sup> of Shares exclusively in exchange for cash. The Trust engages in transactions to convert cash into digital assets (in association with creation orders) and digital assets into cash (in association with redemption orders). The Trust conducts its digital assets purchase and sale transactions by choosing, in its sole discretion, either to trade directly with designated third parties (each, a “Crypto Trading Counterparty”), who are not registered broker-dealers pursuant to written agreements between each such Crypto Trading Counterparty and the Trust, or to trade through the Prime Execution Agent acting in an agency capacity with third parties pursuant to the Prime Execution Agent Agreement. Crypto Trading

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<sup>24</sup> The Trust issues and redeems Shares only in blocks or “Baskets” of 10,000 or integral multiples thereof.

Counterparties settle trades with the Trust using their own accounts at the Prime Execution Agent when trading with the Trust.

For the creation of a Basket of Shares, the Authorized Participant is required to submit the creation order by 2:00 p.m. ET, or the close of regular trading on the Exchange, whichever is earlier (the "Order Cutoff Time"). The Order Cutoff Time may be modified by the Sponsor in its sole discretion.

On the date of the Order Cutoff Time for a creation order, the Trust enters into a transaction by choosing, in its sole discretion, to trade directly with a Crypto Trading Counterparty or the Prime Execution Agent, to buy the Index Constituents in exchange for the cash proceeds from such creation order. The Authorized Participant is responsible for the dollar cost of the difference between the digital assets price utilized in calculating the NAV per Share on the Creation Order Date (as described below) and the price at which the Trust acquires the Index Constituents to the extent the price amount for buying the digital assets is higher than the price utilized in calculating the NAV. In the case the price amount for buying the Index Constituents is lower than the price utilized in calculating the NAV, the Authorized Participant shall keep the dollar impact of any such difference.

Creation orders take place as follows, where "T" is the date of the creation order and each day in the sequence must be a business day in the U.S.

Creation Order Date (T)	Settlement Date (T+1)
<ul style="list-style-type: none"> <li>● Authorized Participant places a creation order.</li> <li>● The Transfer Agent accepts (or rejects) the creation order.</li> </ul>	<ul style="list-style-type: none"> <li>● The Authorized Participant delivers the Basket cash component to the Trust's cash account that is maintained with the Cash Custodian.</li> </ul>



<ul style="list-style-type: none"> <li>● The Trust enters into a transaction with the Crypto Trading Counterparty or the Prime Execution Agent to purchase the corresponding digital assets.</li> <li>● As soon as practicable after 4:00 p.m. ET, the Sponsor determines the Basket cash component, including any dollar cost difference between the digital assets price utilized in calculating NAV per Share and the price at which the Trust acquires the digital assets.</li> </ul>	<ul style="list-style-type: none"> <li>● The Crypto Trading Counterparty or the Prime Execution Agent deposits the digital assets into the Trust’s Trading Account related to the purchase transaction.</li> <li>● Once the Trust is in simultaneous possession of the Basket cash component and the digital assets, the Trust delivers the corresponding Shares to the Authorized Participant.</li> <li>● The Trust transfers the cash related to the purchase transaction from the Trust cash account maintained with the Cash Custodian to the Crypto Trading Counterparty or the Prime Execution Agent.</li> </ul>
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When the Trust chooses to enter into a transaction with the Prime Execution Agent, because the Trust’s Trading Account may not be funded with cash on the Creation Order Date for the purchase of the Index Constituents associated with a cash creation order, the Trust may borrow trade credits (“Trade Credits”) in the form of cash from the “Trade Credit Lender”, under a trade financing agreement (“Trade Financing Agreement”) or may require the Authorized Participant to deliver the required cash for the creation order on the Creation Order Date. The extension of Trade Credits on the Creation Order Date allows the Trust to purchase digital assets through the Prime Execution Agent on the Creation Order Date, with such digital assets being deposited in the Trust’s Trading Account. On Settlement Date for a creation order, the Trust delivers Shares to the Authorized Participant in exchange for cash received from the Authorized Participant. To the extent Trade Credits were utilized, the Trust uses the cash to repay the Trade Credits borrowed from the Trade Credit Lender. On the Settlement Date for a

creation order, the digital assets purchased are swept from the Trust’s Trading Account to the Custody Account pursuant to a regular end-of-day sweep process.

For a redemption of a Basket of Shares, the Authorized Participant is required to submit a redemption order by the Order Cutoff Time. On the date of the Order Cutoff Time for a redemption order, the Trust enters into a transaction by choosing, in its sole discretion, to trade directly with a Crypto Trading Counterparty or the Prime Execution Agent, to sell digital assets in exchange for cash. The Authorized Participant bears the difference between the Index Constituents price utilized in calculating the NAV per Share on the Redemption Order Date and the price realized in selling the Index Constituents to raise the cash needed for the cash redemption order to the extent the price realized in selling the Index Constituents is lower than the price utilized in the NAV. To the extent the price realized in selling the digital assets is higher than the price utilized in the NAV, the Trust delivers the dollar impact of any such difference to the Authorized Participant.

Redemption orders take place as follows, where "T" is the date of the redemption order and each day in the sequence must be a business day.

Redemption Order Date (T)	Settlement Date (T+1)
<ul style="list-style-type: none"> <li>● Authorized Participant places a redemption order.</li> <li>● The Transfer Agent accepts (or rejects) the redemption order.</li> <li>● The Trust instructs the Crypto Custodian to prepare to move the corresponding digital assets from the Trust’s Custody Account to the Trading Account.</li> <li>● The Trust enters into a transaction with the Crypto Trading</li> </ul>	<ul style="list-style-type: none"> <li>● The Authorized Participant delivers the Baskets of Shares to be redeemed to the Trust.</li> <li>● The Crypto Trading Counterparty or the Prime Execution Agent delivers cash to the Trust’s cash account that is maintained with the Cash Custodian related to the sell transaction.</li> <li>● Once the Trust is in simultaneous possession of the Basket of Shares and the respective Basket cash</li> </ul>

<p>Counterparty or the Prime Execution Agent to sell the corresponding digital assets.</p> <ul style="list-style-type: none"> <li>As soon as practicable after 4:00 p.m. ET, the Sponsor determines the Basket cash component, including any dollar cost difference between the digital assets price utilized in calculating NAV per Share and the price at which the Trust sells the digital assets.</li> </ul>	<p>component, the Trust cancels the Shares comprising the number of Baskets redeemed by the Authorized Participant.</p> <ul style="list-style-type: none"> <li>The Trust instructs the Crypto Custodian to transfer the corresponding digital assets agreed on the sell transaction from the Trust's Trading Account to the Crypto Trading Counterparty or Prime Execution Agent.</li> <li>The Trust transfers the Basket cash component from the cash account maintained with the Cash Custodian to the Authorized Participant.</li> </ul>
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The Trust may use financing in connection with a redemption order when the Index Constituents remain in the Custody Account at the point of intended execution of a sale of the Index Constituents. In those circumstances, the Trust may borrow Trade Credits in the form of Index Constituents from the Trade Credit Lender, which allows the Trust to sell digital assets through the Prime Execution Agent on the Redemption Order Date, and the cash proceeds are deposited in the Trading Account. On the Settlement Date for a redemption order, the Trust delivers cash to the Authorized Participant in exchange for Shares received from the Authorized Participant. In the event financing is used, the Trust will use the digital assets moved from the Custody Account to the Trading Account to repay the Trade Credits borrowed from the Trade Credit Lender.

#### Net Asset Value

The Trust's NAV per Share is calculated by taking the current value of its total assets, subtracting any liabilities, and dividing that total by the number of Shares. The

assets of the Trust will consist of the Index Constituents, cash and cash equivalents. The Sponsor has the exclusive authority to determine the Trust's NAV, which it has delegated to the Administrator.

The Administrator of the Trust calculates the NAV once each Business Day, as of the earlier of the close of the Nasdaq or 4:00 p.m. New York time.

The Administrator values the digital assets held by the Trust based on the Index Constituent Settlement Price, unless the prices are not available or the Administrator, in its sole discretion, determines that the Index Constituent Settlement Price is unreliable ("Fair Value Event"). In the instance of a Fair Value Event, the Trust's holdings may be valued on a temporary basis in accordance with the fair value policies approved by the Administrator.

In the instance of a Fair Value Event and pursuant to the Administrator's fair valuation policies and procedures, VWAP or Volume Weighted Median Prices ("VWMP") from another index administrator ("Secondary Index") will be utilized.

If a Secondary Index is also not available or the Administrator in its sole discretion determines the Secondary Index is unreliable, the price set by the Trust's principal market as of 4:00 p.m. ET, on the valuation date will be utilized. In the event the principal market price is not available or the Administrator in its sole discretion determines the principal market valuation is unreliable, the Administrator will use its best judgment to determine a good faith estimate of fair value. The Administrator identifies and determines the Trust's principal market (or in the absence of a principal market, the most advantageous market) for Index Constituents consistent with the application of fair

value measurement framework in FASB ASC 820-10.<sup>25</sup> The principal market is the market where the reporting entity would normally enter into a transaction to sell the asset or transfer the liability. The principal market must be available to and be accessible by the reporting entity. The reporting entity is the Trust.

If the Index Constituent Settlement Price is not used to determine the Trust's digital asset holdings, owners of the beneficial interests of Shares (the "Shareholders") will be notified in a prospectus supplement or on the Trust's website and, if this index change is on a permanent basis, a filing with the Commission under Rule 19b-4 of the Act will be required.

A Fair Value Event value determination will be based upon all available factors that the Sponsor or the Administrator deems relevant at the time of the determination and may be based on analytical values determined by the Sponsor or Administrator using third-party valuation models. Fair value policies approved by the Administrator will seek to determine the fair value price that the Trust might reasonably expect to receive from the current sale of that asset or liability in an arm's-length transaction on the date on which the asset or liability is being valued consistent with "Relevant Transactions".<sup>26</sup>

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<sup>25</sup> See FASB (Financial Accounting Standards Board) Accounting standards codification (ASC) 820-10. For financial reporting purposes only, the Trustee has adopted a valuation policy that outlines the methodology for valuing the Trust's assets. The policy also outlines the methodology for determining the principal market (or in the absence of a principal market, the most advantageous market) in accordance with FASB ASC 820-10.

<sup>26</sup> A "Relevant Transaction" is any crypto asset versus U.S. dollar spot trade that occurs during the observation window between 3:00 p.m. and 4:00 p.m. ET on a "Core Crypto Platform" in the BTC/USD and ETH/USD pair that is reported and disseminated by a Core Crypto Platform through its publicly available application programming interface and observed by the index administrator.

### Intraday Indicative Value

In order to provide updated information relating to the Trust for use by Shareholders and market professionals, the Sponsor has engaged an independent calculator to calculate an updated intraday indicative value (“IIV”). The IIV will be calculated by using the prior day’s closing NAV per Share of the Trust as a base and will be updated throughout the regular market session of 9:30 a.m. E.T. to 4:00 p.m. E.T. (the “Regular Market Session”) to reflect changes in the value of the Trust’s holdings during the trading day. For purposes of calculating the IIV, the Trust’s digital assets holdings will be priced using a real time version of the Index, the Nasdaq Crypto Index (“NCI”)<sup>27</sup>.

The IIV will be disseminated on a per Share basis every 15 seconds during the Exchange’s Regular Market Session and be widely disseminated by one or more major market data vendors during the Regular Market Session.<sup>28</sup>

### Digital Asset ETPs – Applicable Standard

The Commission has recently permitted ETPs to directly hold bitcoin and ether. The Exchange and the Sponsor applaud the Commission as these approvals mark a significant step forward in offering U.S. investors and traders transparent, exchange-listed products for expressing views on digital assets.

On January 10, 2024, the Commission issued an order granting approval for proposals to list certain bitcoin-based commodity trust and bitcoin-based trust units

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<sup>27</sup> The Nasdaq Crypto Index (Index symbol NCI) is calculated every second throughout a 24-hour trading day, seven days per week, using published, real-time bid and ask quotes for Index constituents observed on Core Crypto Platforms through the publicly available API. See [https://indexes.nasdaqomx.com/docs/methodology\\_NCI.pdf](https://indexes.nasdaqomx.com/docs/methodology_NCI.pdf).

<sup>28</sup> Several major market data vendors display and/or make widely available IIVs taken from the Consolidated Tape Association (“CTA”) or other data feeds.

(“Spot Bitcoin ETPs”).<sup>29</sup> In considering the Spot Bitcoin ETPs, the Commission determined in the Spot Bitcoin ETP Approval Order that the exchanges’ comprehensive surveillance-sharing agreement with the Chicago Mercantile Exchange (“CME”) – a U.S. regulated market whose bitcoin futures market is consistently highly correlated to spot bitcoin – could be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the proposals. The exchanges have comprehensive surveillance-sharing agreements with the CME via their common membership in the ISG, which facilitates the sharing of information that is available to the CME through its surveillance of its markets.

After reviewing the proposals for the Spot Bitcoin ETPs, the Commission found that they were consistent with the Act, including with Section 6(b)(5), and rules and regulations thereunder applicable to a national securities exchange, including the Exchange. The abovementioned Section 6(b)(5) requires, among other things, that the investment product is designed to “prevent fraudulent and manipulative acts and practices” and, “in general, to protect investors and the public interest.”

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<sup>29</sup> See Exchange Act Release No. 99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (Self-Regulatory Organizations; NYSE Arca, Inc.; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units) (the “Spot Bitcoin ETP Approval Order”).

The Commission's analysis<sup>30</sup> in the Spot Bitcoin ETP Approval Order also demonstrated that prices typically move in close, though not perfect, correlation<sup>31</sup> between the spot bitcoin market and the CME bitcoin futures market. Therefore, the Commission concluded that fraud or manipulation affecting spot bitcoin market prices would likely similarly impact CME bitcoin futures prices. Since the CME's surveillance can help detect these impacts on CME bitcoin futures prices, such surveillance can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the Spot Bitcoin ETPs proposals.

In the Spot Bitcoin ETP Approval Order, the Commission also stated that the Spot Bitcoin ETP proposals, similar to other spot commodity ETPs it has approved, are reasonably designed to ensure fair disclosure of information necessary for accurate share pricing, to prevent trading in the absence of sufficient transparency, to protect material nonpublic information related to the products' portfolios, and to maintain fair and orderly markets for the shares of the Spot Bitcoin ETPs.

A few months after the issuance of its Spot Bitcoin ETP Approval Order, the Commission issued on May 23, 2024 an approval order for proposals to list certain ether-based trusts ("Spot Ether ETPs").<sup>32</sup> The Commission also concluded in the Spot Ether

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<sup>30</sup> The robustness of the Commission's correlation analysis rests on the pre-requisites of (1) the correlations being calculated with respect to bitcoin futures that trade on the CME, a U.S. market regulated by the CFTC, (2) the lengthy sample period of price returns for both the CME bitcoin futures market and the spot bitcoin market, (3) the frequent intra-day trading data in both the CME bitcoin futures market and the spot bitcoin market over that lengthy sample period, and (4) the consistency of the correlation results throughout the lengthy sample period.

<sup>31</sup> Correlation should not be interpreted as an indicator of a causal relationship or whether one variable leads or lags the other.

<sup>32</sup> See Exchange Act Release No. 100224 (May 23, 2024), 89 FR 46937 (May 30, 2024) (Self-Regulatory Organizations; NYSE Arca, Inc.; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by



ETP Approval Order that the exchanges' comprehensive surveillance-sharing agreement with the CME, a U.S.-regulated market whose ether futures market is consistently highly correlated with spot ether, can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices within the context of the mentioned proposals.

As in the case of the Spot Bitcoin ETP Approval Order, in the Spot Ether ETP Approval Order, the Commission determined that the exchanges' comprehensive surveillance-sharing agreement with the CME ether futures market, which exhibits a consistent high correlation with spot ether, can reasonably be expected to assist in surveilling for fraudulent and manipulative practices in the specific context of the Spot Ether ETP proposals. Therefore, based on similar reasons to the Spot Bitcoin ETP Approval Order, the Commission approved the Spot Ether ETPs, stating that the proposals to list and trade those Spot Ether ETPs were also consistent with the requirements of the Act and the regulations applicable to a national securities exchange, in particular with Section 6(b)(5) and Section 11A(a)(1)(C)(iii) of the Act.

On December 19, 2024, the Commission issued an order granting approval for the listing and trading of shares of the Trust and the Franklin Crypto Index ETF. The order highlighted the consistency of the proposals with the requirements of the Act, particularly Section 6(b)(5) and Section 11A(a)(1)(C)(iii), which emphasize the prevention of fraudulent and manipulative practices and the maintenance of fair and orderly markets. The Commission's decision relied on the robust correlation analyses demonstrating the

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Amendments Thereto, to List and Trade Shares of Ether-Based Exchange-Traded Products) (the "Spot Ether ETP Approval Order").

high consistency between CME bitcoin and ether futures markets and their respective spot markets, and the SEC's determination that the exchanges' comprehensive surveillance-sharing agreement could reasonably be expected to assist in monitoring and deterring fraudulent activities, ensuring compliance with the Act and safeguarding investor interests.

In addition to the CME, Coinbase Derivatives, LLC ("Coinbase Derivatives") – similar to the CME, Coinbase Derivatives regulated by the Commodity Futures Trading Commission ("CFTC") and sharing ISG membership with Nasdaq – also lists futures contracts for digital assets beyond bitcoin and ether. Notably, the Coinbase Derivatives offers derivative products for three additional Index Constituents (as of the filing date): chainlink (LINK), litecoin (LTC), and avalanche (AVAX). This facilitates the sharing of information that is available to Coinbase Derivatives through its surveillance of its markets, including its surveillance of Coinbase Derivatives' LINK, LTC, and AVAX futures market. Nasdaq's ability to obtain information regarding trading in the LINK, LTC, and AVAX futures from other markets that are members of the ISG would assist Nasdaq in detecting and deterring misconduct.

The Sponsor acknowledges that the Index Constituents currently include minority positions in digital assets that are not bitcoin or ether. The Sponsor represents that no more than 10% of the weight of its digital asset holdings will consist of digital assets concerning which the Exchange may not be able to obtain information via the ISG or via a CSSA. For clarification purposes, in the aggregate, at least 90% of the weight of digital asset holding of the Trust shall, on both an initial and continuing basis, consist of

commodities and/or digital assets concerning which the Exchange is able to obtain information via the ISG from other members of the ISG or via a CSSA.

In the context of prior spot digital asset ETP proposal disapproval orders for bitcoin and ether, the Commission expressed concerns about the underlying digital asset market due to the potential for fraud and manipulation and has outlined the reasons why such ETP proposals have been unable to satisfy these concerns.<sup>33</sup> For purposes of the Trust's proposal, the Sponsor anticipates that the Commission may have the same concerns about digital assets other than bitcoin and ether.

The Commission has recognized that a listing exchange could demonstrate that other means to prevent fraudulent and manipulative acts and practices are sufficient to justify dispensing with the requisite surveillance-sharing agreement.<sup>34</sup> In evaluating the

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<sup>33</sup> See Securities Exchange Act Release Nos. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (SR-BatsBZX-2016-30) (Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To List and Trade Shares of the Winklevoss Bitcoin Fund) (the "Winklevoss Order"); 87267 (October 9, 2019), 84 FR 55382 (October 16, 2019) (SR-NYSEArca-2019-01) (Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the Bitwise Bitcoin ETF Fund Under NYSE Arca Rule 8.201-E) (the "Bitwise Order"); 88284 (February 26, 2020), 85 FR 12595 (March 3, 2020) (SR-NYSEArca-2019-39) (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) (the "Wilshire Phoenix Order"); 83904 (August 22, 2018), 83 FR 43934 (August 28, 2018) (SR-NYSEArca-2017-139) (Order Disapproving a Proposed Rule Change to List and Trade the Shares of the ProShares Bitcoin ETF and the ProShares Short Bitcoin ETF); 83912 (August 22, 2018), 83 FR 43912 (August 28, 2018) (SR-NYSEArca-2018-02) (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); 83913 (August 22, 2018), 83 FR 43923 (August 28, 2018) (SR-CboeBZX-2018-01) (Order Disapproving a Proposed Rule Change to List and Trade the Shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF).

<sup>34</sup> See Winklevoss Order, 84 FR at 37580, 37582-91; Bitwise Order, 84 FR at 55383, 55385-406; Wilshire Phoenix Order, 85 FR at 12597.

effectiveness of this type of resistance, the Commission does not apply a “cannot be manipulated” standard.

The Sponsor believes that a more diversified ETP, such as the proposed Trust, offers additional resistance to potential manipulation compared to single-asset or dual-asset ETPs, thereby enhancing the effectiveness of other measures designed to prevent fraudulent and manipulative acts and practices. By diversifying exposure across multiple digital assets, the Trust will reduce the impact that manipulation of a single constituent asset could have on the overall performance of the Trust. The inclusion of assets with differing liquidity profiles, trading volumes, and market dynamics further complicates any coordinated attempt to manipulate the Index as a whole. These structural safeguards, combined with the Exchange’s ability to monitor trading activity through the ISG and CSSAs, provide strong protection against market abuse and enhance the reliability of the Trust as an investment vehicle for U.S. investors.

Additionally, the Sponsor believes that the proposed rule to list and trade Shares of the Trust aligns with precedents established by the SEC for commodity-indexed ETPs. These precedents demonstrate that the trading rules and procedures governing ETPs, where up to 10% of the portfolio weight consists of assets whose principal trading market is not a member of the ISG or does not have a CSSA with the Exchange, are consistent with the Act.

In December 2007, the SEC approved the 19b-4 filing for the iShares S&P GSCI Commodity-Indexed Trust (“GSG”), which established an important precedent for index composition standards. The order states: “*A new component may be added to the Index if it does not constitute more than 10% of the weight of the index or, if it constitutes more*

*than 10% of the weight of the Index, then the principal trading market for such component either (a) is a member of ISG, or (b) has a comprehensive surveillance sharing agreement with the Exchange.”*<sup>35</sup>

This standard reflects the SEC’s emphasis on ensuring that markets for index components are sufficiently transparent and subject to effective regulatory oversight, particularly for components with substantial weightings in the index.

Building on the GSG precedent, the SEC approved the 19b-4 filing for the United States Commodity Index Fund (“USCI”) in July 2010. The SEC’s approval included a similar condition for monitoring trading markets and ensuring appropriate surveillance mechanisms. Specifically, the order states: *“With respect to Fund assets traded on exchanges, not more than 10% of the weight of such assets in the aggregate shall consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.”*<sup>36</sup>

This condition reinforced the SEC’s commitment to safeguarding the integrity of ETPs by limiting the exposure to markets without adequate surveillance. The proposed listing of the Trust incorporates protections consistent with the principles established in the GSG and USCI precedents. This ensures that the vast majority of the Trust’s portfolio remains subject to robust surveillance mechanisms, allowing the Exchange to monitor trading activity effectively and address potential risks to market integrity.

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<sup>35</sup> See Securities Exchange Act No. 56932 (December 7, 2007), 72 FR 71178 (December 14, 2007) (SR-NYSEArca-2007-112) at 71183.

<sup>36</sup> See Securities Exchange Act No. 62527 (July 19, 2010), 75 FR 43606 (July 26, 2010) (SR-NYSEArca-2010-44) at 43609.

By maintaining this 90% threshold, the Sponsor believes that this proposal is consistent with the requirements of the Act. The Sponsor believes that the 10% limit ensures that the Trust adheres to a high standard of investor protection while accommodating the evolving nature of the crypto asset market. This approach aligns with the SEC's historical approval of commodity-indexed ETPs and promotes public interest by fostering fair and orderly markets.

Furthermore, the Sponsor believes the Trust's use of the reference prices provided by the Calculation Agent to value the Trust's holdings ("Reference Prices") and to determine NAV and IIV for the Trust, in tandem with the Trust's cash create and redeem structure represents a novel means to prevent fraud and manipulation from impacting the price of the Shares, by offering protections beyond those that exist in traditional commodity markets and consistent with those that exist in equity markets.

The Sponsor believes that its use of Reference Prices accomplishes these objectives in the following ways:

- (1) The Calculation Agent calculates the Reference Prices for the Index Constituents exclusively through trading activity on spot digital asset trading platforms that are Core Crypto Platforms.
- (2) The Reference Prices are calculated by the Calculation Agent, which is under the UK Benchmarks Regime.<sup>37</sup>

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<sup>37</sup> The "UK Benchmarks Regime" refers to the regulatory framework governing the administration, use, and oversight of financial benchmarks in the United Kingdom. Following the UK's withdrawal from the European Union, the regime is based on the UK Benchmarks Regulation (UK BMR), which closely aligns with the EU Benchmarks Regulation (EU BMR) but is independently supervised by the UK Financial Conduct Authority (FCA). The regime establishes standards and requirements for benchmark administrators to ensure the integrity, transparency, and reliability of benchmarks used in financial markets.

Finally, the Sponsor believes that the cash creation and redemption structure of the Trust also underscores the protections that the Reference Prices afford to the Trust. The Trust's Shares will have their NAV and IIV determined by the Reference Prices and because all Shares in the Trust will be created and redeemed with cash (not physical digital assets), any attempts to manipulate Shares would have to involve transactions on the spot trading platforms that are Core Crypto Platforms to be able to influence the price of the Shares.

Although the Trust is adopting a new strategy of investing in a more diversified basket of crypto assets, the Exchange and the Sponsor believe that the proposed rule change will add value to the U.S. market.

#### Availability of Information

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the prior Business Day's NAV per Share; (b) the prior Business Day's Nasdaq official closing price; (c) calculation of the premium or discount of such Nasdaq official closing price against such NAV per Share; (d) data in chart form displaying the frequency distribution of discounts and premiums of the Nasdaq official closing price against the NAV per Share, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (e) the prospectus; and (f) other applicable quantitative information. The Administrator will also disseminate the Trust's holdings on a daily basis on the Trust's website. The NAV per Share for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. Quotation and last sale

information regarding the Shares will be disseminated through the facilities of the relevant securities information processor.

An estimated value that reflects an estimated IIV will also be disseminated. For more information on the IIV, including the calculation methodology, see “Intraday Indicative Value” above. The IIV disseminated during the Regular Market Session should not be viewed as an actual real time update of the NAV per Share, 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 Regular Market Session by one or more major market data vendors. In addition, the IIV will be available through online information services.

Quotation and last sale information for Index Constituents is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters. Information relating to trading, including price and volume information for Index Constituents, is available from major market data vendors and from the platforms on which such digital assets are traded. Depth of book information is also available from such crypto platforms. The normal trading hours for the digital asset platforms are 24 hours per day, 365 days per year.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services. Information regarding the previous day’s closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.



Initial and Continued Listing

The Shares will be subject to proposed Nasdaq Rule 5712, which sets forth the initial and continued listing criteria applicable to Commodity- and/or Digital Asset-Based Investment Interests Shares. A minimum of 40,000 Shares, or the equivalent of four Baskets, will be required to be outstanding at the time of commencement of trading on the Exchange. Upon termination of the Trust, the Shares will be removed from listing.

The trading of the Shares will be subject to proposed Nasdaq Rule 5712(i), which sets forth certain restrictions on registered Market Makers in Commodity- and/or Digital Asset-Based Investment Interests to facilitate surveillance. As required in Nasdaq Rule 5712(i), the Exchange notes that any registered 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 that the Market Maker may have or over which it may exercise investment discretion in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives; an underlying digital asset, related digital asset futures or options on digital asset futures, or any other related digital asset derivatives; or an underlying series of derivative securities products, related futures or options on such derivative securities products, or any other related derivatives of such derivative securities products. No Market Maker in Commodity- and/or Digital-Asset Based Investment Interests shall trade in a commodity or any related derivative in an account that the Market Maker (1) directly or indirectly controls trading activities or has a direct interest in the profits or losses thereof, (2) is required by this rule to disclose to the Exchange, and (3) has not reported to the Exchange. In addition to the existing obligations under Exchange rules regarding the production of books and records,

the Market Maker in Commodity- and/or Digital Asset-Based Investment Interests shall make available to the Exchange such books, records, or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity, as may be requested by the Exchange.

The Exchange is able to obtain information regarding trading in the Shares and the underlying digital assets, or any other digital assets derivative through members acting as registered Market Makers, in connection with their proprietary or customer trades.

As a general matter, the Exchange has regulatory jurisdiction over its Members, and their associated persons. The Exchange also has regulatory jurisdiction over any person or entity controlling a Member, as well as a subsidiary or affiliate of a Member that is in the securities business. A subsidiary or affiliate of a Member that does business only in commodities would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory or self-regulatory organizations of which such subsidiary or affiliate is a member.

#### 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. ET. 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 5712 and will comply with the requirements of Rule 10A-3 of the Act.

#### 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 (10) 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 Index Constituents underlying the Shares; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

If the IIV or the value of the Index 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 Index occurs. If the interruption to the dissemination of the IIV or the value of the Index persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

In addition, if the Exchange becomes aware that the NAV per Share 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 per Share 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. The surveillance program includes real-time patterns for price and volume movements and post-trade surveillance patterns (e.g., spoofing, marking the close, pinging, phishing).

Trading of Shares on the Exchange will be subject to the Exchange's surveillance program for derivative products, as well as cross-market surveillances administered by FINRA, on behalf of the Exchange pursuant to a regulatory services agreement, which are also designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

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.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and Index Constituents' derivatives with other markets and other entities that are members of the ISG,<sup>38</sup> and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and Index Constituents' derivatives from such markets and other entities. The Exchange also may obtain information regarding trading in the Shares and Index Constituents' derivatives via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a CSSA.

#### Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an information circular ("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 creations and redemptions of Shares in Baskets (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 and NAV is disseminated; (4) the risks involved in trading the Shares during the pre-market and postmarket sessions when an updated IIV will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly

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<sup>38</sup> For a list of the current members and affiliate members of ISG, see <https://isgportal.org/public-members>. The Exchange notes that not all Index Constituents may trade on markets that are members of ISG or with which the Exchange has in place a CSSA, but that, consistent with proposed Rule 5712(e)(1)(ii), at least 90% of the Trust's commodity and/or digital asset holdings will consist of commodities and/or digital assets for which the Exchange may obtain information via the ISG from other members or affiliates of the ISG or for which the principal market is a market with which the Exchange has a CSSA.

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.

The Information Circular will also reference the fact that there is no regulated source of last sale information regarding the Index Constituents, that the Commission has no jurisdiction over the trading of the Index Constituents as commodities or digital assets.

Additionally, the Information Circular will reference that the Trust is subject to various fees and expenses described in the 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 publicly available on the Trust's website.

b. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>39</sup> that an exchange has rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that proposed Rule 5712 is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading of Commodity- and/or Digital Asset-Based Investment Interests provide specific initial and continued listing criteria required to be met by such securities.

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<sup>39</sup> 15 U.S.C. 78f(b)(5).

Proposed Rule 5712(a) provides that the Exchange will file separate proposals under Rule 19(b) of the Act before the listing and trading of Commodity- and/or Digital Asset- Based Investment Interests. All statements or representations contained in such rule filing regarding (a) the description of the index, portfolio, or reference asset, (b) limitations on index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements. If an issue of Commodity- and/or Digital Asset-Based Investment Interests does not satisfy these requirements, the Exchange may halt trading in the securities and will initiate delisting proceedings under the Rule 5800 Series.

Proposed Rule 5712(e) sets forth initial and continued listing criteria applicable to Commodity- and/or Digital Asset-Based Investment Interests. Proposed Rule 5712(e)(1)(i) provides that, for each series of Commodity- and/or Digital Asset-Based Investment Interests, the Exchange will establish a minimum number of Commodity- and/or Digital Asset-Based Investment Interests required to be outstanding at the time of commencement of trading on the Exchange. Proposed Rule 5712(e)(1)(ii) provides that in the aggregate, at least 90% of the weight of the commodity and/or digital asset holdings of a series of Commodity- and/or Digital Asset-Based Investment Interests shall, on both an initial and continuing basis, consist of commodities and/or digital assets for which the Exchange may obtain information pursuant to its ISG membership or for which the principal market is a market with which the Exchange has a CSSA. In addition, proposed Rule 5712(e)(2) provides that the Exchange will maintain surveillance

procedures for securities listed under proposed Rule 5712 and sets forth the circumstances under which the Exchange would consider the suspension of trading in and delisting under the Rule 5800 Series of a series of Commodity- and/or Digital Asset-Based Investment Interests.

With respect to proposed Rule 5712, the Exchange believes that the proposed rule change is designed 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 because Commodity- and/or Digital Asset-Based Investment Interests listed and traded pursuant to proposed Rule 5712 would be substantially similar to Commodity-Based Trust Shares listed and traded pursuant to current Rule 5711(d). Commodity- and/or Digital Asset-Based Investment Interests differ from Commodity-Based Trust Shares only in that Commodity- and/or Digital Asset-Based Investment Interests could be issued, as a proposed, by a trust, limited liability company, or other similar entity (rather than only by a trust), and in that Commodity- and/or Digital Asset-Based Investment Interests could be based, as proposed, on underlying commodities, digital assets (provided that at least 90% of commodity and/or digital asset holdings are those concerning which the Exchange may obtain information via the ISG from other members of the ISG or via CSSA), and/or derivative securities products. The Exchange believes this additional flexibility with respect to the structure of the entity issuing Commodity- and/or Digital Asset-Based Investment Interests and the holdings underlying such securities would remove impediments to and perfect the mechanism of a free and open market, as well as promote competition, by promoting the listing and trading of a new type of ETP, to the benefit of all market participants. The Exchange further believes



that the proposed requirement that at least 90% of any commodity and/or digital asset holdings are those concerning which the Exchange may obtain information via the ISG from other members of the ISG or via a CSSA would remove impediments to and perfect the mechanism of a free and open market, as well as protect investors and the public interest, because it would offer flexibility to issuers of series of Commodity- and/or Digital Asset-Based Investment Interests, to the benefit of investors, while facilitating information sharing among market participants regarding the vast majority of any commodities and/or digital assets underlying series of Commodity- and/or Digital Asset-Based Investment Interests. As noted above, this requirement is based on a similar provision approved by the Commission in 5735(b)(1)(D)(i) regarding Managed Fund Shares.

The Exchange also believes that the proposed addition of Commodity- and/or Digital Asset-Based Investment Interests in Rule 5615(a)(6)(B)'s definition of Derivative Securities, which are exempt from the enumerated corporate governance requirements in Rule 5615(a)(6)(A), would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system by holding Commodity- and/or Digital Asset-Based Investment Interests to the same exemptions currently applicable to other ETPs (including Commodity-Based Trust Shares). The Exchange similarly believes that adding references to Commodity- and/or Digital Asset-Based Investment Interests to Equity 4, Rule 4120(a)(9) and Equity 4, Rule 4120(b)(4)(A), each as discussed above, will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system by holding Commodity- and/or Digital Asset-

Based Investment Interests to the same halt provisions currently applicable to other ETPs (including Commodity-Based Trust Shares).

With respect to the proposed listing and trading of the Shares, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria set forth in proposed Nasdaq Rule 5712. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and Index Constituents' derivatives with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and Index Constituents' derivatives from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and listed Index Constituents' derivatives via the ISG, from other exchanges that are members or affiliates of ISG, or with which the Exchange has in place a CSSA. The Exchange is also able to obtain information regarding trading in the Shares and Index Constituents' derivatives through Members, in connection with such Members' proprietary or customer trades which they effect on any relevant market. 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.

Trading in Shares of the Trust will be halted if the circuit breaker parameters have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market.

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 Shares that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

In the Spot Bitcoin ETP Approval Order and the Spot Ether ETP Approval Order, the Commission concluded that the proposing exchanges' CSSA with the CME – a U.S. regulated market – whose bitcoin and ether futures market is consistently highly correlated to spot bitcoin and spot ether, respectively - could be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the proposals.

The proposed rule change is also designed to prevent fraudulent and manipulative acts and practices because the Trust is structured similarly to and will operate in materially the same manner as the Spot Bitcoin ETPs and Spot Ether ETPs previously

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

In addition, Coinbase Derivatives offers trading in LINK, LTC, and AVAX futures. Nasdaq has a comprehensive surveillance-sharing agreement with Coinbase Derivatives via its common membership in ISG, which facilitates the sharing of information that is available to Coinbase Derivatives through its surveillance of its markets, including its surveillance of Coinbase Derivatives' LINK, LTC, and AVAX futures market. Similar to the Spot Bitcoin and Spot ETH ETPs previously approved by the SEC, Nasdaq's ability to obtain information regarding trading in these futures products from other markets that are members of the ISG would assist Nasdaq in detecting and deterring misconduct.

The GSG and USCI Orders provide further context for products with diversified holdings, where a majority of the assets are subject to surveillance mechanisms. In the GSG Order, the Commission approved an ETP on condition that no more than 10% of the index's weight could consist of assets whose principal trading market was not a member

of the ISG or lacked a CSSA with the Exchange. Similarly, the USCI Order established a similar standard, requiring that at least 90% of the fund's portfolio consist of assets traded on markets with ISG or CSSA arrangements. These orders demonstrate that a majority of assets subject to surveillance are sufficient to mitigate manipulation risks, even when a limited portion of the portfolio is not covered by a surveillance-sharing agreement.

Consequently, this Trust, which primarily invests in bitcoin and ether but may include up to 10% of its assets in other digital assets that do not have surveillance-sharing agreements in place, is consistent with the principles of these approved products. While the majority of the Trust's holdings will consist of bitcoin and ether, the inclusion of up to 10% of other digital assets reflects a balanced approach that maintains robust oversight while offering diversified exposure. CME's bitcoin futures market and ether futures market are highly, though not perfectly, correlated with the spot bitcoin market and the spot ether market, respectively. As such, surveillance of CME's bitcoin futures market and ether futures market can reasonably be expected to assist in surveilling for fraudulent and manipulative acts and practices in the context of the majority of this Trust's portfolio.

For the remaining assets, diversification across multiple digital assets and the 10% limitation reduce the potential for market manipulation, providing additional safeguards within the framework of this proposal.

As noted above, the Reference Prices for the Index Constituents are calculated by the Calculation Agent based exclusively on trading activity at the Core Crypto Platforms, each of which must meet robust eligibility criteria designed to protect the Reference Prices against fraud and manipulation. The layers of defense provided by the Trust's use

of Reference Prices to calculate NAV, in conjunction with the Trust's use of cash creations and redemptions, constitute a novel means to detect, prevent, and respond to fraud, attempted fraud, and similar wrongdoing, including market manipulation, consistent with the requirements of the Act. The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a CSSA for at least 90% of the Trust's commodity and/or digital asset holdings. In addition, as noted above, investors will have ready access to information regarding the Trust's NAV, IIV, and quotation and last sale information for the Shares.

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

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of the Shares, which are Commodity- and/or Digital Asset-Based Investment Interests Shares and that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period specified in Section 19(b)(2) of the Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
5. Text of the proposed rule change.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2025-016)

February \_\_, 2025

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to List and Trade Shares of the Hashdex Nasdaq Crypto Index US ETF Under New Nasdaq Rule 5712

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 27, 2025, 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, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to adopt new Nasdaq Rule 5712 to provide for the listing and trading of Commodity- and Digital Asset-Based Investment Interests, which are securities issued by a trust, limited liability company, or other similar entity that holds specified commodities, digital assets, derivative securities products, and/or cash. The Exchange also proposes to list and trade shares of the Hashdex Nasdaq Crypto Index US ETF (the “Trust”) under proposed Nasdaq Rule 5712. This Amendment No. 1 supersedes the original filing in its entirety.

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

<sup>2</sup> 17 CFR 240.19b-4.



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

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

In its filing with the Commission, the 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 Exchange proposes to adopt new Rule 5712 to provide for the listing and trading of Commodity- and Digital Asset-Based Investment Interests, which are securities issued by a trust, limited liability company, or other similar entity that holds specified commodities, digital assets, derivative securities products, and/or cash. The Exchange also proposes to list and trade Shares of the Trust under proposed Rule 5712.

The units of the Trust are referred to herein as the "Shares."<sup>3</sup> The Commission approved the listing and trading of the Shares of the Trust under Nasdaq Rule 5711(d)<sup>4</sup>

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<sup>3</sup> The Shares are listed under the ticker symbol "NCIQ."

<sup>4</sup> Nasdaq Rule 5711(d) governs the listing and trading of Commodity-Based Trust Shares, which means a security (1) that is issued by a trust that holds (a) a specified commodity deposited with the trust, or (b) a specified commodity and, in addition to such specified commodity, cash; (2) that is issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity and/or cash; and (3) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity and/or cash. See Nasdaq Rule 5711(d)(iv)(A).

on December 19, 2024.<sup>5</sup> This proposal aims to amend representations regarding the investment objective and strategy of the Trust made in the Hashdex Original Filing, and to list and trade the Shares pursuant to proposed Rule 5712. This proposal will supersede the Hashdex Original Filing in its entirety. The Hashdex Original Filing will remain in effect until this proposal is approved by the Commission, at which time the Exchange will transfer the Trust from its current listing standards under Rule 5711(d) into the new listing standards under proposed Rule 5712, and the Trust can implement its amended investment strategy described in this proposal upon such approval.

#### Proposed Listing Rules

Proposed Rule 5712(a) provides that the Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Commodity- and/or Digital Asset-Based Investment Interests that meet the criteria of this rule. The Exchange will file separate proposals under Section 19(b) of the Act before trading, either by listing or pursuant to unlisted trading privileges, Commodity- and/or Digital Asset-Based Investment Interests. All statements or representations contained in such rule filing regarding (a) the description of the index, portfolio, or reference asset, (b) limitations on index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such

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<sup>5</sup> See Securities Exchange Act Release No. 101998 (December 19, 2024), 89 FR 106707 (December 30, 2024) (SR-NASDAQ-2024-028; SR-CboeBZX-2024-091). See also Securities Exchange Act Release Nos. 101218 (Sept. 30, 2024), 89 FR 80970 (Oct. 4, 2024) (SR-NASDAQ-2024-028) (“Amendment No. 1”); and 102309 (January 29, 2025), 90 FR 8961 (February 4, 2025) (SR-NASDAQ-2025-006). SR-NASDAQ-2025-006 updated certain representations made in Amendment No. 1 relating to the service providers and the basket size of the Hashdex Nasdaq Crypto Index US ETF. Amendment No. 1, as amended by SR-NASDAQ-2025-006, will hereinafter be referred to as the “Hashdex Original Filing.”

continued listing requirements. If an issue of Commodity- and/or Digital Asset-Based Investment Interests does not satisfy these requirements, the Exchange may halt trading in the securities and will initiate delisting proceedings under the Rule 5800 Series.

Proposed Rule 5712(b) provides that this rule is applicable only to Commodity- and/or Digital Asset-Based Investment Interests. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the provisions of the Bylaws and all other rules and procedures of the Board shall be applicable to the trading on the Exchange of such securities. Commodity- and/or Digital Asset-Based Investment Interests are included within the definition of “security” or “securities” as such terms are used in the Bylaws and Rules of the Exchange.

Proposed Rule 5712(c)(1) defines a Commodity- and/or Digital Asset-Based Investment Interest as a security (a) that is issued by a trust, limited liability company, or other similar entity (the “Fund”) that holds (1) specified commodities and/or digital assets deposited with the Fund, or (2) specified commodities and/or digital assets and, in addition to such specified commodities and/or digital assets, derivative securities products (i.e., securities that meet the definition of “derivative securities product” in Rule 19b-4(e) under the Act) deposited with the Fund and/or cash; (b) that is issued by such Fund in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity(ies), digital asset(s), derivative securities products, and/or cash; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder’s request by such Fund which will deliver to the redeeming holder the quantity of the underlying commodity(ies), digital asset(s), derivative securities products, and/or cash.

Proposed Rule 5712(c)(2) provides that the term “commodity,” as used in this rule, means commodities as defined in Section 1a(9) of the Commodity Exchange Act.

Proposed Rule 5712(c)(3) defines the term “digital asset,” for purposes of this rule, as any digital representation of value recorded on a cryptographically secured, distributed ledger (i.e., blockchain) or similar technology.

Proposed Rule 5712(d) provides that the Exchange may trade, either by listing or pursuant to unlisted trading privileges, Commodity- and/or Digital Asset-Based Investment Interests based on an underlying commodity(ies), digital asset(s), and/or derivative securities products. Each issue of a Commodity- and/or Digital Asset-Based Investment Interest shall be designated as a separate series and shall be identified by a unique symbol.

Proposed Rule 5712(e)(1) sets forth initial listing criteria for Commodity- and/or Digital Asset-Based Investment Interests. Proposed Rule 5712(e)(1)(i) provides that the Exchange will establish a minimum number of Commodity- and/or Digital Asset-Based Investment Interests required to be outstanding at the time of commencement of trading on the Exchange. Proposed Rule 5712(e)(1)(ii) provides that there shall be no limitation on the percentage of a Fund’s portfolio that may be invested in commodity and/or digital asset holdings, except that, in the aggregate, at least 90% of the weight of such holdings shall, on both an initial and continuing basis, consist of commodities and/or digital assets concerning which the Exchange is able to obtain information via the Intermarket Surveillance Group (“ISG”) from other members of the ISG or via a comprehensive surveillance sharing agreement (“CSSA”).

Proposed Rule 5712(e)(2) and subparagraphs (i) through (viii) thereunder set forth continued listing criteria for Commodity- and/or Digital Asset-Based Investment Interests. Proposed Rule 5712(e)(2) provides that the Exchange will maintain surveillance procedures for securities listed under this rule and will consider the suspension of trading in, and will initiate delisting proceedings under the Rule 5800 Series of, such series under any of the following circumstances:

- if, following the initial twelve-month period following commencement of trading on the Exchange of Commodity- and/or Digital Asset-Based Investment Interests, the Fund has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Commodity- and/or Digital Asset-Based Investment Interests (proposed Rule 5712(e)(2)(i));
- if, following the initial twelve-month period following commencement of trading on the Exchange of Commodity- and/or Digital Asset-Based Investment Interests, the Fund has fewer than 50,000 securities issued and outstanding (proposed Rule 5712(e)(2)(ii));
- if, following the initial twelve-month period following commencement of trading on the Exchange of Commodity- and/or Digital Asset-Based Investment Interests, the market value of all securities issued and outstanding is less than \$1,000,000 (proposed Rule 5712(e)(2)(iii));
- if the value of the underlying commodity(ies) and/or digital asset(s) is no longer calculated or available on at least a 15-second delayed basis from a

source unaffiliated with the sponsor, Fund, custodian or the Exchange  
(proposed Rule 5712(e)(2)(iv));

- if the intraday indicative value is no longer made available on at least a 15-second delayed basis (proposed Rule 5712(e)(2)(v));
- if any of the continued listing requirements set forth in this Rule 5712 are not continuously maintained (proposed Rule 5712(e)(2)(vi));
- if the Exchange submits a rule filing pursuant to Section 19(b) of the Act to permit the listing and trading of a series of Commodity and/or Digital Asset-Based Investment Interests and any of the statements or representations regarding (a) the description of the index, portfolio, or reference asset, (b) limitations on index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing are not continuously maintained (proposed Rule 5712(e)(2)(vii)); or
- if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable (proposed Rule 5712(e)(2)(viii)).

Proposed Rule 5712(e)(3) and the subparagraphs thereunder set forth certain requirements specific to Commodity- and/or Digital Asset-Based Investment Interests issued by a trust. Proposed Rule 5712(e)(3)(i) provides that the stated term of a trust shall be as stated in the trust prospectus; however, a trust may be terminated under such earlier circumstances as may be specified in the trust prospectus. In addition, a trust may terminate in accordance with the provisions of the trust prospectus, which may provide for termination if the value of the trust falls below a specified amount. Proposed Rule

5712(e)(3)(ii) provides for the following requirements on an initial and continued listing basis: (1) that the trustee of a trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business, and that, in cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee; and (2) that no change is to be made in the trustee of a listed issue without prior notice to and approval of the Exchange.

Proposed Rule 5712(f) provides that, upon termination of a Fund issuing securities pursuant to Rule 5712, the Exchange requires that Commodity- and/or Digital Asset-Based Investment Interests issued in connection with the Fund be removed from Exchange listing.

Proposed Rule 5712(g) provides that voting rights shall be as set forth in the applicable prospectus of the Fund issuing Commodity- and/or Digital Asset-Based Investment Interests.

Proposed Rule 5712(h) provides that neither the Exchange nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any underlying commodity value, the current value of the underlying commodity required to be deposited to the Fund in connection with issuance of Commodity- and/or Digital Asset-Based Investment Interests; resulting from any negligent act or omission by the Exchange, or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange, its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government;

communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in an underlying commodity.

Proposed Rule 5712(i) provides that a registered Market Maker<sup>6</sup> in Commodity- and/or Digital Asset-Based Investment Interests must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading that the Market Maker may have or over which it may exercise investment discretion in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives; an underlying digital asset, related digital asset futures or options on digital assets, or any other related digital asset derivatives; or an underlying series of derivative securities products, related future or options on such derivative securities products, or any other related derivatives of such derivative securities products. No Market Maker in Commodity- and/or Digital-Asset Based Investment Interests shall trade in a commodity, or any related derivative in an account that the Market Maker (1) directly or indirectly controls trading activities or has a direct interest in the profits or losses thereof, (2) is required by this rule to disclose to the Exchange, and (3) has not reported to the Exchange.

In addition to the existing obligations under Exchange rules regarding the production of books and records, the Market Maker in Commodity- and/or Digital Asset Based Investment Interests shall make available to the Exchange such books, records, or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the

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<sup>6</sup> “Market Maker” means a dealer that, with respect to a security, holds itself out (by entering quotations in the Nasdaq Market Center) as being willing to buy and sell such security for its own account on a regular and continuous basis and that is registered as such. See Rule 5005(a)(25).



underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity, as may be requested by the Exchange.

Finally, the Exchange proposes to include the following commentary to Rule 5712. Proposed Commentary .01 provides that Exchange members (“Members”) shall provide to all purchasers of newly issued Commodity- and/or Digital Asset-Based Investment Interests a prospectus for the series of Commodity- and/or Digital Asset-Based Investment Interests. Proposed Commentary .02 provides that transactions in Commodity- and/or Digital-Asset Based Investment Interests will occur during the trading hours specified in Equity 4, Rule 4120.

The Exchange also proposes to amend its existing rules to add references to Commodity- and/or Digital Asset-Based Investment Interests, which are intended to align the treatment of the proposed interests with how Commodity-Based Trust Shares are treated under Exchange’s rules. Specifically, the Exchange proposes to amend Rule 5615(a)(6)(B) to include Commodity- and/or Digital Asset-Based Investment Interests listed pursuant to proposed Rule 5712 in the definition of “Derivative Securities” such that Commodity- and/or Digital Asset-Based Investment Interests are among the Derivative Securities that are exempt from the enumerated corporate governance requirements in Rule 5615(a)(6)(A).<sup>7</sup>

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<sup>7</sup> Rule 5615(a)(6)(A) provides that issuers whose only securities listed on Nasdaq are non-voting preferred securities, debt securities or Derivative Securities, are exempt from the requirements relating to Independent Directors (as set forth in Rule 5605(b)), Compensation Committees (as set forth in Rule 5605(d)), Director Nominations (as set forth in Rule 5605(e)), Codes of Conduct (as set forth in Rule 5610), and Meetings of Shareholders (as set forth in Rule 5620(a)). In addition, these issuers are exempt from the requirements relating to Audit Committees (as set forth in Rule 5605(c)), except for the applicable requirements of SEC Rule 10A-3. Notwithstanding, if the issuer also lists its common stock or voting preferred stock, or their equivalent on Nasdaq it will be subject to all the requirements of the Nasdaq 5600 Rule Series.

In addition, the Exchange proposes to amend Equity 4, Rule 4120(a)(9) to add Commodity- and/or Digital Asset-Based Investment Interests to the list of exchange-traded products (“ETPs”) (including Commodity-Based Trust Shares) in which the Exchange may halt trading. The Exchange also proposes to amend Equity 4, Rule 4120(b)(4)(A) to add Commodity- and/or Digital Asset-Based Investment Interests in the definition of “Derivative Securities Product”<sup>8</sup> to make clear that this new ETP type will also be subject to the Exchange’s authority to halt pursuant to Rule 4120(a)(10).

Commodity- and/or Digital Asset-Based Investment Interests listed and traded pursuant to proposed Rule 5712 would be substantially similar to Commodity-Based Trust Shares listed and traded pursuant to current Rule 5711(d), with two main differences. First, whereas Commodity-Based Trust Shares are issued by a trust, Commodity- and/or Digital Asset-Based Investment Interests could be issued, as proposed, by a trust, limited liability company, or other similar entity. Second, whereas Commodity-Based Trust Shares are based on an underlying commodity only, the Exchange proposes that Commodity- and/or Digital Asset-Based Investment Interests could be based on an underlying commodity or commodities, as well as digital assets and derivative securities products.<sup>9</sup> The Exchange believes this flexibility with respect to the structure of the entity issuing Commodity- and/or Digital Asset-Based Investment Interests and the holdings underlying such securities would benefit both issuers and the investing public and would facilitate the availability of a new type of ETP.

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<sup>8</sup> As set forth in Rule 4120(b)(4)(A), Derivative Securities Product currently includes Commodity-Based Trust Shares.

<sup>9</sup> The Exchange notes that the requirement set forth in proposed Rule 5712(c)(1) regarding digital asset holdings is based on a similar provision set forth in current Rule 5735 regarding Managed Fund Shares. See Rule 5735(b)(1)(D)(i).

### The Trust

The Trust is managed and controlled by the Hashdex Asset Management Ltd. (“Sponsor”) and administered by U.S. Bancorp Fund Services, LLC (the “Administrator”). The Shares are registered with the SEC by means of the Trust's registration statement on Form S-1 (the “Registration Statement”).<sup>10</sup>

The Shares are issued by the Trust, a Delaware statutory trust established by the Sponsor. The Trust is operating pursuant to the rules and guidelines set forth in the Trust agreement (“Trust Agreement”). The Trust issues Shares representing fractional undivided beneficial interests in its net assets. The Trust is neither an investment company registered under the Investment Company Act of 1940, as amended (the “1940 Act”), nor a commodity pool under the Commodity Exchange Act.

U.S. Bancorp Fund Services, LLC is the transfer agent for the Trust (“Transfer Agent”). U.S. Bank, N.A. holds the Trust's cash and/or cash equivalents<sup>11</sup> (“Cash Custodian”). Coinbase Custody Trust Company, LLC and BitGo Trust Company, Inc. are the custodians of the Trust's digital assets (“Crypto Custodians”, and together with the Cash Custodian, the “Custodians”).<sup>12</sup>

### The Trust's Investment Objective

The investment objective of the Trust will be to ensure that the daily changes in the net asset value (“NAV”) of the Shares correspond to the daily changes in the price of

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<sup>10</sup> On February 7, 2025, the Trust filed with the Commission a Registration Statement on Form S-1 under the Securities Act of 1933 (15 U.S.C. 77a). The description of the operation of the Trust herein is based, in part, on the most recent Registration Statement.

<sup>11</sup> “Cash equivalents” are limited to short-term treasury bills (90 days or less to maturity), money market funds, and demand deposit accounts.

<sup>12</sup> The Trust may engage additional custodians for its digital assets, each of whom may be referred to as a Crypto Custodian. The Trust may also remove or change current Crypto Custodians, provided that there is at least one Crypto Custodian at all times.

the Nasdaq Crypto Settlement Price Index,<sup>13</sup> NCIS (the “NCIS” or “Index”), less expenses and liabilities of the Trust, by investing in the digital asset constituents of the Index (“Index Constituents”).

The Shares are designed to provide a straightforward means of obtaining price exposure to the Index Constituents, as opposed to direct acquisition, holding, and trading of digital assets on a peer-to-peer or other basis or via a digital asset platform. The Shares have been designed to remove the obstacles represented by the complexities and operational burdens involved in a direct investment in digital assets, while at the same time having an intrinsic value that reflects, at any given time, the investment exposure to the Index Constituents held by the Trust at such time, less the Trust’s expenses and liabilities. The Shares provide investors with an alternative method of accessing the digital asset markets through the public securities market.

The Trust gains exposure to the Index Constituents by buying spot digital assets. The Trust maintains cash and/or cash equivalent balances to the extent it is necessary to cover currently due Trust-payable expenses.

If there are no Share redemption orders or currently due Trust-payable expenses, the Trust’s portfolio is expected to consist of solely of Index Constituents, except that the Sponsor may, at its sole discretion, exclude a specific Index Constituent under certain circumstances further described below. The Trust does not invest in any other spot digital asset besides the Index Constituents. The Trust does not invest in tokenized assets

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<sup>13</sup> See <https://indexes.nasdaqomx.com/docs/Nasdaq%20Crypto%20Indexes%20Methodology.pdf>.

or stablecoins. As of December 31, 2024, the Index Constituents and their weightings<sup>14</sup> were as follows:

<b>Constituents</b>	<b>Weight</b>
Bitcoin (BTC)	72.70%
Ether (ETH)	14.48%
Solana (SOL)	4.78%
XRP Ledger (XRP)	5.02%
Cardano (ADA)	1.50%
Chainlink (LINK)	0.51%
Avalanche (AVAX)	0.37%
Litecoin (LTC)	0.37%
Uniswap (UNI)	0.27%

The weighting of each Index Constituent in the Trust's portfolio is generally expected to match the weighting of the Index Constituents in the Index, except when the Sponsor determines to exclude or limit the weight of one or more digital assets from the Trust's portfolio in the rules-based circumstances set forth below. In such cases, the weightings of the digital assets held by the Trust are generally expected to be calculated proportionally to the respective Index Constituents for the remaining Index Constituents.

The Sponsor may, at its discretion, exclude or limit the weighting of Index Constituents in the Trust's portfolio under the following circumstances:

- (1) The inclusion or projected weighting of a digital asset could, in the Sponsor's sole judgment, result in the Trust being required to register as an investment

<sup>14</sup> The Index Constituents will be weighted according to their relative free float market capitalizations, as described in the next section "The Trust's Benchmark".

company under the Investment Company Act or require the Sponsor to register as an investment adviser under the Investment Advisers Act of 1940;

- (2) None or few of the authorized participants or service providers have the ability to trade or otherwise support the asset in a way that impacts the Trust operations;
- (3) The Sponsor determines, based on available guidance, that the use or trading of the digital asset raises, or is likely to raise, significant governmental, policy, or regulatory concerns or is subject to, or likely to become subject to, a specialized regulatory regime, such as U.S. federal securities or commodities laws or similar laws in other significant jurisdictions;
- (4) The digital asset's underlying code contains, or may contain, material flaws or vulnerabilities; or
- (5) Holding the digital asset would cause the Trust's holdings to be inconsistent with the listing requirements of proposed Rule 5712.

To ensure compliance with proposed Nasdaq Rule 5712, the Sponsor will monitor the weights of the digital assets in the Trust's portfolio and Index Constituents on a daily basis. If the portfolio breaches the requirement, the Sponsor will adjust the portfolio to comply with its listing rule according to the following method:

- The combined allocation of all digital assets other than those eligible under the 90% requirement will be limited to 10% of the portfolio, with their individual weights proportionally adjusted to reflect their relative weightings in the Index.
- The remaining 90% of the portfolio will be redistributed proportionally among the eligible digital assets, based on their respective weights in the Index.

The Sponsor employs a passive investment strategy that is intended to track the changes in the Index regardless of whether the Index goes up or goes down, meaning that the Sponsor does not try to “beat” the Index. The Trust’s passive investment strategy is designed to allow investors to purchase and sell the Shares for the purpose of investing in the Index, whether to hedge the risk of losses in their Index-related transactions or gain price exposure to the Index. Consistent with its investment objective, the Trust will not use its investments to enhance leverage or seek performance that is the multiple or inverse multiple of the Index.

Unless permitted by the Commission, none of the Trust, the Sponsor, any Crypto Custodian, or any other person associated with the Trust will, directly or indirectly, engage in action where any portion of the Trust’s holdings becomes subject to a proof-of-stake validation or is used to earn additional assets or generate income or other earnings through staking.

From time to time, the Trust may be entitled to or come into possession of “Incidental Rights” and/or “IR Virtual Currency” by virtue of its ownership of digital assets, generally through a fork in the Index Constituents blockchains, an airdrop offered to holders of the Index Constituents or other similar event. “Incidental Rights” are rights to acquire, or otherwise establish dominion and control over, any crypto asset (other than the Index Constituents) or other asset or right, which rights are incident to the Trust’s ownership of the Index Constituents and arise without any action of the Trust or of the Sponsor. “IR Virtual Currency” is any crypto asset (other than the Index Constituents), or other assets or rights, acquired through the exercise of any Incidental Right.

With respect to a fork, airdrop or similar event, the Sponsor will cause the Trust to irrevocably abandon any such Incidental Rights and IR Virtual Currency and no such Incidental Right or IR Virtual Currency shall be taken into account for purposes of determining the NAV of the Trust.

#### The Trust's Benchmark

The Trust will use the Index as a reference to track and measure its performance compared to the price performance of the markets for the Index Constituents and to value the Index Constituents held by the Trust for purposes of calculating the Trust's NAV.

The Index is designed to measure the performance of a portion of the overall crypto asset market. The Index does not track the overall performance of all crypto assets generally, nor the performance of any specific crypto assets. The Index is owned and administered by Nasdaq, Inc. ("Index Provider") and is calculated by CF Benchmarks Limited ("Calculation Agent"), which is experienced in calculating and administering crypto assets indices. The Calculation Agent publishes daily the Index Constituents, the Index Constituents' weightings, the intraday value of the Index (under the ticker NCI), and the daily settlement value of the Index (under the ticker NCIS), which is effectively the Index's closing value.<sup>15</sup>

The Index is derived from a rules-based methodology ("Index Rules"), which is overseen by the Nasdaq Index Management Committee ("NIMC"). The NIMC governs the Index and is responsible for its implementation, administration, and general oversight, including assessing crypto assets for eligibility, adjustments to account for regulatory

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<sup>15</sup> The closing level of the Index is calculated once a day on business days at 4:05 p.m. New York Time. See [https://indexes.nasdaqomx.com/docs/methodology\\_NCI.pdf](https://indexes.nasdaqomx.com/docs/methodology_NCI.pdf) (under "Appendix B: Settlement Times").



changes and periodic methodology reviews. Neither the Trust, nor the Sponsor have control over the Index Rules or the Index administration.

According to the Index Rules, crypto assets are eligible for inclusion in the Index if they satisfy the criteria set forth under the NCI methodology. The Index adjusts its constituents and weightings on a quarterly basis to reflect changes in the crypto asset markets.

Pursuant to the Index Rules, to be eligible for inclusion in the Index, crypto assets must meet the following criteria on a quarterly basis:

- (1) Have active tradable markets listed on at least two Core Crypto Platforms<sup>16</sup> for the entire period since the previous Index reconstitution;
- (2) Be supported by at least one Core Custodian<sup>17</sup> for the entire period since the previous Index reconstitution.

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<sup>16</sup> A “Core Crypto Platform” is a crypto asset platform that, in the opinion of the NIMC, exhibits at a minimum the characteristics specified in the Nasdaq Digital Assets Indexes Guidelines for Core Crypto Platforms and Core Custodians (the “Guidelines”), such as (1) having strong forking controls, (2) effective anti-money laundering controls, including surveillance for manipulative trading practices and erroneous transactions, (3) demonstrating robust IT infrastructure and active capacity management, (4) evidencing cooperation with regulators and law enforcement, and be licensed by a public independent governing body. See [https://indexes.nasdaqomx.com/docs/Nasdaq\\_Digital\\_Assets\\_Indexes\\_Guidelines\\_Core\\_Exchange\\_Core\\_Custodians.pdf](https://indexes.nasdaqomx.com/docs/Nasdaq_Digital_Assets_Indexes_Guidelines_Core_Exchange_Core_Custodians.pdf). Such license could be obtained today through bodies such as the New York State Department of Financial Services’ (NYDFS) BitLicense, or other state, national or international regulators. The list of existing Core Crypto Platforms will be recertified by the NIMC at a minimum on an annual basis. The Core Crypto Platforms as of December 31, 2024 are BitStamp, Coinbase, Gemini, itBit, Kraken, and LMAX Digital.

<sup>17</sup> A “Core Custodian” is a crypto assets custodian that, in the opinion of the NIMC, exhibits the characteristics specified in the Guidelines. See [https://indexes.nasdaqomx.com/docs/Nasdaq\\_Digital\\_Assets\\_Indexes\\_Guidelines\\_Core\\_Exchange\\_Core\\_Custodians.pdf](https://indexes.nasdaqomx.com/docs/Nasdaq_Digital_Assets_Indexes_Guidelines_Core_Exchange_Core_Custodians.pdf) (under “Core Custodians”). A Core Custodian might lose eligibility if it does not comply with the specified requirements in the Index methodology or with any other NIMC requirements. The NIMC will review new Core Custodian candidates throughout the year and announce any new additions when approved. The list of existing Core Custodians will be recertified by the NIMC at a minimum on an annual basis. Changes to the list of Core Custodians may be made by the approval of the NIMC and announced accordingly in the case of exceptional events or in order to maintain the integrity of the Index. The Core Custodians as of December 31, 2024 are BitGo, Coinbase, Fidelity, Gemini, Komainu, and Zodia.

- (3) To be considered for entry to the Index at any Index reconstitution, an asset must have a median daily trading volume in the USD pair conducted across all Core Crypto Platforms that is no less than 0.5% of the cryptocurrency asset that has the highest median daily trading volume.
- (4) Be eligible for listing in an ETP on SIX Swiss Exchange and Deutsche Börse Xetra as of thirty (30) calendar days prior to the day of inclusion.
- (5) Have free-floating pricing (i.e., not be pegged to the value of any asset).

If a crypto asset meets requirements (1) through (5), it will be considered eligible for Index inclusion.

Notwithstanding inclusion in the eligible list, the NIMC reserves the right to further exclude any additional assets based on one or more factors, including but not limited to its review of general reputational, fraud, manipulation, or security concerns connected to the asset. Assets that, in the sole discretion of the NIMC, do not offer utility, do not facilitate novel use cases, or that do not exhibit technical, structural or cryptoeconomic innovation (e.g., assets inspired by memes or internet jokes) may also be excluded.

The Index will assess any crypto assets resulting from a hard fork or an airdrop under the same criteria as established crypto assets and will only include a new digital asset if it meets the eligibility criteria set forth above.

The Index Constituents are weighted according to their relative free float market capitalizations. The free float market capitalization of an Index Constituent on any given day is defined as the product of an Index Constituent Settlement Price (as defined below)

and its “Circulating Supply”<sup>18</sup> as set in the most recent reconstitution. Weights are calculated by dividing the free float market capitalization of a digital asset by the total free float market capitalization of all Index Constituents at the time of rebalancing.

The Index is reconstituted and rebalanced quarterly, on the first Business Day in March, June, September, and December (each a “Reconstitution Date”). For this purpose, a Business Day means any day other than a day when Nasdaq is closed for regular trading (“Business Day”).

The settlement price of each Index Constituent (“Index Constituent Settlement Price”) is calculated once every trading day<sup>19</sup> by applying a publicly available rules-based pricing methodology (the “Pricing Methodology”) to a diverse collection of pricing sources to provide an institutional-grade reference price for each constituent. The Pricing Methodology is designed to account for variances in price across a wide range of sources, each of which has been vetted according to criteria identified in the methodology. Specifically, the Index Constituent Settlement Price is the Time Weighted Average Price

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<sup>18</sup> The Index will utilize “Circulating Supply” of an Index Constituent for all calculations of free float market capitalization and the determination of constituent weights. “Circulating Supply” is defined as the total supply of all units of a digital asset issued outside of the codebase since the initial block on a digital asset’s blockchain or since the point of inception of the digital asset on a cryptographic distributed ledger that can be “spent” or moved from one deposit address to another that is deemed to be likely to be available for trading as defined by the Calculation Agent and described by the methods in the CF Cryptocurrency Index Family Multi Asset Ground Rules (section 4.2.1 to 4.3.1.2.1). Circulating Supply data will be determined at the block height or ledger number which is the last confirmed block or ledger number at 16:00:00 UTC on the day that is eight (8) business days immediately preceding the relevant Reconstitution Date. Where the Calculation Agent cannot reliably determine any of the respective inputs for the calculation of the Circulating Supply for a given crypto asset that is an Index Constituent then its Circulating Supply shall be approximated. This will be done by applying the Median Free Float Factor (Circulating Supply/Total Supply) that has been determined for that reconstitution of all Index Constituents to the Total Supply (Circulating Supply = Total Supply X Median Free Float Factor). During reconstitution, updated Circulating Supply of crypto assets will be set and will remain fixed until the next reconstitution. The Index fixes Circulating Supply of Index Constituents between reconstitutions in order to preserve the investability property of the Index.

<sup>19</sup> All Index Constituent calculations are performed concurrently with the Index calculation, which takes place at 4:05 p.m. New York time. See supra note 15.

(“TWAP”) calculated across the volume weighted average prices (“VWAPs”) for each minute in the settlement price window, which is between 3:50:00 and 4:00:00 p.m. New York time, on all Core Crypto Platforms. Where there are no transactions observed in any given minute of the settlement price window, that minute is excluded from the calculation of the TWAP.

The Pricing Methodology also utilizes penalty factors to mitigate the impact of anomalous trading activity such as manipulation, illiquidity, large block trading, or operational issues that could compromise price representation. Three types of penalties are applied when three or more contributing Core Crypto Platforms contribute pricing for a constituent asset: abnormal price penalties, abnormal volatility penalties, and abnormal volume penalties. These penalties are defined as adjustment factors to the weight of information from each platform that contributes pricing information based on the deviation of a platform’s price, volatility, or volume from the median across all Core Crypto Platforms. For example, if a Core Crypto Platform’s price is 2.5 standard deviations away from the median price, its price penalty factor will be a  $1/2.5$  multiplier.

The Sponsor believes that the NCIS is a suitable Index for the Trust for pricing the Trust’s assets and as an Index that the Trust tracks. Specifically, the Index would provide reliable pricing for purposes of tracking the actual performance of the crypto asset markets for the Index Constituents. Second, it is administered by a reputable index administrator that is not affiliated with the Sponsor or Trust,<sup>20</sup> which provides assurances

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<sup>20</sup> Nasdaq, Inc. (“Nasdaq”), the Index Provider, adheres to the International Organization of Securities Commissions principles for benchmarks (the “IOSCO Principles”) for many of its indexes via an internal control and governance framework that is audited by an external, independent auditor on an annual basis. Although NCIS is not currently one of the indexes that is required to comply with IOSCO Principles, as a reference rate index, it is administered in a manner that is generally consistent with both the IOSCO Principles and the elements of Nasdaq’s internal control and governance framework pursuant to IOSCO Principles. NCIS is administered

of accountability and independence. Finally, its Pricing Methodology is designed to resist potential price manipulation from unregulated crypto markets by applying the following safeguards:

- (1) Requiring that constituents are eligible for being listed as an underlying asset of an ETP listed on the SIX Swiss Exchange and the Deutsche Börse Xetra as of thirty (30) calendar days prior to the day of its inclusion;
- (2) Strict eligibility criteria for the Core Crypto Platforms from which the Index data is drawn;
- (3) A diverse collection of trustworthy pricing sources to provide an institutional-grade reference price for the Index Constituents; and
- (4) The use of adjustment factors to mitigate against the impact of any anomalous trading activity on the Index Constituent Settlement Prices.

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and governed by the NIMC in accordance with the publicly available NCI methodology. The NIMC oversees all aspects of the administration of the NCIS, including the defined processes and controls for the selection and recertification of third parties such as the Core Crypto Platforms and Core Custodians, as well as the validation and reconciliation of Index calculations and pricing data. As discussed above, the list of existing Core Crypto Platforms and Core Custodians will be recertified by the NIMC at a minimum on an annual basis. The NIMC also oversees the identification and mitigation of any potential conflicts of interest, formal complaints, and updates or changes to the Index methodology consistent with the IOSCO Principles.

### The Index Constituents

The Trust gains exposure to digital assets by investing in the Index Constituents. As of December 31, 2024, the Index Constituents are bitcoin (BTC), ether (ETH), solana (SOL), XRP ledger (XRP), cardano (ADA), chainlink (LINK), avalanche (AVA), litecoin (LTC), and uniswap (UNI). Below, the Sponsor provides a description of each of the Index Constituents as of the date of this proposal.

#### *Bitcoin (BTC)*

Bitcoin, introduced in 2009, is the first decentralized cryptocurrency and operates on a proof-of-work consensus mechanism. It is designed to facilitate peer-to-peer transactions without relying on intermediaries like banks. Transactions are validated by miners who compete to solve complex cryptographic puzzles, ensuring the integrity and security of the Bitcoin blockchain. Bitcoin's capped supply of 21 million coins adds to its appeal as a deflationary asset, often regarded as "digital gold" due to its scarcity and store of value characteristics.

The Bitcoin blockchain serves as a transparent and immutable ledger, recording all transactions in sequential blocks. It uses the SHA-256 cryptographic hash function to secure its network, and the difficulty of mining adjusts dynamically to maintain block generation approximately every 10 minutes. Beyond its use as a digital currency, Bitcoin is increasingly employed as collateral in decentralized finance (DeFi) applications and is traded in both spot and derivative markets worldwide.

Bitcoin's role as the dominant cryptocurrency has positioned it as a key component of institutional portfolios and investment products. Its market dynamics are influenced by macroeconomic trends, adoption rates, and its regulatory environment,

making it a focal point for the broader crypto industry. With a decentralized governance model and a community-driven upgrade process, Bitcoin continues to evolve while adhering to its core principles of decentralization and security.

*Ethereum (ETH)*

Ethereum, launched in 2015, revolutionized blockchain technology by introducing smart contracts, enabling developers to build decentralized applications (DApps). Its native cryptocurrency, ether (ETH), functions as the fuel for the Ethereum Virtual Machine (EVM), where smart contracts execute automatically upon meeting predefined conditions. Ethereum's transition from proof-of-work to proof-of-stake in 2022 (dubbed "The Merge") significantly reduced its energy consumption and strengthened its scalability and security.

The Ethereum blockchain supports a thriving ecosystem of applications, particularly in decentralized finance (DeFi) and non-fungible tokens (NFTs). DeFi platforms leverage Ethereum's capabilities to enable lending, borrowing, and trading without intermediaries, while NFTs have transformed the way digital ownership and collectibles are conceptualized. Ethereum's programmability and robust network effect have positioned it as a leading blockchain for innovation and adoption.

Ether's value is driven by its utility as a medium for transaction fees (gas), staking rewards, and as a speculative asset. Continuous upgrades, such as the Shapella and Dencun updates, aim to enhance Ethereum's performance, scalability, and user experience. The network's decentralized governance model ensures ongoing improvements while balancing the needs of its diverse user base.

*Solana (SOL)*

Solana is a high-performance blockchain designed for scalability and low transaction costs, making it ideal for decentralized applications (DApps) such as gaming and decentralized finance (DeFi). It employs a unique Proof-of-History (PoH) mechanism integrated with Proof-of-Stake (PoS) to achieve high throughput and efficient block validation. Solana's architecture allows for consistent and rapid transaction processing, supporting its role as a leading platform for innovative blockchain solutions.

*XRP Ledger (XRP)*

The XRP Ledger (XRPL) is a decentralized blockchain optimized for fast, cost-efficient global payments. Its unique consensus protocol, distinct from proof-of-work or proof-of-stake, enables secure transaction validation without significant energy consumption. XRP serves as the network's native currency, functioning as a bridge asset for cross-border payments and a tool to prevent spam on the network. With a fixed supply of 100 billion tokens, XRP plays a pivotal role in supporting the network's ecosystem.

*Cardano (ADA)*

Cardano is a research-driven blockchain platform that emphasizes scalability, security, and sustainability. Utilizing the Ouroboros Proof-of-Stake protocol, Cardano supports smart contracts and DApps while ensuring energy efficiency and decentralization. Its native token, ADA, facilitates transactions, staking rewards, and governance, empowering participants to influence the network's development.



*Chainlink (LINK)*

Chainlink is a decentralized oracle network that bridges blockchain-based smart contracts with real-world data. Its LINK token incentivizes node operators to provide accurate data and ensures the integrity of information used in DeFi, gaming, and other blockchain applications. Chainlink's modularity and interoperability make it a cornerstone for expanding blockchain use cases.

*Avalanche (AVAX)*

Avalanche is a high-speed, scalable blockchain ecosystem designed for decentralized applications and custom blockchain networks. Its unique consensus mechanism, Avalanche Consensus, offers rapid finality and supports interoperable subnets, making it a versatile platform for diverse use cases. AVAX, its native token, is utilized for transaction fees, staking, and network security.

*Litecoin (LTC)*

Litecoin, launched in 2011, has a main chain that shares a slightly modified Bitcoin codebase. The practical effects of those codebase differences are lower transaction fees, faster transaction confirmations, and faster mining difficulty retargeting. Utilizing the Script proof-of-work algorithm, Litecoin remains a popular choice for payments and a reliable store of value in the cryptocurrency space.

*Uniswap (UNI)*

Uniswap is a leading decentralized exchange protocol that operates on Ethereum. It enables users to trade tokens directly from their wallets without intermediaries, leveraging automated market maker (AMM) mechanisms. The UNI token is central to

Uniswap's governance, allowing holders to propose and vote on protocol upgrades and changes.

#### Custody of the Trust's Digital Assets

An investment in the Shares is backed by assets held by the Trust, including the Index Constituents held by the Crypto Custodians on behalf of the Trust. The Crypto Custodians must qualify as Core Custodians by the NIMC and thus satisfy at least the requirements set forth by the NIMC in the NCIS methodology.<sup>21</sup> The Trust may engage additional custodians and may also remove or change current Crypto Custodians, provided that there is at least one Crypto Custodian who is also a Core Custodian at all times.<sup>22</sup>

The Trust's Crypto Custodians hold and are responsible for maintaining custody of the Trust's digital assets. The Sponsor causes the Trust to maintain ownership and control of the Trust's digital assets in a manner consistent with good delivery requirements for spot commodity transactions.

All of the Trust's digital assets are held in one or more accounts in the name of the Trust (each a "Custody Account" and together the "Custody Accounts"), other than the Trust's assets which are temporarily maintained in a trading account under limited circumstances ("Trading Account"), i.e., in connection with creation and redemption basket activity or sales of digital assets deducted from the Trust's holdings in payment of

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<sup>21</sup> See [https://indexes.nasdaqomx.com/docs/Nasdaq\\_Digital\\_Assets\\_Indexes\\_Guidelines\\_Core\\_Exchange\\_Core\\_Custodians.pdf](https://indexes.nasdaqomx.com/docs/Nasdaq_Digital_Assets_Indexes_Guidelines_Core_Exchange_Core_Custodians.pdf). As noted above, the Core Custodians as of December 31, 2024 are BitGo, Coinbase, Fidelity, Gemini, Komainu, and Zodia, and the Trust's Crypto Custodians are on this list.

<sup>22</sup> If the Trust determines to do so, the Exchange will submit a rule filing with the Commission under Rule 19b-4 of the Act

Trust expenses or the Sponsor's fee (or, in extraordinary circumstances, upon liquidation of the Trust).

The Trust's digital assets and cash holdings from time to time may temporarily be maintained in the Trading Account. The Sponsor intends to execute an agreement so Coinbase Inc. can serve as the Trust's "Prime Execution Agent" ("Prime Execution Agent Agreement"). In this capacity, the Prime Execution Agent facilitates the buying and selling of digital assets by the Trust in response to cash creations and redemptions between the Trust and registered broker-dealers that are Depository Trust Company ("DTC") participants that enter into an authorized participant agreement with the Sponsor ("Authorized Participants"), and the sale of digital assets to pay the Sponsor's fee, any other Trust expenses not assumed by the Sponsor, to the extent applicable, and in extraordinary circumstances, in connection with the liquidation of the Trust's assets.

#### Creation and Redemption of Shares

The Trust issues and redeems "Baskets"<sup>23</sup> on a continuous basis. Baskets are issued or redeemed only in exchange for an amount of cash determined by the Sponsor or the Administrator on each Business Day. No Shares are issued unless the Cash Custodian has allocated to the Trust's account the corresponding amount of cash. Baskets may be created or redeemed only by Authorized Participants. Each Authorized Participant must be registered as a broker-dealer under the Exchange Act and regulated by Financial Industry Regulatory Authority ("FINRA"), and must be qualified to act as a

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<sup>23</sup> Baskets will be offered continuously at NAV per Share for 10,000 Shares. Therefore, a Basket of Shares would be valued at NAV per Share multiplied by the Basket size and the value of the bitcoin and ether to be acquired by the Trust as part of the creation of a Basket would be based on the dollar value of the NAV per Share multiplied by the Basket size for such creations. Only Authorized Participants may purchase or redeem Baskets.

broker or dealer in the states or other jurisdictions where the nature of its business so requires.

The Authorized Participants deliver only cash to create Shares and receive only cash when redeeming Shares. Further, Authorized Participants do not directly or indirectly purchase, hold, deliver, or receive digital assets as part of the creation or redemption process, or otherwise direct the Trust or a third party with respect to purchasing, holding, delivering, or receiving digital assets as part of the creation or redemption process.

The Trust creates Shares by receiving Index Constituents from a third party that is not the Authorized Participant, and the Trust – not the Authorized Participant – is responsible for selecting the third party to deliver the assets. Further, the third party will not be acting as an agent of the Authorized Participant with respect to the delivery of the Index Constituents to the Trust or acting at the direction of the Authorized Participant with respect to the delivery of the Index Constituents to the Trust. The Trust redeems Shares by delivering Index Constituents to a third party that is not the Authorized Participant, and the Trust – not the Authorized Participant – is responsible for selecting the third party to receive the Index Constituents. Further, the third party does not act as an agent of the Authorized Participant with respect to the receipt of the Index Constituents from the Trust or acting at the direction of the Authorized Participant with respect to the receipt of the Index Constituents from the Trust. The third-party will be unaffiliated with the Trust and the Sponsor.

In connection with cash creations and cash redemptions, the Authorized Participants submit orders to create or redeem Baskets<sup>24</sup> of Shares exclusively in exchange for cash. The Trust engages in transactions to convert cash into digital assets (in association with creation orders) and digital assets into cash (in association with redemption orders). The Trust conducts its digital assets purchase and sale transactions by choosing, in its sole discretion, either to trade directly with designated third parties (each, a “Crypto Trading Counterparty”), who are not registered broker-dealers pursuant to written agreements between each such Crypto Trading Counterparty and the Trust, or to trade through the Prime Execution Agent acting in an agency capacity with third parties pursuant to the Prime Execution Agent Agreement. Crypto Trading Counterparties settle trades with the Trust using their own accounts at the Prime Execution Agent when trading with the Trust.

For the creation of a Basket of Shares, the Authorized Participant is required to submit the creation order by 2:00 p.m. ET, or the close of regular trading on the Exchange, whichever is earlier (the "Order Cutoff Time"). The Order Cutoff Time may be modified by the Sponsor in its sole discretion.

On the date of the Order Cutoff Time for a creation order, the Trust enters into a transaction by choosing, in its sole discretion, to trade directly with a Crypto Trading Counterparty or the Prime Execution Agent, to buy the Index Constituents in exchange for the cash proceeds from such creation order. The Authorized Participant is responsible for the dollar cost of the difference between the digital assets price utilized in calculating the NAV per Share on the Creation Order Date (as described below) and the price at

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<sup>24</sup> The Trust issues and redeems Shares only in blocks or “Baskets” of 10,000 or integral multiples thereof.

which the Trust acquires the Index Constituents to the extent the price amount for buying the digital assets is higher than the price utilized in calculating the NAV. In the case the price amount for buying the Index Constituents is lower than the price utilized in calculating the NAV, the Authorized Participant shall keep the dollar impact of any such difference.

Creation orders take place as follows, where "T" is the date of the creation order and each day in the sequence must be a business day in the U.S.

Creation Order Date (T)	Settlement Date (T+1)
<ul style="list-style-type: none"> <li>● Authorized Participant places a creation order.</li> <li>● The Transfer Agent accepts (or rejects) the creation order.</li> <li>● The Trust enters into a transaction with the Crypto Trading Counterparty or the Prime Execution Agent to purchase the corresponding digital assets.</li> <li>● As soon as practicable after 4:00 p.m. ET, the Sponsor determines the Basket cash component, including any dollar cost difference between the digital assets price utilized in calculating NAV per Share and the price at which the Trust acquires the digital assets.</li> </ul>	<ul style="list-style-type: none"> <li>● The Authorized Participant delivers the Basket cash component to the Trust's cash account that is maintained with the Cash Custodian.</li> <li>● The Crypto Trading Counterparty or the Prime Execution Agent deposits the digital assets into the Trust's Trading Account related to the purchase transaction.</li> <li>● Once the Trust is in simultaneous possession of the Basket cash component and the digital assets, the Trust delivers the corresponding Shares to the Authorized Participant.</li> <li>● The Trust transfers the cash related to the purchase transaction from the Trust cash account maintained with the Cash Custodian to the Crypto Trading Counterparty or the Prime Execution Agent.</li> </ul>

When the Trust chooses to enter into a transaction with the Prime Execution Agent, because the Trust's Trading Account may not be funded with cash on the Creation

Order Date for the purchase of the Index Constituents associated with a cash creation order, the Trust may borrow trade credits (“Trade Credits”) in the form of cash from the “Trade Credit Lender”, under a trade financing agreement (“Trade Financing Agreement”) or may require the Authorized Participant to deliver the required cash for the creation order on the Creation Order Date. The extension of Trade Credits on the Creation Order Date allows the Trust to purchase digital assets through the Prime Execution Agent on the Creation Order Date, with such digital assets being deposited in the Trust’s Trading Account. On Settlement Date for a creation order, the Trust delivers Shares to the Authorized Participant in exchange for cash received from the Authorized Participant. To the extent Trade Credits were utilized, the Trust uses the cash to repay the Trade Credits borrowed from the Trade Credit Lender. On the Settlement Date for a creation order, the digital assets purchased are swept from the Trust’s Trading Account to the Custody Account pursuant to a regular end-of-day sweep process.

For a redemption of a Basket of Shares, the Authorized Participant is required to submit a redemption order by the Order Cutoff Time. On the date of the Order Cutoff Time for a redemption order, the Trust enters into a transaction by choosing, in its sole discretion, to trade directly with a Crypto Trading Counterparty or the Prime Execution Agent, to sell digital assets in exchange for cash. The Authorized Participant bears the difference between the Index Constituents price utilized in calculating the NAV per Share on the Redemption Order Date and the price realized in selling the Index Constituents to raise the cash needed for the cash redemption order to the extent the price realized in selling the Index Constituents is lower than the price utilized in the NAV. To the extent

the price realized in selling the digital assets is higher than the price utilized in the NAV, the Trust delivers the dollar impact of any such difference to the Authorized Participant.

Redemption orders take place as follows, where "T" is the date of the redemption order and each day in the sequence must be a business day.

Redemption Order Date (T)	Settlement Date (T+1)
<ul style="list-style-type: none"> <li>● Authorized Participant places a redemption order.</li> <li>● The Transfer Agent accepts (or rejects) the redemption order.</li> <li>● The Trust instructs the Crypto Custodian to prepare to move the corresponding digital assets from the Trust’s Custody Account to the Trading Account.</li> <li>● The Trust enters into a transaction with the Crypto Trading Counterparty or the Prime Execution Agent to sell the corresponding digital assets.</li> <li>● As soon as practicable after 4:00 p.m. ET, the Sponsor determines the Basket cash component, including any dollar cost difference between the digital assets price utilized in calculating NAV per Share and the price at which the Trust sells the digital assets.</li> </ul>	<ul style="list-style-type: none"> <li>● The Authorized Participant delivers the Baskets of Shares to be redeemed to the Trust.</li> <li>● The Crypto Trading Counterparty or the Prime Execution Agent delivers cash to the Trust’s cash account that is maintained with the Cash Custodian related to the sell transaction.</li> <li>● Once the Trust is in simultaneous possession of the Basket of Shares and the respective Basket cash component, the Trust cancels the Shares comprising the number of Baskets redeemed by the Authorized Participant.</li> <li>● The Trust instructs the Crypto Custodian to transfer the corresponding digital assets agreed on the sell transaction from the Trust's Trading Account to the Crypto Trading Counterparty or Prime Execution Agent.</li> <li>● The Trust transfers the Basket cash component from the cash account maintained with the Cash Custodian to the Authorized Participant.</li> </ul>



The Trust may use financing in connection with a redemption order when the Index Constituents remain in the Custody Account at the point of intended execution of a sale of the Index Constituents. In those circumstances, the Trust may borrow Trade Credits in the form of Index Constituents from the Trade Credit Lender, which allows the Trust to sell digital assets through the Prime Execution Agent on the Redemption Order Date, and the cash proceeds are deposited in the Trading Account. On the Settlement Date for a redemption order, the Trust delivers cash to the Authorized Participant in exchange for Shares received from the Authorized Participant. In the event financing is used, the Trust will use the digital assets moved from the Custody Account to the Trading Account to repay the Trade Credits borrowed from the Trade Credit Lender.

#### Net Asset Value

The Trust's NAV per Share is calculated by taking the current value of its total assets, subtracting any liabilities, and dividing that total by the number of Shares. The assets of the Trust will consist of the Index Constituents, cash and cash equivalents. The Sponsor has the exclusive authority to determine the Trust's NAV, which it has delegated to the Administrator.

The Administrator of the Trust calculates the NAV once each Business Day, as of the earlier of the close of the Nasdaq or 4:00 p.m. New York time.

The Administrator values the digital assets held by the Trust based on the Index Constituent Settlement Price, unless the prices are not available or the Administrator, in its sole discretion, determines that the Index Constituent Settlement Price is unreliable ("Fair Value Event"). In the instance of a Fair Value Event, the Trust's holdings may be

valued on a temporary basis in accordance with the fair value policies approved by the Administrator.

In the instance of a Fair Value Event and pursuant to the Administrator's fair valuation policies and procedures, VWAP or Volume Weighted Median Prices ("VWMP") from another index administrator ("Secondary Index") will be utilized.

If a Secondary Index is also not available or the Administrator in its sole discretion determines the Secondary Index is unreliable, the price set by the Trust's principal market as of 4:00 p.m. ET, on the valuation date will be utilized. In the event the principal market price is not available or the Administrator in its sole discretion determines the principal market valuation is unreliable, the Administrator will use its best judgment to determine a good faith estimate of fair value. The Administrator identifies and determines the Trust's principal market (or in the absence of a principal market, the most advantageous market) for Index Constituents consistent with the application of fair value measurement framework in FASB ASC 820-10.<sup>25</sup> The principal market is the market where the reporting entity would normally enter into a transaction to sell the asset or transfer the liability. The principal market must be available to and be accessible by the reporting entity. The reporting entity is the Trust.

If the Index Constituent Settlement Price is not used to determine the Trust's digital asset holdings, owners of the beneficial interests of Shares (the "Shareholders") will be notified in a prospectus supplement or on the Trust's website and, if this index

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<sup>25</sup> See FASB (Financial Accounting Standards Board) Accounting standards codification (ASC) 820-10. For financial reporting purposes only, the Trustee has adopted a valuation policy that outlines the methodology for valuing the Trust's assets. The policy also outlines the methodology for determining the principal market (or in the absence of a principal market, the most advantageous market) in accordance with FASB ASC 820-10.

change is on a permanent basis, a filing with the Commission under Rule 19b-4 of the Act will be required.

A Fair Value Event value determination will be based upon all available factors that the Sponsor or the Administrator deems relevant at the time of the determination and may be based on analytical values determined by the Sponsor or Administrator using third-party valuation models. Fair value policies approved by the Administrator will seek to determine the fair value price that the Trust might reasonably expect to receive from the current sale of that asset or liability in an arm's-length transaction on the date on which the asset or liability is being valued consistent with "Relevant Transactions".<sup>26</sup>

#### Intraday Indicative Value

In order to provide updated information relating to the Trust for use by Shareholders and market professionals, the Sponsor has engaged an independent calculator to calculate an updated intraday indicative value ("IIV"). The IIV will be calculated by using the prior day's closing NAV per Share of the Trust as a base and will be updated throughout the regular market session of 9:30 a.m. E.T. to 4:00 p.m. E.T. (the "Regular Market Session") to reflect changes in the value of the Trust's holdings during the trading day. For purposes of calculating the IIV, the Trust's digital assets holdings will be priced using a real time version of the Index, the Nasdaq Crypto Index ("NCI")<sup>27</sup>.

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<sup>26</sup> A "Relevant Transaction" is any crypto asset versus U.S. dollar spot trade that occurs during the observation window between 3:00 p.m. and 4:00 p.m. ET on a "Core Crypto Platform" in the BTC/USD and ETH/USD pair that is reported and disseminated by a Core Crypto Platform through its publicly available application programming interface and observed by the index administrator.

<sup>27</sup> The Nasdaq Crypto Index (Index symbol NCI) is calculated every second throughout a 24-hour trading day, seven days per week, using published, real-time bid and ask quotes for Index constituents observed on Core Crypto Platforms through the publicly available API. See [https://indexes.nasdaqomx.com/docs/methodology\\_NCI.pdf](https://indexes.nasdaqomx.com/docs/methodology_NCI.pdf).

The IIV will be disseminated on a per Share basis every 15 seconds during the Exchange’s Regular Market Session and be widely disseminated by one or more major market data vendors during the Regular Market Session.<sup>28</sup>

Digital Asset ETPs – Applicable Standard

The Commission has recently permitted ETPs to directly hold bitcoin and ether. The Exchange and the Sponsor applaud the Commission as these approvals mark a significant step forward in offering U.S. investors and traders transparent, exchange-listed products for expressing views on digital assets.

On January 10, 2024, the Commission issued an order granting approval for proposals to list certain bitcoin-based commodity trust and bitcoin-based trust units (“Spot Bitcoin ETPs”).<sup>29</sup> In considering the Spot Bitcoin ETPs, the Commission determined in the Spot Bitcoin ETP Approval Order that the exchanges’ comprehensive surveillance-sharing agreement with the Chicago Mercantile Exchange (“CME”) – a U.S. regulated market whose bitcoin futures market is consistently highly correlated to spot bitcoin – could be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the proposals. The exchanges have comprehensive surveillance-sharing agreements with the CME via their common membership in the ISG, which facilitates the sharing of information that is available to the CME through its surveillance of its markets.

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<sup>28</sup> Several major market data vendors display and/or make widely available IIVs taken from the Consolidated Tape Association (“CTA”) or other data feeds.

<sup>29</sup> See Exchange Act Release No. 99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (Self-Regulatory Organizations; NYSE Arca, Inc.; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units) (the “Spot Bitcoin ETP Approval Order”).

After reviewing the proposals for the Spot Bitcoin ETPs, the Commission found that they were consistent with the Act, including with Section 6(b)(5), and rules and regulations thereunder applicable to a national securities exchange, including the Exchange. The abovementioned Section 6(b)(5) requires, among other things, that the investment product is designed to “prevent fraudulent and manipulative acts and practices” and, “in general, to protect investors and the public interest.”

The Commission's analysis<sup>30</sup> in the Spot Bitcoin ETP Approval Order also demonstrated that prices typically move in close, though not perfect, correlation<sup>31</sup> between the spot bitcoin market and the CME bitcoin futures market. Therefore, the Commission concluded that fraud or manipulation affecting spot bitcoin market prices would likely similarly impact CME bitcoin futures prices. Since the CME's surveillance can help detect these impacts on CME bitcoin futures prices, such surveillance can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the Spot Bitcoin ETPs proposals.

In the Spot Bitcoin ETP Approval Order, the Commission also stated that the Spot Bitcoin ETP proposals, similar to other spot commodity ETPs it has approved, are reasonably designed to ensure fair disclosure of information necessary for accurate share pricing, to prevent trading in the absence of sufficient transparency, to protect material

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<sup>30</sup> The robustness of the Commission's correlation analysis rests on the pre-requisites of (1) the correlations being calculated with respect to bitcoin futures that trade on the CME, a U.S. market regulated by the CFTC, (2) the lengthy sample period of price returns for both the CME bitcoin futures market and the spot bitcoin market, (3) the frequent intra-day trading data in both the CME bitcoin futures market and the spot bitcoin market over that lengthy sample period, and (4) the consistency of the correlation results throughout the lengthy sample period.

<sup>31</sup> Correlation should not be interpreted as an indicator of a causal relationship or whether one variable leads or lags the other.

nonpublic information related to the products' portfolios, and to maintain fair and orderly markets for the shares of the Spot Bitcoin ETPs.

A few months after the issuance of its Spot Bitcoin ETP Approval Order, the Commission issued on May 23, 2024 an approval order for proposals to list certain ether-based trusts ("Spot Ether ETPs").<sup>32</sup> The Commission also concluded in the Spot Ether ETP Approval Order that the exchanges' comprehensive surveillance-sharing agreement with the CME, a U.S.-regulated market whose ether futures market is consistently highly correlated with spot ether, can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices within the context of the mentioned proposals.

As in the case of the Spot Bitcoin ETP Approval Order, in the Spot Ether ETP Approval Order, the Commission determined that the exchanges' comprehensive surveillance-sharing agreement with the CME ether futures market, which exhibits a consistent high correlation with spot ether, can reasonably be expected to assist in surveilling for fraudulent and manipulative practices in the specific context of the Spot Ether ETP proposals. Therefore, based on similar reasons to the Spot Bitcoin ETP Approval Order, the Commission approved the Spot Ether ETPs, stating that the proposals to list and trade those Spot Ether ETPs were also consistent with the requirements of the Act and the regulations applicable to a national securities exchange, in particular with Section 6(b)(5) and Section 11A(a)(1)(C)(iii) of the Act.

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<sup>32</sup> See Exchange Act Release No. 100224 (May 23, 2024), 89 FR 46937 (May 30, 2024) (Self-Regulatory Organizations; NYSE Arca, Inc.; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Shares of Ether-Based Exchange-Traded Products) (the "Spot Ether ETP Approval Order").

On December 19, 2024, the Commission issued an order granting approval for the listing and trading of shares of the Trust and the Franklin Crypto Index ETF. The order highlighted the consistency of the proposals with the requirements of the Act, particularly Section 6(b)(5) and Section 11A(a)(1)(C)(iii), which emphasize the prevention of fraudulent and manipulative practices and the maintenance of fair and orderly markets. The Commission's decision relied on the robust correlation analyses demonstrating the high consistency between CME bitcoin and ether futures markets and their respective spot markets, and the SEC's determination that the exchanges' comprehensive surveillance-sharing agreement could reasonably be expected to assist in monitoring and deterring fraudulent activities, ensuring compliance with the Act and safeguarding investor interests.

In addition to the CME, Coinbase Derivatives, LLC ("Coinbase Derivatives") – similar to the CME, Coinbase Derivatives regulated by the Commodity Futures Trading Commission ("CFTC") and sharing ISG membership with Nasdaq – also lists futures contracts for digital assets beyond bitcoin and ether. Notably, the Coinbase Derivatives offers derivative products for three additional Index Constituents (as of the filing date): chainlink (LINK), litecoin (LTC), and avalanche (AVAX). This facilitates the sharing of information that is available to Coinbase Derivatives through its surveillance of its markets, including its surveillance of Coinbase Derivatives' LINK, LTC, and AVAX futures market. Nasdaq's ability to obtain information regarding trading in the LINK, LTC, and AVAX futures from other markets that are members of the ISG would assist Nasdaq in detecting and deterring misconduct.

The Sponsor acknowledges that the Index Constituents currently include minority positions in digital assets that are not bitcoin or ether. The Sponsor represents that no more than 10% of the weight of its digital asset holdings will consist of digital assets concerning which the Exchange may not be able to obtain information via the ISG or via a CSSA. For clarification purposes, in the aggregate, at least 90% of the weight of digital asset holding of the Trust shall, on both an initial and continuing basis, consist of commodities and/or digital assets concerning which the Exchange is able to obtain information via the ISG from other members of the ISG or via a CSSA.

In the context of prior spot digital asset ETP proposal disapproval orders for bitcoin and ether, the Commission expressed concerns about the underlying digital asset market due to the potential for fraud and manipulation and has outlined the reasons why such ETP proposals have been unable to satisfy these concerns.<sup>33</sup> For purposes of the Trust's proposal, the Sponsor anticipates that the Commission may have the same concerns about digital assets other than bitcoin and ether.

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<sup>33</sup> See Securities Exchange Act Release Nos. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (SR-BatsBZX-2016-30) (Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To List and Trade Shares of the Winklevoss Bitcoin Fund) (the "Winklevoss Order"); 87267 (October 9, 2019), 84 FR 55382 (October 16, 2019) (SR-NYSEArca-2019-01) (Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the Bitwise Bitcoin ETF Fund Under NYSE Arca Rule 8.201-E) (the "Bitwise Order"); 88284 (February 26, 2020), 85 FR 12595 (March 3, 2020) (SR-NYSEArca-2019-39) (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) (the "Wilshire Phoenix Order"); 83904 (August 22, 2018), 83 FR 43934 (August 28, 2018) (SR-NYSEArca-2017-139) (Order Disapproving a Proposed Rule Change to List and Trade the Shares of the ProShares Bitcoin ETF and the ProShares Short Bitcoin ETF); 83912 (August 22, 2018), 83 FR 43912 (August 28, 2018) (SR-NYSEArca-2018-02) (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); 83913 (August 22, 2018), 83 FR 43923 (August 28, 2018) (SR-CboeBZX-2018-01) (Order Disapproving a Proposed Rule Change to List and Trade the Shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF).



The Commission has recognized that a listing exchange could demonstrate that other means to prevent fraudulent and manipulative acts and practices are sufficient to justify dispensing with the requisite surveillance-sharing agreement.<sup>34</sup> In evaluating the effectiveness of this type of resistance, the Commission does not apply a “cannot be manipulated” standard.

The Sponsor believes that a more diversified ETP, such as the proposed Trust, offers additional resistance to potential manipulation compared to single-asset or dual-asset ETPs, thereby enhancing the effectiveness of other measures designed to prevent fraudulent and manipulative acts and practices. By diversifying exposure across multiple digital assets, the Trust will reduce the impact that manipulation of a single constituent asset could have on the overall performance of the Trust. The inclusion of assets with differing liquidity profiles, trading volumes, and market dynamics further complicates any coordinated attempt to manipulate the Index as a whole. These structural safeguards, combined with the Exchange’s ability to monitor trading activity through the ISG and CSSAs, provide strong protection against market abuse and enhance the reliability of the Trust as an investment vehicle for U.S. investors.

Additionally, the Sponsor believes that the proposed rule to list and trade Shares of the Trust aligns with precedents established by the SEC for commodity-indexed ETPs. These precedents demonstrate that the trading rules and procedures governing ETPs, where up to 10% of the portfolio weight consists of assets whose principal trading market is not a member of the ISG or does not have a CSSA with the Exchange, are consistent with the Act.

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<sup>34</sup> See Winklevoss Order, 84 FR at 37580, 37582-91; Bitwise Order, 84 FR at 55383, 55385-406; Wilshire Phoenix Order, 85 FR at 12597.

In December 2007, the SEC approved the 19b-4 filing for the iShares S&P GSCI Commodity-Indexed Trust (“GSG”), which established an important precedent for index composition standards. The order states: “*A new component may be added to the Index if it does not constitute more than 10% of the weight of the index or, if it constitutes more than 10% of the weight of the Index, then the principal trading market for such component either (a) is a member of ISG, or (b) has a comprehensive surveillance sharing agreement with the Exchange.*”<sup>35</sup>

This standard reflects the SEC’s emphasis on ensuring that markets for index components are sufficiently transparent and subject to effective regulatory oversight, particularly for components with substantial weightings in the index.

Building on the GSG precedent, the SEC approved the 19b-4 filing for the United States Commodity Index Fund (“USCI”) in July 2010. The SEC’s approval included a similar condition for monitoring trading markets and ensuring appropriate surveillance mechanisms. Specifically, the order states: “*With respect to Fund assets traded on exchanges, not more than 10% of the weight of such assets in the aggregate shall consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.*”<sup>36</sup>

This condition reinforced the SEC’s commitment to safeguarding the integrity of ETPs by limiting the exposure to markets without adequate surveillance. The proposed listing of the Trust incorporates protections consistent with the principles established in the GSG and USCI precedents. This ensures that the vast majority of the Trust’s

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<sup>35</sup> See Securities Exchange Act No. 56932 (December 7, 2007), 72 FR 71178 (December 14, 2007) (SR-NYSEArca-2007-112) at 71183.

<sup>36</sup> See Securities Exchange Act No. 62527 (July 19, 2010), 75 FR 43606 (July 26, 2010) (SR-NYSEArca-2010-44) at 43609.

portfolio remains subject to robust surveillance mechanisms, allowing the Exchange to monitor trading activity effectively and address potential risks to market integrity.

By maintaining this 90% threshold, the Sponsor believes that this proposal is consistent with the requirements of the Act. The Sponsor believes that the 10% limit ensures that the Trust adheres to a high standard of investor protection while accommodating the evolving nature of the crypto asset market. This approach aligns with the SEC's historical approval of commodity-indexed ETPs and promotes public interest by fostering fair and orderly markets.

Furthermore, the Sponsor believes the Trust's use of the reference prices provided by the Calculation Agent to value the Trust's holdings ("Reference Prices") and to determine NAV and IIV for the Trust, in tandem with the Trust's cash create and redeem structure represents a novel means to prevent fraud and manipulation from impacting the price of the Shares, by offering protections beyond those that exist in traditional commodity markets and consistent with those that exist in equity markets.

The Sponsor believes that its use of Reference Prices accomplishes these objectives in the following ways:

- (1) The Calculation Agent calculates the Reference Prices for the Index Constituents exclusively through trading activity on spot digital asset trading platforms that are Core Crypto Platforms.
- (2) The Reference Prices are calculated by the Calculation Agent, which is under the UK Benchmarks Regime.<sup>37</sup>

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<sup>37</sup> The "UK Benchmarks Regime" refers to the regulatory framework governing the administration, use, and oversight of financial benchmarks in the United Kingdom. Following the UK's withdrawal from the European Union, the regime is based on the UK Benchmarks Regulation (UK BMR), which closely aligns with the EU Benchmarks Regulation (EU BMR) but is independently

Finally, the Sponsor believes that the cash creation and redemption structure of the Trust also underscores the protections that the Reference Prices afford to the Trust. The Trust's Shares will have their NAV and IIV determined by the Reference Prices and because all Shares in the Trust will be created and redeemed with cash (not physical digital assets), any attempts to manipulate Shares would have to involve transactions on the spot trading platforms that are Core Crypto Platforms to be able to influence the price of the Shares.

Although the Trust is adopting a new strategy of investing in a more diversified basket of crypto assets, the Exchange and the Sponsor believe that the proposed rule change will add value to the U.S. market.

#### Availability of Information

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the prior Business Day's NAV per Share; (b) the prior Business Day's Nasdaq official closing price; (c) calculation of the premium or discount of such Nasdaq official closing price against such NAV per Share; (d) data in chart form displaying the frequency distribution of discounts and premiums of the Nasdaq official closing price against the NAV per Share, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (e) the prospectus; and (f) other applicable quantitative information. The Administrator will also disseminate the Trust's holdings on a daily basis on the Trust's website. The NAV per Share for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. Quotation and last sale

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supervised by the UK Financial Conduct Authority (FCA). The regime establishes standards and requirements for benchmark administrators to ensure the integrity, transparency, and reliability of benchmarks used in financial markets.

information regarding the Shares will be disseminated through the facilities of the relevant securities information processor.

An estimated value that reflects an estimated IIV will also be disseminated. For more information on the IIV, including the calculation methodology, see “Intraday Indicative Value” above. The IIV disseminated during the Regular Market Session should not be viewed as an actual real time update of the NAV per Share, 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 Regular Market Session by one or more major market data vendors. In addition, the IIV will be available through online information services.

Quotation and last sale information for Index Constituents is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters. Information relating to trading, including price and volume information for Index Constituents, is available from major market data vendors and from the platforms on which such digital assets are traded. Depth of book information is also available from such crypto platforms. The normal trading hours for the digital asset platforms are 24 hours per day, 365 days per year.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services. Information regarding the previous day’s closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Initial and Continued Listing

The Shares will be subject to proposed Nasdaq Rule 5712, which sets forth the initial and continued listing criteria applicable to Commodity- and/or Digital Asset-Based Investment Interests Shares. A minimum of 40,000 Shares, or the equivalent of four Baskets, will be required to be outstanding at the time of commencement of trading on the Exchange. Upon termination of the Trust, the Shares will be removed from listing.

The trading of the Shares will be subject to proposed Nasdaq Rule 5712(i), which sets forth certain restrictions on registered Market Makers in Commodity- and/or Digital Asset-Based Investment Interests to facilitate surveillance. As required in Nasdaq Rule 5712(i), the Exchange notes that any registered 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 that the Market Maker may have or over which it may exercise investment discretion in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives; an underlying digital asset, related digital asset futures or options on digital asset futures, or any other related digital asset derivatives; or an underlying series of derivative securities products, related futures or options on such derivative securities products, or any other related derivatives of such derivative securities products. No Market Maker in Commodity- and/or Digital-Asset Based Investment Interests shall trade in a commodity or any related derivative in an account that the Market Maker (1) directly or indirectly controls trading activities or has a direct interest in the profits or losses thereof, (2) is required by this rule to disclose to the Exchange, and (3) has not reported to the Exchange. In addition to the existing obligations under Exchange rules regarding the production of books and records,

the Market Maker in Commodity- and/or Digital Asset-Based Investment Interests shall make available to the Exchange such books, records, or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity, as may be requested by the Exchange.

The Exchange is able to obtain information regarding trading in the Shares and the underlying digital assets, or any other digital assets derivative through members acting as registered Market Makers, in connection with their proprietary or customer trades.

As a general matter, the Exchange has regulatory jurisdiction over its Members, and their associated persons. The Exchange also has regulatory jurisdiction over any person or entity controlling a Member, as well as a subsidiary or affiliate of a Member that is in the securities business. A subsidiary or affiliate of a Member that does business only in commodities would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory or self-regulatory organizations of which such subsidiary or affiliate is a member.

#### 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. ET. 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 5712 and will comply with the requirements of Rule 10A-3 of the Act.

#### 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 (10) 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 Index Constituents underlying the Shares; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

If the IIV or the value of the Index 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 Index occurs. If the interruption to the dissemination of the IIV or the value of the Index persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

In addition, if the Exchange becomes aware that the NAV per Share 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 per Share 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. The surveillance program includes real-time patterns for price and volume movements and post-trade surveillance patterns (e.g., spoofing, marking the close, pinging, phishing).

Trading of Shares on the Exchange will be subject to the Exchange's surveillance program for derivative products, as well as cross-market surveillances administered by FINRA, on behalf of the Exchange pursuant to a regulatory services agreement, which are also designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

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.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and Index Constituents' derivatives with other markets and other entities that are members of the ISG,<sup>38</sup> and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and Index Constituents' derivatives from such markets and other entities. The Exchange also may obtain information regarding trading in the Shares and Index Constituents' derivatives via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a CSSA.

#### Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an information circular ("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 creations and redemptions of Shares in Baskets (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 and NAV is disseminated; (4) the risks involved in trading the Shares during the pre-market and postmarket 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)

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<sup>38</sup> For a list of the current members and affiliate members of ISG, see <https://isgportal.org/public-members>. The Exchange notes that not all Index Constituents may trade on markets that are members of ISG or with which the Exchange has in place a CSSA, but that, consistent with proposed Rule 5712(e)(1)(ii), at least 90% of the Trust's commodity and/or digital asset holdings will consist of commodities and/or digital assets for which the Exchange may obtain information via the ISG from other members or affiliates of the ISG or for which the principal market is a market with which the Exchange has a CSSA.

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.

The Information Circular will also reference the fact that there is no regulated source of last sale information regarding the Index Constituents, that the Commission has no jurisdiction over the trading of the Index Constituents as commodities or digital assets.

Additionally, the Information Circular will reference that the Trust is subject to various fees and expenses described in the 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 publicly available on the Trust's website.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>39</sup> that an exchange has rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that proposed Rule 5712 is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading of Commodity- and/or Digital Asset-Based Investment Interests provide specific initial and continued listing criteria required to be met by such securities.

Proposed Rule 5712(a) provides that the Exchange will file separate proposals under Rule 19(b) of the Act before the listing and trading of Commodity- and/or Digital

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<sup>39</sup> 15 U.S.C. 78f(b)(5).

Asset- Based Investment Interests. All statements or representations contained in such rule filing regarding (a) the description of the index, portfolio, or reference asset, (b) limitations on index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements. If an issue of Commodity- and/or Digital Asset-Based Investment Interests does not satisfy these requirements, the Exchange may halt trading in the securities and will initiate delisting proceedings under the Rule 5800 Series.

Proposed Rule 5712(e) sets forth initial and continued listing criteria applicable to Commodity- and/or Digital Asset-Based Investment Interests. Proposed Rule 5712(e)(1)(i) provides that, for each series of Commodity- and/or Digital Asset-Based Investment Interests, the Exchange will establish a minimum number of Commodity- and/or Digital Asset-Based Investment Interests required to be outstanding at the time of commencement of trading on the Exchange. Proposed Rule 5712(e)(1)(ii) provides that in the aggregate, at least 90% of the weight of the commodity and/or digital asset holdings of a series of Commodity- and/or Digital Asset-Based Investment Interests shall, on both an initial and continuing basis, consist of commodities and/or digital assets for which the Exchange may obtain information pursuant to its ISG membership or for which the principal market is a market with which the Exchange has a CSSA. In addition, proposed Rule 5712(e)(2) provides that the Exchange will maintain surveillance procedures for securities listed under proposed Rule 5712 and sets forth the circumstances under which the Exchange would consider the suspension of trading in and

delisting under the Rule 5800 Series of a series of Commodity- and/or Digital Asset-Based Investment Interests.

With respect to proposed Rule 5712, the Exchange believes that the proposed rule change is designed 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 because Commodity- and/or Digital Asset-Based Investment Interests listed and traded pursuant to proposed Rule 5712 would be substantially similar to Commodity-Based Trust Shares listed and traded pursuant to current Rule 5711(d). Commodity- and/or Digital Asset-Based Investment Interests differ from Commodity-Based Trust Shares only in that Commodity- and/or Digital Asset-Based Investment Interests could be issued, as a proposed, by a trust, limited liability company, or other similar entity (rather than only by a trust), and in that Commodity- and/or Digital Asset-Based Investment Interests could be based, as proposed, on underlying commodities, digital assets (provided that at least 90% of commodity and/or digital asset holdings are those concerning which the Exchange may obtain information via the ISG from other members of the ISG or via CSSA), and/or derivative securities products. The Exchange believes this additional flexibility with respect to the structure of the entity issuing Commodity- and/or Digital Asset-Based Investment Interests and the holdings underlying such securities would remove impediments to and perfect the mechanism of a free and open market, as well as promote competition, by promoting the listing and trading of a new type of ETP, to the benefit of all market participants. The Exchange further believes that the proposed requirement that at least 90% of any commodity and/or digital asset holdings are those concerning which the Exchange may obtain information via the ISG

from other members of the ISG or via a CSSA would remove impediments to and perfect the mechanism of a free and open market, as well as protect investors and the public interest, because it would offer flexibility to issuers of series of Commodity- and/or Digital Asset-Based Investment Interests, to the benefit of investors, while facilitating information sharing among market participants regarding the vast majority of any commodities and/or digital assets underlying series of Commodity- and/or Digital Asset-Based Investment Interests. As noted above, this requirement is based on a similar provision approved by the Commission in 5735(b)(1)(D)(i) regarding Managed Fund Shares.

The Exchange also believes that the proposed addition of Commodity- and/or Digital Asset-Based Investment Interests in Rule 5615(a)(6)(B)'s definition of Derivative Securities, which are exempt from the enumerated corporate governance requirements in Rule 5615(a)(6)(A), would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system by holding Commodity- and/or Digital Asset-Based Investment Interests to the same exemptions currently applicable to other ETPs (including Commodity-Based Trust Shares). The Exchange similarly believes that adding references to Commodity- and/or Digital Asset-Based Investment Interests to Equity 4, Rule 4120(a)(9) and Equity 4, Rule 4120(b)(4)(A), each as discussed above, will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system by holding Commodity- and/or Digital Asset-Based Investment Interests to the same halt provisions currently applicable to other ETPs (including Commodity-Based Trust Shares).

With respect to the proposed listing and trading of the Shares, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria set forth in proposed Nasdaq Rule 5712. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and Index Constituents' derivatives with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and Index Constituents' derivatives from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and listed Index Constituents' derivatives via the ISG, from other exchanges that are members or affiliates of ISG, or with which the Exchange has in place a CSSA. The Exchange is also able to obtain information regarding trading in the Shares and Index Constituents' derivatives through Members, in connection with such Members' proprietary or customer trades which they effect on any relevant market. 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.

Trading in Shares of the Trust will be halted if the circuit breaker parameters have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market.

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 Shares that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

In the Spot Bitcoin ETP Approval Order and the Spot Ether ETP Approval Order, the Commission concluded that the proposing exchanges' CSSA with the CME – a U.S. regulated market – whose bitcoin and ether futures market is consistently highly correlated to spot bitcoin and spot ether, respectively - could be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the proposals.

The proposed rule change is also designed to prevent fraudulent and manipulative acts and practices because the Trust is structured similarly to and will operate in materially the same manner as the Spot Bitcoin ETPs and Spot Ether ETPs previously approved by the Commission. The Exchange further believes that the proposed rule



change is designed to prevent fraudulent and manipulative acts and practices because, as noted by the Commission in the Spot Bitcoin ETP Approval Order and Spot Ether ETP Approval Order, the Exchange's ability to obtain information regarding trading in the Shares and futures from other markets that are members of the ISG (including the CME) would assist the Exchange in detecting and deterring misconduct. In particular, the CME bitcoin futures market and CME ether futures market are large, surveilled, and regulated markets that are closely connected with the spot markets for bitcoin and ether, respectively, through which the Exchange could obtain information to assist in detecting and deterring potential fraud or manipulation.

In addition, Coinbase Derivatives offers trading in LINK, LTC, and AVAX futures. Nasdaq has a comprehensive surveillance-sharing agreement with Coinbase Derivatives via its common membership in ISG, which facilitates the sharing of information that is available to Coinbase Derivatives through its surveillance of its markets, including its surveillance of Coinbase Derivatives' LINK, LTC, and AVAX futures market. Similar to the Spot Bitcoin and Spot ETH ETPs previously approved by the SEC, Nasdaq's ability to obtain information regarding trading in these futures products from other markets that are members of the ISG would assist Nasdaq in detecting and deterring misconduct.

The GSG and USCI Orders provide further context for products with diversified holdings, where a majority of the assets are subject to surveillance mechanisms. In the GSG Order, the Commission approved an ETP on condition that no more than 10% of the index's weight could consist of assets whose principal trading market was not a member of the ISG or lacked a CSSA with the Exchange. Similarly, the USCI Order established a

similar standard, requiring that at least 90% of the fund's portfolio consist of assets traded on markets with ISG or CSSA arrangements. These orders demonstrate that a majority of assets subject to surveillance are sufficient to mitigate manipulation risks, even when a limited portion of the portfolio is not covered by a surveillance-sharing agreement.

Consequently, this Trust, which primarily invests in bitcoin and ether but may include up to 10% of its assets in other digital assets that do not have surveillance-sharing agreements in place, is consistent with the principles of these approved products. While the majority of the Trust's holdings will consist of bitcoin and ether, the inclusion of up to 10% of other digital assets reflects a balanced approach that maintains robust oversight while offering diversified exposure. CME's bitcoin futures market and ether futures market are highly, though not perfectly, correlated with the spot bitcoin market and the spot ether market, respectively. As such, surveillance of CME's bitcoin futures market and ether futures market can reasonably be expected to assist in surveilling for fraudulent and manipulative acts and practices in the context of the majority of this Trust's portfolio.

For the remaining assets, diversification across multiple digital assets and the 10% limitation reduce the potential for market manipulation, providing additional safeguards within the framework of this proposal.

As noted above, the Reference Prices for the Index Constituents are calculated by the Calculation Agent based exclusively on trading activity at the Core Crypto Platforms, each of which must meet robust eligibility criteria designed to protect the Reference Prices against fraud and manipulation. The layers of defense provided by the Trust's use of Reference Prices to calculate NAV, in conjunction with the Trust's use of cash

creations and redemptions, constitute a novel means to detect, prevent, and respond to fraud, attempted fraud, and similar wrongdoing, including market manipulation, consistent with the requirements of the Act. The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a CSSA for at least 90% of the Trust's commodity and/or digital asset holdings. In addition, as noted above, investors will have ready access to information regarding the Trust's NAV, IIV, and quotation and last sale information for the Shares.

For all 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 will facilitate the listing and trading of the Shares, which are Commodity- and/or Digital Asset-Based Investment Interests Shares and that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

No written comments were 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 (i) as the Commission may designate up to 90 days of such date 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 shall: (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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-NASDAQ-2025-016 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-2025-016. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website

(<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2025-016 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>40</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>40</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

Deleted text is [bracketed]. New text is underlined.

**THE NASDAQ STOCK MARKET LLC RULES**

\* \* \* \* \*

**5600. Corporate Governance Requirements**

\* \* \* \* \*

**5615. Exemptions from Certain Corporate Governance Requirements**

This rule provides the exemptions from the corporate governance rules afforded to certain types of Companies, including Controlled Companies, and sets forth the phase-in schedules for Companies listing in connection with initial public offerings, Companies emerging from bankruptcy, Companies transferring from other markets and national securities exchanges, Companies listing in connection with a spin-off transaction, and Companies ceasing to be Smaller Reporting Companies, Foreign Private Issuers, or Controlled Companies.

**(a) Exemptions to the Corporate Governance Requirements**

\* \* \* \* \*

**(6) Issuers of Non- Voting Preferred Securities, Debt Securities and Derivative Securities**

- (A) Issuers whose only securities listed on Nasdaq are non-voting preferred securities, debt securities or Derivative Securities, are exempt from the requirements relating to Independent Directors (as set forth in Rule 5605(b)), Compensation Committees (as set forth in Rule 5605(d)), Director Nominations (as set forth in Rule 5605(e)), Codes of Conduct (as set forth in Rule 5610), and Meetings of Shareholders (as set forth in Rule 5620(a)). In addition, these issuers are exempt from the requirements relating to Audit Committees (as set forth in Rule 5605(c)), except for the applicable requirements of SEC Rule 10A-3. Notwithstanding, if the issuer also lists its common stock or voting preferred stock, or their equivalent on Nasdaq it will be subject to all the requirements of the Nasdaq 5600 Rule Series.
- (B) For the purposes of this Rule 5600 Series only, the term "Derivative Securities" is defined as the following: Exchange Traded Fund Shares (Rule 5704), Portfolio Depository Receipts and Index Fund Shares (Rule 5705); Equity Index-Linked Securities (Rule 5710(k)(i)), Commodity-Linked Securities (Rule 5710(k)(ii)), Fixed Income Index-Linked Securities (5710(k)(iii)), Futures-Linked Securities (5710(k)(iv)), Multifactor Index-Linked Securities (5710(k)(v)), Index-Linked Exchangeable Notes (Rule 5711(a)), Equity Gold Shares (Rule 5711(b)), Trust Certificates (Rule 5711(c)), Commodity-Based Trust Shares (Rule 5711(d)),

Currency Trust Shares (Rule 5711(e)), Commodity Index Trust Shares (Rule 5711(f)), Commodity Futures Trust Shares (Rule 5711(g)), Partnership Units (Rule 5711(h)), Managed Trust Securities (Rule 5711(j)), Commodity- and/or Digital Asset-Based Investment Interests (Rule 5712), SEEDS (Rule 5715), Trust Issued Receipts (Rule 5720), Managed Fund Shares (Rule 5735), NextShares (Rule 5745), and Proxy Portfolio Shares (Rule 5750). Derivative Securities are subject to certain exemptions to the Rule 5600 Series as described in Rule 5615(a)(6).

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## **5700. Other Securities**

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## **5712. Commodity- and/or Digital Asset-Based Investment Interests[Reserved]**

(a) The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Commodity- and/or Digital Asset-Based Investment Interests that meet the criteria of this rule. The Exchange will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before trading, either by listing or pursuant to unlisted trading privileges, Commodity- and/or Digital Asset-Based Investment Interests. All statements or representations contained in such rule filing regarding (a) the description of the index, portfolio, or reference asset, (b) limitations on index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements. If an issue of Commodity- and/or Digital Asset-Based Investment Interests does not satisfy these requirements, the Exchange may halt trading in the securities and will initiate delisting proceedings under the Rule 5800 Series.

(b) **Applicability.** This rule is applicable only to Commodity- and/or Digital Asset-Based Investment Interests. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the provisions of the Bylaws and all other rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Commodity- and/or Digital Asset-Based Investment Interests are included within the definition of “security” or “securities” as such terms are used in the Bylaws and Rules of the Exchange.

(c) **Definitions.** The following terms as used in the Rules shall, unless the context otherwise requires, have the meaning herein specified:

(1) **Commodity- and/or Digital Asset-Based Investment Interests.** The term “Commodity- and/or Digital Asset-Based Investment Interests” means a security (a) that is issued by a trust, limited liability company, or other similar entity (the “Fund”) that holds (1) specified commodities and/or digital assets deposited with the Fund, or (2) specified commodities and/or digital assets and, in addition to such specified commodities and/or digital assets, derivative securities products

(i.e., securities that meet the definition of “derivative securities product” in Rule 19b-4(e) under the Securities Exchange Act of 1934) deposited with the Fund and/or cash; (b) that is issued by such Fund in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity(ies), digital asset(s), derivative securities products, and/or cash; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder’s request by such Fund which will deliver to the redeeming holder the quantity of the underlying commodity(ies), digital asset(s), derivative securities products, and/or cash.

(2) **Commodity.** For purposes of this rule, the term “commodity” means commodities as defined in Section 1a(9) of the Commodity Exchange Act.

(3) **Digital Asset.** For purposes of this Rule, the term “digital asset” means any digital representation of value recorded on a cryptographically secured, distributed ledger (i.e., blockchain) or similar technology.

**(d) Designation of Underlying Commodity(ies), Digital Asset(s), and/or Derivative Securities Products.** The Exchange may trade, either by listing or pursuant to unlisted trading privileges, Commodity- and/or Digital Asset-Based Investment Interests based on an underlying commodity(ies), digital asset(s), and/or derivative securities products. Each issue of a Commodity- and/or Digital Asset-Based Investment Interest shall be designated as a separate series and shall be identified by a unique symbol.

**(e) Initial and Continued Listing.** Commodity- and/or Digital Asset-Based Investment Interests will be listed and traded on the Exchange subject to application of the following criteria:

**(1) Initial Listing**

(i) The Exchange will establish a minimum number of Commodity- and/or Digital Asset-Based Investment Interests required to be outstanding at the time of commencement of trading on the Exchange.

(ii) There shall be no limitation on the percentage of a Fund’s portfolio that may be invested in commodity and/or digital asset holdings, except that, in the aggregate, at least 90% of the weight of such holdings shall, on both an initial and continuing basis, consist of commodities and/or digital assets concerning which the Exchange is able to obtain information via the Intermarket Surveillance Group (“ISG”) from other members of the ISG or via a comprehensive surveillance sharing agreement.

**(2) Continued Listing.** The Exchange will maintain surveillance procedures for securities listed under this rule and will consider the suspension of trading in, and will initiate delisting proceedings under the Rule 5800 Series of, such series under any of the following circumstances:



(i) if, following the initial twelve-month period following commencement of trading on the Exchange of Commodity- and/or Digital Asset-Based Investment Interests, the Fund has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Commodity- and/or Digital Asset- Based Investment Interests;

(ii) if, following the initial twelve-month period following commencement of trading on the Exchange of Commodity- and/or Digital Asset-Based Investment Interests, the Fund has fewer than 50,000 securities issued and outstanding;

(iii) if, following the initial twelve-month period following commencement of trading on the Exchange of Commodity- and/or Digital Asset-Based Investment Interests, the market value of all securities issued and outstanding is less than \$1,000,000;

(iv) if the value of the underlying commodity(ies) and/or digital asset(s) is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the sponsor, Fund, custodian or the Exchange;

(v) if the intraday indicative value is no longer made available on at least a 15-second delayed basis;

(vi) if any of the continued listing requirements set forth in this Rule 5712 are not continuously maintained;

(vii) if the Exchange submits a rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of a series of Commodity- and/or Digital Asset-Based Investment Interests and any of the statements or representations regarding (a) the description of the index, portfolio, or reference asset, (b) limitations on index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing are not continuously maintained; or

(viii) if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

### **(3) Investment Interests Issued by a Trust**

(i) Term. The stated term of a trust shall be as stated in the trust prospectus. However, a trust may be terminated under such earlier circumstances as may be specified in the trust prospectus. A trust may terminate in accordance with the provisions of the trust prospectus, which may provide for termination if the value of the trust falls below a specified amount.

(ii) **Trustee.** The following requirements apply on an initial and continued listing basis:

(A) The trustee of a trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee.

(B) No change is to be made in the trustee of a listed issue without prior notice to and approval of the Exchange.

(f) **Termination.** Upon termination of a Fund issuing securities pursuant to this rule, the Exchange requires that Commodity- and/or Digital Asset-Based Investment Interests issued in connection with such Fund be removed from Exchange listing.

(g) **Voting.** Voting rights shall be as set forth in the applicable prospectus of the Fund issuing Commodity- and/or Digital Asset-Based Investment Interests.

(h) **Limitation of Exchange Liability.** Neither the Exchange nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any underlying commodity value, the current value of the underlying commodity required to be deposited to the Fund in connection with issuance of Commodity- and/or Digital Asset-Based Investment Interests; resulting from any negligent act or omission by the Exchange, or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange, its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in an underlying commodity.

(i) **Market Maker Accounts.** A registered Market Maker in Commodity- and/or Digital Asset-Based Investment Interests must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading that the Market Maker may have or over which it may exercise investment discretion in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives; an underlying digital asset, related digital asset futures or options on digital asset futures, or any other related digital asset derivatives; or an underlying series of derivative securities products, related futures or options on such derivative securities products, or any other related derivatives of such derivative securities products. No Market Maker in Commodity- and/or Digital-Asset Based Investment Interests shall trade in a commodity or any related derivative in an account that the Market Maker (1) directly or indirectly controls trading activities or has a direct interest in the profits or losses thereof, (2) is required by this rule to disclose to the Exchange, and (3) has not reported to the Exchange.

In addition to the existing obligations under Exchange rules regarding the production of books and records, the Market Maker in Commodity- and/or Digital Asset-Based Investment Interests shall make available to the Exchange such books, records, or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity, as may be requested by the Exchange.

Commentary:

.01 Members shall provide to all purchasers of newly issued Commodity- and/or Digital Asset-Based Investment Interests a prospectus for the series of Commodity- and/or Digital Asset-Based Investment Interests.

.02 Transactions in Commodity- and/or Digital-Asset Based Investment Interests will occur during the trading hours specified in Equity 4, Rule 4120.

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#### **Equity 4 Equity Trading Rules**

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#### **4120. Limit Up-Limit Down Plan and Trading Halts**

##### **(a) Authority to Initiate Trading Halts or Pauses**

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(9) may halt trading in a series of Portfolio Depository Receipts, Index Fund Shares (as defined in Rule 5705), Index-Linked Exchangeable Notes, Equity Gold Shares, Trust Certificates, Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, and Managed Trust Securities (as defined in Rule 5711(a) - (h) and (j), respectively), Commodity- and/or Digital Asset-Based Investment Interests (as defined in Rule 5712), or NextShares (as defined in Rule 5745) listed on Nasdaq if the Intraday Indicative Value (as defined in Rule 5705), for Portfolio Depository Receipts or Index Fund Shares, for derivative securities as defined in Rule 5711(a), (b), and (d) - (h), Rule 5711(j) for Managed Trust Securities, or Rule 5745 for NextShares) or the index value applicable to that series is not being disseminated as required, during the day in which the interruption to the dissemination of the Intraday Indicative Value or the index value occurs. If the interruption to the dissemination of the Intraday Indicative Value or the index value persists past the trading day in which it occurred, Nasdaq will halt trading no later than the beginning of the trading day following the interruption. Nasdaq may also exercise discretion to halt trading in a series of Portfolio Depository Receipts, Index Fund Shares, Exchange Traded Fund Shares (as defined in Rule 5704), Managed Fund Shares, Index-Linked Exchangeable Notes, Equity Gold Shares, Trust Certificates, Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust

Shares, Commodity Futures Trust Shares, Partnership Units, Trust Units (as defined in Rule 5711(i)), Managed Trust Securities, Currency Warrants (as defined in Rule 5711(k)), Commodity- and/or Digital Asset-Based Investment Interests (as defined in Rule 5712), NextShares, or Proxy Portfolio Shares (as defined in Rule 5750) based on a consideration of the following factors: (A) trading in underlying securities comprising the index or portfolio applicable to that series has been halted in the primary market(s), (B) the extent to which trading has ceased in securities underlying the index or portfolio, or (C) the presence of other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market.

\* \* \* \* \*

**(b) Trading Halts for Trading of Certain Derivative Securities Products on Nasdaq Pursuant to Unlisted Trading Privileges**

\* \* \* \* \*

**(4) Definitions.** For purposes of this Rule:

(A) Derivative Securities Product means a series of Exchange Traded Fund Shares, Portfolio Depository Receipts, Index Fund Shares, Managed Fund Shares, NextShares, Trust Issued Receipts, or Proxy Portfolio Shares (as defined in Rules 5704, 5705, 5735, 5745, 5720, and 5750 respectively), a series of Commodity-Related Securities (as defined in Equity 10, Section 8), securities representing interests in unit investment trusts or investment companies, Index- Linked Exchangeable Notes, Equity Gold Shares, Trust Certificates, Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, Trust Units, Managed Trust Securities, or Currency Warrants (as defined in Rule 5711(a) - (k)), Commodity- and/or Digital Asset-Based Investment Interests (as defined in Rule 5712), or any other UTP Derivative Security (as defined in Rule 5740).

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