FEDERAL REGISTER

Vol. 89 Friday,
No. 9 January 12, 2024

Pages 2111–2480

OFFICE OF THE FEDERAL REGISTER

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Contents

Federal Register

Vol. 89, No. 9

Friday, January 12, 2024

Agency for Healthcare Research and Quality
NOTICES
Supplemental Evidence and Data Request:
Effect of Dietary Digestible Carbohydrate Intake on Risk of Cardiovascular Disease, 2226–2228

Agricultural Marketing Service
PROPOSED RULES
Marketing Order:
Raisins Produced from Grapes Grown in California; Hearing, 2178–2182
NOTICES
Environmental Impact Statements; Availability, etc.:
Local Meat Capacity Grant Program, Finding of No Significant Impact, 2198

Agriculture Department
See Agricultural Marketing Service

Census Bureau
NOTICES
Draft Plan for Providing Public Access to the Results of Federally Funded Research, 2199–2200

Civil Rights Commission
NOTICES
Hearings, Meetings, Proceedings, etc.:
Delaware Advisory Committee, 2198–2199

Commerce Department
See Census Bureau
See Industry and Security Bureau
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Hearings, Meetings, Proceedings, etc.:
Quarterly Public Meeting, 2214
Procurement List; Additions and Deletions, 2213–2214

Defense Department
RULES
Civil Monetary Penalty Inflation Adjustment, 2144–2146
NOTICES
Department of Navy Categorical Exclusion Pursuant to the National Environmental Policy Act, 2214–2216

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Family Educational Rights and Privacy Act Regulatory Requirements, 2218
Joint Consolidation Loan Separation Application, 2217–2218
Hearings, Meetings, Proceedings, etc.:
President's Advisory Commission on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics, 2219–2220
Privacy Act; Matching Program, 2216–2217

Election Assistance Commission
NOTICES
Meetings; Sunshine Act, 2220

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Charter Amendments, Establishments, Renewals and Terminations:
National Petroleum Council, 2220

Environmental Protection Agency
NOTICES
Environmental Impact Statements; Availability, etc., 2222
Pesticide Tolerances:
Neonicotinoid Insecticides and Other Systemic Insecticides, 2222–2223
Policy Assessment:
Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen, Oxides of Sulfur and Particulate Matter, 2223

Farm Credit Administration
RULES
Civil Monetary Penalty Inflation Adjustment, 2116–2118

Federal Aviation Administration
RULES
Airworthiness Criteria:
Wing Aviation LLC; Hummingbird Unmanned Aircraft, 2118–2125
Special Conditions:
Lufthansa Tecknik AG, Airbus Models A319–133 and A321–200 Series Airplanes; Supercapacitor Systems and Installation, 2126–2127
NOTICES
Environmental Assessments; Availability, etc.:
Application for a Supersonic Flight Waiver for Boom Technology XB–1 Supersonic Test Flights, 2471–2472

Federal Communications Commission
RULES
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, 2151–2171
Civil Monetary Penalty Inflation Adjustment, 2148–2151
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 2223–2225

Federal Energy Regulatory Commission
NOTICES
Combined Filings, 2220–2222

Federal Housing Finance Agency
NOTICES
Annual Adjustment of the Cap on Average Total Assets that Defines Community Financial Institutions, 2225–2226

Federal Motor Carrier Safety Administration
PROPOSED RULES
Safety Fitness Determinations, 2195–2197

Federal Reserve System
RULES
Civil Monetary Penalty Inflation Adjustment, 2114–2116

Fish and Wildlife Service
NOTICES
Privacy Act; Systems of Records, 2230–2236

Foreign Assets Control Office
RULES
Civil Monetary Penalty Inflation Adjustment, 2139–2144

General Services Administration
RULES
Acquisition Regulation:
Standardizing Federal Supply Schedule Clause and Provision Prescriptions, 2172–2174

Geological Survey
NOTICES
Privacy Act; Systems of Records, 2236–2237

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Health Resources and Services Administration
See National Institutes of Health

Health Resources and Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
CAREWare Customer Satisfaction and Usage Survey, 2228–2229

Indian Affairs Bureau
NOTICES
Indian Gaming:
Approval by Operation of Law of Amendment to Class III Tribal-State Gaming Compact (Ewiiaapaayp Band of Kumeyaay Indians and State of California), 2237

Industry and Security Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Import, End-User, Delivery Verification Certificates and Firearms Entry Clearance Requirements, 2200–2201

Institute of Museum and Library Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Native American Library Services Basic Grant Program Notice of Funding Opportunity, 2256–2257

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service
See Ocean Energy Management Bureau
See Surface Mining Reclamation and Enforcement Office
RULES
Privacy Act Regulations:
Exemption for Investigative Records, 2147–2148
NOTICES
Privacy Act; Systems of Records, 2237–2238

Internal Revenue Service
RULES
Corporate Bond Yield Curve for Determining Present Value, 2127–2132
PROPOSED RULES
Definition of Energy Property and Rules Applicable to the Energy Credit; Correction, 2182–2183

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Certain Oil Country Tubular Goods from the Republic of Korea; Correction, 2201

International Trade Commission
NOTICES
Investigations; Determinations, Modifications, and Rulings, etc.:
Certain Furniture Products Finished with Decorative Wood Grain Paper and Components Thereof, 2252–2253

Justice Department
PROPOSED RULES
Nondiscrimination on the Basis of Disability:
Accessibility of Medical Diagnostic Equipment of State and Local Government Entities, 2183–2195
NOTICES
Proposed Consent Decree:
Clean Air Act, 2254
Proposed Settlement Agreement, Stipulation, Order, and Judgment, etc.:
Clean Air Act, 2253–2254

Labor Department
See Workers Compensation Programs Office

Land Management Bureau
NOTICES
Environmental Impact Statements; Availability, etc.:
Draft Resource Management Plan Amendment, Rough Hat Clark Solar Project in Clark County, NV, 2239–2240
Privacy Act; Systems of Records, 2238–2239

Maritime Administration
NOTICES
Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel:
Mas Pura Vida (Motor), 2474–2475
Rayne Check (Motor), 2474
Sarabi (Sail), 2472–2473
Wanderlust (Motor), 2473

National Foundation on the Arts and the Humanities
See Institute of Museum and Library Services

National Highway Traffic Safety Administration
NOTICES
Petition for Decision of Inconsequential Noncompliance:
Consolidated Glass and Mirror, LLC; Denial, 2475–2478

National Institute of Standards and Technology
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
National Environmental Policy Act Financial Disclosure, 2201–2202

National Institutes of Health
NOTICES
Hearings, Meetings, Proceedings, etc.:
National Institute of Allergy and Infectious Diseases, 2229–2230
National Institute of Dental and Craniofacial Research, 2230

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Exclusive Economic Zone Off Alaska:
Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area, 2176–2177
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Vessel Monitoring System Requirements for the Pacific Islands Fisheries, 2212
Permits, Applications, Issuances, etc.:
Marine Mammals, 2213
Taking or Importing of Marine Mammals:
City of Oceanside's Harbor Fishing Pier and Non-Motorized Vessel Launch Improvement Project in Oceanside, CA, 2202–2212

National Park Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
National Park Service Leasing Program, 2240–2241
Inventory Completion:
Amistad National Recreation Area, Del Rio, TX, 2247–2248
Cincinnati Museum Center, Cincinnati, OH, 2245–2247
Michigan State Historic Preservation Office, Lansing, MI, 2244
U.S. Department of the Interior, Bureau of Land Management, Alaska State Office, Anchorage, AK, 2243–2244
U.S. Department of the Interior, Navajo National Monument, Shonto, AZ, 2244–2245
University of Oregon Museum of Natural and Cultural History, Eugene, OR; Amendment, 2248–2249
University of Rhode Island, South Kingstown, RI, 2241–2243

National Science Foundation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Computer Science for All—Evaluation and Systematic Review of Grantee Documents, 2257–2258

Nuclear Regulatory Commission
RULES
Civil Monetary Penalty Inflation Adjustment, 2112–2114
Enforcement Policy, 2111–2112

Ocean Energy Management Bureau
NOTICES
Environmental Assessments; Availability, etc.:
Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf Offshore Delaware, Maryland, and Virginia, 2251–2252
Environmental Impact Statements; Availability, etc.:
Expected Wind Energy Development in the New York Bight, 2249–2251

Pension Benefit Guaranty Corporation
RULES
Civil Monetary Penalty Inflation Adjustment, 2132–2133

Postal Regulatory Commission
NOTICES
New Postal Products, 2258–2259

Railroad Retirement Board
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 2259–2262

Securities and Exchange Commission
NOTICES
Self-Regulatory Organizations; Proposed Rule Changes:
Cboe BZX Exchange, Inc., 2263–2278, 2338–2443
NYSE American LLC, 2262–2263, 2294–2297
NYSE Arca, Inc., 2297–2321, 2443–2468
The Nasdaq Stock Market LLC, 2278–2294, 2321–2338

Small Business Administration
NOTICES
Disaster Declaration:
Kansas; Public Assistance Only, 2469
Rhode Island, 2468–2469
Surrender of License of Small Business Investment Company:
Multiplier Capital, LP, 2469

State Department
NOTICES
Charter Amendments, Establishments, Renewals and Terminations:
Advisory Committee on International Postal and Delivery Services, 2469

Surface Mining Reclamation and Enforcement Office
RULES
West Virginia Regulatory Program, 2133–2139

Surface Transportation Board
RULES
Civil Monetary Penalty Inflation Adjustment, 2174–2176
NOTICES
Exemption:
Continuance in Control; James K. Perry and W. Stinson Dean, Pioneer Rail and Transload of Hawthorne, FL and Pioneer Rail and Transload of El Reno, OK, 2470
Operation; Pioneer Rail and Transport of El Reno, OK, a Division of Pioneer Storage Co., LLC, Line in El Reno, OK, 2471
Operation; Pioneer Rail and Transport of Hawthorne, FL, a Division of Pioneer Storage Co. of Florida, LLC, Line in Hawthorne, FL, 2469–2470

Transportation Department
See Federal Aviation Administration

See Federal Motor Carrier Safety Administration
See Maritime Administration
See National Highway Traffic Safety Administration
See Transportation Statistics Bureau

Transportation Statistics Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Report of Extension of Credit to Political Candidates, 2478
Submission of Audit Reports, 2478–2479

Treasury Department
See Foreign Assets Control Office
See Internal Revenue Service

Veterans Affairs Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Authorization to Disclose Personal Information to a Third Party, 2480
Environmental Assessments; Availability, etc.:
State Veterans Homes Program, 2479–2480

Workers Compensation Programs Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Certification of Medical Necessity, 2255–2256
Representative Payee Report, Representative Payee Report (Short Form), and Physician's/Medical Officer's Statement, 2254–2255

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR

Proposed Rules:

989.....2178

10 CFR

2 (2 documents) 2111, 2112
13.....2112

12 CFR

263.....2114
622.....2116

14 CFR

21.....2118
25.....2126

26 CFR

1.....2127

Proposed Rules:

1.....2182

28 CFR

Proposed Rules:

35.....2183

29 CFR

4071.....2132
4302.....2132

30 CFR

948.....2133

31 CFR

501.....2139
510.....2139
535.....2139
536.....2139
539.....2139
541.....2139
542.....2139
544.....2139
546.....2139
547.....2139
548.....2139
549.....2139
551.....2139
552.....2139
553.....2139
555.....2139
558.....2139
560.....2139
561.....2139
566.....2139
570.....2139
576.....2139
578.....2139
583.....2139
584.....2139
588.....2139
589.....2139
590.....2139
592.....2139
594.....2139
597.....2139
598.....2139

32 CFR

269.....2144

43 CFR

2.....2147

47 CFR

1 (2 documents) 2148, 2151

48 CFR

538.....2172

49 CFR

1022.....2174

Proposed Rules:

350.....2195
365.....2195
385.....2195
386.....2195
387.....2195
395.....2195

50 CFR

679.....2176

Rules and Regulations

Federal Register

Vol. 89, No. 9

Friday, January 12, 2024

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

[NRC–2023–0196]

Revision of the NRC Enforcement Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Revision to policy statement.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is publishing a revision to its Enforcement Policy. This revision addresses the requirements of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, which requires Federal agencies to adjust their maximum civil monetary penalty amounts annually for inflation.

DATES: This action is effective on January 12, 2024.

ADDRESSES: Please refer to Docket ID NRC–2023–0196 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0196. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
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FOR FURTHER INFORMATION CONTACT: Susanne Woods, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–287–9446, email: *Susanne.Woods@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

In 1990, Congress passed the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA) to provide for regular adjustments for inflation of civil monetary penalties (CMPs). As amended by the Debt Collection Improvement Act of 1996, the FCPIAA required that the head of each Federal agency review and, if necessary, adjust by regulation the CMPs assessed under statutes enforced by the agency at least once every 4 years.

On November 2, 2015, the President of the United States signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Improvements Act), which further amended the FCPIAA and requires Federal agencies to adjust their CMPs annually for inflation no later than January 15 of each year. The requirements of the 2015 Improvements Act apply to the NRC's maximum CMP amounts for 1) a violation of the Atomic Energy Act (AEA) of 1954, as amended, or any regulation or order issued under the AEA, codified in § 2.205(j) of title 10 of the *Code of Federal Regulations* (10 CFR), ''Civil penalties''; and 2) a false claim or statement made under the Program Fraud Civil Remedies Act, codified in 10 CFR 13.3, ''Basis for civil penalties and assessments.''

Pursuant to the 2015 Improvements Act, the NRC published today in the Rules section of the **Federal Register** the revised maximum daily base CMP, based on the percentage change in the consumer price index between October 2021 and October 2022, and codified in 10 CFR 2.205(j). In connection with this final rule, the NRC is publishing a corresponding update to the NRC's Enforcement Policy to adjust the monetary amounts listed in Section 8.0, ''Table of Base Civil Penalties.'' This monetary adjustment does not include the base civil penalty amounts listed in item f. because those values are based on the estimated or actual costs of authorized disposal and are not calculated based on the maximum daily base CMP codified in 10 CFR 2.205(j). Adjustments to item f. base civil penalty amounts are being examined under a separate effort.

Accordingly, the NRC has revised its Enforcement Policy to read as follows:

8.0 Table of Base Civil Penalties

[Table A]

a. Power reactors, gaseous diffusion uranium enrichment plants, and high-level waste repository	$360,000
b. Fuel fabricators authorized to possess Category I or II quantities of SNM and uranium conversion facilities	180,000
c. All other fuel fabricators, including facilities under construction, authorized to possess Category III quantities of SNM, industrial processors, independent spent fuel and monitored retrievable storage installations, mills, gas centrifuge and laser uranium enrichment facilities	90,000
d. Test reactors, contractors, waste disposal licensees, industrial radiographers, and other large material users	36,000
e. Research reactors, academic, medical, or other small material users	18,000
f. Loss, abandonment, or improper transfer or disposal of regulated material, regardless of the use or type of licensee:	
1. Sources or devices with a total activity greater than 3.7 × 104 MBq (1 Curie), excluding hydrogen-3 (tritium)	54,000
2. Other sources or devices containing the materials and quantities listed in 10 CFR 31.5(c)(13)(i)	17,000
3. Sources and devices not otherwise described above	7,000

8.0 TABLE OF BASE CIVIL PENALTIES—Continued

[Table A]

g. Individuals who release safeguards information	9,000

II. Paperwork Reduction Act Statement

This policy statement does not contain any new or amended collection of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq). Existing collections of information were approved by the Office of Management and Budget (OMB), approval numbers 3150–0010 and 3150–0136.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

III. Congressional Review Act

This action is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has determined that it is not a ''major rule'' as defined by the Congressional Review Act.

Dated: December 20, 2023.

For the Nuclear Regulatory Commission.

Daniel H. Dorman,

Executive Director for Operations.

[FR Doc. 2023–28968 Filed 1–11–24; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 13

[NRC–2022–0045]

RIN 3150–AK73

Adjustment of Civil Penalties for Inflation for Fiscal Year 2024

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to adjust the maximum civil monetary penalties it can assess under statutes enforced by the agency. These changes are mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The NRC is amending its regulations to adjust the maximum civil monetary penalty for a violation of the Atomic Energy Act of 1954, as amended, or any regulation or order issued under the Atomic Energy Act from $351,424 to $362,814 per violation, per day. Additionally, the NRC is amending provisions concerning program fraud civil penalties by adjusting the maximum civil monetary penalty under the Program Fraud Civil Remedies Act from $13,508 to $13,946 for each false claim or statement.

DATES: This final rule is effective on January 12, 2024.

ADDRESSES: Please refer to Docket ID NRC–2022–0045 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0045. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

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FOR FURTHER INFORMATION CONTACT: Krupskaya Castellon, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–9221, email: *Krupskaya.Castellon@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Discussion
III. Rulemaking Procedure
IV. Section-by-Section Analysis
V. Regulatory Analysis
VI. Regulatory Flexibility Act
VII. Backfitting and Issue Finality
VIII. Plain Writing
IX. National Environmental Policy Act
X. Paperwork Reduction Act
XI. Congressional Review Act

I. Background

Congress passed the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA) to allow for regular adjustment for inflation of civil monetary penalties (CMPs), maintain the deterrent effect of such penalties and promote compliance with the law, and improve the collection of CMPs by the Federal government (Pub L. 101–410, 104 Stat. 890; 28 U.S.C. 2461 note). Pursuant to this authority, and as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–34, 110 Stat. 1321–373), the NRC increased via rulemaking the CMP amounts for violations of the Atomic Energy Act of 1954, as amended (AEA) (codified at § 2.205 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Civil penalties'') and Program Fraud Civil Remedies Act (codified at § 13.3, ''Civil penalties and assessments'') on four occasions between 1996 and 2008.[1]

On November 2, 2015, Congress amended the FCPIAA through the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Improvements Act) (Sec. 701, Pub. L. 114–74, 129 Stat. 599). The 2015 Improvements Act required that the head of each agency perform an initial ''catch-up'' adjustment via

[1] Adjustment of Civil Penalties for Inflation (73 FR 54671; Sept. 23, 2008); Adjustment of Civil Penalties for Inflation (69 FR 62393; Oct. 26, 2004); Adjustment of Civil Penalties for Inflation; Miscellaneous Administrative Changes (65 FR 59270; Oct. 4, 2000); Adjustment of Civil Monetary Penalties for Inflation (61 FR 53554; Oct. 11, 1996). An adjustment was not performed in 2012 because the FCPIAA at the time required agencies to round their CMP amounts to the nearest multiple of $1,000 or $10,000, depending on the size of the CMP amount, and the 2012 percentages based on the statutory formula were small enough that no adjustment resulted.

rulemaking, adjusting the CMPs enforced by that agency according to the percentage change in the Consumer Price Index (CPI) between the month of October 2015 and the month of October of the calendar year when the CMP amount was last established by Congress. The NRC published this catch-up rulemaking on July 1, 2016 (81 FR 43019).

The 2015 Improvements Act also requires that the head of each agency continue to adjust CMP amounts, rounded to the nearest dollar, on an annual basis. Specifically, each CMP is to be adjusted based on the percentage change between the CPI for the month of October, and the CPI for the month of October for the previous year. The NRC most recently adjusted its civil penalties for inflation according to this statutory formula on January 13, 2023 (88 FR 2188). This year's adjustment is based on the increase in the CPI from October 2022 to October 2023.

II. Discussion

Section 234 of the AEA limits civil penalties for violations of the AEA to $100,000 per day, per violation (42 U.S.C. 2282). However, as discussed in Section I, ''Background,'' of this document, the NRC has increased this amount several times since 1996 per the FCPIAA, as amended. Using the formula in the 2015 Improvements Act, the $351,424 amount last established in January 2023 will increase by 3.241 percent, resulting in a new CMP amount of $362,814. This is based on the increase in the CPI from October 2022 (298.012) to October 2023 (307.671). Therefore, the NRC is amending § 2.205 to reflect a new maximum CMP under the AEA in the amount of $362,814 per day, per violation. This represents an increase of $11,390.

Monetary penalties under the Program Fraud Civil Remedies Act were established in 1986 at $5,000 per claim (Pub. L. 99–509, 100 Stat. 1938; 31 U.S.C. 3802). The NRC also has adjusted this amount (currently set at $13,508) multiple times pursuant to the FCPIAA, as amended, since 1996. Using the formula in the 2015 Improvements Act, the $13,508 amount last established in January 2023 will also increase by 3.241 percent, resulting in a new CMP amount of $13,946. Therefore, the NRC is amending § 13.3 to reflect a new maximum CMP amount of $13,946 per claim or statement. This represents an increase of $438.

As permitted by the 2015 Improvements Act, the NRC may apply these increased CMP amounts to any penalties assessed by the agency after the effective date of this final rule (January 15, 2024), regardless of whether the associated violation occurred before or after this date (Pub. L. 114–74, 129 Stat. 600; 28 U.S.C. 2461 note). The NRC assesses civil penalty amounts for violations of the AEA based on the class of licensee and severity of the violation, in accordance with the NRC Enforcement Policy, which is available under ADAMS Accession No. ML23333A447. A corresponding update to the NRC Enforcement Policy is being published today in the Rules section of the **Federal Register** to reflect the updated CMP amount in § 2.205.

III. Rulemaking Procedure

The 2015 Improvements Act expressly exempts this final rule from the notice and comment requirements of the Administrative Procedure Act by directing agencies to adjust CMPs for inflation ''notwithstanding section 553 of title 5, United States Code'' (Pub. L. 114–74, 129 Stat. 599; 28 U.S.C. 2461 note). As such, this final rule is being issued without prior public notice or opportunity for public comment, with an effective date of January 12, 2024.

IV. Section-by-Section Analysis

Section 2.205 Civil Penalties

This final rule revises paragraph (j) by replacing ''$351,424'' with ''$362,814.''

Section 13.3 Basis for Civil Penalties and Assessments

This final rule revises paragraphs (a)(1)(iv) and (b)(1)(ii) by replacing ''$13,508'' with ''$13,946.''

V. Regulatory Analysis

This final rule adjusts for inflation the maximum CMPs the NRC may assess under the AEA and under the Program Fraud Civil Remedies Act of 1986. The formula for determining the amount of the adjustment is mandated by Congress in the FCPIAA, as amended by the 2015 Improvements Act (codified at 28 U.S.C. 2461 note). Congress passed this legislation on the basis of its findings that the power to impose monetary civil penalties is important to deterring violations of Federal law and furthering the policy goals of Federal laws and regulations. Congress has also found that inflation diminishes the impact of these penalties and their effect. The principal purposes of this legislation are to provide for adjustment of civil monetary penalties for inflation, maintain the deterrent effect of civil monetary penalties, and promote compliance with the law. Therefore, these are the anticipated impacts of this rulemaking. Direct monetary impacts fall only upon licensees or other persons subjected to NRC enforcement for violations of the AEA and regulations and orders issued under the AEA (§ 2.205), or those licensees or persons subjected to liability pursuant to the provisions of the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812) and the NRC's implementing regulations (10 CFR part 13).

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to regulations for which a Federal agency is not required by law, including the rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. 553(b), to publish a general notice of proposed rulemaking (5 U.S.C. 604). As discussed in this notice under Section III, ''Rulemaking Procedure,'' of this document, this final rule is exempt from the requirements of 5 U.S.C. 553(b) and notice and comment need not be provided. Accordingly, the NRC also determines that the requirements of the Regulatory Flexibility Act do not apply to this final rule.

VII. Backfit and Issue Finality

The NRC has not prepared a backfit analysis for this final rule. This final rule does not involve any provision that would impose a backfit, nor is it inconsistent with any issue finality provision, as those terms are defined in 10 CFR chapter I. As mandated by Congress, this final rule increases CMP amounts for violations of already-existing NRC regulations and requirements. This final rule does not modify any licensee systems, structures, components, designs, approvals, or procedures required for the construction or operation of any facility.

VIII. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31885).

IX. National Environmental Policy Act

The NRC has determined that this final rule is the type of action described as a categorical exclusion in § 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

X. Paperwork Reduction Act

This final rule does not contain a collection of information as defined in the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and, therefore,

is not subject to the requirements of the Paperwork Reduction Act of 1995.

XI. Congressional Review Act

This final rule is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Confidential business information; Freedom of information, Environmental protection, Hazardous waste, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 13

Administrative practice and procedure, Claims, Fraud, Organization and function (Government agencies), Penalties.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; 28 U.S.C. 2461 note; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 2 and 13:

PART 2—AGENCY RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 2 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 29, 53, 62, 63, 81, 102, 103, 104, 105, 161, 181, 182, 183, 184, 186, 189, 191, 234 (42 U.S.C. 2039, 2073, 2092, 2093, 2111, 2132, 2133, 2134, 2135, 2201, 2231, 2232, 2233, 2234, 2236, 2239, 2241, 2282); Energy Reorganization Act of 1974, secs. 201, 206 (42 U.S.C. 5841, 5846); Nuclear Waste Policy Act of 1982, secs. 114(f), 134, 135, 141 (42 U.S.C. 10134(f), 10154, 10155, 10161); Administrative Procedure Act (5 U.S.C. 552, 553, 554, 557, 558); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note.

Section 2.205(j) also issued under 28 U.S.C. 2461 note.

§ 2.205 [Amended]

■ 2. In § 2.205, amend paragraph (j) by removing the amount ''$351,424'' and adding in its place the amount ''$362,814''.

PART 13—PROGRAM FRAUD CIVIL REMEDIES

■ 3. The authority citation for part 13 continues to read as follows:

Authority: 31 U.S.C. 3801 through 3812; 44 U.S.C. 3504 note.

Section 13.3 also issued under 28 U.S.C. 2461 note Section 13.13 also issued under 31 U.S.C. 3730.

§ 13.3 [Amended]

■ 4. In § 13.3, amend paragraphs (a)(1)(iv) and (b)(1)(ii) by removing the amount ''$13,508'' and adding in its place the amount ''$13,946''.

Dated: December 20, 2023.

For the Nuclear Regulatory Commission.

Daniel H. Dorman,

Executive Director for Operations.

[FR Doc. 2023–28969 Filed 1–11–24; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 263

[Docket No. R–1827]

RIN 7100–AG74

Rules of Practice for Hearings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (the ''Board'') is issuing a final rule amending its rules of practice and procedure to adjust the amount of each civil money penalty (''CMP'') provided by law within its jurisdiction to account for inflation as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: This final rule is effective on January 12, 2024.

FOR FURTHER INFORMATION CONTACT: Thomas O. Kelly, Senior Counsel (202–974–7059), Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Ave. NW, Washington, DC 20551. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

SUPPLEMENTARY INFORMATION:

Federal Civil Penalties Inflation Adjustment Act

The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note (''FCPIA Act''), requires federal agencies to adjust, by regulation, the CMPs within their jurisdiction to account for inflation. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the ''2015 Act'') [1] amended the FCPIA Act to require federal agencies to make annual adjustments not later than January 15 of every year.[2] The Board is now issuing a new final rule to set the CMP levels pursuant to the required annual adjustment for 2024. The Board will apply these adjusted maximum penalty levels to any penalties assessed on or after [publication date], whose associated violations occurred on or after November 2, 2015. Penalties assessed for violations occurring prior to November 2, 2015, will be subject to the amounts set in the Board's 2012 adjustment pursuant to the FCPIA Act.[3]

Under the 2015 Act, the annual adjustment to be made for 2024 is the percentage by which the Consumer Price Index for the month of October 2023 exceeds the Consumer Price Index for the month of October 2022. On December 19, 2023, as directed by the 2015 Act, the Office of Management and Budget (OMB) issued guidance to affected agencies on implementing the required annual adjustment which included the relevant inflation multiplier.[4] Using OMB's multiplier, the Board calculated the adjusted penalties for its CMPs, rounding the penalties to the nearest dollar.[5]

Administrative Procedure Act

The 2015 Act states that agencies shall make the annual adjustment ''notwithstanding section 553 of title 5, United States Code.'' Therefore, this rule is not subject to the provisions of the Administrative Procedure Act (the ''APA''), 5 U.S.C. 553, requiring notice, public participation, and deferred effective date.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* requires a regulatory flexibility analysis only for rules for which an agency is required to publish a general notice of proposed rulemaking. Because the 2015 Act states that agencies' annual adjustments are to

[1] Public Law 114–74, 129 Stat. 599 (2015) (codified at 28 U.S.C. 2461 note).

[2] 28 U.S.C. 2461 note, 4(b)(1).

[3] 77 FR 68,680 (Nov. 16, 2012).

[4] OMB Memorandum M–24–07, *Implementation of Penalty Inflation Adjustments for 2024, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (Dec. 19, 2023).

[5] Under the 2015 Act and implementing OMB guidance, agencies are not required to make an adjustment to a CMP if, during the 12 months preceding the required adjustment, such penalty increased due to a law other than the 2015 Act by an amount greater than the amount of the required adjustment. No other laws have adjusted the CMPs within the Board's jurisdiction during the preceding 12 months.

be made notwithstanding section 553 of title 5 of United States Code—the APA section requiring notice of proposed rulemaking—the Board is not publishing a notice of proposed rulemaking. Therefore, the Regulatory Flexibility Act does not apply.

Paperwork Reduction Act

There is no collection of information required by this final rule that would be subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

List of Subjects in 12 CFR Part 263

Administrative practice and procedure, Claims, Crime, Equal access to justice, Lawyers, Penalties.

Authority and Issuance

For the reasons set forth in the preamble, the Board amends 12 CFR part 263 to read as follows:

PART 263—RULES OF PRACTICE FOR HEARINGS

■ 1. The authority citation for part 263 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 248, 324, 334, 347a, 504, 505, 1464, 1467, 1467a, 1817(j), 1818, 1820(k), 1829, 1831o, 1831p–1, 1832(c), 1847(b), 1847(d), 1884, 1972(2)(F), 3105, 3108, 3110, 3349, 3907, 3909(d), 4717; 15 U.S.C. 21, 78l(i), 78o–4, 78o–5, 78u–2; 1639e(k); 28 U.S.C. 2461 note; 31 U.S.C. 5321; and 42 U.S.C. 4012a.

■ 2. Section 263.65 is revised to read as follows:

§ 263.65 Civil money penalty inflation adjustments.

(a) *Inflation adjustments.* In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990, the Board has set forth in paragraph (b) of this section the adjusted maximum amounts for each civil money penalty provided by law within the Board's jurisdiction. The authorizing statutes contain the complete provisions under which the Board may seek a civil money penalty. The adjusted civil money penalties apply only to penalties assessed on or after January 12, 2024, whose associated violations occurred on or after November 2, 2015.

(b) *Maximum civil money penalties.* The maximum (or, in the cases of 12 U.S.C. 334 and 1832(c), fixed) civil money penalties as set forth in the referenced statutory sections are set forth in the table in this paragraph (b).

TABLE 1 TO PARAGRAPH (b)

Statute	Adjusted civil money penalty
12 U.S.C. 324:	
Inadvertently late or misleading reports, inter alia	$4,899
Other late or misleading reports, inter alia	48,992
Knowingly or reckless false or misleading reports, inter alia	2,449,575
12 U.S.C. 334	356
12 U.S.C. 374a	356
12 U.S.C. 504:	
First Tier	12,249
Second Tier	61,238
Third Tier	2,449,575
12 U.S.C. 505:	
First Tier	12,249
Second Tier	61,238
Third Tier	2,449,575
12 U.S.C. 1464(v)(4)	4,899
12 U.S.C. 1464(v)(5)	48,992
12 U.S.C. 1464(v)(6)	2,449,575
12 U.S.C. 1467a(i)(2)	61,238
12 U.S.C. 1467a(i)(3)	61,238
12 U.S.C. 1467a(r):	
First Tier	4,899
Second Tier	48,992
Third Tier	2,449,575
12 U.S.C. 1817(j)(16):	
First Tier	12,249
Second Tier	61,238
Third Tier	2,449,575
12 U.S.C. 1818(i)(2):	
First Tier	12,249
Second Tier	61,238
Third Tier	2,449,575
12 U.S.C. 1820(k)(6)(A)(ii)	402,920
12 U.S.C. 1832(c)	3,558
12 U.S.C. 1847(b)	61,238
12 U.S.C. 1847(d):	
First Tier	4,899
Second Tier	48,992
Third Tier	2,449,575
12 U.S.C. 1884	356
12 U.S.C. 1972(2)(F):	
First Tier	12,249
Second Tier	61,238
Third Tier	2,449,575
12 U.S.C. 3110(a)	55,981
12 U.S.C. 3110(c):	

TABLE 1 TO PARAGRAPH (b)—Continued

Statute	Adjusted civil money penalty
First Tier	4,480
Second Tier	44,783
Third Tier	2,239,210
12 U.S.C. 3909(d)	3,047
15 U.S.C. 78u–2(b)(1):	
For a natural person	11,524
For any other person	115,231
15 U.S.C. 78u–2(b)(2)	
For a natural person	115,231
For any other person	576,158
15 U.S.C. 78u–2(b)(3)	
For a natural person	230,464
For any other person	1,152,314
15 U.S.C. 1639e(k)(1)	14,069
15 U.S.C. 1639e(k)(2)	28,135
42 U.S.C. 4012a(f)(5)	2,661

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2024–00650 Filed 1–11–24; 8:45 am]

BILLING CODE 6210–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 622

RIN 3052–AD62

Rules of Practice and Procedure; Adjusting Civil Money Penalties for Inflation

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: This regulation implements inflation adjustments to civil money penalties (CMPs) that the Farm Credit Administration (FCA) may impose or enforce pursuant to the Farm Credit Act of 1971, as amended (Farm Credit Act), and pursuant to the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994, and further amended by the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act) (collectively FDPA, as amended).

DATES: This regulation is effective on January 15, 2024.

FOR FURTHER INFORMATION CONTACT: Brian Camp, Accountant, Office of Regulatory Policy, Farm Credit Administration, (703) 883–4320, TTY (703) 883–4056, or, Heather LoPresti, Senior Counsel, Office of General Counsel, Farm Credit Administration, (703) 883–4318, TTY (703) 883–4056.

SUPPLEMENTARY INFORMATION:

I. Objective

The objective of this regulation is to adjust the maximum CMPs for inflation through a final rulemaking to retain the deterrent effect of such penalties.

II. Background

A. Introduction

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (1996 Act) and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act) (collectively, 1990 Act, as amended), requires all Federal agencies with the authority to enforce CMPs to evaluate and adjust, if necessary, those CMPs each year to ensure that they continue to maintain their deterrent value and promote compliance with the law. Section 3(2) of the 1990 Act, as amended, defines a civil monetary penalty [1] as any penalty, fine, or other sanction that: (1) either is for a specific monetary amount as provided by Federal law or has a maximum amount provided for by Federal law; (2) is assessed or enforced by an agency pursuant to Federal law; and (3) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.[2]

The FCA imposes and enforces CMPs through the Farm Credit Act [3] and the FDPA, as amended.[4] FCA's regulations governing CMPs are found in 12 CFR parts 622 and 623. Part 622 establishes rules of practice and procedure applicable to formal and informal hearings held before the FCA, and to formal investigations conducted under the Farm Credit Act. Part 623 prescribes rules regarding persons who may practice before the FCA and the circumstances under which such persons may be suspended or debarred from practice before the FCA.

B. CMPs Issued Under the Farm Credit Act

Section 5.32(a) of the Farm Credit Act provides that any Farm Credit System (System) institution or any officer, director, employee, agent, or other person participating in the conduct of the affairs of a System institution who violates the terms of an order that has become final pursuant to section 5.25 or 5.26 of the Farm Credit Act must pay a maximum daily amount of $1,000,[5] for each day such violation continues. This CMP maximum was set by the Farm Credit Amendments Act of 1985, which amended the Farm Credit Act. Orders issued by the FCA under section 5.25 or 5.26 of the Farm Credit Act include temporary and permanent cease-and-desist orders. In addition, section 5.32(h) of the Farm Credit Act provides that any directive issued under sections 4.3(b)(2), 4.3A(e), or 4.14A(i) of the Farm Credit Act ''shall be treated'' as a final order issued under section 5.25 of

[1] While the 1990 Act, as amended by the 1996 and 2015 Acts, uses the term ''civil monetary penalties'' for these penalties or other sanctions, the Farm Credit Act and FCA regulations use the term ''civil money penalties.'' Both terms have the same meaning. Accordingly, this rule uses the term civil money penalty, and both terms may be used interchangeably.

[2] *See* 28 U.S.C. 2461 *note.*

[3] Public Law 92–181, as amended.

[4] 42 U.S.C. 4012a and Public Law 103–325, title V, 108 Stat. 2160, 2255–87 (September 23, 1994).

[5] The inflation-adjusted CMP in effect on January 15, 2023, for a violation of a final order is $2,741 per day, as set forth in § 622.61(a)(1) of FCA regulations.

the Farm Credit Act for purposes of assessing a CMP.

Section 5.32(a) of the Farm Credit Act also states that ''[a]ny such institution or person who violates any provision of the [Farm Credit] Act or any regulation issued under this Act shall forfeit and pay a civil penalty of not more than $500 [6] per day for each day during which such violation continues.'' This CMP maximum was set by section 423 of the Agricultural Credit Act of 1987, which was enacted in 1988 and amended the Farm Credit Act. Current inflation-adjusted CMP maximums are set forth in existing § 622.61 of FCA regulations.[7]

The FCA also enforces the FDPA, as amended, which requires FCA to assess CMPs for a pattern or practice of committing certain specific actions in violation of the National Flood Insurance Program. The FDPA states that the maximum CMP for a violation of that Act is $2,000.[8] [9]

C. Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015

1. In General

The 2015 Act required all Federal agencies to adjust the CMPs yearly, starting January 15, 2017.

Under Section 4(b) of the 1990 Act, as amended, annual adjustments are to be made no later than January 15.[10] Section 6 of the 1990 Act, as amended, states that any increase to a civil monetary penalty under this 1990 Act applies only to civil monetary penalties, including instances in which an associated violation predated the annual increase, which are assessed after the date the increase takes effect.

Section 5(b) of the 1990 Act, as amended, defines the term ''cost-of-living adjustment'' as the percentage (if any) for each civil monetary penalty by which (1) the Consumer Price Index (CPI) for the month of October of the calendar year preceding the adjustment, exceeds (2) the CPI for the month of October one year before the month of October referred to in (1) of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.[11]

The increase for each CMP adjusted for inflation must be rounded using a method prescribed by section 5(a) of the 1990 Act, as amended, by the 2015 Act.[12]

2. Other Adjustments

If a civil monetary penalty is subject to a cost-of-living adjustment under the 1990 Act, as amended, but is adjusted to an amount greater than the amount of the adjustment required under the Act within the 12 months preceding a required cost-of-living adjustment, the agency is not required to make the cost-of-living adjustment to that CMP in that calendar year.[13]

III. Yearly Adjustments

A. Mathematical Calculations of 2024 Adjustments

The adjustment requirement affects two provisions of section 5.32(a) of the Farm Credit Act. For the 2024 yearly adjustments to the CMPs set forth by the Farm Credit Act, the calculation required by the 2023 White House Office of Management and Budget (OMB) guidance [14] is based on the percentage by which the CPI for October 2023 exceeds the CPI for October 2022. The OMB set forth guidance, as required by the 2015 Act,[15] with a multiplier for calculating the new CMP values.[16] The 2023 OMB multiplier for the 2024 CMPs is 1.03241.

The adjustment also affects the CMPs set by the Flood Disaster Protection Act of 1973, as amended. The adjustment multiplier is the same for all FCA enforced CMPs, set at 1.03241. The maximum CMPs for violations were created in 2012 by the Biggert-Waters Act, which amended the Flood Disaster Protection Act of 1973.

1. New Penalty Amount in § 622.61(a)(1)

The inflation-adjusted CMP currently in effect for violations of a final order occurring on or after January 15, 2023, is a maximum daily amount of $2,741.[17] Multiplying the $2,741 CMP by the 2023 OMB multiplier, 1.03241, yields a total of $2,829.84. When that number is rounded as required by section 5(a) of the 1990 Act, as amended, the inflation-adjusted maximum increases to $2,830. Thus, the new CMP maximum is $2,830, for violations that occur on or after January 15, 2024.

2. New Penalty Amount in § 622.61(a)(2)

The inflation-adjusted CMP currently in effect for violations of the Farm Credit Act or regulations issued under the Farm Credit Act occurring on or after January 15, 2023, is a maximum daily amount of $1,240.[18] Multiplying the $1,240 CMP maximum by the 2023 OMB multiplier, 1.03241, yields a total of $1,280.19. When that number is rounded as required by section 5(a) of the 1990 Act, as amended the inflation-adjusted maximum increases to $1,280. Thus, the new CMP maximum is $1,280, for violations that occur on or after January 15, 2024.

3. New Penalty Amounts for Flood Insurance Violations Under § 622.61(b)

The existing maximum CMP for a pattern or practice of flood insurance violations pursuant to 42 U.S.C. 4012a(f)(5) occurring on or after January 15, 2023, is $2,577. Multiplying $2,577 by the 2023 OMB multiplier, 1.03241, yields a total of $2,660.52. When that number is rounded as required by section 5(a) of the 1990 Act, as amended, the new maximum assessment of the CMP for violating 42 U.S.C. 4012a(f)(5) is $2,661. Thus, the new CMP maximum is $2,661, for violations that occur on or after January 15, 2024.

IV. Notice and Comment Not Required by the Administrative Procedure Act

Section 4(b)(2) of the 1990 Act, as amended by section 701 of the 2015 Act (28 U.S.C. 2461 note), provides an exemption from the Administrative Procedure Act notice and comment requirements in 5 U.S.C. 553. Further, these revisions are ministerial, technical, and noncontroversial. For these reasons, the FCA has determined to adopt this rule in final form.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations,

[6] The inflation-adjusted CMP in effect on January 15, 2023, for a violation of the Farm Credit Act or a regulation issued under the Farm Credit Act is $1,240 per day for each violation, as set forth in § 622.61(a)(2) of FCA regulations.

[7] Prior adjustments were made under the 1990 Act and continue to be made each year.

[8] Public Law 112–141, 126 Stat. 405 (July 6, 2012); 42 U.S.C. 4012a(f)(5).

[9] The inflation-adjusted CMP in effect on January 15, 2023, for a flood insurance violation is $2,577, as set forth in § 622.61(b) of FCA regulations.

[10] Public Law 114–74, sec. 701(b)(1).

[11] The CPI is published by the Department of Labor, Bureau of Statistics, and is available at its website: *https://www.bls.gov/cpi/*.

[12] Pursuant to section 5(a)(3) of the 2015 Act, any increase determined under the subsection shall be rounded to the nearest $1.

[13] Pursuant to section 4(d) of the 1990 Act, as amended.

[14] OMB Circular M–24–07, Implementation of Penalty Inflation Adjustments for 2024, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

[15] 28 U.S.C. 2461 *note,* section 7(a).

[16] OMB Circular M–24–07, Implementation of Penalty Inflation Adjustments for 2024, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

[17] 12 CFR 622.61(a)(1).

[18] 12 CFR 622.61(a)(2).

has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 622

Administrative practice and procedure, Crime, Investigations, Penalties.

For the reasons stated in the preamble, part 622 of chapter VI, title 12 of the Code of Federal Regulations is amended to read as follows:

PART 622—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 622 continues to read as follows:

Authority: Secs. 5.9, 5.10, 5.17, 5.25–5.37 of the Farm Credit Act (12 U.S.C. 2243, 2244, 2252, 2261–2273); 28 U.S.C. 2461 note; and 42 U.S.C. 4012a(f).

■ 2. Revise § 622.61 to read as follows:

§ 622.61 Adjustment of civil money penalties by the rate of inflation under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

(a) The maximum amount of each civil money penalty within FCA's jurisdiction is adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. 2461 note), as follows:

(1) Amount of civil money penalty imposed under section 5.32 of the Act for violation of a final order issued under section 5.25 or 5.26 of the Act: The maximum daily amount is $2,830 for violations that occur on or after January 15, 2024.

(2) Amount of civil money penalty for violation of the Act or regulations: the maximum daily amount is $1,280 for each violation that occurs on or after January 15, 2024.

(b) The maximum civil money penalty amount assessed under 42 U.S.C. 4012a(f) is $2,661 for each violation that occurs on or after January 15, 2024, with no cap on the total amount of penalties that can be assessed against any single institution during any calendar year.

Dated: January 9, 2024.

Ashley Waldron,

Secretary to the Board, Farm Credit Administration.

[FR Doc. 2024–00595 Filed 1–11–24; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. FAA–2022–1763]

Airworthiness Criteria: Special Class Airworthiness Criteria for the Wing Aviation LLC; Hummingbird Unmanned Aircraft

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Issuance of final airworthiness criteria.

SUMMARY: The FAA announces the special class airworthiness criteria for the Wing Aviation LLC (Wing) Hummingbird unmanned aircraft (UA). This document sets forth the airworthiness criteria that the FAA finds to be appropriate and applicable for the UA design.

DATES: These airworthiness criteria are effective February 12, 2024.

FOR FURTHER INFORMATION CONTACT: Mack A. Martinez, Product Policy Management—Emerging Aircraft Section, AIR–62B, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service, Federal Aviation Administration, 2300 East Devon Avenue, Room 335/339, Des Plaines, IL 60018, telephone (847) 294–7481.

SUPPLEMENTARY INFORMATION:

Background

Wing Aviation LLC (Wing) applied to the FAA on September 19, 2018, for a special class type certificate (TC) under 14 CFR 21.17(b) for the Model Hummingbird UA.

The Model Hummingbird consists of a fixed-wing airplane UA and its associated elements (AE) including communication links and components that control the UA. The Model Hummingbird UA has a maximum gross takeoff weight of approximately 15 pounds. It is approximately 3.4 feet in width, 4.2 feet in length, and 9.4 inches in height. The Model Hummingbird UA is battery powered using electric motors for vertical takeoff, landing, and forward flight. The unmanned aircraft system (UAS) operations would rely on high levels of automation and may include multiple UA operated by a single pilot, up to a ratio of 20 UA to 1 pilot. Wing intends for the Model Hummingbird to be used to deliver packages. The proposed concept of operations (CONOPS) for the Model Hummingbird includes a maximum operating altitude of 400 feet above ground level, a maximum cruise speed of 68 knots, operations beyond visual line of sight (BVLOS), and operations over people (OOP). Wing has not requested approval for flight into known icing for the Model Hummingbird UA.

Under § 21.17(c), an application for type certification is effective for 3 years. Section 21.17(d) provides that where a TC has not been issued within that 3-year time limit, the applicant may file for an extension and update the designated applicable regulations in the type certification basis. The effective date of the applicable airworthiness requirements for the updated type certification basis must not be earlier than 3 years before the date of issue of the TC. Since the project was not certificated within 3 years after the application date above, the FAA approved the applicant's request to extend the application for type certification. As a result, the date of the updated type certification basis is September 26, 2022.

The FAA issued a notice of proposed airworthiness criteria for the Wing Model Hummingbird UA, which published in the **Federal Register** on February 8, 2023 (88 FR 8333).

Discussion of Comments

The FAA received responses from 5 commenters. The comments came from industry organizations such as the Air Line Pilots Association (ALPA), the Association for Uncrewed Vehicle Systems International (AUVSI), the Small Unmanned Aerial Vehicles (UAV) Coalition, the Commercial Drone Alliance, and Wing Aviation LLC.

Specific Issues Raised Within the Scope of the Notice

D&R.100 UA Signal Monitoring and Transmission: The FAA proposed criteria on the minimum types of information the FAA finds are necessary for the UA to transmit to the AE for continued safe flight and operation.

Comment Summary: ALPA is concerned with the possibility of cyber security breaches that could allow unauthorized individuals to take control of a UA, potentially leading to safety issues. As such, it is important to address these concerns and establish an acceptable envelope of tolerance for UA operation that ensures the security of the signal monitoring and transmission systems.

FAA Response: These comments are outside the scope for D&R.100. The comments by ALPA on cyber security, D&R.115, are addressed in the following paragraph.

D&R.115 Cyber Security: The FAA proposed a requirement to address the risks to the UA associated with intentional unauthorized electronic interactions that may result in an adverse effect on the security or airworthiness of the UA.

Comment Summary: ALPA is concerned with the safety and security of the Command and Control (C2) link and potential unauthorized intrusions that could result in the loss of full control over the aircraft. ALPA recommends that every UA model requesting operations in the National Airspace System (NAS) undergo testing and validation during the aircraft certification process to ensure the security of the C2 link is impenetrable and cannot be hacked. ALPA states that reports have shown that the loss of the C2 link and the inability to regain it has led to an uncontained flyaway. ALPA focuses on the most critical aspects of safe UA operations and recommends specific requirements to ensure the safe discontinuation of a flight after a failure of a critical part or system and/or unauthorized intrusion of the C2 link. Other recommendations include the ability of the pilot to re-route the UA safely and dynamically, the ability for the UA control station to allow the pilot to intervene in the management of the flight, an established parameter requirement for geo-fencing specifications, and a requirement for the UA to possess the capability to detect and avoid other aircraft and hazards that are human made/manufactured and natural.

FAA Response: The proposed recommendations are too specific for this general airworthiness criteria language; the language already covers the general issues that ALPA's specific recommendations seek to address. D&R.115 states that the UA equipment, systems, and networks must be assessed to identify and mitigate protections as necessary. The level of detail regarding the assessment of failures and the required protection level of equipment, systems, and networks will be addressed in the means of compliance (MOC) to these airworthiness criteria. The C2 link is addressed in the airworthiness criteria under D&R.120 Contingency Planning for a C2 lost link or degradation of a C2 link, as well as performance requirements. The C2 link is considered part of the UA and will be assessed for cyber security under D&R.115 as part of equipment and systems.

D&R.120 Contingency Planning: The FAA proposed a requirement to address the risks associated with loss of communication C2 link between the pilot and the UA. The proposed criteria requires that the UA be designed to automatically execute a predetermined action and include the predetermined action in the UA Flight Manual. The UA Flight Manual must also include the minimum performance requirements for the C2 data link defining when the C2 link is degraded to a level where active control is no longer ensured. Takeoff when the C2 link is degraded below minimum performance requirements must be prevented by design or by an operating limitation to be included in the UA Flight Manual.

Comment Summary: ALPA expressed several areas of concern related to UA contingency planning that the FAA should consider during the aircraft certification process. These concerns include addressing the risks associated with loss of communication, defining detailed preprogrammed algorithmic deliverables and corrective actions for each situation, and ensuring that the UA can automatically execute a safe predetermined flight, loiter landing, or termination in the event of any critical parts or systems failures. ALPA has several recommendations including to have the applicant ''Develop a detailed narrative that outlines every possible action that the UA will execute when guidance/intrusion challenges arise after the first preterminal action is initiated with the flight of the aircraft until all maneuvering actions have been exhausted and no further options exist.'' ALPA also recommends a test and validation of the effectiveness of the pre-determined executable actions to ensure proper design and definition of UA as intended.

FAA Response: The FAA shares ALPA's concerns and has determined that the current airworthiness criteria appropriately address these concerns. The airworthiness criteria within D&R.120(a) propose the automatic and immediate execution of a safe predetermined action, in the event of a loss of communications, be part of the UA design. Furthermore, D&R.120(b) proposes that established predetermined actions are included in the UA Flight Manual, thus ensuring the applicant outlines these predetermined maneuvering actions within their contingency planning. Test and validation methods, of the effectiveness of such pre-determined actions as part of mitigation planning by which the UA will meet these criteria are addressed by D&R.310(a) and will be outlined in the MOC.

D&R.125 Lightning: The FAA proposed criteria to address the risks that would result from a lightning strike, accounting for the size and physical limitations of a UAS that could preclude traditional lightning protection features. The FAA further proposed that without lightning protection for the UA, the flight manual must include an operating limitation to prohibit flight into weather conditions with potential lightning.

Comment Summary: ALPA commented that lightning can cause significant damage to aircraft and pose a safety risk to people and property on the ground if that aircraft were to lose control and crash. ALPA suggests 10 specific recommendations for the FAA such as developing lightning protection standards and procedures; establishing a certification process for UA lightning protection and requiring all UA to comply with those standards; requiring regular inspections to identify damage caused by lightning strikes; and developing training programs for UA operators and maintenance personnel on lightning safety.

FAA Response: The proposed recommendations are too specific for this general airworthiness criteria language. The UA, if designed with lightning mitigation features per D&R.125(a), would need to demonstrate protection of the UA from loss of flight or control due to lightning within the MOC. Otherwise, the operational limitations per D&R.125(b) would prohibit flight into weather conditions conducive to lightning activity.

D&R.130 Adverse Weather Conditions: The FAA proposed criteria either requiring that design characteristics protect the UAS from adverse weather conditions or prohibiting flight into known adverse weather conditions. The criteria proposed to define adverse weather conditions as rain, snow, and icing.

Comment Summary: ALPA recommends that the FAA develop and implement a policy that covers scenarios beyond ''known conditions'' when UAs inadvertently experience adverse weather conditions. ALPA suggests 30 specific recommendations including establishing training requirements for UA pilots and crew members on managing adverse weather conditions; requiring that UA operators have access to accurate and up-to-date weather information; requiring continuous monitoring of adverse weather conditions during flight operations; establishing strict icing requirements and tolerances to prevent the operation of the UA in icing conditions; establishing strict wind limitations and protocols; and that UA operators adapt air carrier icing standards or use them as a baseline to ensure safe operations.

FAA Response: Scenarios beyond ''known conditions'' would be an anomalous situation that is beyond the scope of D&R.130. For adverse weather conditions for which the UA is not approved to operate, D&R.130 already contains requirements to detect adverse weather and minimize the likelihood of operating in those conditions. Testing of operations in these conditions is beyond the level of rigor needed for these aircraft. In addition, the effect of wind is addressed in D&R.300(b)(9), even though it is not included in D&R.130. D&R testing MOCs and test plans will ensure the UA is tested for adverse wind conditions. Design requirements related to operation in icing as a result of adverse weather are addressed in the CONOPS as stated within D&R.130(b).

D&R.135 Flight Essential Parts: The FAA proposed criteria for critical parts that were substantively similar to those in the existing standards for normal category rotorcraft under 14 CFR 27.602, with changes to reflect UAS terminology and failure conditions. The criteria proposed to define a critical part as a part, the failure of which could result in a loss of flight or unrecoverable loss of control of the aircraft.

Comment Summary: ALPA proposed several recommendations related to design and testing of the UA to consider the failure rates of associated systems and parts. ALPA recommends that a failure-rate threshold should be determined for critical components that are flight essential. ALPA recommends that the FAA establish stringent standards and guidelines for UA certification to ensure public safety.

FAA Response: The specific numerical reliability of any specific part is more specific than would appear in airworthiness D&R criteria. D&R.135(b) already requires the applicant to define maintenance instructions or life limits on any essential parts. Life limits are determined based on the number of failure-free hours flown on the highest time conformed aircraft and the life limits are listed in the instructions for continued airworthiness (ICA).

D&R.300 Durability and Reliability: The FAA proposed durability and reliability testing that would require the applicant to demonstrate safe flight of the UAS across the entire operational envelope and up to all operational limitations, for all phases of flight and all aircraft configurations described in the applicant's CONOPS, with no failures that result in a loss of flight, loss of control, loss of containment, or emergency landing outside the operator's recovery area. The FAA further proposed that UA would only be certificated for operations within the limitations, and for flight over areas no greater than the maximum population density, as described in the applicant's CONOPS and demonstrated by test.

Comment Summary: ALPA commented that it is crucial that UA operators understand the limitations and requirements for operating in visual line of sight (VLOS) and BVLOS environments, including recovery zone limitations. Additionally, proper maintenance and testing must be conducted to ensure the UA's airworthiness certificate is valid and reliable for operation. ALPA suggests 10 specific recommendations including requiring scheduled maintenance per 14 CFR part 43; specific minimum testing; and requiring regular system checks before each flight to ensure the aircraft is in proper working condition.

FAA Response: The D&R airworthiness criteria contain requirements related to the airworthiness of the aircraft itself, relying heavily on both flight testing and on maintenance in accordance with defined maintenance procedures. The comments on the operational environments are separate requirements or limitations and not part of the criteria for the aircraft itself. ALPA's specific maintenance recommendations are already encompassed by the general language of D&R.300.

Comment Summary: The Small UAV Coalition commented on the proposed D&R.300 requirement that no failures occur ''that result in loss of flight, loss of control, loss of containment, or emergency landing outside the operator's recovery area.'' The Coalition recommends that a single failure during testing should not automatically restart counting the number of flight test operations set for a particular population density. Rather, if the applicant can identify the failure through root cause and fault tree analysis and provide a validated mitigation to prevent its recurrence, the number of consecutive failure-free operations and overall flight test hours allocation should be adjusted to be proportionate to the particular risk of that failure.

The Small UAV Coalition also states, ''some UAS design elements could include an onboard health system that initiates a landing to lessen the potential of a loss of control event. In those cases, if the landings could be demonstrated to occur in safer locations that should not count as a failure.'' The Coalition seeks confirmation that the text ''operator's recovery area'' includes that sort of landing. Absent correction or clarification from the FAA on this language in D&R.300, the Coalition believes these requirements would present unnecessary and overly burdensome compliance challenges for the applicant to address.

FAA Response: The intent of the testing criteria is for the applicant to demonstrate the aircraft's durability and reliability through a successful accumulation of flight testing. The FAA does not expect analytical evaluation to be part of this process. It should be noted that D&R.300 is intended to demonstrate the reliability of the system and not the consequence of failure, which is addressed in D&R.305. Systems designed to allow for unscheduled landings at potentially safer sites which are not controlled by the operator may provide a safety benefit, but D&R.300 is evaluating the overall system reliability and any landing outside those sites predetermined and accepted by the FAA in the flight test plan will be considered a test point failure. Failures during flight testing may or may not require additional test hours, up to and including resetting of the accumulated flight hours to zero. This determination will be made by the FAA based on the extent of redesign necessary to minimize the likelihood the incident will recur. However, the applicant will comply with these testing criteria using an MOC, accepted by the FAA, through the issue paper process. The MOC will depend on the reliability level the applicant has proposed to meet.

D&R.305 Probable Failures: The FAA proposed criteria to evaluate how the UAS functions after probable failures, including failures related to propulsion systems, C2 link, global positioning system (GPS), critical flight control components with a single point of failure, control station, and any other equipment identified by the applicant.

Comment Summary: ALPA provided 10 recommendations to ensure that the testing criteria effectively address probable failures and that any additional critical failures are also considered. Some of the recommendations include the FAA specifying which ''certain failures'' that UAs will be expected to demonstrate to prove that they can remain under control and contained; the UA should be tested to ensure it can safely return to a predetermined location or land safely in the event of a loss of power or propulsion system failure; and the applicant should test the UA's ability to detect and avoid potential obstacles, such as other aircraft, buildings, or terrain, to ensure safe operations in all types of environments.

FAA Response: ''Probable failures'' are addressed in D&R.305 and ''capabilities'' are addressed within

D&R.310. The intent of the testing criteria is for the applicant to demonstrate the aircraft's durability and reliability through a successful accumulation of flight testing. The FAA does not expect analytical evaluation to be part of this process. However, the applicant will comply with these testing criteria using test plans developed to an MOC, accepted by the FAA through the issue paper process. The MOC will address each element of these airworthiness criteria and will be dependent on the reliability level the applicant has proposed to meet.

D&R.310 Capabilities and Functions: The FAA proposed criteria to require the applicant to demonstrate, by test, the minimum capabilities and functions necessary for the design. UAS.310(a) proposed to require the applicant to demonstrate, by test, the capability of the UAS to regain command and control of the UA after a C2 link is lost, the sufficiency of the electrical system to carry all anticipated loads, and the ability of the pilot to override any pre-programming in order to resolve a potential unsafe operating condition in any phase of flight. UAS.310(b) proposed to require the applicant to demonstrate, by test, certain features if the applicant requests approval of those features (geo-fencing, external cargo, detect and avoid, etc.). UAS.310(c) proposed to require the design of the UAS to safeguard against an unintended discontinuation of flight or release of cargo, whether by human action or malfunction.

Comment Summary: ALPA comments on assuring the security of the C2 link through testing and validation during the aircraft certification process for every UA model requesting operations in the NAS. An acceptable percentage for cyber intrusions and the ability to regain command and control of the UA after the C2 link is lost must be defined. ALPA also provided several recommendations on capabilities and functions required by D&R.310(a) or optional D&R.310(b), if requested for approval.

FAA Response: D&R.120(a) requires contingency planning for C2 lost link and D&R.115 requires protections from cyber intrusions. Specific contingency plans and protections will be addressed in the MOC for those airworthiness criteria. D&R.310's general airworthiness criteria language already covers the other issues ALPA's specific recommendations seek to address.

Comment Summary: The proposed airworthiness criteria discussion of D&R.310 ''Capabilities and Functions'' includes the sentence, ''[i]n order to show that the UA does not create a hazard when landing, the UA must show by test that it has the ability to detect and avoid any potential hazards on the ground by demonstrating any such landing always stays well clear of all people and other obstacles.''

Wing, AUVSI, The Commercial Drone Alliance and The Small UAV Coalition object to the FAA's use of absolute terms such as ''any'' and ''always'' against undefined and/or ambiguous terms (such as ''well clear'' in the context of ground obstacles) outlined in the preamble discussion of the proposed airworthiness criteria. Absent correction or clarification by the FAA, the commenters state that this language sets an impossibly high standard beyond the capabilities of either human or machine. Such absolute and prescriptive MOC is inappropriate in the context of airworthiness criteria. Wing is concerned that this standard precludes the ability of Wing or other manufacturers to demonstrate compliance at any practical level of test or validation. The commenters note that this standard is not called for in the actual proposed text of D&R.310 itself. In finalizing the airworthiness criteria, the FAA should correct or clarify its preamble language to avoid any possible confusion.

Wing is concerned that the absolute terms ''any'' and ''always'' create a bar that demonstration by test or other means cannot meet. In addition, the use of terms such as ''potential'' and ''well clear'' similarly creates substantial challenges to compliance demonstration by test or other means. Wing states that it would be exceptionally challenging to meet this standard and that it exceeds the expectations for crewed aircraft as written. Wing requests that the FAA allow for alternative means of demonstrating that the UA does ''not create a hazard when landing'' in accordance with D&R.310(a)(6) by prefacing this paragraph with the phrase ''for example;'' remove the absolute terms ''any,'' ''all,'' and ''always'' to allow for the use of reasonable and achievable test methods; and remove the undefined and ambiguous terms ''well clear,'' ''other obstacles,'' and ''potential'' when outlining test or demonstration criteria.

FAA Response: The FAA's use of absolute terms referenced in the comment summary above are of concern to Wing and others as in their view, ''the language sets an impossibly high standard beyond the capabilities of either human or machine.'' The subject language is based on the increased level of automation of Wing's system, which relies on onboard automated decision-making rather than pilot action. To accept such a system, the UAS must exhibit highly automated features and functions to enhance the safety of UAS operations by replacing direct manual control of the UA with automation. The UAS's automated flight envelope and path protection systems must be designed for controllability and maneuverability needed to detect and to maintain safe separation from hazards or obstacles on or near the ground while in normal, abnormal, and emergency operations. Some examples of abnormal or emergency scenarios include collision avoidance, aborted missions, power system failures, and forced landings. The UAS must also be equipped with capabilities and necessary features that will automatically contain or control the aircraft in the case of a loss of external services used in communicating, controlling, or providing system inputs to the UA. All foreseeable loss, degradation or non-availability of external services, systems, or signals must not put the UA in an uncontrolled, uncontained, or unsafe condition.

D&R.310 is a testing requirement and sets the criteria which must be demonstrated by flight test as part of the type certification program. The language referenced by the commenters as preamble language does not appear in the final rule but is given in the discussion section of the NPRM as a tool for understanding why the requirement was drafted as it was and provides additional insight into the means by which the applicant will be able to show compliance with the testing requirements in D&R.310. The intent of the use of this language within the NPRM discussion is for the applicant to show compliance by demonstrating landings that do not adversely impact people or obstacles. Therefore, the FAA finds that an acceptable flight test outcome is one that would not result in an unsafe condition. Within the context of the certification testing performed under D&R.310, the FAA's use of absolute terms such as ''any'' and ''always'' only serve to emphasize acceptable examples of test boundaries which will be addressed in more detail in the MOC and test plans. Likewise, terms like ''well clear'' will be defined based on the appropriate near mid-air collision (NMAC) volume determined to be acceptable to the FAA for the D&R flight test campaign.

D&R.320 Verification of Limits: The FAA proposed to require a demonstration of the UA's performance, maneuverability, stability, and control with a factor of safety (5% over maximum gross weight with no loss of control or loss of flight).

Comment Summary: ALPA is concerned that the safety factor of 5% is too low. The Model Hummingbird UA weighs approximately 15 lbs., which means that 5% is approximately 0.75 lbs. ALPA recommends increasing this number to a minimum of a double-digit percentage for current and future aircraft certification standards.

FAA Response: The FAA determined that based on historical data, 5% is a minimum acceptable margin.

Additional Airworthiness Criteria Identified by Commenters

UA to Pilot Ratio: The Wing Model Hummingbird UAS operations would rely on high levels of automation and may include multiple UA operated by a single pilot, up to a ratio of 20 UA to 1 pilot.

Comment Summary: ALPA is concerned with the safe operation of multiple UAs operated by a single pilot as described within the proposed airworthiness criteria notice. ALPA recommends that the FAA research and better assess multiple UA operations by a single pilot to establish a baseline understanding of the feasibility of a single UA pilot flying multiple UAs before developing airworthiness certification criteria. The proposed 20 to 1 UA to pilot ratio presents significant challenges to ensuring the safe operation of UAs and other NAS users, and the FAA should implement additional certification requirements for pilots operating multiple UAs, including specialized training and qualification standards. Additionally, the FAA should establish guidelines for the maximum number of UAs that a single pilot can operate to ensure safe and effective operations in the NAS. Furthermore, there should always be a backup failsafe and tertiary means of control for built-in redundancy where another human operator can intervene out of necessity for safety. The FAA should base its decision on facts and data and should clarify what qualitative and quantitative scientific instruments were utilized to assess the potential risks of the aircraft.

FAA Response: These airworthiness criteria require the applicant to demonstrate the durability and reliability of the UA design by flight test, at the highest aircraft-to-pilot ratio, without exceptional piloting skill or alertness. In addition, D&R.305(c) requires the applicant to demonstrate probable failures by test at the highest aircraft-to-pilot ratio. The durability and reliability-based type certification process was developed for UAS that meet certain design criteria to include a maximum operating limitation of 20:1 aircraft to pilot ratio. Any deviation from this limitation will require additional coordination and will add to the project timeline.

Level of Automation: The Wing Model Hummingbird UA operations would rely on high levels of automation.

Comment Summary: ALPA is concerned about the specificity of the Model Hummingbird UA's automation level. ALPA states that the FAA should clarify the degree and level of automation in which the UA will operate. This includes defining whether the operation of the Model Hummingbird UA will be fully automated autonomous, partially automated autonomous, preprogrammed, or a combination of any of these options. Additionally, the FAA should determine the required minimal involvement or participation from the remote pilot(s) to assure flight safety. ALPA suggests that the FAA establish guidelines for aircraft onboard (organic) and/or offboard (inorganic) intelligence system(s) to deconflict other known and unknown (birds, floating objects/flying debris) air traffic and associated hazards. The FAA should ensure that these systems are tested, designed, and manufactured to a certain failure rate, such as a 10^{-9} failure rate per flight hours or something less.

FAA Response: D&R.100 requires UA specifications within the CONOPS. Data within the CONOPS are proprietary to the applicant. The D&R methodology is used as a framework to allow for an adequate balance of certification rigor with safety related outcomes. The FAA considered the size of aircraft, its maximum airspeed and altitude, and operational limitations to address the number of UA per operator (maximum of 20:1 aircraft to pilot ratio) and to address operations in which the aircraft would operate BVLOS of the pilot to assess the potential risk the aircraft could pose to other aircraft and to human beings on the ground. Using these parameters, the FAA developed proposed airworthiness criteria to address those potential risks to ensure the aircraft remains reliable, controllable, safe, and airworthy without the need for requiring a prescriptive failure rate.

Hazardous Cargo Carriage Over Populated Areas

Comment Summary: ALPA is concerned that the carriage of HAZMAT by UAs over populated areas poses a significant safety concern requiring the FAA's action. The guidelines and regulations for the carriage of HAZMAT by UAs should consider the associated risks to public safety. UA operators should be required to provide information about the HAZMAT they are carrying. The FAA should also establish a system for monitoring and enforcing compliance, ensure that emergency responders are informed, properly trained, and equipped to handle nonconventional operational factors involving UA HAZMAT incidents, and require UA manufacturers to incorporate safeguards and emergency response mechanisms. By taking these and other recommended steps, the FAA can help ensure the safe operation of UAs in the NAS.

FAA Response: The FAA acknowledges the concern by ALPA. However, the comment is not within the scope of the aircraft type certification for which this airworthiness criteria was developed. The carriage of HAZMAT is an operational function and if applicable to Wing's operation for this aircraft, would be provided in the CONOPS. The CONOPS, if approved for HAZMAT, will contain operational limitations in the operating approval, as necessary. The CONOPS are proprietary to the applicant.

BVLOS and OOP

Comment Summary: ALPA is concerned that as the use of UAs for BVLOS operations and over people become increasingly common, it raises significant safety concerns that must be addressed in the certification process. ALPA is concerned about the potential risks associated with this type of operation involving the Model Hummingbird UA or any similar operator. In order to ensure safety, ALPA recommends that operators explain how they plan to mitigate their aerial footprint around and away from people and property, with detailed evasion and emergency set-down plans, processes, and parameters. Additionally, ALPA urges the FAA to consider the possibility of an aircraft performing BVLOS losing propulsion and being unable to maintain flight, requiring a recovery or crash mitigation strategy and emergency vertical arrestment system to prevent harm to persons or property.

ALPA states that many manufacturers within the UA/drone and urban air mobility (UAM) and advanced air mobility (AAM) industry do not include an emergency vertical arrestment system to prevent loss of life and property in the event of an aircraft losing its engine or engines then becoming a falling object which is increasingly alarming if that aircraft has minimal to a zero-glide aspect ratio. ALPA recommends continuous collaboration between industry experts and the regulator to

develop safer aircraft design and certification standards for the best interests of the end-users, the flying public, and those affected by flight operations of UA/drone or UAM/AAM aircraft. When these types of aircraft operate in the same airspace as commercial aircraft, ALPA recommends that pilots have the ability to see them on the flightdeck or pilot display and air traffic controllers can view them on their displays to separate air traffic safely. These aircraft must also have active collision-avoidance technology, and ALPA opposes any integration that does not include aircraft collision-avoidance systems (ACAS) that are interoperable with commercial collision-avoidance systems. ALPA further opposes any proposed changes to 14 CFR 91.113 to enable BVLOS operational safety case(s) to transfer the responsibility of ''see and avoid'' to crewed aircraft under certain conditions. The responsibility of ''see and avoid'' must remain with the remote pilot, and any changes to this would be detrimental to the safe integration of UAs into the NAS.

FAA Response: Discussion on proposed changes to general operating flight rule § 91.113 is not within the scope of this airworthiness criteria as it does not pertain to the type certification of the aircraft itself. Operational approval will be granted based on the maximum cumulative risk posed by the proposed operations, taking into account mitigating features, *e.g.,* vertical arresting systems such as parachutes, if they are proposed as part of the design. However, the airworthiness criteria are developed to be high level and performance based, rather than relying on specific designs which may limit introduction of other novel safety enhancing features.

Battery Standards

Comment Summary: ALPA states that the use of batteries as an energy source for aircraft propulsion in the NAS is a substantial shift from traditional propulsion methods on which current safety margins are based and requires more regulator exploration to determine best safety practices. ALPA states that the FAA will need to analyze, qualify, and quantify the aircraft performance and operational environments to determine whether the safety baseline of this technological functionality can be performed reliably and repeatedly to an equivalent level of safety. ALPA recommends that the FAA and industry mutually agree upon the scientific data to confer consensus regarding acceptable safety margins.

ALPA provided 20 specific recommendations regarding battery safety. Some of the recommendations are to develop standards; establish certification procedures for aircraft batteries; develop regulations for transporting lithium-ion batteries; define policies and procedures for flightcrews to promptly act with an abnormal battery anomaly; and several more recommendations on best-practices for battery safety.

FAA Response: The recommendations on battery standards by the commenter are noted as either being too specific or out of scope for this D&R airworthiness criteria. The overly specific recommendations address issues already encompassed by the general airworthiness criteria. D&R testing per D&R.300 should demonstrate reliability of the UAS as a whole and thus each system or component within the UAS has met a minimum acceptable reliability standard. Demonstration of the safe carriage of batteries and mitigations for known risks are addressed via flight test within D&R.305(a)(1) ''Propulsion systems.''

Out of Scope Comments

The FAA received and reviewed several comments that were general, stated the commenter's viewpoint or opposition without a suggestion specific to the proposed criteria, or did not make a request the FAA can act on. These comments are noted as beyond the scope of this document.

Applicability

These airworthiness criteria, established under the provisions of § 21.17(b), are applicable to the Model Hummingbird UA. Should Wing Aviation LLC apply at a later date for a change to the TC to include another model, these airworthiness criteria would apply to that model as well, provided the FAA finds them appropriate in accordance with the requirements of subpart D to part 21.

Conclusion

This action affects only the airworthiness criteria for one model UA. It is not a standard of general applicability.

Authority Citation

The authority citation for these airworthiness criteria is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

Airworthiness Criteria

Pursuant to the authority delegated to me by the Administrator, the following airworthiness criteria are issued as part of the type certification basis for the Wing Aviation LLC Model Hummingbird UA. The FAA finds that compliance with the following would mitigate the risks associated with the proposed design and CONOPS appropriately and would provide an equivalent level of safety to existing rules.

General

D&R.001 Concept of Operations

The applicant must define and submit to the FAA a concept of operations (CONOPS) proposal describing the UAS operation in the National Airspace System for which UA type certification is requested. The CONOPS proposal must include, at a minimum, a description of the following information in sufficient detail to determine the parameters and extent of testing and operating limitations:

(a) The intended type of operations;

(b) UA specifications;

(c) Meteorological conditions;

(d) Operators, pilots, and personnel responsibilities;

(e) Control station, support equipment, and other associated elements (AE) necessary to meet the airworthiness criteria;

(f) Command, control, and communication functions;

(g) Operational parameters (such as population density, geographic operating boundaries, airspace classes, launch and recovery area, congestion of proposed operating area, communications with air traffic control, line of sight, and aircraft separation); and

(h) Collision avoidance equipment, whether onboard the UA or part of the AE, if requested.

D&R.005 Definitions

For purposes of these airworthiness criteria, the following definitions apply.

(a) *Loss of control:* Loss of control means an unintended departure of an aircraft from controlled flight. It includes control reversal or an undue loss of longitudinal, lateral, and directional stability and control. It also includes an upset or entry into an unscheduled or uncommanded attitude with high potential for uncontrolled impact with terrain. A loss of control means a spin, loss of control authority, loss of aerodynamic stability, divergent flight characteristics, or similar occurrence, which could generally lead to a crash.

(b) *Loss of flight:* Loss of flight means a UA's inability to complete its flight as planned, up to and through its originally planned landing. It includes

scenarios where the UA experiences controlled flight into terrain, obstacles, or any other collision, or a loss of altitude that is severe or non-reversible. Loss of flight also includes deploying a parachute or ballistic recovery system that leads to an unplanned landing outside the operator's designated recovery zone.

Design and Construction

D&R.100 UA Signal Monitoring and Transmission

The UA must be designed to monitor and transmit to the AE all information required for continued safe flight and operation. This information includes, at a minimum, the following:

(a) Status of all critical parameters for all energy storage systems;

(b) Status of all critical parameters for all propulsion systems;

(c) Flight and navigation information as appropriate, such as airspeed, heading, altitude, and location; and

(d) Communication and navigation signal strength and quality, including contingency information or status.

D&R.105 UAS AE Required for Safe UA Operations

(a) The applicant must identify and submit to the FAA all AE and interface conditions of the UAS that affect the airworthiness of the UA or are otherwise necessary for the UA to meet these airworthiness criteria. As part of this requirement—

(1) The applicant may identify either specific AE or minimum specifications for the AE.

(i) If minimum specifications are identified, they must include the critical requirements of the AE, including performance, compatibility, function, reliability, interface, operator alerting, cyber security, and environmental requirements.

(ii) Critical requirements are those that if not met would impact the ability to operate the UA safely and efficiently.

(2) The applicant may use an interface control drawing, a requirements document, or other reference, titled so that it is clearly designated as AE interfaces to the UA.

(b) The applicant must show the FAA that the AE or minimum specifications identified in paragraph (a) of this section meet the following:

(1) The AE provide the functionality, performance, reliability, and information to assure UA airworthiness in conjunction with the rest of the design;

(2) The AE are compatible with the UA capabilities and interfaces;

(3) The AE must monitor and transmit to the operator all information required for safe flight and operation, including but not limited to those identified in D&R.100; and

(4) The minimum specifications, if identified, are correct, complete, consistent, and verifiable to assure UA airworthiness.

(c) The FAA will establish the approved AE or minimum specifications as operating limitations and include them in the UA type certificate data sheet and UA Flight Manual.

(d) The applicant must develop any maintenance instructions necessary to address implications from the AE on the airworthiness of the UA. Those instructions will be included in the instructions for continued airworthiness (ICA) required by D&R.205.

D&R.110 Software

To minimize the existence of software errors, the applicant must:

(a) Verify by test all software that may impact the safe operation of the UA;

(b) Utilize a configuration management system that tracks, controls, and preserves changes made to software throughout the entire life cycle; and

(c) Implement a problem reporting system that captures and records defects and modifications to the software.

D&R.115 Cyber Security

(a) UA equipment, systems, and networks, addressed separately and in relation to other systems, must be protected from intentional unauthorized electronic interactions that may result in an adverse effect on the security or airworthiness of the UA. Protection must be ensured by showing that the security risks have been identified, assessed, and mitigated as necessary.

(b) When required by paragraph (a) of this section, procedures and instructions to ensure security protections are maintained must be included in the ICA.

D&R.120 Contingency Planning

(a) The UA must be designed so that, in the event of a loss of the command and control (C2) link, the UA will automatically and immediately execute a safe predetermined flight, loiter, landing, or termination.

(b) The applicant must establish the predetermined action in the event of a loss of the C2 link and include it in the UA Flight Manual.

(c) The UA Flight Manual must include the minimum performance requirements for the C2 data link, defining when the C2 link is degraded to a level where remote active control of the UA is no longer ensured. Takeoff when the C2 link is degraded below the minimum link performance requirements must be prevented by design or prohibited by an operating limitation in the UA Flight Manual.

D&R.125 Lightning

(a) Except as provided in paragraph (b) of this section, the UA must have design characteristics that will protect the UA from loss of flight or loss of control due to lightning.

(b) If the UA has not been shown to protect against lightning, the UA Flight Manual must include an operating limitation to prohibit flight into weather conditions conducive to lightning activity.

D&R.130 Adverse Weather Conditions

(a) For purposes of this section, ''adverse weather conditions'' means rain, snow, and icing.

(b) Except as provided in paragraph (c) of this section, the UA must have design characteristics that will allow the UA to operate within the adverse weather conditions specified in the CONOPS without loss of flight or loss of control.

(c) For adverse weather conditions for which the UA is not approved to operate, the applicant must develop operating limitations to prohibit flight into known adverse weather conditions and either:

(1) Develop operating limitations to prevent inadvertent flight into adverse weather conditions; or

(2) Provide a means to detect any adverse weather conditions for which the UA is not certificated to operate and show the UA's ability to avoid or exit those conditions.

D&R.135 Flight Essential Parts

(a) A flight essential part is a part, the failure of which could result in a loss of flight or unrecoverable loss of UA control.

(b) If the type design includes flight essential parts, the applicant must establish a flight essential parts list. The applicant must develop and define mandatory maintenance instructions or life limits, or a combination of both, to prevent failures of flight essential parts. Each of these mandatory actions must be included in the airworthiness limitations section of the ICA.

Operating Limitations and Information

D&R.200 UA Flight Manual

The applicant must provide a UA Flight Manual with each UA.

(a) The UA Flight Manual must contain the following information:

(1) UA operating limitations;

(2) UA operating procedures;

(3) Performance information;

(4) Loading information; and

(5) Other information that is necessary for safe operation because of design, operating, or handling characteristics.

(b) Those portions of the UA Flight Manual containing the information specified in paragraph (a)(1) of this section must be approved by the FAA.

D&R.205 ICA

The applicant must prepare the ICA for the UA in accordance with appendix A to 14 CFR part 23, as appropriate, that are acceptable to the FAA. The ICA may be incomplete at type certification if a program exists to ensure their completion prior to delivery of the first UA or issuance of a standard airworthiness certificate, whichever occurs later.

Testing

D&R.300 Durability and Reliability

The UA must be designed to be durable and reliable when operated under the limitations prescribed for its operating environment, as documented in its CONOPS, and included as operating limitations on the type certificate data sheet and in the UA Flight Manual. The durability and reliability must be demonstrated by flight test in accordance with the requirements of this section and completed with no failures that result in a loss of flight, loss of control, loss of containment, or emergency landing outside the operator's recovery area.

(a) Once a UA has begun testing to show compliance with this section, all flights for that UA must be included in the flight test report.

(b) Tests must include an evaluation of the entire flight envelope across all phases of operation and must address, at a minimum, the following:

(1) Flight distances;

(2) Flight durations;

(3) Route complexity;

(4) Weight;

(5) Center of gravity;

(6) Density altitude;

(7) Outside air temperature;

(8) Airspeed;

(9) Wind;

(10) Weather;

(11) Operation at night, if requested;

(12) Energy storage system capacity; and

(13) Aircraft to pilot ratio.

(c) Tests must include the most adverse combinations of the conditions and configurations in paragraph (b) of this section.

(d) Tests must show a distribution of the different flight profiles and routes representative of the type of operations identified in the CONOPS.

(e) Tests must be conducted in conditions consistent with the expected environmental conditions identified in the CONOPS, including electromagnetic interference (EMI) and high intensity radiated fields (HIRF).

(f) Tests must not require exceptional piloting skill or alertness.

(g) Any UAS used for testing must be subject to the same worst-case ground handling, shipping, and transportation loads as those allowed in service.

(h) Any UA used for testing must use AE that meet, but do not exceed, the minimum specifications identified under D&R.105. If multiple AE are identified, the applicant must demonstrate each configuration.

(i) Any UAS used for testing must be maintained and operated in accordance with the ICA and UA Flight Manual. No maintenance beyond the intervals established in the ICA will be allowed to show compliance with this section.

(j) If cargo operations or external-load operations are requested, tests must show, throughout the flight envelope and with the cargo or the external load at the most critical combinations of weight and center of gravity, that—

(1) The UA is safely controllable and maneuverable; and

(2) The cargo or the external load is retainable and transportable.

D&R.305 Probable Failures

The UA must be designed such that a probable failure will not result in a loss of containment or control of the UA. This must be demonstrated by test.

(a) Probable failures related to the following equipment, at a minimum, must be addressed:

(1) Propulsion systems;

(2) C2 link;

(3) Global positioning system (GPS);

(4) Flight control components with a single point of failure;

(5) Control station; and

(6) Any other AE identified by the applicant.

(b) Any UA used for testing must be operated in accordance with the UA Flight Manual.

(c) Each test must occur at the critical phase and mode of flight, and at the highest aircraft-to-pilot ratio.

D&R.310 Capabilities and Functions

(a) All of the following required UAS capabilities and functions must be demonstrated by test:

(1) Capability to regain command and control of the UA after the C2 link has been lost.

(2) Capability of the electrical system to power all UA systems and payloads.

(3) Ability for the pilot to safely discontinue the flight.

(4) Capability of the UA to maintain its preplanned flight path within acceptable navigation accuracy.

(5) Ability to safely abort a takeoff.

(6) Ability to safely abort a landing and initiate a go-around unless the UA is shown not to create a hazard when landing.

(b) The following UAS capabilities and functions, if requested for approval, must be demonstrated by test:

(1) Continued flight after degradation of the propulsion system.

(2) Geo-fencing that contains the UA within a designated area, in all operating conditions.

(3) Positive transfer of the UA between control stations that ensures only one control station can control the UA at a time.

(4) Capability to release an external cargo load to prevent loss of control of the UA.

(5) Capability to detect and avoid other aircraft and obstacles.

(c) The UA must be designed to safeguard against inadvertent discontinuation of the flight and inadvertent release of cargo or external load.

D&R.315 Fatigue

The structure of the UA must be shown to withstand the repeated loads expected during its service life without failure. A life limit for the airframe must be established, demonstrated by test, and included in the ICA.

D&R.320 Verification of Limits

The performance, maneuverability, stability, and control of the UA within the flight envelope described in the UA Flight Manual must be demonstrated at a minimum of 5% over maximum gross weight with no loss of control or loss of flight.

Issued in Washington, DC, on January 8, 2024.

Ian Lucas,

Manager, Certification Coordination Section, Policy and Standards Division, Aircraft Certification Service.

[FR Doc. 2024–00549 Filed 1–11–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2022–0205; Special Conditions No. 25–844–SC]

Special Conditions: Lufthansa Tecknik AG, Airbus Models A319–133 and A321–200 Series Airplanes; Supercapacitor Systems and Installation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Airbus Model A319–133 and A321–200 series airplanes. These airplanes, as modified by Lufthansa Tecknik AG (Lufthansa), will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is the installation of an uninterruptible power supply (UPS) system based on supercapacitor technology. The current airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Effective January 12, 2024.

FOR FURTHER INFORMATION CONTACT: Daniel Poblete, Electrical Systems, AIR–626A, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service, Federal Aviation Administration, 3960 Paramount Blvd., Suite 100, Lakewood, CA 90712–4137; telephone and fax (562) 627–5335; email *daniel.d.poblete@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On February 17, 2021, Lufthansa applied for a supplemental type certificate for the installation of a UPS system in the Model A319–133 and A321–200 series airplanes. The Airbus Model A319–133 and A321–200 series airplanes are twin-engine, transport category airplanes. The Airbus Model A319–133 airplane has a maximum passenger seating capacity of 160, and a maximum takeoff weight of 154,322 pounds. The Airbus Model A321–200 airplane has a maximum passenger seating capacity 230, and a maximum takeoff weight of 213,848 pounds.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Lufthansa must show that the Model A319–133 and A321–200 series airplanes, as changed, continue to meet the applicable provisions of the regulations listed in Type Certificate No. A28NM or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Airbus Model A319–133 and A321–200 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A319–133 and A321–200 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Airbus Model A319–133 and A321–200 series airplanes will incorporate the following novel or unusual design features:

This design feature for this installation of a UPS system is based on supercapacitor technology.

Discussion

Currently, there are no regulatory or industry standards for supercapacitors and their installation on transport category airplanes. Supercapacitors are used to provide power to non-essential cabin equipment when the normal power source is interrupted for a short period of time. In this design, the supercapacitor UPS system will allow connected equipment to be provided back-up power if normal electrical power source is interrupted, and remain operational such as during power transfers as well as provide transient voltage surge suppression should harmful high voltage transients occur. The UPS is only used for systems not critical to continued safe flight and landing.

Since the supercapacitor is being used as a high-capacity electrical storage device and functions similarly to rechargeable batteries, the special conditions used for lithium batteries are appropriate for supercapacitor installations and the hazardous conditions that could be presented. These special conditions are necessary to assist in the testing and installation of this supercapacitor on the aircraft.

Special condition 1 requires that the supercapacitor installation be designed to preclude propagation of a thermal event, such as self-sustained, uncontrolled increases in temperature or pressure. Special condition 1 is intended to ensure that the supercapacitor system is designed to eliminate the potential for uncontrollable failures. However, a certain number of failures will occur due to various factors beyond the control of the supercapacitor designer. Therefore, other special conditions are intended to protect the airplane and its occupants if other failures occur.

Special conditions 2, 6, 8, and 9 are self-explanatory.

Special condition 3 makes it clear that the flammable fluid fire protection requirements of § 25.863 apply to supercapacitor installations. Section 25.863 is applicable to areas of the airplane that could be exposed to flammable fluid leakage from airplane systems. Supercapacitors may contain an electrolyte that is a flammable fluid.

Special condition 4 requires that each supercapacitor installation not damage surrounding structure or adjacent systems, equipment, or electrical wiring interconnection system (EWIS) components from corrosive fluids or gases that may escape in such a way as to cause a hazardous condition.

While special condition 4 addresses corrosive fluids and gases, special condition 5 addresses heat. Special condition 5 requires that each supercapacitor installation have provisions to prevent any hazardous effect on surrounding structure or adjacent systems, equipment, or EWIS components, caused by the maximum amount of heat the supercapacitor installation can generate due to any failure of the supercapacitor installation or any of the individual supercapacitors. The means of meeting special conditions 4 and 5 may be the same, but the requirements are independent and address different hazards.

Special condition 7 requires that supercapacitor be disconnected or otherwise removed from its charging source without the need for crew intervention should the supercapacitor become overheated or fail in a manner that may create a safety hazard. This requirement applies to all supercapacitor installations and is not limited to those whose proper functioning is required for the safe operation of the airplane.

The special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Discussion of Comments

The FAA issued Notice of Proposed Special Conditions No. 25–22–02–SC for the Airbus Model A319–133 and A321–200 series airplanes, which was published in the **Federal Register** on June 1, 2023 (88 FR 35781). The FAA received one comment from The Boeing Company (Boeing).

Boeing recommended the FAA add a definition of what constitutes a supercapacitor and high-capacity electrical storage device and to include their thresholds such as capacity, voltage, and dialectic strength. Boeing stated that this clarification of supercapacitor terminology will avoid any ambiguity and confusion when applying special conditions and their applicability, specifically with the inapplicability to small capacitors that are used on various electrical systems used in electronics.

The FAA acknowledges Boeing's recommendation that adding a definition of what constitutes a supercapacitor is important for clarification and to ensure these special conditions' inapplicability to small capacitors used in various electrical systems in aviation electronics. However, the FAA declines to create a definition for supercapacitors through special conditions. Currently, the FAA is not aware of an industry standard regarding the design and installation of supercapacitors. With no supercapacitor industry standard currently available, the similarity of the function of the supercapacitor closely relates to the rechargeable lithium batteries. Therefore, the special conditions used for lithium batteries are being used for this supercapacitor installation. The applicant and the FAA will review the design and installation of the supercapacitor to ensure these special conditions will apply only to supercapacitors used as energy storage devices similar to rechargeable lithium batteries.

Applicability

As discussed above, these special conditions are applicable to the Airbus Model A319–133 and A321–200 series airplanes. Should Lufthansa apply at a later date for a change to the supplemental type certificate to include another model incorporating the same novel or unusual design feature included on Type Certificate No. A28NM, these special conditions would apply to that model as well.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**. However, as the certification date for the Airbus Model A319–133 and A321–200 series airplanes is imminent, the FAA finds that good cause exists to make these special conditions effective upon publication.

Conclusion

This action affects only a certain novel or unusual design feature on Airbus Models A319–133 and A321–200 series airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Airbus Model A319–133 and A321–200 series airplanes, as modified by Lufthansa Technik AG. Each supercapacitor installation must:

1. Be designed to preclude the occurrence of uncontrolled increases in temperature or pressure under all foreseeable operating and failure conditions to prevent fire and explosion.
2. Not emit explosive or toxic gasses, in normal operation or as the result of its failure that may accumulate in hazardous quantities in any area of the airplane.
3. Meet the requirements of § 25.863.
4. Not damage surrounding structure or adjacent systems, equipment, or electrical wiring interconnection system (EWIS) components from corrosive fluids or gases that may escape to cause a hazardous condition.
5. Have provisions to prevent any hazardous effect on surrounding structure or adjacent systems, equipment, or EWIS components, caused by the maximum amount of heat it can generate during any failure including any individual supercapacitors.
6. Have a means to prevent overheating or overcharging of the supercapacitor.
7. Have a means to automatically disconnect it from its charging source in the event of an over-temperature condition or failure.
8. Have a monitoring and alerting feature that alerts the flightcrew when the capacity has fallen below acceptable levels if its function is required for safe operation of the airplane. The flightcrew alerting must be in accordance with the requirements of § 25.1322.
9. Have a means to prevent insufficient charging if required for safe operation of the airplane.

Note: A supercapacitor installation consists of the supercapacitor(s) and any protective, monitoring and alerting circuitry or hardware inside or outside of the supercapacitor. This includes EWIS components as defined by § 25.1701. It also includes any venting or cooling system and packaging. For the purpose of these special conditions, a supercapacitor and the supercapacitor installation is referred to as a supercapacitor.

Issued in Kansas City, Missouri, on January 8, 2024.

Patrick R. Mullen,

Manager, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service.

[FR Doc. 2024–00484 Filed 1–11–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9986]

RIN 1545–BQ57

Corporate Bond Yield Curve for Determining Present Value

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document sets forth final regulations specifying the methodology

for constructing the corporate bond yield curve that is used to derive the interest rates used in calculating present value and making other calculations under a defined benefit plan, as well as for discounting unpaid losses and estimated salvage recoverable of insurance companies. These regulations affect participants in, beneficiaries of, employers maintaining, and administrators of certain retirement plans, as well as insurance companies.

DATES:

Effective date: These regulations are effective January 12, 2024.

Applicability date: These regulations apply for purposes of determining the corporate bond yield curve under section 430(h)(2)(D) of the Internal Revenue Code for months that begin on or after February 1, 2024.

FOR FURTHER INFORMATION CONTACT: Arslan Malik or Linda S.F. Marshall, Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) at (202) 317–6700 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 412 of the Internal Revenue Code (Code) prescribes minimum funding requirements for defined benefit pension plans. Section 430 specifies the minimum funding requirements that apply generally to defined benefit plans that are not multiemployer plans.[1] For a plan subject to section 430, section 430(a) defines the minimum required contribution for a plan year by reference to the plan's funding target for the plan year. Under section 430(d)(1), a plan's funding target for a plan year generally is the present value of all benefits accrued or earned under the plan as of the first day of that plan year.

Section 430(h)(2) provides rules regarding the interest rates to be used under section 430. Section 430(h)(2)(B) provides that a plan's funding target and target normal cost for a plan year are determined using three interest rates: (1) the first segment rate, which applies to benefits reasonably determined to be payable during the 5-year period beginning on the valuation date; (2) the second segment rate, which applies to benefits reasonably determined to be payable during the next 15-year period; and (3) the third segment rate, which applies to benefits reasonably determined to be paid after that 15-year period. Under sections 430(h)(2)(C)(i) through (iii), each of these segment rates is determined for a month on the basis of the corporate bond yield curve for the month, taking into account only that portion of the yield curve that is based on bonds maturing during the period for which the segment rate is used.

Section 430(h)(2)(C)(iv), which was added to the Code in 2012 by section 40211 of the Moving Ahead for Progress in the 21st Century Act, Public Law 112–141, 126 Stat. 405, and has been modified several times since then (most recently in 2021 by section 80602 of the Infrastructure Investment and Jobs Act, Pub. L. 117–58, 135 Stat. 429), provides interest rate stabilization rules under which the segment rates are constrained by reference to the 25-year average segment rates. Under section 430(h)(2)(C)(iv), if a segment rate for a month is less than the applicable minimum percentage, or more than the applicable maximum percentage, of the average of the corresponding segment rates for years in the 25-year period ending with September 30 of the calendar year preceding the calendar year in which the plan year begins, then the segment rate for that month is equal to the applicable minimum percentage or the applicable maximum percentage of the corresponding 25-year average segment rate, whichever is closest. The last sentence of section 430(h)(2)(C)(iv)(I) provides that any 25-year average segment rate that is less than 5 percent is deemed to be 5 percent.

Under section 430(h)(2)(D)(i), the term ''corporate bond yield curve'' means, with respect to any month, a yield curve prescribed by the Secretary for the month that reflects the average, for the 24-month period ending with the month preceding such month, of monthly yields on investment grade corporate bonds with varying maturities and that are in the top three quality levels available. Section 430(h)(2)(D)(ii) permits a plan sponsor to elect to use the corporate bond yield curve, rather than the segment rates, to determine the plan's minimum required contribution. The yield curve that applies pursuant to this election is determined without regard to 24-month averaging. This election, once made, may be revoked only with the consent of the Secretary.

Under section 430(h)(2)(F), the Secretary is instructed to publish for each month the corporate bond yield curve (without regard to the 24-month averaging specification), the segment rates described in section 430(h)(2)(C), and the 25-year averages of segment rates used under section 430(h)(4)(C)(iv). The Secretary is also instructed to publish a description of the methodology used to determine the yield curve and segment rates which is sufficiently detailed to enable plans to make reasonable projections regarding the yield curve and segment rates for future months based on the plan's projection of future interest rates.

Section 1.430(h)(2)–1 was issued in 2009 to provide rules regarding the interest rates to be used under section 430. T.D. 9467, 74 FR 53004. Section 1.430(h)(2)–1(d) provides that the methodology for determining the yield curve is provided in guidance that is published in the Internal Revenue Bulletin. Notice 2007–81, 2007–2 CB 899, describes the methodology used by the Department of the Treasury (Treasury Department) to develop the corporate bond yield curve. Section 1.430(h)(2)–1(d) also provides that the yield curve for each month will be set forth in guidance published in the Internal Revenue Bulletin. Monthly IRS notices set forth the corporate bond yield curve for the month (without regard to the 24-month averaging specification), the section 430 segment interest rates (before and after adjustment pursuant to section 430(h)(3)(C)(iv)), and the 25-year average segment rates (which are updated annually).

Section 417(e)(3) provides assumptions for determining minimum present value for certain purposes, including the determination of a lump-sum that is the present value of an annuity, and prescribes an applicable interest rate for this purpose. Section 417(e)(3)(C) provides that the term ''applicable interest rate'' means the adjusted first, second, and third segment rates applied under rules similar to the rules of section 430(h)(2)(C) for the month before the date of a distribution or such other time as the Secretary may prescribe by regulations. However, for purposes of section 417(e)(3), these rates are determined without regard to the segment rate stabilization rules of section 430(h)(2)(C)(iv). In addition, under section 417(e)(3)(D), these rates are determined using the average yields for a month, rather than the 24-month average used under section 430(h)(2)(D).

[1] Section 302 of the Employee Retirement Income Security Act of 1974, Public Law 93–406, 88 Stat. 829 (1974), as amended (ERISA), sets forth funding rules that are parallel to those in section 412 of the Code, and section 303 of ERISA sets forth minimum funding requirements that apply generally for defined benefit plans (other than multiemployer plans) that are parallel to those in section 430 of the Code. Pursuant to section 101 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App., as amended, the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these regulations for purposes of ERISA, as well as the Code. Thus, these Treasury regulations issued under section 430 of the Code also apply for purposes of section 303 of ERISA.

Under section 846(c), the Secretary determines the applicable interest rate to be used by insurance companies to discount unpaid losses on the basis of the corporate bond yield curve (as defined in section 430(h)(2)(D)(i), determined by substituting ''60-month period'' for ''24-month period''). Under § 1.832–4(c), the applicable interest rate determined under section 846(c) is also used by insurance companies to discount estimated salvage recoverable, unless the Commissioner publishes applicable discount factors to be used for that purpose.

A notice of proposed rulemaking and notice of public hearing (REG–124123–22) that would revise the methodology for determining the corporate bond yield curve was published in the **Federal Register** (88 FR 41047) on June 23, 2023. Two commenters submitted comments on the proposed regulations. A public hearing on the proposed regulations was scheduled for August 30, 2023, but was cancelled because no one requested to speak. After consideration of these comments, these final regulations are adopted with minor changes to the language from the proposed regulations to provide more detail on the methodology for determining the corporate bond yield curve.

Summary of Comments and Explanation of Revisions

These regulations specify the methodology used to develop the corporate bond yield curve. This methodology is generally the same as the methodology set forth in Notice 2007–81 but includes two refinements to take into account changes in the bond market since 2007. The regulations also amend the existing regulations under section 430(h)(2) to reflect the addition of the interest rate stabilization rules of section 430(h)(2)(C)(iv) and to eliminate transition rules that applied to plan years beginning before January 1, 2010.

One commenter expressed support for the rules set forth in the proposed regulations. The other commenter raised various concerns regarding the corporate bond yield curve.[2] Those concerns are discussed in this Summary of Comments and Explanation of Revisions.

Under these regulations, as under Notice 2007–81, the monthly corporate bond yield curve for a month is defined as the set of spot rates at specified durations. The specified durations are at 6-month intervals ranging from 6 months through 100 years, and the spot rate at a duration is the yield (when compounded semiannually) for a bond that matures at that duration with a single payment at maturity. Each spot rate at a specified duration on the monthly corporate bond yield curve for a month is equal to the arithmetic average for each business day of that month of the spot rates at that duration on the daily corporate bond yield curves.

Under these regulations, as under Notice 2007–81, each spot rate on the daily corporate bond yield curve is derived from a forward interest rate function (that is, the projected instantaneous interest rate at each point in time) that is defined by the selection of five coefficients of B-splines determined using the bond data, taking into account certain adjustment factors.

Two of those adjustment factors, which are included in the methodology set forth in Notice 2007–81, take into account the ratings of the bonds used to develop the daily corporate bond yield curve. The third adjustment factor, which was not included in the methodology set forth in that notice, is a hump adjustment variable that peaks at 20 years maturity[3] and serves to capture the effects of the hump in spot rates that is often seen around 20 years maturity.

Under the methodology used in Notice 2007–81, the spot rate at a duration *t* could be calculated directly as the discount rate at that duration derived from the forward interest rate function. However, the addition of the hump adjustment variable under the proposed regulations means that the calculation of the spot rates from the discount function and the hump adjustment variable requires an intermediate step. This intermediate step, which was implicit in the proposed regulations, involves the determination of a par yield curve (that is, the curve in which the rate at maturity *t* on the curve is equal to the yield for a bond with maturity of *t* for which the price is the same as the principal amount) that is calculated from the discount function and the hump adjustment variable. In response to a commenter's request that the regulations specify clear standards for the determination of the corporate bond yield curve, these regulations describe this intermediate step. Accordingly, these regulations clarify that the spot rates are determined by first setting the spot rate at duration of ½ year on the daily corporate bond yield curve as the yield at maturity of ½ year from the daily par yield curve, and then determining the spot rate for any later duration by applying an iterative process based on the spot rates at earlier durations and the daily par yield curve.

One commenter asked how the IRS handles the situation in which the rating of a bond is upgraded or downgraded during a month, or a bond is rated differently by different rating organizations for a single day. Because the monthly corporate bond yield curve is developed from a set of daily corporate bond yield curves, changes in ratings during the month are automatically taken into account. In the case of a bond that is rated differently by different ratings organizations on a single day, the bond is treated as having the average of the ratings for that day.

These regulations generally adopt the specification for the bond data set for a month under Notice 2007–81 but modify an exclusion from that bond data set. Under Notice 2007–81 and these regulations, subject to certain exclusions, the bonds that are used to construct the daily corporate bond yield curve for a business day are bonds with the following characteristics: (1) maturities longer than ½ year,[4] (2) at least two payment dates, (3) designated as corporate, (4) high quality ratings (that is, AAA, AA, or A) as of that business day from the nationally recognized statistical rating organizations,[5] (5) at least $250 million in par amount outstanding on at least one day during the month, (6) payment of fixed nominal semiannual coupons and the principal amount at maturity,

[2] This commenter suggested that multiple yield curves be published for different segments of the corporate bond market, such as by industry, sector, or region. This suggestion is inconsistent with the requirements of section 430(h)(2)(D) and (F), under which the Secretary must publish a single corporate bond yield curve for each month. In addition, this commenter expressed concern about the impact of the proposed regulations on the determination of the applicable federal rate and any resulting impact on the tax-exempt bond market. However, pursuant to section 1274(d), the applicable federal rates are determined with reference to the yields on Treasury securities, not corporate bonds; thus, these regulations have no effect on the determination of the applicable federal rates.

[3] The hump adjustment variable is a mathematical function that is a cubic spline in the interval from 10 years maturity through 30 years maturity made up of two polynomials with a smooth junction at 20 years maturity.

[4] Under Notice 2007–81 and the regulations, the data for durations equal to or below ½ year that is used to construct the daily corporate bond yield curve consists of AA financial and AA nonfinancial commercial paper rates, as reported by the Federal Reserve Board.

[5] Although section 939A(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376, generally prohibits federal agencies from issuing regulations that apply a standard that is based on credit ratings from statistical rating organizations, this prohibition does not apply to the construction of the daily corporate bond yield curve because the use of those credit ratings is required by section 430(h)(2)(D) of the Code.

and (7) maturity not later than 30 years after that day.

Under Notice 2007–81 and these regulations, the following categories of bonds are excluded from the bond data set: (1) bonds not denominated in U.S. dollars, (2) bonds not issued by U.S. corporations, (3) bonds that are capital securities (sometimes referred to as hybrid preferred stock), (4) bonds having variable coupon rates, (5) convertible bonds, (6) bonds issued by a government-sponsored enterprise (such as the Federal National Mortgage Association), (7) asset-backed bonds, (8) putable bonds, (9) bonds with sinking funds, and (10) bonds with a par amount outstanding below $250 million for the day for which the daily yield curve is constructed.

Notice 2007–81 also excluded callable bonds (unless the call feature is make-whole) from the bond data set used to construct the daily corporate bond yield curve. The regulations generally retain this exclusion but narrow it. Under the proposed regulations, this exclusion does not apply if the call feature is exercisable only during the last year before maturity. This type of call feature has recently become more widely used, and the inclusion of bonds with this feature in the data set will result in a significantly larger pool of bonds that more accurately reflects the market for high quality corporate bonds.

One commenter asked how the calculation of the yield of a corporate bond is affected by any options embedded in that bond. The complexity of the calculations involved in quantifying this effect is the reason that corporate bonds with embedded put and call options have been generally excluded from the set of bonds used to determine the corporate bond yield curve in the past. However, as noted in the preceding paragraph, including bonds with a call feature that is exercisable only during the last year before maturity significantly increases the pool of bonds that are taken into account in developing the corporate bond yield curve, and the Treasury Department and the IRS have determined that this feature does not significantly affect the yields of these bonds. Accordingly, no adjustment will be made to reflect the effect of this feature on bond yields.

Applicability Date

These regulations apply for purposes of determining the corporate bond yield curve under section 430(h)(2)(D) for months that begin on or after February 1, 2024.

Statement of Availability of IRS Documents

IRS Revenue Rulings, Revenue Procedures, and Notices cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS website at *www.irs.gov.*

Special Analyses

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

Regulatory Flexibility Act

It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. The vast majority of plan sponsors of defined benefit plans that are subject to section 430 choose to use the segment rates under section 430(h)(2)(C), rather than the corporate bond yield curve under section 430(h)(2)(D), to determine minimum required contributions. Furthermore, most of the plan sponsors who choose to use the corporate bond yield curve for this purpose are not small employers. Therefore, the methodology set forth in these regulations for constructing the corporate bond yield curve will not have a significant effect on minimum required contributions for small employers. In addition, the insurance companies that are required to use a modified version of the corporate bond yield curve to discount unpaid losses are typically not small employers. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

Pursuant to section 7805(f) of the Code, the proposed regulations that preceded these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business, and no comments were received.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. These regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These regulations do not have federalism implications, impose substantial direct compliance costs on State and local governments, or preempt State law within the meaning of the Executive order.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Drafting Information

The principal authors of these regulations are Arslan Malik and Linda S.F. Marshall of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the Treasury Department and the IRS participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, the Treasury Department and the IRS amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.430(h)(2)–1 is amended by:

■ 1. Removing the phrase ‘‘and transition rules’’ in the last sentence of paragraph (a)(1);

■ 2. Revising paragraph (b)(2);

■ 3. Removing the last sentence in paragraph (c)(1);
■ 4. In paragraphs (c)(2)(i) through (iii), removing the phrase ''under the transition rule of paragraph (h)(4) of this section'' and adding the phrase ''under the interest rate stabilization rules in section 430(h)(2)(C)(iv)'' in its place;
■ 5. Revising paragraph (d);
■ 6. Removing paragraph (e)(3) and redesignating paragraph (e)(4) as paragraph (e)(3);
■ 7. In newly redesignated paragraph (e)(3)(ii), removing the phrase ''this paragraph (e)(4)'' and adding the phrase ''this paragraph (e)(3)'' in its place;
■ 8. Redesignating paragraph (e)(5) as paragraph (e)(4); and
■ 9. Revising paragraph (h).

The revisions read as follows:

§ 1.430(h)(2)–1 Interest rates used to determine present value.

* * * * *

(b) * * *

(2) *Benefits payable within 5 years.* In the case of benefits expected to be payable during the 5-year period beginning on the valuation date for the plan year, the interest rate used in determining the present value of the benefits that are included in the target normal cost and the funding target for the plan is the first segment rate with respect to the applicable month, as described in paragraph (c)(2)(i) of this section.

* * * * *

(d) *Monthly corporate bond yield curve*—(1) *In general*—(i) *Construction of monthly corporate bond yield curve.* For purposes of this section, the monthly corporate bond yield curve for a month is defined as the set of spot rates at specified durations. The specified durations are at 6-month intervals ranging from 6 months through 100 years and the spot rate at a duration is the yield (when compounded semiannually) for a bond that matures at that duration with a single payment at maturity. The monthly corporate bond yield curve is constructed as the average of the spot rates from the set of daily corporate bond yield curves as specified in paragraph (d)(1)(ii) of this section. Each daily corporate bond yield curve is constructed using the methodology set forth in paragraph (d)(2) of this section based on the data described in paragraph (d)(3) of this section. The yield curve for each month will be published in the Internal Revenue Bulletin. See § 601.601(d) of this chapter.

(ii) *Monthly corporate bond yield curve constructed through averaging.* Each spot rate at a specified duration on the monthly corporate bond yield curve for a month is equal to the arithmetic average, for each business day of that month, of the spot rates at that duration on the daily corporate bond yield curves.

(2) *Construction of the daily corporate bond yield curve*—(i) *In general*—(A) *Calculation of spot rates.* The spot rate at duration of ½ year on the daily corporate bond yield curve is set equal to the yield at maturity of ½ year from the daily par yield curve described in paragraph (d)(2)(i)(B) of this section. The spot rate for any later duration on the daily corporate bond yield curve is determined by applying an iterative process based on the spot rates at earlier durations and the daily par yield curve.

(B) *Calculation of par yield curve.* The daily par yield curve (that is, the curve in which the rate at maturity t on the curve is equal to the yield for a bond with maturity of t for which the price is the same as the principal amount) is calculated from the discount function described in paragraph (d)(2)(i)(C) of this section and the hump adjustment variable described in paragraph (d)(2)(iii)(D) of this section.

(C) *Derivation of discount function.* The discount function for a day at duration t (denoted d(t)) is derived from the forward interest rate function as described in paragraph (d)(2)(ii) of this section (denoted $f(z)$) using the following equation:

$$d(t) = exp\left(-\int_0^t f(z)dz\right)$$

(ii) *Determination of forward interest rates*—(A) *In general.* The forward interest rate function used to derive the discount function is determined as a series of cubic polynomials (referred to as a cubic spline) that have a smooth junction at specified knot points (maturities of 0, 1.5, 3, 7, 15, and 30 years). The requirement that the polynomials have a smooth junction at a knot point is satisfied if the two polynomials that are meeting at the knot have the same value, the same derivative, and the same second derivative at that knot point.

(B) *Constraints on the forward interest function.* The following three constraints are placed on the forward interest rate function—

(*1*) The second derivative of the function is set to 0 at maturity 0.

(*2*) The value of the forward interest rate function at and after 30 years is constrained to equal its average value from 15 to 30 years.

(*3*) The derivative of the forward interest rate function is set to 0 at maturity 30 years.

(iii) *Parameters for daily bond price model*—(A) *B-spline coefficients.* The assumed cubic spline for the forward interest rate function can be described as a linear combination of B-splines, with five parameters, which are determined taking into account the two coefficients for the bond-quality adjustment variables described in paragraphs (d)(2)(iii)(B) and (C) of this section and the coefficient for the hump adjustment variable described in paragraph (d)(2)(iii)(D) of this section. The five parameters and three coefficients are determined using the bond data weighted as described in paragraph (d)(2)(iv) of this section. After this weighting of the bond data, the five parameters and three coefficients are chosen to minimize the sum of the squared differences between the bid price for each of the bonds (or ask price for commercial paper) and the price estimated for each of those bonds determined using the specified parameters and coefficients, and taking into account the bond's coupon rate, number of years until maturity, and rating.

(B) *Adjustment factor for share of bonds that are AA-rated.* The first adjustment variable is based on the proportion of bonds that are rated AA within the universe of bonds in the data set that are rated AA or AAA, weighted by par value. In the case of an AAA-rated bond the adjustment variable described in this paragraph (d)(2)(iii)(B) is equal to the product of the proportion described in the preceding sentence and the number of years until maturity for the bond. In the case of an AA-rated bond the adjustment variable described in this paragraph (d)(2)(iii)(B) is equal to the product of (1- that proportion) and the number of years until maturity for the bond. In the case of an A-rated bond, the adjustment variable described in this paragraph (d)(2)(iii)(B) is 0.

(C) *Adjustment factor for share of bonds that are A-rated.* The second adjustment variable is based on the proportion of bonds rated A within the universe of bonds in the data set, weighted by par value. In the case of an AAA-rated bond or an AA-rated bond, the adjustment variable described in this paragraph (d)(2)(iii)(C) is equal to the product of the proportion described in the preceding sentence and the number of years until maturity for the bond. In the case of an A-rated bond, the adjustment variable described in this paragraph (d)(2)(iii)(C) is equal to the product of (1- that proportion) and the number of years until maturity for the bond.

(D) *Hump adjustment variable.* The hump adjustment variable is a

mathematical function that is a cubic spline in the interval from 10 years maturity through 30 years maturity made up of two polynomials with a smooth junction (as described in paragraph (d)(2)(ii)(A) of this section) at 20 years maturity. The spline rises from 0 at 10 years maturity to 1.0 at 20 years maturity, then falls back down to 0 at 30 years maturity. The hump adjustment variable is 0 for maturities less than 10 years and maturities greater than 30 years.

(iv) *Weighting of bond data.* The bond data are weighted in three steps. In the first step, equal weights are assigned to the commercial paper rates at the short end of the curve, and the par amounts outstanding of all the bonds are rescaled so that their sum equals the sum of the weights for commercial paper. In the second step, the squared price difference for each commercial paper rate is multiplied by the commercial paper weight, and the squared price difference for each bond is multiplied by the bond's rescaled par amount outstanding. In the third step, applicable for bonds with duration greater than 1, the weighted squared price difference for each bond from the second step is divided by the bond's duration.

(3) *Data used*—(i) *In general.* Except as otherwise provided in this paragraph (d)(3), the bonds that are used to construct the daily corporate bond yield curve for a business day are bonds with maturities longer than ½ year, with at least two payment dates, and that:

(A) Are designated as corporate;

(B) Have high quality ratings (AAA, AA, or A) as of that business day from the nationally recognized statistical rating organizations;

(C) Have at least $250 million in par amount outstanding on at least one day during the month;

(D) Pay fixed nominal semiannual coupons and the principal amount at maturity; and

(E) Mature not later than 30 years after that business day.

(ii) *Excluded bonds.* The following types of bonds are not used to construct the daily corporate bond yield curve for a date:

(A) Bonds not denominated in U.S. dollars;

(B) Bonds not issued by U.S. corporations;

(C) Bonds that are capital securities (sometimes referred to as hybrid preferred stock);

(D) Bonds with variable coupon rates;

(E) Convertible bonds;

(F) Bonds issued by a government-sponsored enterprise (such as the Federal National Mortgage Association);

(G) Asset-backed bonds;

(H) Callable bonds, unless the call feature is make-whole or the call feature is exercisable only during the last year before maturity;

(I) Putable bonds;

(J) Bonds with sinking funds; and

(K) Bonds with an outstanding par amount below $250 million for the day for which the daily yield curve is constructed.

(iii) *Durations equal to or below ½ year.* The data for durations equal to or below ½ year that is used to construct the daily corporate bond yield curve consists of AA financial and AA nonfinancial commercial paper rates, as reported by the Federal Reserve Board.

* * * * *

(h) *Applicability date.* This section applies for months that begin on or after February 1, 2024. For rules that apply for earlier periods, see 26 CFR 1.430(h)(2)–1 revised as of April 1, 2023.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

Approved: December 27, 2023.

Lily Batchelder,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2024–00552 Filed 1–11–24; 8:45 am]

BILLING CODE 4830–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4071 and 4302

RIN 1212–AB45

Adjustment of Civil Penalties for Inflation

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation is required to amend its regulations annually to adjust for inflation the maximum civil penalty for failure to provide certain notices or other material information and for failure to provide certain multiemployer plan notices.

DATES:

Effective date: This rule is effective on January 12, 2024.

Applicability date: The increases in the civil monetary penalties under sections 4071 and 4302 of the Employee Retirement Income Security Act provided for in this rule apply to such penalties assessed after January 12, 2024.

FOR FURTHER INFORMATION CONTACT: Karen Levin (*levin.karen@pbgc.gov*), Attorney, Regulatory Affairs Division, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101; 202–229–3559. If you are deaf or hard of hearing or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of the Regulatory Action

This rule is needed to carry out the requirements of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and Office of Management and Budget guidance M–24–07. The rule adjusts, as required for 2024, the maximum civil penalties under 29 CFR parts 4071 and 4302 that the Pension Benefit Guaranty Corporation (PBGC) may assess for failure to provide certain notices or other material information and certain multiemployer plan notices.

PBGC's legal authority for this action comes from the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and from sections 4002(b)(3), 4071, and 4302 of the Employee Retirement Income Security Act of 1974 (ERISA).

Major Provisions of the Regulatory Action

This rule adjusts as required by law the maximum civil penalties that PBGC may assess under sections 4071 and 4302 of ERISA. The new maximum amounts are $2,670 for section 4071 penalties and $356 for section 4302 penalties.

Background

PBGC administers title IV of ERISA. Title IV has two provisions that authorize PBGC to assess civil monetary penalties.[1] Section 4302, added to ERISA by the Multiemployer Pension Plan Amendments Act of 1980, authorizes PBGC to assess a civil penalty of up to $100 a day for failure to provide a notice under subtitle E of title IV of ERISA (dealing with multiemployer plans). Section 4071, added to ERISA by the Omnibus Budget Reconciliation Act of 1987, authorizes

[1] Under the Federal Civil Penalties Inflation Adjustment Act of 1990, a penalty is a civil monetary penalty if (among other things) it is for a specific monetary amount or has a maximum amount specified by Federal law. Title IV also provides (in section 4007) for penalties for late payment of premiums, but those penalties are neither in a specified amount nor subject to a specified maximum amount.

PBGC to assess a civil penalty of up to $1,000 a day for failure to provide a notice or other material information under subtitles A, B, and C of title IV and sections 303(k)(4) and 306(g)(4) of title I of ERISA.

Adjustment of Civil Penalties

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 [2] requires agencies to adjust civil monetary penalties for inflation and to publish the adjustments in the **Federal Register**. An initial adjustment was required to be made by interim final rule published by July 1, 2016, and effective by August 1, 2016. Subsequent adjustments must be published by January 15 each year after 2016.

On December 19, 2023, the Office of Management and Budget issued memorandum M–24–07 on implementation of the 2024 annual inflation adjustment.[3] The memorandum provides agencies with the cost-of-living adjustment multiplier for 2024, which is based on the Consumer Price Index (CPI–U) for the month of October 2023, not seasonally adjusted. The multiplier for 2024 is 1.03241. The adjusted maximum amounts are $2,670 for section 4071 penalties and $356 for section 4302 penalties.

Compliance With Regulatory Requirements

The Office of Management and Budget has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866 and therefore not subject to its review.

The Office of Management and Budget also has determined that notice and public comment on this final rule are unnecessary because the adjustment of civil penalties implemented in the rule is required by law. See 5 U.S.C. 553(b).

Because no general notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Parts 4071 and 4302

Penalties.

In consideration of the foregoing, PBGC amends 29 CFR parts 4071 and 4302 as follows:

[2] Sec. 701, Public Law 114–74, 129 Stat. 599–601 (Bipartisan Budget Act of 2015).

[3] See M–24–07, Implementation of Penalty Inflation Adjustments for 2024, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, *https://www.whitehouse.gov/wp-content/uploads/2023/12/M-24-07-Implementation-of-Penalty-Inflation-Adjustments-for-2024.pdf.*

PART 4071—PENALTIES FOR FAILURE TO PROVIDE CERTAIN NOTICES OR OTHER MATERIAL INFORMATION

■ 1. The authority citation for part 4071 continues to read as follows:

Authority: 28 U.S.C. 2461 note, as amended by sec. 701, Pub. L. 114–74, 129 Stat. 599–601; 29 U.S.C. 1302(b)(3), 1371.

§ 4071.3 [Amended]

■ 2. In § 4071.3, remove the number ''$2,586'' and add in its place the number ''$2,670''.

PART 4302—PENALTIES FOR FAILURE TO PROVIDE CERTAIN MULTIEMPLOYER PLAN NOTICES

■ 3. The authority citation for part 4302 continues to read as follows:

Authority: 28 U.S.C. 2461 note, as amended by sec. 701, Pub. L. 114–74, 129 Stat. 599–601; 29 U.S.C. 1302(b)(3), 1452.

§ 4302.3 [Amended]

■ 4. In § 4302.3, remove the number ''$345'' and add in its place the number ''$356''.

Issued in Washington, DC.

Gordon Hartogensis,

Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2024–00488 Filed 1–11–24; 8:45 am]

BILLING CODE 7709–02–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[SATS No. WV–125–FOR; Docket ID: OSMRE–2017–0003 S1D1S SS08011000 SX064A000 2340S180110; S2D2S SS08011000 SX064A000 23XS501520]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment with deferral.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving, with one deferral, an amendment to the West Virginia statutory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment revises the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA) as contained in Senate Bill 687 of 2017. These revisions modify the WVSCMRA requirements related to the release of bonds and provisions related to the use of money from the Special Reclamation Water Trust Fund. We are deferring our decision on the removal of provisions pertaining to the long-range planning process for the selection and prioritization of sites to be reclaimed.

DATE: This rule is effective February 12, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Castle, Acting Field Office Director, Charleston Field Office, Telephone: (859) 260–3900. Email: *osm-chfo@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program
II. Submission of the Amendment
III. OSMRE's Findings
IV. Summary and Disposition of Comments
V. OSMRE's Decision
VI. Statutory and Executive Order Reviews

I. Background on the West Virginia Program

Subject to OSMRE's oversight, SMCRA section 503(a) permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning the West Virginia program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Submission of the Amendment

By letter dated May 3, 2017 (Administrative Record No. 1608), and received by us on May 15, 2017, the West Virginia Department of Environmental Protection (WVDEP) submitted an amendment to its program under SMCRA, docketed as WV–125–FOR. The proposed amendment consists of statutory revisions to WVSCMRA contained in Senate Bill 687 of 2017 (S.B. 687) (approved April 26, 2017). *See* 2017 W.Va. Acts ch. 86.

Through S.B. 687, West Virginia seeks to revise statutory provisions related to the release of bonds and the use of

money from the Special Reclamation Water Trust Fund to assure a reliable source of capital and operating expenses for the treatment of discharges from bond-forfeited sites. West Virginia also seeks to revise and reorganize the bond release requirements specific to when the different phases of a bond can be released and under what circumstances; it also preserves the requirement that no bond will be released until all reclamation requirements are met.

We announced receipt of the proposed amendment in the April 8, 2019, **Federal Register** (84 FR 13853) (Administrative Record No. 1617). In the same notice, we opened a public comment period and provided an opportunity for a public hearing on these provisions. The public comment period closed on May 8, 2019. We did not hold a public hearing or meeting because one was not requested. Letters were sent to various Federal agencies requesting comments (Administrative Record No. 1618), but none were received. For clarification, the summary of the April 8, 2019, proposed rule notice also unintentionally mentions revisions to pre-blasting and blasting requirements as being a part of this amendment. West Virginia had submitted other amendments to its blasting regulations that we had not yet addressed; therefore, in order to keep all changes to the blasting regulations together, we consolidated them into a separate amendment, which can be viewed at *www.regulations.gov* by searching the Docket ID Number OSM–2016–0010–0002, or SATS No. WV–123–FOR.

III. OSMRE's Findings

We are approving, with one deferral, the revisions proposed in WV–125–FOR as described below. The following are findings concerning West Virginia's amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. Any revisions that we do not specifically discuss below concerning non-substantive wording or editorial changes can be found in the full text of the program amendment available at *www.regulations.gov,* searchable by the Docket ID Number referenced at the top of this notice.

The following describes the substantive statutory revisions that WVDEP submitted to OSMRE for approval on May 3, 2017 (Administrative Record No. WV–1608).

1. W. Va. Code 22–3–11(g)(1)—Bonds; amount and method of bonding; bonding requirements; special reclamation tax and funds; prohibited acts; period of bond liability.

West Virginia seeks to revise W. Va. Code 22–3–11(g)(1) to specify that moneys in the Special Reclamation Water Trust Fund are to be used to assure a reliable source of capital and operating expenses for the treatment of water discharges from forfeited sites where the WVDEP Secretary has obtained or applied for a National Pollutant Discharge Elimination System (NPDES) permit as of the effective date of WVSCMRA. The existing provision states only that the funds assure ''a reliable source of capital to reclaim and restore water treatment systems on forfeited sites.''

OSMRE's Findings: The West Virginia alternative bonding system was conditionally approved by the Secretary on January 21, 1981 (46 FR 5915), and the condition of the approval was removed on March 1, 1983 (48 FR 8448). This approval was granted under section 509(c) of SMCRA, 30 U.S.C. 1259(c), which allows for the approval of an alternative bonding system that will achieve the objectives and purposes of section 509. In drafting section 509(c), Congress was not specific in prescribing how alternative bonding programs should be financed. The relevant analysis is whether the proposed alternative bonding system achieves the objectives and purposes of a conventional bonding system as expressed in section 509 of SMCRA and as implemented by 30 CFR 800.11(e).

In the May 7, 2020, **Federal Register** (85 FR 27139), we approved on a permanent basis revisions to W. Va. Code 22–3–11(g) made by West Virginia in 2008 that added language to provide that the Special Reclamation Water Trust Fund was created within the State Treasury, into and from which moneys would be paid for the purpose of assuring a reliable source of capital to reclaim and restore water treatment systems on forfeited sites. Previously, the expenditure for water treatment systems was limited to fees collected under the Special Reclamation Fund. The revisions West Virginia proposes through S.B. 687 clarify that in addition to assuring sufficient funds to cover capital costs, which generally relate to the construction of water treatment systems, the funds must also be sufficient to cover those systems' operating expenses.

Both capital and operating costs must be accounted for to ensure compliance with the requirement in 30 CFR 800.11(e)(1) that the State have sufficient money to complete reclamation for any areas that may be in default at any time. In our 2020 approval, we made special mention of other language in this provision, which West Virginia now proposes to delete, that both funds are ''for the purpose of designing, constructing, and maintaining water treatment systems.'' *See* 85 FR at 27152. The proposed text stating that the Special Reclamation Water Trust Fund moneys are to be used for both capital and operating expenses only calls special attention to the distinction and removes any ambiguity from West Virginia's requirements in light of the proposed deletion of ''for the purpose of designing, constructing, and maintaining water treatment systems,'' which we address below in the provision West Virginia has renumbered as paragraph (g)(2). S.B. 687 also clarifies that the money from the Special Reclamation Water Trust Fund is to be used where the Secretary has received or applied for an NPDES permit. As indicated in proposed paragraph (g)(2), addressed below, both funds are ''for the reclamation and rehabilitation'' of eligible lands, which we understand to mean that to the extent that any reclamation obligation is not expensed under the Special Reclamation Water Trust Fund, it will be expensed under the Special Reclamation Fund. Neither of these revisions materially change West Virginia's program as we approved it on May 7, 2020, and it continues to be no less stringent than the Federal alternative bonding requirement at section 509(c) of SMCRA, 30 U.S.C. 1259(c), and no less effective than the Federal alternative bonding requirements at 30 CFR 800.11(e).

2. W. Va. Code 22–3–11(g)(2)—Bonds; amount and method of bonding; bonding requirements; special reclamation tax and funds; prohibited acts; period of bond liability.

In 1995, West Virginia submitted revisions to W. Va. Code 22–3–11(g) that established the development of a long-range planning process for selection and prioritization of sites to be reclaimed to avoid inordinate short-term obligations of the fund's assets of such magnitude that the solvency of the fund was jeopardized. Relying on West Virginia's implementing regulations at 38 CSR 2–12.4(c), which provide that reclamation operations must be initiated within 180 days following final forfeiture notice, we approved that revision to the extent that it provided only for the ranking of sites for reclamation without compromising the requirement that all sites for which bonds were posted be properly and timely reclaimed. *See* 60 FR 51900 (Oct. 4, 1995). In 2008, West Virginia further revised this section to account for the Special Reclamation Water Trust Fund and specified that ''[t]he secretary may use both funds for the purpose of designing, constructing

and maintaining water treatment systems when they are required for a complete reclamation of the affected lands described in this subsection.'' West Virginia now seeks to delete these provisions, as well as renumber the remaining paragraph, formerly part of (g)(1), as (g)(2).

OSMRE's Findings: We addressed West Virginia's long-range planning process for selection and prioritization of sites to be reclaimed in previous decisions, specifically in the **Federal Register** documents of October 4, 1995 (60 FR 51900) and May 29, 2002 (67 FR 37610). In both of these instances, we explained in detail that for West Virginia's Special Reclamation Fund and Special Reclamation Water Trust Fund to remain solvent requires an inventory of sites requiring reclamation. Without this inventory, it is virtually impossible for the Special Reclamation Advisory Council to accurately assess the liabilities that would be included in the alternative bonding system. We further emphasized this fact in our letter to the WVDEP dated August 23, 2021 (Administrative Record No. 1659). Again, we raised concerns regarding WVDEP having not taken the necessary steps to ensure the complete and accurate listing of all outstanding reclamation obligations (including water treatment) on active permits. We informed WVDEP that the State was required to submit either a proposed written amendment or a description of an amendment to be proposed that meets the requirements of 30 CFR 732.17(f)(1) to establish a better inventory of existing obligations.

On October 18, 2021, WVDEP responded to our letter with a proposal for an amendment (Administrative Record No. 1664) to address this issue, which then proceeded through the State's statute and rulemaking process. On March 29, 2022, WVDEP submitted this proposed revision to the West Virginia program (Administrative Record No. 1666) to develop and maintain a database to track reclamation liabilities in the WVDEP Special Reclamation Program. We are deferring our decision on Section 22–3–11(g)(2) until we have reviewed the 2022 proposed amendment (docketed as WV–128–FOR). Our deferral does not impact West Virginia's efforts to renumber these provisions from subsection (g) to paragraph (g)(2), and the renumbering has no effect on the West Virginia program. Therefore, we approve the renumbering.

3. W. Va. Code 22–3–23(c)—Release of bond or deposits; application; notice; duties of Secretary; public hearings; final maps on grade release.

West Virginia seeks to amend W. Va. Code 22–3–23(c) to more closely reflect the language used in section 519(c) of SMCRA (Requirements for release), 30 U.S.C. 1269(c), first by eliminating the distinction previously created at existing subsections (c)(1) and (c)(2) between operations with and without an approved variance from the requirement that areas be reclaimed to approximate original contour (AOC). This proposed change replaces two sets of phased bond release requirements (currently at (c)(1)(A)–(C) and (c)(2)(A)–(C)) with one set of bond release requirements under subsection (c), paragraphs (1) through (3). The State also seeks to eliminate the proviso repeated under both sets of requirements that a minimum bond of ten thousand dollars shall be retained following Phase I and II bond releases, and a proviso that allowed total release of bonds following backfilling where provisions for sound future maintenance was assured by the local or regional economic development or planning agency and certain other requirements were met. West Virginia originally proposed the provision about sound future maintenance, as well as bond release provisions specific to operations with variances from AOC requirements, in relation to a Consent Decree agreed to by the plaintiffs and WVDEP in the matter of *Bragg* v. *Robertson,* Civil Action No. 2:98–0636 (S.D.W.Va.) (approved by the U.S. District Court for the Southern District of West Virginia on February 17, 2000). The remaining changes relate to Phase II bond release at existing subparagraphs (c)(1)(B) and (c)(2)(B), which will become paragraph (c)(2).

West Virginia's proposed revisions eliminate a requirement that Phase II bond release (*i.e.,* bond release following successful revegetation) may occur only at a minimum of two years from the last augmented seeding, fertilizing, irrigation, or other work, and eliminate the flat percentage of bond returned at Phase II bond release (ten percent for those operations with an approved variance from AOC, twenty-five percent for all other operations). In place of the flat percentages, paragraph (2) will provide that the bond or deposit, in whole or in part, may be released after revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan. When determining the amount of bond to be released after successful revegetation has been established, the Secretary will retain that amount of bond for the revegetated area that would be sufficient for a third party to cover the cost of reestablishing revegetation and for the period specified for operator responsibility at W. Va. Code 22–3–13(b). This section establishes that the operator ensures that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable and complies with the minimum environmental performance standards for surface mining operations.

Proposed paragraph (c)(3) redrafts provisos from subparagraphs (c)(1)(C) and (c)(2)(C) that provide that when the operator has successfully completed all surface coal mining and reclamation activities, the remaining portion of the bond may be released, but not before the expiration of the period specified for operator responsibility at W. Va. Code 22–3–13(b). These provisions also provide that no bond will be fully released until all reclamation requirements are complied with, and that ''the release may be made where the quality of untreated post-mining water discharged is better than or equal to the premining water quality discharged from the mining site where expressly authorized,'' which currently only relates to West Virginia's remining regulations at CSR 38–2–23. All of this language will now appear at proposed paragraph (c)(3).

OSMRE's Findings: As we explained in our August 18, 2000, **Federal Register** notice (65 FR 50409, 50411), West Virginia's bond release requirements particular to operations with approved AOC variances apply to mountaintop removal and steep slope mining operations. We noted at that time that the different percentages of bonds released did not exceed those provided under section 519(c) of SMCRA and the Federal regulations at 30 CFR 800.40(c). Further, we explained that there was no counterpart in SMCRA or its implementing regulations for the requirement that final bond cannot be released on lands subject to an AOC variance unless, if applicable, any necessary postmining infrastructure is established and any necessary financing is completed. Therefore, the elimination of these unique requirements from WVSCMRA is approved.

West Virginia proposed to delete a proviso stating that after Phase I and II bond release, operations must still maintain a minimum bond of $10,000. We find that this requirement is redundant of W. Va. Code 22–3–11(a), which states: ''Provided, that the minimum amount of bond furnished for any type of reclamation bonding shall be ten thousand dollars.'' The elimination of this proviso from W. Va. Code 22–3–23 does not relieve operations of the requirement of W. Va.

Code 22–3–11(a), which itself is the same as the requirement under section 509(a) of SMCRA, 30 U.S.C. 1259(a). Therefore, we approve this deletion to the extent that it removes the requirement from West Virginia's bond release requirements, but we note that its deletion has no effect on West Virginia's general requirement that no reclamation bonds may be less than ten thousand dollars.

In the November 12, 1999, **Federal Register** (64 FR 61507, 61512), we deferred a decision on the proposed amendment that would allow certain operations to be granted full bond release where provisions for sound future maintenance were assured by the local or regional economic development or planning agency and certain other requirements were met. Our deferral pended West Virginia's submission of regulations that West Virginia believed would satisfy our concerns that the proviso created an exemption from bond release requirements that conflicted with SMCRA. At that time, we explained that until we readdressed our deferral, West Virginia was prohibited from implementing this provision. Because this provision never became effective, West Virginia's current proposed deletion of the proviso has no effect on West Virginia's program. Therefore, we are approving the deletion.

West Virginia also proposed to revise the requirements for Phase II bond release by eliminating the specified amount (ten and twenty-five percent) that is to be returned upon a Phase II bond release and eliminating the minimum two-year waiting period after the last augmented seeding before revegetation standards may be met. Neither SMCRA nor the Federal regulations specify an amount of bond to be released upon Phase II or proscribe a time period for the determination that revegetation has been established for the purpose of Phase II bond release. Rather, Federal law places within the discretion of the regulatory authority the need to determine and retain adequate bond to complete all required reclamation and to determine that successful revegetation has been established. *See* 30 U.S.C. 1269(c)(2) and 30 CFR 800.40(c)(2). When we approved West Virginia's inspection frequency of inactive mines, we explained that West Virginia's two-year requirement from last augmented seeding was more stringent than Federal requirements. *See* 55 FR 21304, 21333 (May 23, 1990). The Federal requirements at 30 CFR 800.40(c) ''require only that revegetation be successfully established, with the definition of 'established' left to the discretion of the regulatory authority, provided it includes adequacy to control erosion and compliance with the species composition requirements of the reclamation plan.'' When a regulatory authority proposes to remove a provision that is more stringent than the Federal requirements, we must still ensure the remaining provisions are not rendered less stringent than those requirements. The two-year requirement is not critical to a mining operator's achievement of the relevant vegetative performance standard or to WVDEP's evaluation of whether the standard is met. The proposed amendment retains West Virginia's commitment to verify that applicable standards for vegetative success have been met before the relevant portion of the bond is released and, therefore, is no less stringent than sections 505 and 519 of SMCRA, 30 U.S.C. 1265 and 1269, or less effective than the Federal regulations at 30 CFR 800.40 and 816.116. Therefore, we are approving the amendment.

West Virginia's proposed revision would eliminate the flat percentage Phase II bond release in favor of retaining the amount of bond for the revegetated area that would be sufficient for a third party to cover the cost of reestablishing revegetation and for the period specified for operator responsibility. This proposed revision directly reflects the language of 30 CFR 800.40(c)(2). In 1983, we removed from paragraph (c)(2) a corresponding twenty-five percent Phase II maximum bond release requirement in favor of more flexibility for the regulatory authority to retain the amount of bond necessary. *See* 48 FR 32932, 32953 (July 19, 1983). At that time, we acknowledged that establishment of a maximum percentage as a Federal requirement was arbitrary and not consistent with SMCRA. *Id.* Given that West Virginia's revision brings its bond release requirement back in line with the Federal regulation, it is no less effective than Federal requirements, and we are approving it.

Regarding proposed paragraph (c)(3), this paragraph simply redrafts provisions related to the conditions for final bond release from existing subparagraphs (c)(1)(C) and (c)(2)(C), which were revisions initially required by us, *see* 50 FR 28316, 28319 (July 11, 1985), and for which we later approved subsequent revisions by West Virginia, *see* 68 FR 40157, 40158–59 (July 7, 2003). Because the proposed redrafting does not change any of these provisions from when we last approved them, we are approving the redrafted language.

4. W. Va. Code 22–3–23(i)—Release of bond or deposits; application; notice; duties of Secretary; public hearings; final maps on grade release.

WVDEP proposed to add subdivision (i) to its bonding requirements, which would authorize the Secretary to propose rules for legislative approval during the 2018 regular session of the Legislature that implemented the statutory changes discussed above while adopting, where possible, corresponding Federal regulatory standards. In addition, the Secretary was to specifically consider the adoption of corresponding Federal standards codified at 30 CFR part 700 *et seq.*

OSMRE's findings: OSMRE is approving the addition of subdivision (i) to WVDEP's bonding requirements, which authorizes the Secretary to propose rules for legislative approval. In addition, the WVDEP Secretary was to specifically consider the adoption of corresponding Federal standards codified at 30 CFR part 700 *et seq.* This approval enabled WVDEP the discretion to amend its bonding regulations as needed so that West Virginia's program may continue to satisfy Federal law. West Virginia made its regulatory revisions through a Committee Substitute for Senate Bill 163 of 2018, *see* 2018 W.Va. Acts ch. 141, which West Virginia submitted to us on May 2, 2018 (Administrative Record No. WV–1613A, in part), docketed as WV–126–FOR. Subsection (i) itself did not change any substantive provisions of West Virginia's approved program, but instead only directed WVDEP to fashion revisions to WVDEP's regulations that WVDEP determined were necessary to comply with Federal law. Therefore, subsection (i) is neither inconsistent with SMCRA nor less effective than SMCRA's implementing regulations. We are currently reviewing those regulatory revisions made under the authority of subsection (i) as part of a separate action docketed at WV–126–FOR.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment and received a letter dated May 8, 2019, from the West Virginia Coal Association (WVCA) (Administrative Record No. 1627). WVCA stated in its letter that S.B. 687 revised both bonding and explosives and blasting provisions of the WVSCMRA. WVCA stated that it was unclear why WV–125–FOR only covered the bonding portion of the bill. The blasting provisions referenced in our public notice of WV–125–FOR on April 8, 2019, were moved into WV–123–FOR with House Bill 4726

(approved April 1, 2016), *see* 2016 W.Va. Acts ch.106, and Senate Bill 163 (approved May 2, 2018), *see* 2018 W.Va. Acts ch. 141, which also amended West Virginia's blasting laws.

Federal Agency Comments

On April 10, 2019, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the West Virginia program (Administrative Record No. 1618). On April 30, 2019, we received a letter from the USDA Forest Service, Monongahela National Forest. The USDA Forest Service did not have any comments of the proposed changes to the revisions to the West Virginia Code (Administrative Record No. 1626).

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). On April 10, 2019, under 30 CFR 732.17(h)(11)(i), we requested comments and concurrence from the EPA on the amendment (Administrative Record No. 1618). We received concurrence but no comments from the EPA on August 14, 2019, (Administrative Record No. 1629).

State Historic Preservation Office (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On April 10, 2019, we requested comments on West Virginia's amendment (Administrative Record No. 1618). We did not receive any comments.

V. OSMRE's Decision

We are approving this amendment, with one deferral, to the West Virginia statutory program under SMCRA. The amendment revises WVSCMRA as contained in Senate Bill 687 of 2017. These revisions modify the WVSCMRA requirements related to the release of bonds and provisions related to the use of money from the Special Reclamation Water Trust Fund.

Based on the above findings, we are approving the amendment WVDEP sent to us on May 3, 2017 (Administrative Record No. 1608), with one exception—we are deferring our decision on the removal of provisions related to the long-range planning process and the prioritization of sites. We will address those proposed revisions along with West Virginia's submission docketed at WV–128–FOR related to the establishment of a database to track existing reclamation liabilities.

To implement this decision, we are amending the Federal regulations at 30 CFR part 948 that codify decisions concerning the West Virginia program. In accordance with the Administrative Procedure Act, this rule will take effect 30 days after the date of publication.

VI. Statutory and Executive Order Reviews

Executive Order 12630—Governmental Actions and Interference With Constitutionally Protected Property Rights

This rule would not effect a taking of private property or otherwise have taking implications that would result in public property being taken for government use without just compensation under the law. Therefore, a takings implication assessment is not required. This determination is based on an analysis of the corresponding Federal regulations.

Executive Orders 12866—Regulatory Planning and Review, 13563—Improving Regulation and Regulatory Review, and 14094—Modernizing Regulatory Review

Executive Order 12866, as amended by Executive Order 14094, provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866, as amended by Executive Order 14094. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has reviewed this rule as required by Section 3 of Executive Order 12988. The Department determined that this **Federal Register** document meets the criteria of Section 3 of Executive Order 12988, which is intended to ensure that the agency review its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency write its legislation and regulations to minimize litigation; and that the agency's legislation and regulations provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Because Section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive Order to the quality of this **Federal Register** document and to changes to the Federal regulations. The review under this Executive Order did not extend to the language of the State regulatory program or to the program amendment that West Virginia drafted.

Executive Order 13132—Federalism

This rule has potential Federalism implications as defined under Section 1(a) of Executive Order 13132. Executive Order 13132 directs agencies to ''grant the States the maximum administrative discretion possible'' with respect to Federal statutes and regulations administered by the States. West Virginia, through its approved regulatory program, implements and administers SMCRA and its implementing regulations at the State level. This rule approves, in part, an amendment to the West Virginia program submitted and drafted by the State and defers decision on one element of the amendment only to the extent necessary to evaluate it in concert with a related amendment recently submitted by the State. Therefore, this rule is consistent with the direction to provide maximum administrative discretion to States.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on the distribution of power and responsibilities between the Federal government and Tribes. The basis for this determination is that our decision on the West Virginia program does not include Indian lands, as defined by SMCRA, or regulation of activities on Indian lands. Indian lands are regulated independently under the applicable approved Federal program. The Department's consultation policy also acknowledges that our rules may have Tribal implications where the State proposing the amendment encompasses ancestral lands in areas with mineable coal. We are currently working to

identify and engage appropriate Tribal stakeholders to devise a constructive approach for consulting on such amendments.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rulemaking that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not a significant energy action under the definition in Executive Order 13211, a Statement of Energy Effects is not required.

Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

This rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866; and this action does not address environmental health or safety risks disproportionately affecting children.

National Environmental Policy Act

Consistent with sections 501(a) and 702(d) of SMCRA (30 U.S.C. 1251(a) and 1292(d), respectively) and the U.S. Department of the Interior Departmental Manual, part 516, section 13.5(A), State program amendments are not major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (15 U.S.C. 3701 *et seq.*) directs OSMRE to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. (OMB Circular A–119 at p. 14). This action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with SMCRA.

Paperwork Reduction Act

This rule does not include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to impose an unfunded mandate. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Thomas D. Shope,

Regional Director, North Atlantic—Appalachian Region.

For the reasons set out in the preamble, 30 CFR part 948 is amended as follows:

PART 948—WEST VIRGINIA

■ 1. The authority citation for part 948 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Amend § 948.12 by adding paragraph (k) to read as follows:

§ 948.12 State statutory, regulatory, and proposed program amendment provisions not approved.

* * * * *

(k) We are not approving the following portions of provisions of the proposed program amendment that West Virginia submitted on May 15, 2017:

(1) We are deferring our decision on the deletion of provisions from W. Va. Code 22–3–11(g)(2) regarding the development of a long-range planning process for the selection and prioritization of sites to be reclaimed. We defer our decision until we make a determination on West Virginia's related amendment docketed at WV–128–FOR, which relates to the complete and accurate listing of all outstanding reclamation obligations (including water treatment) on active permits in the State.

(2) [Reserved]

■ 3. In § 948.15 amend the table by adding an entry in chronological order by ''Date of publication of final rule'' to read as follows:

§ 948.15 Approval of West Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication of final rule	Citation/description of approved provisions
* *	*	* * * *
May 3, 2017	1/12/2024	W.Va. Code 22–3–11(g)(1), (g)(2) (partial); 22–3–23(c) and (i).

[FR Doc. 2024–00530 Filed 1–11–24; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 501, 510, 535, 536, 539, 541, 542, 544, 546, 547, 548, 549, 551, 552, 553, 555, 558, 560, 561, 566, 570, 576, 578, 583, 584, 588, 589, 590, 592, 594, 597, and 598

Inflation Adjustment of Civil Monetary Penalties

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is issuing this final rule to adjust certain civil monetary penalties for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: This rule is effective January 12, 2024.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; Assistant Director for Compliance, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available from OFAC's website (*www.treas.gov/ofac*).

Background

Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890; 28 U.S.C. 2461 note), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74, 129 Stat. 599, 28 U.S.C. 2461 note) (the FCPIA Act), requires each federal agency with statutory authority to assess civil monetary penalties (CMPs) to adjust CMPs annually for inflation according to a formula described in section 5 of the FCPIA Act. One purpose of the FCPIA Act is to ensure that CMPs continue to maintain their deterrent effect through periodic cost-of-living-based adjustments.

OFAC has adjusted its CMPs nine times since the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 went into effect on November 2, 2015: an initial catch-up adjustment on August 1, 2016 (81 FR 43070, July 1, 2016); an additional initial catch-up adjustment related to CMPs for failure to comply with a requirement to furnish information, the late filing of a required report, and failure to maintain records (''recordkeeping CMPs'') that were inadvertently omitted from the August 1, 2016 initial catch-up adjustment on October 5, 2020 (85 FR 54911, September 3, 2020); and annual adjustments on February 10, 2017 (82 FR 10434, February 10, 2017); March 19, 2018 (83 FR 11876, March 19, 2018); June 14, 2019 (84 FR 27714, June 14, 2019); April 9, 2020 (85 FR 19884, April 9, 2020); March 17, 2021 (86 FR 14534, March 17, 2021); February 9, 2022 (87 FR 7369, February 9, 2022); and January 13, 2023 (88 FR 2229, January 13, 2023).

Method of Calculation

The method of calculating CMP adjustments applied in this final rule is required by the FCPIA Act. Under the FCPIA Act and the Office of Management and Budget guidance required by the FCPIA Act, annual inflation adjustments subsequent to the initial catch-up adjustment are to be based on the percent change between the Consumer Price Index for all Urban Consumers (''CPI–U'') for the October preceding the date of the adjustment and the prior year's October CPI–U. As set forth in Office of Management and Budget Memorandum M–24–07 of December 19, 2023, the adjustment multiplier for 2023 is 1.03241. In order to complete the 2024 annual adjustment, each current CMP is multiplied by the 2024 adjustment multiplier. Under the FCPIA Act, any increase in CMP must be rounded to the nearest multiple of $1.

New Penalty Amounts

OFAC imposes CMPs pursuant to the penalty authority in five statutes: the Trading With the Enemy Act (50 U.S.C. 4301–4341, at 4315) (TWEA); the International Emergency Economic Powers Act (50 U.S.C. 1701–1706, at 1705) (IEEPA); the Antiterrorism and Effective Death Penalty Act of 1996 (18 U.S.C. 2339B) (AEDPA); the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1901–1908, at 1906) (FNKDA); and the Clean Diamond Trade Act (19 U.S.C. 3901–3913, at 3907) (CDTA).

The table below summarizes the existing and new maximum CMP amounts for each statute.

TABLE 1—MAXIMUM CMP AMOUNTS FOR RELEVANT STATUTES

Statute	Existing maximum CMP amount	Maximum CMP amount effective Jan. 12, 2024
TWEA	$105,083	$108,489
IEEPA	356,579	368,136
AEDPA	94,127	97,178
FNKDA	1,771,754	1,829,177
CDTA	16,108	16,630

In addition to updating these maximum CMP amounts, OFAC is also updating two references to one-half the IEEPA maximum CMP from $178,290 to $184,068, and is adjusting the recordkeeping CMP amounts found in OFAC's Economic Sanctions Enforcement Guidelines in appendix A to 31 CFR part 501. The table below summarizes the existing and new maximum CMP amounts for OFAC's recordkeeping CMPs.

TABLE 2—MAXIMUM CMP AMOUNTS FOR RECORDKEEPING CMPS

Violation	Existing maximum CMP amount	Maximum CMP amount effective Jan. 12, 2024
Failure to furnish information pursuant to 31 CFR 501.602 irrespective of whether any other violation is alleged	$27,520	$28,412
Failure to furnish information pursuant to 31 CFR 501.602 where OFAC has reason to believe that the apparent violation(s) involves a transaction(s) valued at greater than 500,000, irrespective of whether any other violation is alleged	68,801	71,031
Late filing of a required report, whether set forth in regulations or in a specific license, if filed within the first 30 days after the report is due	3,439	3,550
Late filing of a required report, whether set forth in regulations or in a specific license, if filed more than 30 days after the report is due	6,881	7,104
Late filing of a required report, whether set forth in regulations or in a specific license, if the report relates to blocked assets, an additional CMP for every 30 days that the report is overdue, up to five years	1,377	1,422
Failure to maintain records in conformance with the requirements of OFAC's regulations or of a specific license	68,928	71,162

Finally, OFAC is making changes in the authorities citations of 31 CFR parts 583 and 594 to more specifically reference one of the relevant statutory authorities in each citation.

Public Participation

The FCPIA Act expressly exempts this final rule from the notice and comment requirements of the Administrative Procedure Act by directing agencies to adjust CMPs for inflation ''notwithstanding section 553 of title 5, United States Code'' (Pub. L. 114–74, 129 Stat. 599; 28 U.S.C. 2461 note). As such, this final rule is being issued without prior public notice or opportunity for public comment, with an effective date of January 12, 2024.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

This rule is not a significant regulatory action as defined in section 3.f. of Executive Order 12866 of September 30, 1993, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), as amended.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not impose information collection requirements that would require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 31 CFR Parts 501, 510, 535, 536, 539, 541, 542, 544, 546, 547, 548, 549, 551, 552, 553, 555, 558, 560, 561, 566, 570, 576, 578, 583, 584, 588, 589, 590, 592, 594, 597, and 598

Administrative practice and procedure, Banks, Banking, Blocking of assets, Exports, Foreign trade, Licensing, Penalties, Sanctions.

For the reasons set forth in the preamble, OFAC amends 31 CFR chapter V as follows:

PART 501—REPORTING, PROCEDURES AND PENALTIES REGULATIONS

■ 1. The authority citation for part 501 continues to read as follows:

Authority: 8 U.S.C. 1189; 18 U.S.C. 2332d, 2339B; 19 U.S.C. 3901–3913; 21 U.S.C. 1901–1908; 22 U.S.C. 287c, 2370(a), 6009, 6032, 7205, 8501–8551; 31 U.S.C. 321(b); 50 U.S.C. 1701–1706, 4301–4341; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note).

Subpart D—Trading With the Enemy Act (TWEA) Penalties

§ 501.701 [Amended]

■ 2. In § 501.701, in paragraph (a)(3) introductory text, remove ''$105,083'' and add in its place ''$108,489''.

■ 3. Amend appendix A to part 501 as follows:

■ a. In paragraph IV.A., remove ''$27,520'' and add in its place ''$28,412'' and remove ''$68,801'' and add in in its place ''$71,031'';

■ b. In paragraph IV.B., remove ''$3,439'' and add in its place ''$3,550'', remove ''$6,881'' and add in its place ''$7,104'', and remove ''$1,377'' and add in its place ''$1,422'';

■ c. In paragraph IV.C., remove ''$68,928'' and add in its place ''$71,162'';

■ d. In paragraph V.B.2.a.i., remove ''$178,290'' and add in its place ''$184,068'' and remove ''$356,579'' and add in its place ''$368,136'';

■ e. In paragraph V.B.2.a.ii., remove ''$356,579'' in all three locations where it appears and add in its place in all three locations ''$368,136'';

■ f. In paragraph V.B.2.a.v., remove ''$356,579'' and add in its place ''$368,136'', remove ''$105,083'' and add in its place ''$108,489'', remove ''$1,771,754'' and add in its place ''$1,829,177'', remove ''$94,127'' and add in its place ''$97,178'', and remove ''$16,108'' and add in its place ''$16,630''; and

■ g. Revise paragraph V.B.2.a.vi.

The revision reads as follows:

Appendix A to Part 501—Economic Sanctions Enforcement Guidelines

* * * * *

V. * * *

B. * * *

2. * * *

a. * * *

vi. The following matrix represents the base amount of the proposed civil penalty for each category of violation:

BASE PENALTY MATRIX

Voluntary Self-Disclosure	Egregious Case: NO	Egregious Case: YES
YES	(1) One-Half of Transaction Value (capped at lesser of $184,068 or one-half of the applicable statutory maximum per violation)	(3) One-Half of Applicable Statutory Maximum
NO	(2) Applicable Schedule Amount (capped at lesser of $368,136 or the applicable statutory maximum per violation)	(4) Applicable Statutory Maximum

* * * * *

PART 510—NORTH KOREA SANCTIONS REGULATIONS

■ 4. The authority citation for part 510 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c, 9201–9255; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); Pub. L. 115–44, 131 Stat. 886 (codified in scattered sections of 22 U.S.C.); E.O. 13466, 73 FR 36787, 3 CFR, 2008 Comp., p. 195; E.O. 13551, 75 FR 53837, 3 CFR, 2010 Comp., p. 242; E.O. 13570, 76 FR 22291, 3 CFR, 2011 Comp., p. 233; E.O. 13687, 80 FR 819, 3 CFR, 2015 Comp., p. 259; E.O. 13722, 81 FR 14943, 3 CFR, 2016 Comp., p. 446; E.O. 13810, 82 FR 44705, 3 CFR, 2017 Comp., p. 379.

Subpart G—Penalties and Finding of Violation

§ 510.701 [Amended]

■ 5. In § 510.701, in paragraph (a)(2), remove ''$356,579'' and add in its place ''$368,136''.

PART 535—IRANIAN ASSETS CONTROL REGULATIONS

■ 6. The authority citation for part 535 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2332d; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 12170, 44 FR 65729, 3 CFR, 1979 Comp., p. 457; E.O. 12205, 45 FR 24099, 3 CFR, 1980 Comp., p. 248; E.O. 12211, 45 FR 26685, 3 CFR, 1980 Comp., p. 253; E.O. 12276, 46 FR 7913, 3 CFR, 1981 Comp., p. 104; E.O. 12279, 46 FR 7919, 3 CFR, 1981 Comp., p. 109; E.O. 12280, 46 FR 7921, 3 CFR, 1981 Comp., p. 110; E.O. 12281, 46 FR 7923, 3 CFR, 1981 Comp., p. 112; E.O. 12282, 46 FR 7925, 3 CFR, 1981 Comp., p. 113; E.O. 12283, 46 FR 7927, 3 CFR, 1981 Comp., p. 114; E.O. 12294, 46 FR 14111, 3 CFR, 1981 Comp., p. 139.

Subpart G—Penalties

§ 535.701 [Amended]

■ 7. In § 535.701, in paragraph (a)(2), remove ''$356,579'' and add in its place ''$368,136''.

PART 536—NARCOTICS TRAFFICKING SANCTIONS REGULATIONS

■ 8. The authority citation for part 536 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 12978, 60 FR 54579, 3 CFR, 1995 Comp., p. 415; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

Subpart G—Penalties

§ 536.701 [Amended]

■ 9. In § 536.701, in paragraph (a)(2), remove ''$356,579'' and add in its place ''$368,136''.

PART 539—WEAPONS OF MASS DESTRUCTION TRADE CONTROL REGULATIONS

■ 10. The authority citation for part 539 continues to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 2751–2799aa–2; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13094, 63 FR 40803, 3 CFR, 1998 Comp., p. 200; E.O. 13382, 70 FR 38567, 3 CFR, 2005 Comp., p. 170.

Subpart G—Penalties

§ 539.701 [Amended]

■ 11. In § 539.701, in paragraph (a)(2), remove ''$356,579'' and add in its place ''$368,136''.

PART 541—ZIMBABWE SANCTIONS REGULATIONS

■ 12. The authority citation for part 541 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13288, 68 FR 11457, 3 CFR, 2003 Comp., p. 186; E.O. 13391, 70 FR 71201, 3 CFR, 2005 Comp., p. 206; E.O. 13469, 73 FR 43841, 3 CFR, 2008 Comp., p. 1025.

Subpart G—Penalties

§ 541.701 [Amended]

■ 13. In § 541.701, in paragraph (a)(2), remove ''$356,579'' and add in its place ''$368,136''.

PART 542—SYRIAN SANCTIONS REGULATIONS

■ 14. The authority citation for part 542 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 18 U.S.C. 2332d; 22 U.S.C. 287c; 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); Pub. L. 116–92, Div. F, Title LXXIV, 133 Stat. 2290 (22 U.S.C. 8791 note); E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; E.O. 13399, 71 FR 25059, 3 CFR, 2006 Comp., p. 218; E.O. 13460, 73 FR 8991, 3 CFR 2008 Comp., p. 181; E.O. 13572, 76 FR 24787, 3 CFR 2011 Comp., p. 236; E.O. 13573, 76 FR 29143, 3 CFR 2011 Comp., p. 241; E.O. 13582, 76 FR 52209, 3 CFR 2011 Comp., p. 264; E.O. 13606, 77 FR 24571, 3 CFR 2012 Comp., p. 243.

Subpart G—Penalties

§ 542.701 [Amended]

■ 15. In § 542.701, in paragraph (a)(2), remove ''$356,579'' and add in its place ''$368,136''.

PART 544—WEAPONS OF MASS DESTRUCTION PROLIFERATORS SANCTIONS REGULATIONS

■ 16. The authority citation for part 544 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13094, 63 FR 40803, 3 CFR, 1998 Comp., p. 200; E.O. 13382, 70 FR 38567, 3 CFR, 2005 Comp., p. 170.

Subpart G—Penalties

§ 544.701 [Amended]

■ 17. In § 544.701, in paragraph (a)(2), remove ''$356,579'' and add in its place ''$368,136''.

PART 546—DARFUR SANCTIONS REGULATIONS

■ 18. The authority citation for part 546 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13067, 62 FR 59989, 3 CFR, 1997 Comp., p. 230; E.O. 13400, 71 FR 25483, 3 CFR, 2006 Comp., p. 220.

Subpart G—Penalties

§ 546.701 [Amended]

■ 19. In § 546.701, in paragraph (a)(2), remove ''$356,579'' and add in its place ''$368,136''.

PART 547—DEMOCRATIC REPUBLIC OF THE CONGO SANCTIONS REGULATIONS

■ 20. The authority citation for part 547 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13413, 71 FR 64105, 3 CFR, 2006 Comp., p. 247; E.O. 13671, 79 FR 39949, 3 CFR, 2015 Comp., p. 280.

Subpart G—Penalties and Finding of Violation

§ 547.701 [Amended]

■ 21. In § 547.701, in paragraph (a)(2), remove ''$356,579'' and add in its place ''$368,136''.

PART 548—BELARUS SANCTIONS REGULATIONS

■ 22. The authority citation for part 548 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13405, 71 FR 35485, 3 CFR, 2006 Comp., p. 231; E.O. 14038, 86 FR 43905, 3 CFR, 2021 Comp., p. 626.

Subpart G—Penalties

§ 548.701 [Amended]

■ 23. In § 548.701, in paragraph (a)(2), remove ''$356,579'' and add in its place ''$368,136''.

PART 549—LEBANON SANCTIONS REGULATIONS

■ 24. The authority citation for part 549 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13441, 72 FR 43499, 3 CFR, 2008 Comp., p. 232.

Subpart G—Penalties

§ 549.701 [Amended]

■ 25. In § 549.701, in paragraph (a)(2), remove ''$356,579'' and add in its place ''$368,136''.

PART 551—SOMALIA SANCTIONS REGULATIONS

■ 26. The authority citation for part 551 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13536, 75 FR 19869, 3 CFR, 2010 Comp., p. 203; E.O. 13620, 77 FR 43483, 3 CFR, 2012 Comp., p. 281.

Subpart G—Penalties and Findings of Violation

§ 551.701 [Amended]

■ 27. In § 551.701, in paragraph (a)(2), remove ''$356,579'' and add in its place ''$368,136''.

PART 552—YEMEN SANCTIONS REGULATIONS

■ 28. The authority citation for part 552 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13611, 77 FR 29533, 3 CFR, 2012 Comp., p. 260.

Subpart G—Penalties and Findings of Violation

§ 552.701 [Amended]

■ 29. In § 552.701, in paragraph (a)(2), remove ''$356,579'' and add in its place ''$368,136''.

PART 553—CENTRAL AFRICAN REPUBLIC SANCTIONS REGULATIONS

■ 30. The authority citation for part 553 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13667, 79 FR 28387, 3 CFR, 2014 Comp., p. 243.

Subpart G—Penalties and Findings of Violation

§ 553.701 [Amended]

■ 31. In § 553.701, in paragraph (a)(2), remove ''$356,579'' and add in its place ''$368,136''.

PART 555—MALI SANCTIONS REGULATIONS

■ 32. The authority citation for part 555 continues to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13882, 84 FR 37055, 3 CFR, 2019 Comp., p. 346.

Subpart G—Penalties and Findings of Violation

§ 555.701 [Amended]

■ 33. In § 555.701, in paragraph (a)(2), remove ''$356,579'' and add in its place ''$368,136''.

PART 558—SOUTH SUDAN SANCTIONS REGULATIONS

■ 34. The authority citation for part 558 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13664, 79 FR 19283, 3 CFR, 2014 Comp., p. 238.

Subpart G—Penalties and Findings of Violation

§ 558.701 [Amended]

■ 35. In § 558.701, in paragraph (a)(2), remove ''$356,579'' and add in its place ''368,136''.

PART 560—IRANIAN TRANSACTIONS AND SANCTIONS REGULATIONS

■ 36. The authority citation for part 560 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 22 U.S.C. 2349aa–9, 7201–7211, 8501–8551, 8701–8795; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CFR, 1995 Comp., p. 356; E.O. 13059, 62 FR 44531, 3 CFR, 1997 Comp., p. 217; E.O. 13599, 77 FR 6659, 3 CFR, 2012 Comp., p. 215; E.O. 13846, 83 FR 38939, 3 CFR, 2018 Comp., p. 854.

Subpart G—Penalties

§ 560.701 [Amended]

■ 37. In § 560.701, in paragraph (a)(2), remove ''$356,579'' and add in its place ''$368,136''.

PART 561—IRANIAN FINANCIAL SANCTIONS REGULATIONS

■ 38. The authority citation for part 561 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 8501–8551, 8701–8795; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 13553, 75 FR 60567, 3 CFR, 2010 Comp., p. 253; E.O. 13599, 77 FR 6659, 3 CFR, 2012 Comp., p. 215; E.O. 13846, 83 FR 38939, 3 CFR, 2018 Comp., p. 854; E.O. 13871, 84 FR 20761, 3 CFR, 2019 Comp., p. 309.

Subpart G—Penalties

§ 561.701 [Amended]

■ 39. In § 561.701, in paragraph (a)(4), remove ''$356,579'' and add in its place ''$368,136''.

PART 566—HIZBALLAH FINANCIAL SANCTIONS REGULATIONS

■ 40. The authority citation for part 566 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); Pub. L. 114–102, 129 Stat. 2205 (50 U.S.C. 1701 note); Pub. L. 115–272, 132 Stat. 4144 (50 U.S.C. 1701 note).

Subpart G—Penalties and Finding of Violation

§ 566.701 [Amended]

■ 41. In § 566.701, in paragraph (b), remove ''$356,579'' and add in its place ''$368,136''.

PART 570—LIBYAN SANCTIONS REGULATIONS

■ 42. The authority citation for part 570 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13566, 76 FR 11315, 3 CFR, 2011 Comp., p. 222; E.O. 13726, 81 FR 23559, 3 CFR, 2016 Comp., p. 454.

Subpart G—Penalties and Findings of Violation

§ 570.701 [Amended]

■ 43. In § 570.701, in paragraph (a)(2), remove ''$356,579'' and add in its place ''$368,136''.

PART 576—IRAQ STABILIZATION AND INSURGENCY SANCTIONS REGULATIONS

■ 44. The authority citation for part 576 continues to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13303, 68 FR 31931, 3 CFR, 2003 Comp., p. 227; E.O. 13315, 68 FR 52315, 3 CFR, 2003 Comp., p. 252; E.O. 13350, 69 FR 46055, 3 CFR, 2004 Comp., p. 196; E.O. 13364, 69 FR 70177, 3 CFR, 2004 Comp., p. 236; E.O. 13438, 72 FR 39719, 3 CFR, 2007 Comp., p. 224; E.O. 13668, 79 FR 31019, 3 CFR, 2014 Comp., p. 248.

Subpart G—Penalties

§ 576.701 [Amended]

■ 45. In § 576.701, in paragraph (a)(2), remove ''$356,579'' and add in its place ''$368,136''.

PART 578—CYBER-RELATED SANCTIONS REGULATIONS

■ 46. The authority citation for part 578 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); Pub. L. 115–44, 131 Stat. 886 (codified in scattered sections of 22 U.S.C.); E.O. 13694, 80 FR 18077, 3 CFR 2015 Comp., p. 297; E.O. 13757, 82 FR 1, 3 CFR 2016 Comp., p. 659.

Subpart G—Penalties and Findings of Violation

§ 578.701 [Amended]

■ 47. In § 578.701, in paragraph (a)(2), remove ''$356,579'' and add in its place ''$368,136''.

PART 583—GLOBAL MAGNITSKY SANCTIONS REGULATIONS

■ 48. The authority citation for part 583 is revised to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 10101–10103; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13818, 82 FR 60839, 3 CFR, 2017 Comp., p. 399.

Subpart G—Penalties and Findings of Violation

§ 583.701 [Amended]

■ 49. In § 583.701, in paragraph (c), remove ''$356,579'' and add in its place ''$368,136''.

PART 584—MAGNITSKY ACT SANCTIONS REGULATIONS

■ 50. The authority citation for part 584 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); Pub. L. 112–208, Title IV, 126 Stat. 1502 (22 U.S.C. 5811 note).

Subpart G—Penalties and Finding of Violation

§ 584.701 [Amended]

■ 51. In § 584.701, in paragraph (a)(2), remove ''$356,579'' and add in its place ''$368,136''.

PART 588—WESTERN BALKANS STABILIZATION REGULATIONS

■ 52. The authority citation for part 588 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13219, 66 FR 34777, 3 CFR, 2001 Comp., p. 778; E.O. 13304, 68 FR 32315, 3 CFR, 2004 Comp., p. 229; E.O. 14033, 86 FR 43905, 3 CFR, 2022 Comp., p. 591.

Subpart G—Penalties and Findings of Violation

§ 588.701 [Amended]

■ 53. In § 588.701, in paragraph (a)(2), remove ''$356,579'' and add in its place ''$368,136''.

PART 589—UKRAINE-/RUSSIA-RELATED SANCTIONS REGULATIONS

■ 54. The authority citation for part 589 continues to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 8901–8910, 8921–8930; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); Pub. L. 115–44, 131 Stat. 886 (codified in scattered sections of 22 U.S.C.); E.O. 13660, 79 FR 13493, 3 CFR, 2014 Comp., p. 226; E.O. 13661, 79 FR 15535, 3 CFR, 2014 Comp., p. 229; E.O. 13662, 79 FR 16169, 3 CFR, 2014 Comp., p. 233; E.O. 13685, 79 FR 77357, 3 CFR, 2014 Comp., p. 313.

Subpart G—Penalties and Findings of Violation

§ 589.701 [Amended]

■ 55. In § 589.701, in paragraph (a)(2), remove ''$356,579'' and add in its place ''$368,136''.

PART 590—TRANSNATIONAL CRIMINAL ORGANIZATIONS SANCTIONS REGULATIONS

■ 56. The authority citation for part 590 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13581, 76 FR 44757, 3 CFR, 2011 Comp., p. 260; E.O. 13863, 84 FR 10255, 3 CFR, 2019 Comp., p. 267.

Subpart G—Penalties and Findings of Violation

§ 590.701 [Amended]

■ 57. In § 590.701, in paragraph (a)(2), remove ''$356,579'' and add in its place ''$368,136''.

PART 592—ROUGH DIAMONDS CONTROL REGULATIONS

■ 58. The authority citation for part 592 continues to read as follows:

Authority: 3 U.S.C. 301; 19 U.S.C. 3901–3913; 31 U.S.C. 321(b); Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); E.O. 13312, 68 FR 45151, 3 CFR, 2003 Comp., p. 246.

Subpart F—Penalties

§ 592.601 [Amended]

■ 59. In § 592.601, in paragraph (a)(2), remove ''$16,108'' and add in its place ''$16,630''.

PART 594—GLOBAL TERRORISM SANCTIONS REGULATIONS

■ 60. The authority citation for part 594 is revised to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 287c; 22 U.S.C. 9404–9411; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); Pub. L. 114–102, 129 Stat. 2205, as amended (50 U.S.C. 1701 note); Pub. L. 115–348, 132 Stat. 5055 (50 U.S.C. 1701 note); E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13268, 67 FR 44751, 3 CFR 2002 Comp., p. 240; E.O. 13284, 68 FR 4075, 3 CFR, 2003 Comp., p. 161; E.O. 13372, 70 FR 8499, 3 CFR, 2006 Comp., p. 159; E.O. 13886, 84 FR 48041, 3 CFR, 2019 Comp., p. 356.

Subpart G—Penalties

§ 594.701 [Amended]

■ 61. In § 594.701, in paragraph (a)(2), remove ''$356,579'' and add in its place ''$368,136''.

PART 597—FOREIGN TERRORIST ORGANIZATIONS SANCTIONS REGULATIONS

■ 62. The authority citation for part 597 continues to read as follows:

Authority: 8 U.S.C. 1189; 18 U.S.C. 2339B; 31 U.S.C. 321(b); Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note).

Subpart G—Penalties

§ 597.701 [Amended]

■ 63. In § 597.701, in paragraph (b)(3), remove ''$94,127'' and add in its place ''$97,178''.

PART 598—FOREIGN NARCOTICS KINGPIN SANCTIONS REGULATIONS

■ 64. The authority citation for part 598 continues to read as follows:

Authority: 3 U.S.C. 301; 21 U.S.C. 1901–1908; 31 U.S.C. 321(b); Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note).

Subpart G—Penalties

§ 598.701 [Amended]

■ 65. In § 598.701, in paragraph (a)(4), remove ''$1,771,754'' and add in its place ''$1,829,177''.

Bradley T. Smith,
Director, Office of Foreign Assets Control.

[FR Doc. 2024–00594 Filed 1–11–24; 8:45 am]
BILLING CODE 4810–AL–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 269

[Docket ID: DOD–2016–OS–0045]

RIN 0790–AL72

Civil Monetary Penalty Inflation Adjustment

AGENCY: Office of the Under Secretary of Defense (Comptroller), Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The DoD is issuing this final rule to adjust each of its statutory civil monetary penalties (CMP) to account for inflation. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), requires the head of each agency to adjust for inflation its CMP levels in effect as of November 2, 2015, under a revised methodology that was effective for 2016 and for each year thereafter.

DATES: This rule is effective January 15, 2024.

FOR FURTHER INFORMATION CONTACT: Dzenana Dzanic, 703–508–9277.

SUPPLEMENTARY INFORMATION:

Background Information

The Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, codified at 28 U.S.C. 2461, note, as amended, requires agencies to annually adjust the level of CMPs for inflation to improve their effectiveness and maintain their deterrent effect. Section 2461 requires that not later than July 1, 2016, and not later than January 15 of every year thereafter, the head of each agency must adjust each CMP within its jurisdiction by the inflation adjustment set forth therein. The inflation adjustment is determined by increasing the maximum CMP or the range of minimum and maximum CMPs, as applicable, for each CMP by the cost-

of-living adjustment, rounded to the nearest multiple of $1. The cost-of-living adjustment is the percentage (if any) for each CMP by which the Consumer Price Index (CPI) for the month of October preceding the date of the adjustment exceeds the CPI for the month of October in the previous calendar year.

The initial catch up adjustments for inflation to the DoD's CMPs were published as an interim final rule in the **Federal Register** on May 26, 2016 (81 FR 33389–33391) and became effective on that date. The interim final rule was published as a final rule without change on September 12, 2016 (81 FR 62629–62631), effective that date. The revised methodology for agencies for 2017 and each year thereafter provides for the improvement of the effectiveness of CMPs to maintain their deterrent effect. The DoD is adjusting the level of all civil monetary penalties under its jurisdiction by the Office of Management and Budget (OMB) directed cost-of-living adjustment multiplier for 2024 of 1.03241 prescribed in OMB Memorandum M–24–07, ''Implementation of Penalty Inflation Adjustments for 2024, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.'' The DoD's 2024 adjustments for inflation to CMPs apply only to those CMPs, including those whose associated violation predated such adjustment, which are assessed by the DoD after the effective date of the new CMP level.

Statement of Authority and Costs and Benefits

Pursuant to 5 U.S.C. 553(b)B, there is good cause to issue this rule without prior public notice or opportunity for public comment because it would be impracticable and unnecessary. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 2461) requires agencies, effective 2017, to make annual adjustments for inflation to CMPs notwithstanding 5 U.S.C. 553. Additionally, the methodology used, effective 2017, for adjusting CMPs for inflation is established in statute, with no discretion provided to agencies regarding the substance of the adjustments for inflation to CMPs. The DoD is charged only with performing ministerial computations to determine the dollar amount of adjustments for inflation to CMPs. Accordingly, prior public notice and an opportunity to comment are not required for this rule. For the same reasons, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date.

Further, there are no significant costs associated with the regulatory revisions that would impose any mandates on the DoD, Federal, State or local governments, or the private sector. Accordingly, prior public notice and an opportunity for public comment are not required for this rule. The benefit of this rule is the DoD anticipates that civil monetary penalty collections may increase in the future due to new penalty authorities and other changes in this rule. However, it is difficult to accurately predict the extent of any increase, if any, due to a variety of factors, such as budget and staff resources, the number and quality of civil penalty referrals or leads, and the length of time needed to investigate and resolve a case.

Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Executive Order 14094, ''Modernizing Regulatory Review,'' supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). In accordance with paragraph (b) of Executive Order 14094, section 3(f) of Executive Order 12866 is amended to read as follows: ''Significant regulatory action'' means any regulatory action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $200 million or more (adjusted every 3 years by the Administrator of OIRA for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

This rule has been designated ''not significant,'' under the amended section 3(f) of Executive Order 12866.

Congressional Review Act, 5 U.S.C. 804(2)

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. A major rule may take effect no earlier than 60 calendar days after Congress receives the rule report or the rule is published in the **Federal Register**, whichever is later. This rule is not a major rule, as defined by 5 U.S.C. 804(2).

Unfunded Mandates Reform Act (2 U.S.C. Chapter 25)

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits before issuing any rule the mandates of which require spending in any year of $100 million in 1995 dollars, updated annually for inflation. This rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

The Under Secretary of Defense (Comptroller) certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require DoD to prepare a regulatory flexibility analysis.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

The Paperwork Reduction Act was enacted to minimize the paperwork burden for individuals; small businesses; educational and nonprofit institutions; Federal contractors; State, local and tribal governments; and other persons resulting from the collection of information by or for the Federal government. The Act requires agencies obtain approval from the OMB before using identical questions to collect information from ten or more persons. This rule does not impose reporting or recordkeeping requirements on the public.

Executive Order 13132, ''Federalism''

Executive Order 13132 establishes certain requirements that an agency

must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule will not have a substantial effect on State and local governments.

Executive Order 13175, "Consultation and Coordination With Indian Tribal Governments"

It has been determined that this rule will not have a substantial effect on Indian tribal governments. This rule does not impose substantial direct compliance costs on one or more Indian tribes, preempt tribal law, or effect the distribution of power and responsibilities between the Federal government and Indian tribes.

List of Subjects in 32 CFR Part 269

Administrative practice and procedure, Penalties.

Accordingly, 32 CFR part 269 is amended as follows.

PART 269—CIVIL MONETARY PENALTY INFLATION ADJUSTMENT

■ 1. The authority citation for 32 CFR part 269 continues to read as follows:

Authority: 28 U.S.C. 2461 note.

■ 2. In § 269.4, revise paragraph (d) to read as follows:

§ 269.4 Cost of living adjustments of civil monetary penalties.

* * * * *

(d) *Inflation adjustment.* Maximum civil monetary penalties within the jurisdiction of the Department are adjusted for inflation as follows:

TABLE 1 TO PARAGRAPH (d)

United States Code	Civil monetary penalty description	Maximum penalty amount as of 2023 ($)	New adjusted maximum penalty amount ($)
National Defense Authorization Act for FY 2005, 10 U.S.C. 113, note.	Unauthorized Activities Directed at or Possession of Sunken Military Craft.	$156,108	$161,168
10 U.S.C. 1094(c)(1)	Unlawful Provision of Health Care	13,707	14,152
10 U.S.C. 1102(k)	Wrongful Disclosure—Medical Records:		
	First Offense	8,106	8,368
	Subsequent Offense	54,036	55,788
10 U.S.C. 2674(c)(2)	Violation of the Pentagon Reservation Operation and Parking of Motor Vehicles Rules and Regulations.	2,234	2,306
31 U.S.C. 3802(a)(1)	Violation Involving False Claim	13,508	13,946
31 U.S.C. 3802(a)(2)	Violation Involving False Statement	13,508	13,946
42 U.S.C. 1320a–7a(a); 32 CFR 200.210(a)(1).	False claims	24,163	24,946
42 U.S.C. 1320a–7a(a); 32 CFR 200.210(a)(1).	Claims submitted with a false certification of physician license	24,163	24,946
42 U.S.C. 1320a–7a(a); 32 CFR 200.210(a)(2).	Claims presented by excluded party	24,163	24,946
42 U.S.C. 1320a–7a(a); 32 CFR 200.210(a)(2); (b)(2)(ii).	Employing or contracting with an excluded individual	24,163	24,946
42 U.S.C. 1320a–7a(a); 32 CFR 200.210(a)(1).	Pattern of claims for medically unnecessary services/supplies	24,163	24,946
42 U.S.C. 1320a–7a(a); 32 CFR 200.210(a)(2).	Ordering or prescribing while excluded	24,163	24,946
42 U.S.C. 1320a–7a(a); 32 CFR 200.210(a)(5).	Known retention of an overpayment	24,163	24,946
42 U.S.C. 1320a–7a(a); 32 CFR 200.210(a)(4).	Making or using a false record or statement that is material to a false or fraudulent claim.	120,816	124,731
42 U.S.C. 1320a–7a(a); 32 CFR 200.210(a)(6).	Failure to grant timely access to OIG for audits, investigations, evaluations, or other statutory functions of OIG.	36,245	37,420
42 U.S.C. 1320a–7a(a); 32 CFR 200.210(a)(3).	Making false statements, omissions, misrepresentations in an enrollment application.	120,816	124,731
42 U.S.C. 1320a–7a(a); 32 CFR 200.310(a).	Unlawfully offering, paying, soliciting, or receiving remuneration to induce or in return for the referral of business in violation of 1128B(b) of the Social Security Act.	120,816	124,731

Dated: January 9, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–00647 Filed 1–11–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 2

[DOI–2023–0008;234D0104IG, DG10100000, DIG000000.000000]

RIN 1090–AB27

Privacy Act Regulations; Exemption for Investigative Records

AGENCY: Office of Inspector General, Interior.

ACTION: Final rule.

SUMMARY: The Department of the Interior (DOI) is issuing a final rule to amend its regulations to exempt certain records in the INTERIOR/OIG–02, Investigative Records, system of records from one or more provisions of the Privacy Act of 1974 because of criminal, civil, and administrative law enforcement requirements.

DATES: The final rule is effective January 12, 2024.

FOR FURTHER INFORMATION CONTACT: Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240, *DOI_Privacy@ios.doi.gov* or (202) 208–1605.

SUPPLEMENTARY INFORMATION:

Background

DOI published a notice of proposed rulemaking (NPRM) in the **Federal Register** at 88 FR 44748 (July 13, 2023) proposing to exempt portions of the INTERIOR/OIG–02, Investigative Records, system of records from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(1), (k)(3), and (k)(5) because this system of records contains material that support activities related to investigations. The revised INTERIOR/OIG–02, Investigative Records, system of records notice (SORN) was published in the **Federal Register** at 88 FR 44827 (July 13, 2023). Comments were invited on both the INTERIOR/OIG–02 SORN and NPRM. DOI received no comments on the SORN and two general comments on the NPRM, which are posted on *Regulations.gov* for public viewing. The comments are not substantive, therefore, the NPRM will be implemented as proposed.

Procedural Requirements

1. Regulatory Planning and Review (Executive Orders 12866, 14094 and 13563)

Executive Order 14094 reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this final rule in a manner consistent with these requirements.

E.O. 12866, as reaffirmed by E.O. 13563 and E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

2. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121)). This rule does not impose a requirement for small businesses to report or keep records on any of the requirements contained in this rule. The exemptions to the Privacy Act apply to individuals, and individuals are not covered entities under the Regulatory Flexibility Act. This rule is not a major rule under 5 U.S.C. 804(2). This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

3. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments in the aggregate, or on the private sector, of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. This rule makes only minor changes to 43 CFR part 2. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

4. Takings (E.O. 12630)

In accordance with Executive Order 12630, this rule will not have significant takings implications. This rule makes only minor changes to 43 CFR part 2. A takings implication assessment is not required.

5. Federalism (E.O. 13132)

In accordance with Executive Order 13132, this rule does not have any federalism implications to warrant the preparation of a Federalism Assessment. The rule is not associated with, nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. A Federalism Assessment is not required.

6. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Does not unduly burden the Federal judicial system.

(b) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(c) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

7. Consultation With Indian Tribes (E.O. 13175)

In accordance with Executive Order 13175, the Department of the Interior has evaluated this rule and determined that it would have no substantial effects on Federally Recognized Indian Tribes.

8. Paperwork Reduction Act

This rule does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) is not required.

9. National Environmental Policy Act

This rule does not constitute a major Federal Action significantly affecting the quality for the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.,* is not required because the rule is covered by a categorical exclusion. We have determined the rule is categorically excluded under 43 CFR 46.210(i) because it is administrative, legal, and technical in nature. We also have determined the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

10. Effects on Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

11. Clarity of This Regulation

We are required by Executive Order 12866 and 12988, the Plain Writing Act of 2010 (Pub. L. 111–274), and the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means each rule we publish must:

—Be logically organized;
—Use the active voice to address readers directly;
—Use clear language rather than jargon;
—Be divided into short sections and sentences; and
—Use lists and table wherever possible.

List of Subjects in 43 CFR Part 2

Administrative practice and procedure, Confidential information, Courts, Freedom of Information Act, Privacy Act.

For the reasons stated in the preamble, the Department of the Interior proposes to amend 43 CFR part 2 as follows:

PART 2—FREEDOM OF INFORMATION ACT; RECORDS AND TESTIMONY

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 553; 31 U.S.C. 3717; 43 U.S.C. 1460, 1461, the Social Security Number Fraud Prevention Act of 2017, Pub. L. 115–59, September 15, 2017.

■ 2. Amend § 2.254 by adding paragraphs (b)(3), (d)(3), (e)(8) to read as follows:

§ 2.254 Exemptions.

* * * * *

(b) * * *

(3) INTERIOR/OIG–02, Investigative Records.

(d) * * *

(3) INTERIOR/OIG–02, Investigative Records.

(e) * * *

(8) INTERIOR/OIG–02, Investigative Records.

* * * * *

Teri Barnett,

Departmental Privacy Officer, Department of the Interior.

[FR Doc. 2024–00588 Filed 1–11–24; 8:45 am]

BILLING CODE 4334–63–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[DA 23–1198; FR ID 196408]

Annual Adjustment of Civil Monetary Penalties To Reflect Inflation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act) requires the Federal Communications Commission to amend its forfeiture penalty rules to reflect annual adjustments for inflation in order to improve their effectiveness and maintain their deterrent effect. The Inflation Adjustment Act provides that the new penalty levels shall apply to penalties assessed after the effective date of the increase, including when the penalties whose associated violation predate the increase.

DATES:

Effective date: The rule is effective January 12, 2024.

Applicability date: The civil monetary penalties are applicable beginning January 15, 2024.

FOR FURTHER INFORMATION CONTACT: Peter S. Hyun, Chief of Staff and Deputy Bureau Chief, Enforcement Bureau, at *Peter.Hyun@fcc.gov* or 202–418–2019.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, DA 23–1198, adopted and released on December 22, 2023. The complete text of this document is available for download at *https://docs.fcc.gov/public/attachments/DA-23-1198A1.pdf.* To request this document in accessible formats for people with disabilities (*e.g.,* Braille, large print, electronic files, audio format, etc.) or to request reasonable accommodations (*e.g.,* accessible format documents, sign language interpreters, CART, etc.), send an email to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice).

Synopsis

The Bipartisan Budget Act of 2015 included, as section 701 thereto, the Inflation Adjustment Act, which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410), to improve the effectiveness of civil monetary penalties and maintain their deterrent effect. Under the Inflation Adjustment Act, agencies are required to make annual inflationary adjustments by January 15 each year, beginning in 2017. The adjustments are calculated pursuant to Office of Management and Budget (OMB) guidance. OMB issued guidance on December 19, 2023, and this Order follows that guidance. The Commission therefore updates the civil monetary penalties for 2024, to reflect an annual inflation adjustment based on the percent change between each published October's CPI–U; in this case, October 2023 CPI–U (307.671)/October 2022 CPI–U (298.012) = 1.03241. The Commission multiplies 1.03241 by the most recent penalty amount and then rounds the result to the nearest dollar.

For 2024, the adjusted penalty or penalty range for each applicable penalty is calculated by multiplying the most recent penalty amount by the 2024 annual adjustment (1.03241), then rounding the result to the nearest dollar. The adjustments in civil monetary penalties that we adopt in this Order apply only to such penalties assessed on and after January 15, 2024.

Paperwork Reduction Act

This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Congressional Review Act

The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Penalties.

Federal Communications Commission.

Peter Hyun,

Chief of Staff and Deputy Bureau Chief, Enforcement Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

■ 1. The authority citation for part 1 is revised to read as follows:

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

■ 2. Amend § 1.80 by revising paragraphs (b)(1) through (10), Table 4 to paragraph (b)(11), and paragraph (b)(12)(ii) to read as follows:

§ 1.80 Forfeiture proceedings.

* * * * *

(b) * * *

(1) *Forfeiture penalty for a broadcast station licensee, permittee, cable television operator, or applicant.* If the violator is a broadcast station licensee or permittee, a cable television operator, or an applicant for any broadcast or cable television operator license, permit, certificate, or other instrument of authorization issued by the Commission, except as otherwise noted in this paragraph (b)(1), the forfeiture penalty under this section shall not exceed $61,238 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $612,395 for any single act or failure to act described in paragraph (a) of this section. There is no limit on forfeiture assessments for EEO violations by cable operators that occur after notification by the Commission of a potential violation. See section 634(f)(2) of the Communications Act (47 U.S.C. 554). Notwithstanding the foregoing in this section, if the violator is a broadcast station licensee or permittee or an applicant for any broadcast license, permit, certificate, or other instrument of authorization issued by the Commission, and if the violator is determined by the Commission to have broadcast obscene, indecent, or profane material, the forfeiture penalty under this section shall not exceed $495,500 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $4,573,840 for any single act or failure to act described in paragraph (a) of this section.

(2) *Forfeiture penalty for a common carrier or applicant.* If the violator is a common carrier subject to the provisions of the Communications Act or an applicant for any common carrier license, permit, certificate, or other instrument of authorization issued by the Commission, the amount of any forfeiture penalty determined under this section shall not exceed $244,958 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $2,449,575 for any single act or failure to act described in paragraph (a) of this section.

(3) *Forfeiture penalty for a manufacturer or service provider.* If the violator is a manufacturer or service provider subject to the requirements of section 255, 716, or 718 of the Communications Act (47 U.S.C. 255, 617, or 619), and is determined by the Commission to have violated any such requirement, the manufacturer or service provider shall be liable to the United States for a forfeiture penalty of not more than $140,674 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $1,406,728 for any single act or failure to act.

(4) *Forfeiture penalty for a 227(e) violation.* Any person determined to have violated section 227(e) of the Communications Act or the rules issued by the Commission under section 227(e) of the Communications Act shall be liable to the United States for a forfeiture penalty of not more than $14,067 for each violation or three times that amount for each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $1,406,728 for any single act or failure to act. Such penalty shall be in addition to any other forfeiture penalty provided for by the Communications Act.

(5) *Forfeiture penalty for a 227(b)(4)(B) violation.* Any person determined to have violated section 227(b)(4)(B) of the Communications Act or the rules in 47 CFR part 64 issued by the Commission under section 227(b)(4)(B) of the Communications Act shall be liable to the United States for a forfeiture penalty determined in accordance with paragraphs (A)–(F) of section 503(b)(2) plus an additional penalty not to exceed $11,955.

(6) *Forfeiture penalty for pirate radio broadcasting.* (i) Any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than $2,391,097; and

(ii) Any person who willfully and knowingly violates the Act or any rule, regulation, restriction, or condition made or imposed by the Commission under authority of the Act, or any rule, regulation, restriction, or condition made or imposed by any international radio or wire communications treaty or convention, or regulations annexed thereto, to which the United States is party, relating to pirate radio broadcasting shall, in addition to any other penalties provided by law, be subject to a fine of not more than $119,555 for each day during which such offense occurs, in accordance with the limit described in this section.

(7) *Forfeiture penalty for a section 6507(b)(4) Tax Relief Act violation.* If a violator who is granted access to the Do-Not-Call registry of public safety answering points discloses or disseminates any registered telephone number without authorization, in violation of section 6507(b)(4) of the Middle Class Tax Relief and Job Creation Act of 2012 or the Commission's implementing rules in 47 CFR part 64, the monetary penalty for such unauthorized disclosure or dissemination of a telephone number from the registry shall be not less than $131,738 per incident nor more than $1,317,380 per incident depending upon whether the conduct leading to the violation was negligent, grossly negligent, reckless, or willful, and depending on whether the violation was a first or subsequent offense.

(8) *Forfeiture penalty for a section 6507(b)(5) Tax Relief Act violation.* If a violator uses automatic dialing equipment to contact a telephone number on the Do-Not-Call registry of public safety answering points, in violation of section 6507(b)(5) of the Middle Class Tax Relief and Job Creation Act of 2012 or the Commission's implementing rules in 47 CFR part 64, the monetary penalty for contacting such a telephone number shall be not less than $13,174 per call nor more than $131,738 per call depending on whether the violation was negligent, grossly negligent, reckless, or willful, and depending on whether the violation was a first or subsequent offense.

(9) *Forfeiture penalty for a failure to block.* Any person determined to have failed to block illegal robocalls pursuant to §§ 64.6305(g) and 64.1200(n) of this chapter shall be liable to the United States for a forfeiture penalty of no more than $24,496 for each violation, to be assessed on a per-call basis.

(10) *Maximum forfeiture penalty for any case not previously covered.* In any case not covered in paragraphs (b)(1) through (9) of this section, the amount of any forfeiture penalty determined under this section shall not exceed $24,496 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $183,718 for any single act or failure to act described in paragraph (a) of this section.

(11) * * *

TABLE 4 TO PARAGRAPH (b)(11)—NON-SECTION 503 FORFEITURES THAT ARE AFFECTED BY THE DOWNWARD ADJUSTMENT FACTORS [1]

Violation	Statutory amount after 2024 annual inflation adjustment
Sec. 202(c) Common Carrier Discrimination	$14,697, $735/day.
Sec. 203(e) Common Carrier Tariffs	$14,697, $735/day.
Sec. 205(b) Common Carrier Prescriptions	$29,395.
Sec. 214(d) Common Carrier Line Extensions	$2,939/day.
Sec. 219(b) Common Carrier Reports	$2,939/day.
Sec. 220(d) Common Carrier Records & Accounts	$14,697/day.
Sec. 223(b) Dial-a-Porn	$152,310/day.
Sec. 227(e) Caller Identification	$14,067/violation.
	$42,200/day for each day of continuing violation, up to $1,406,728 for any single act or failure to act.
Sec. 364(a) Forfeitures (Ships)	$12,249/day (owner).
Sec. 364(b) Forfeitures (Ships)	$2,451 (vessel master).
Sec. 386(a) Forfeitures (Ships)	$12,249/day (owner).
Sec. 386(b) Forfeitures (Ships)	$2,451 (vessel master).
Sec. 511 Pirate Radio Broadcasting	$2,391,097, $119,555/day.
Sec. 634 Cable EEO	$1,086/day.

(12) * * *

(ii) The application of the annual inflation adjustment required by the foregoing Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 results in the following adjusted statutory maximum forfeitures authorized by the Communications Act:

TABLE 5 TO PARAGRAPH (b)(12)(ii)

U.S. Code citation	Maximum penalty after 2024 annual inflation adjustment
47 U.S.C. 202(c)	$14,697.
	$735.
47 U.S.C. 203(e)	$14,697.
	$735.
47 U.S.C. 205(b)	$29,395.
47 U.S.C. 214(d)	$2,939.
47 U.S.C. 219(b)	$2,939.
47 U.S.C. 220(d)	$14,697.
47 U.S.C. 223(b)	$152,310.
47 U.S.C. 227(b)(4)(B)	$61,238, plus an additional penalty not to exceed $11,955.
	$612,395, plus an additional penalty not to exceed $11,955.
	$244,958, plus an additional penalty not to exceed $11,955.
	$2,449,575, plus an additional penalty not to exceed $11,955.
	$495,500, plus an additional penalty not to exceed $11,955.
	$4,573,840, plus an additional penalty not to exceed $11,955.
	$24,496, plus an additional penalty not to exceed $11,955.
	$183,718, plus an additional penalty not to exceed $11,955.
	$140,674, plus an additional penalty not to exceed $11,955.
	$1,406,728, plus an additional penalty not to exceed $11,955.
47 U.S.C. 227(e)	$14,067.
	$42,200.
	$1,406,728.
47 U.S.C. 362(a)	$12,249.
47 U.S.C. 362(b)	$2,451.
47 U.S.C. 386(a)	$12,249.
47 U.S.C. 386(b)	$2,451.
47 U.S.C. 503(b)(2)(A)	$61,238.
	$612,395.

[1] Unlike section 503 of the Act, which establishes maximum forfeiture amounts, other sections of the Act, with two exceptions, state prescribed amounts of forfeitures for violations of the relevant section. These amounts are then subject to mitigation or remission under section 504 of the Act. One exception is section 223 of the Act, which provides a maximum forfeiture per day. For convenience, the Commission will treat this amount as if it were a prescribed base amount, subject to downward adjustments. The other exception is section 227(e) of the Act, which provides maximum forfeitures per violation, and for continuing violations. The Commission will apply the factors set forth in section 503(b)(2)(E) of the Act and this table 4 to determine the amount of the penalty to assess in any particular situation. The amounts in this table 4 are adjusted for inflation pursuant to the Debt Collection Improvement Act of 1996 (DCIA), 28 U.S.C. 2461. These non-section 503 forfeitures may be adjusted downward using the "Downward Adjustment Criteria" shown for section 503 forfeitures in table 3 to this paragraph (b)(11).

TABLE 5 TO PARAGRAPH (b)(12)(ii)—Continued

U.S. Code citation	Maximum penalty after 2024 annual inflation adjustment
47 U.S.C. 503(b)(2)(B)	$244,958. $2,449,575.
47 U.S.C. 503(b)(2)(C)	$495,500. $4,573,840.
47 U.S.C. 503(b)(2)(D)	$24,496. $183,718.
47 U.S.C. 503(b)(2)(F)	$140,674. $1,406,728.
47 U.S.C. 507(a)	$2,426.
47 U.S.C. 507(b)	$356.
47 U.S.C. 511	$2,391,097. $119,555.
47 U.S.C. 554	$1,086.
Sec. 6507(b)(4) of Tax Relief Act	$1,317,380/incident.
Sec. 6507(b)(5) of Tax Relief Act	$131,738/call.

* * * * *

[FR Doc. 2024–00624 Filed 1–11–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WC Docket No. 17–84; FCC 23–109; FR ID 195734]

Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) establishes rules creating a new process for the Commission's review and assessment of pole attachment disputes that impede or delay broadband deployment in order to expedite resolution of such disputes, and providing communications providers with information about the status of the utility poles they plan to use as they map out their broadband buildouts.

DATES: Effective February 12, 2024, except for §§ 1.1411(c)(4) (amendatory instruction 2) and 1.1415 (amendatory instruction 4), which are delayed indefinitely. The Commission will publish a document in the **Federal Register** announcing the effective date for those sections.

FOR FURTHER INFORMATION CONTACT: For further information, please contact either Michele Berlove, Assistant Division Chief, Competition Policy Division, Wireline Competition Bureau, at *michele.berlove@fcc.gov* or at (202) 418–1477, or Michael Ray, Attorney Advisor, Competition Policy Division, Wireline Competition Bureau, at *michael.ray@fcc.gov* or at (202) 418–0357. For additional information concerning the Paperwork Reduction Act proposed information collection requirements contained in this document, send an email to*PRA@fcc.gov*or contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Fourth Report and Order* in WC Docket No. 17–84, adopted December 13, 2023, and released December 15, 2023. The full text of this document is available for public inspection at the following internet address: *https://docs.fcc.gov/public/attachments/FCC-23-109A1.pdf.* To request materials in accessible formats for people with disabilities (*e.g.,* Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530.

Synopsis

I. Introduction

1. Access to a broadband connection is a necessity of modern life. With consumers more dependent than ever on fixed and mobile broadband networks for work, healthcare services, education, and social activities, the Commission remains committed to ensuring consumers across the nation have meaningful access to broadband. With the support of the Commission's universal service fund, the Infrastructure Investment and Jobs Act, which included the largest ever Federal investment in broadband, as well as other Federal and state broadband deployment programs, more funding than ever is available to build the necessary infrastructure to bring much-needed broadband services to unserved and underserved areas in the United States. Key to these broadband projects are the utility poles that support the wires and the wireless equipment that carry broadband to American homes and businesses.

2. Over the last several years, the Commission has taken significant steps in setting the ''rules for the road'' for the discussions between utilities and telecommunications companies about the timing and cost of attaching broadband equipment to utility poles, with the backstop of a robust complaint process when parties cannot agree on the rates, terms, and conditions for pole attachments. (Note that section 224(c) of the Communications Act of 1934, as amended (the Act), exempts from Commission jurisdiction those pole attachments in states that have elected to regulate pole attachments themselves. To date, 23 states and the District of Columbia have opted out of Commission regulation of pole attachments in their jurisdictions. The Commission's pole attachment rules currently only apply to cable operators and providers of telecommunications services and therefore do not apply to broadband-only internet service providers. We recently proposed to reclassify broadband internet access service as a telecommunications service, which would, if completed, apply section 224 and the Commission's pole attachment rules to broadband-only internet service providers.) In this item, we take additional steps to speed broadband deployment by making the pole attachment process faster, more transparent, and more cost effective. Specifically, we adopt rules (1) establishing a new process for the Commission's review and assessment of pole attachment disputes that impede or delay broadband deployment in order to expedite resolution of such disputes, and (2) providing communications providers with information about the

status of the utility poles they plan to use as they map out their broadband builds.

II. Background

3. In 1996, as part of its implementation of the pole attachment requirements located in sections 224(h) and 224(i) of the Act, the Commission determined that when a modification, such as a pole replacement, is undertaken for the benefit of a particular party, then under cost causation principles, the benefiting party must assume the cost of the modification. (Section 224(h) states that whenever the owner of a pole, duct, conduit, or right-of-way intends to modify or alter such pole, duct, conduit, or right-of-way, the owner shall provide written notification of such action to any entity that has obtained an attachment to such conduit or right-of-way so that such entity may have a reasonable opportunity to add to or modify its existing attachment. Any entity that adds to or modifies its existing attachment after receiving such notification shall bear a proportionate share of the costs incurred by the owner in making such pole, duct, conduit, or right-of-way accessible. Section 224(i) states that an entity that obtains an attachment to a pole, conduit, or right-of-way shall not be required to bear any of the costs of rearranging or replacing its attachment, if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other entity (including the owner of such pole, duct, conduit, or right-of-way).) The Commission also found that when a utility decides to modify a pole for its own benefit, and no other attachers derive a benefit from the modification, the utility must bear the full cost of the new pole. The Commission further adopted a cost sharing principle for when an existing attacher uses a modification by another party as an opportunity to add to or modify its own attachments and applied this principle to utilities and other attachers seeking to use modifications as an opportunity to bring their own facilities into compliance with safety or other requirements. In the *2018 Wireline Infrastructure Order* (83 FR 31659–02, July 9, 2018), the Commission reiterated that application of the cost sharing principle.

4. On July 16, 2020, NCTA—the internet & Television Association (NCTA) filed a Petition asking the Commission to clarify its rules in the context of pole replacements. Specifically, NCTA asked the Commission to declare that: (1) utilities must share in the cost of pole replacements in unserved areas pursuant to section 224 of the Act, § 1.1408(b) of the Commission's rules, and Commission precedent; (2) pole attachment complaints arising in unserved areas should be prioritized through placement on the Accelerated Docket under § 1.736 of the Commission's rules; and (3) § 1.1407(b) of the Commission's rules authorizes the Commission to order a utility to complete a pole replacement within a specified time frame or designate an authorized contractor to do so. NCTA argued that without Commission action, the costs and operational challenges associated with pole replacements will inhibit attachers from deploying broadband services to Americans in unserved areas.

5. In the *2021 Pole Replacement Declaratory Ruling,* although the Wireline Competition Bureau declined to act on NCTA's Petition, finding that ''it is more appropriate to address questions concerning the allocation of pole replacement costs within the context of a rulemaking, which provides the Commission with greater flexibility to tailor regulatory solutions,'' it observed that the record developed in response to the NCTA Petition revealed inconsistent practices by utilities with regard to cost responsibility for pole replacements. Accordingly, the Bureau clarified that, pursuant to § 1.1408(b) of the Commission's rules and prior precedent, ''utilities may not require requesting attachers to pay the entire cost of pole replacements that are not solely caused by the new attacher and, thus, may not avoid responsibility for pole replacement costs by postponing replacements until new attachment requests are submitted.'' The Commission subsequently affirmed the Bureau's clarifications.

6. Last year, the Commission issued a *Second Further Notice of Proposed Rulemaking* (*Second FNPRM*) (87 FR 25181–01, Apr. 28, 2022) in this proceeding seeking comment on the universe of situations where the requesting attacher should not be required to pay for the full cost of a pole replacement and the proper allocation of costs among utilities and attachers in those situations. (To the extent that the Fourth Report and Order does not expressly address a topic that was subject to comment in the *Second FNPRM,* that issue remains pending.) Specifically, the Commission sought comment on the applicability of cost causation and cost allocation principles in the context of pole replacements—*e.g.,* when is a pole replacement not caused (necessitated solely) by a new attachment request, and when and how parties must share in the costs of a pole replacement. The Commission also sought comment on the extent to which utilities directly benefit from pole replacements, including a utility's responsibility for the costs of pole upgrades and modifications unrelated to new attachments and the effect of early pole retirements on pole replacement cost causation and cost allocation calculations. The *Second FNPRM* also sought comment on whether the Commission should require utilities to share information with potential attachers concerning the condition and replacement status of their poles and other measures that may help avoid or expedite the resolution of disputes between the parties, including whether to expand use of the Commission's Accelerated Docket for pole attachment complaints and the specific criteria that Commission staff should use in deciding whether to place a pole complaint on the Accelerated Docket. (To the extent that the Fourth Report and Order does not expressly address a topic that was subject to comment in the *Second FNPRM,* that issue remains pending.)

III. Report and Order

7. In the Fourth Report and Order, we adopt measures to expedite resolution of pole attachment disputes that impede or delay broadband deployment. Specifically, we (1) establish an agency-wide rapid response team to provide coordinated review and assessment of such pole attachment disputes and to recommend effective dispute resolution procedures, and (2) adopt specific criteria to guide that team when considering whether a complaint (or portion thereof) should be included on the Enforcement Bureau's Accelerated Docket. We also require utilities to provide information regarding pole conditions and scheduled replacements to the extent that information is contained in cyclical pole inspection reports that utilities already create and maintain in the ordinary course of their business, or in pole inspection reports created between cyclical reports. (Both pole attachers and utilities made several other proposals, not addressed herein, regarding the process for pole attachments and replacements and ways they believe the process could be improved to reduce disputes and promote broadband deployment.)

A. Accelerating Resolution of Pole Attachment Disputes That Impede or Delay Broadband Deployment

8. We amend our rules to prioritize and expedite the resolution of pole attachment disputes that impede or

delay broadband deployment by establishing a Commission intra-agency rapid response team—called the Rapid Broadband Assessment Team (RBAT)—to provide coordinated review and assessment of such disputes. (We codify these amendments in part 1, subpart J, of the Commission's rules (*i.e.,* Pole Attachment Complaint Procedures) by redesignating current § 1.1415 as § 1.1416 and adding a new § 1.1415. These rule amendments apply only to disputes involving pole attachments of a cable television system or a provider of telecommunications service and do not apply to disputes involving pole attachments of a broadband-only internet service provider. They also do not apply to disputes involving poles that are owned or controlled by a railroad, the Federal Government, a state (including a political subdivision thereof such as a municipality), or a cooperative association, or where the poles at issue are located in a state, or the District of Columbia, that has certified to the Commission that it regulates the rates, terms, and conditions of pole attachments in that state or jurisdiction pursuant to 47 U.S.C. 224(c). Should we adopt the proposal set forth in the *Open internet NPRM* (88 FR 76048–01, Nov. 3, 2023) to reclassify broadband-only internet service as a telecommunications service, section 224 would once again apply to broadband-only internet service providers deployments.) At the outset, we emphasize that we expect all parties to comply with the Commission's pole attachment rules and to negotiate in good faith to craft solutions that suit the needs of attachers and utilities to facilitate deployment projects. We recognize, however, that in some instances disagreements arise as to the conduct of one or multiple parties, and we encourage parties in those instances to avail themselves of the Commission's dispute resolution processes to both facilitate the resolution of disputes and, when necessary, use the formal adjudication process to develop precedent upon which parties can rely to settle future potential disputes. In this document, we amend our rules to create the RBAT in an effort to make the Commission's pole attachment dispute resolution process more responsive and adaptable with the goal of facilitating deployment.

9. The RBAT will be charged with expediting the resolution of these disputes by swiftly engaging key stakeholders, gathering relevant information, distilling issues in dispute, and recommending to the parties, where appropriate, an abbreviated mediation process, placement of a complaint (or portion of a complaint) on the Accelerated Docket based on consideration of specified criteria, and/or any other action that the RBAT determines will help the parties resolve their dispute. (The Schools, Health & Libraries Broadband (SHLB) Coalition suggests that creation of the RBAT may result in a needless administrative step and associated delay, and suggests that the RBAT, if created, be vested with authority to resolve disputes without going through the additional step of a complaint process. We decline to adopt this approach. The RBAT is designed to assist parties in resolving their dispute expeditiously without need for litigation. But if parties are unable to reach a resolution, either through mediation or other means, our existing complaint procedures, including the Accelerated Docket, ensure a means of adjudicating the dispute in accordance with due process.)

10. In the *Second FNPRM,* the Commission sought comment on NCTA's proposed adoption of policies ''favoring the placement of pole attachment complaints arising in unserved areas on the [Commission's] Accelerated Docket[,]'' a mechanism that requires the Commission to quickly resolve disputes between parties within 60 days. (Under § 1.736(a), complaint proceedings on the Accelerated Docket must be concluded within 60 days, and are therefore subject to shorter pleading deadlines and other modifications to the procedural rules that govern formal complaint proceedings.) It also sought comment on measures that would expedite the resolution of ''pole replacement[ ]'' disputes and on criteria for determining more generally ''when pole attachment complaints should be placed on the Accelerated Docket.'' Based on broad record support among attachers for further streamlining our processes as applied to disputes that impede or delay broadband deployment, we conclude that the targeted measures outlined below are warranted and will advance the Commission's goal of timely broadband deployment.

11. As the Commission observed in the *Second FNPRM,* our current rules provide a 180-day deadline (or shot clock) for final action on pole access complaints where a cable television system operator or provider of telecommunications service claims that it has been denied access to a pole, duct, conduit, or right-of-way owned or controlled by a utility. (For purposes of this subsection, the Commission has defined a ''pole access complaint'' as a complaint ''filed by a cable television system or a provider of telecommunications service that alleges a complete denial of access to a utility pole[,]'' and clarified that ''[the] term [pole access complaint] does not encompass a complaint alleging that a utility is imposing unreasonable rates, terms, or conditions that amount to a denial of pole access.'') In addition, a 270-day shot clock currently applies to final action on all other pole attachment complaints (*i.e.,* those alleging unjust or unreasonable rates, terms, or conditions of attachment). Several commenters assert that these timeframes are commercially unreasonable for attachers seeking to deploy broadband networks, particularly in rural or unserved areas. (Charter asserts that the ''[m]ere *existence*'' of a path allowing more routine use of the Accelerated Docket ''could help broadband providers resolve disagreements without the need for Commission intervention'' by ''provid[ing] attachers facing government-imposed construction deadlines with a more credible option of seeking relief, thereby reducing the one-sided leverage held by pole owners today.'') NCTA submits that the need for expedited procedures has gained greater urgency recently for ''providers . . . receiving government funds to build out broadband under deadlines that afford no time for a lengthy complaint process.'' A number of commenters therefore propose more routine use of the Accelerated Docket, with its 60-day shot clock, especially for pole attachment disputes involving time-sensitive deployments in unserved areas. Several commenters also contend that the current Accelerated Docket rule does not sufficiently motivate utilities to comply with their obligation to allow pole access because it is unclear when Commission staff, in the exercise of their discretion under § 1.736(d) of our rules, will include a matter on the Accelerated Docket. Crown Castle asserts that ''without certainty that the complaint will be promptly resolved, the decision to bring a formal complaint to the Commission involves business decisions about whether the resolution will be too late to meaningfully assist the deployment.'' On the other hand, other commenters argue that sweeping or widespread imposition of the Accelerated Docket rule, with its highly compressed timeframes, could raise potential fairness and due process concerns given the complexity of the issues raised in most pole attachment cases. (Other commenters question the necessity of new rules (1) due to the relative infrequency of requests for Accelerated Docket treatment, *see, e.g.,* Edison Electric Institute Comments at

54 (challenging the need to further expedite ''denial of access'' complaints based on ''[t]he complete absence of [such] complaints before the Commission''), or (2) due to the lack of evidence of instances where dilatory actions of utilities have caused broadband grant recipients to lose access to such funding.) After considering these competing concerns, we find that the adoption of targeted dispute resolution reforms, as set forth below, will address the expressed need for quicker resolution of pole attachment disputes that may impede or delay broadband deployment while ensuring sufficient fairness and due process for all involved parties.

12. *Disputes Subject to RBAT Review and Assessment Procedures.* The Commission asked in the *Second FNPRM* whether any new dispute resolution procedures should be ''limited to complaints that raise only discrete pole access issues'' and do not require consideration of ''whether a rate, term, or condition of attachment is unjust or unreasonable.'' To address the need for timely broadband deployment, particularly in unserved or underserved areas, we apply the new procedures discussed below to any pole attachment dispute that a party alleges is impeding or delaying the deployment of broadband facilities. To provide greater clarity regarding when such a dispute would be eligible for placement on the Accelerated Docket, we also adopt below specific criteria that will guide the RBAT in determining when a dispute is suitable for accelerated disposition. In light of the strict time constraints of the Accelerated Docket, disputes raising relatively straightforward legal and evidentiary issues, as determined based on the RBAT's review of these criteria, are more likely to be considered appropriate for placement on the Accelerated Docket.

13. Although the record reflects differing views regarding which disputes should be subject to new dispute resolution procedures, a significant proportion of commenters seeking such reforms ask that we limit the focus of any new procedures to disputes that are interfering with active broadband deployment plans or projects. We adopt this suggestion based on our conclusion that focusing on pole attachment disputes that impede or delay a provider's ability to deploy new broadband facilities will align with, and advance most directly, the goal of timely broadband deployment. (Several utilities argue that across-the-board application of dispute resolution reforms to an entire category of disputes would fail to account for complexities in individual cases. But such comments assume that Accelerated Docket treatment would automatically apply to all disputes within the identified category. In fact, under the reforms we adopt herein, such disputes will receive individualized assessment and review (by the RBAT) based on a totality of factors analysis.)

14. *RBAT Review and Assessment of Disputes that Impede or Delay Broadband Deployment.* To expedite the resolution of pole attachment disputes that impede or delay an active broadband deployment project, we amend our rules to establish the RBAT, which will be comprised of Enforcement Bureau and Wireline Competition Bureau staff with expertise in the Commission's pole attachment rules and orders. We charge the RBAT with prioritizing the resolution of any pole attachment dispute that a party alleges is impeding or delaying the deployment of broadband facilities (including where the party is also seeking placement of the matter on the Accelerated Docket under § 1.736). In performing this role, the RBAT will gather and promptly review all pertinent information submitted by the parties and provide guidance and advice on the most effective means of resolving the parties' dispute. Where appropriate, the RBAT will recommend to the parties an abbreviated mediation process, placement of a complaint, or portion of a complaint, on the Accelerated Docket, and/or any other action that the RBAT determines will help the parties resolve their dispute. The RBAT will recommend use of the Accelerated Docket where it determines, based upon a totality of the criteria outlined below, that a complaint, or portion thereof, is suitable for accelerated disposition. (The RBAT may recommend placement of a dispute on the Accelerated Docket in the exercise of the discretion afforded Commission staff ''to decide whether a complaint, or portion of a complaint, is suitable for inclusion on the Accelerated Docket.'' A prospective complainant may accept the recommendation, with or without the consent of the other party or parties to the dispute, by moving forward with the agreed upon schedule and process established by Commission staff in the case.) To request RBAT review and assessment of a dispute that a party to the dispute contends is impeding or delaying deployment of broadband facilities, the party must first notify the Chief of the Enforcement Bureau's Market Disputes Resolution Division (MDRD) of the request by phone and in writing. (The RBAT review and assessment process will be available only to attachers and pole owners that are direct parties to such dispute (including any legal counsel retained to represent a party in that specific dispute). For parties seeking both RBAT review *and* inclusion of a proceeding relating to broadband facilities deployment on the Accelerated Docket, this initial notification by phone and in writing would need to be made prior to filing the formal complaint and would constitute the notification required under § 1.736(b).) The MDRD Chief will direct the party to a streamlined form on the MDRD website—Request for RBAT Review and Assessment—and to instructions for completing and electronically transmitting the form to the RBAT. The form will elicit information relevant to the scope and nature of the dispute, and to whether the dispute is appropriate for expedited mediation and/or placement on the Accelerated Docket. (The form will require a submitting party to provide: information identifying the parties and the services they offer; the section(s) of the Act or Commission rule or order alleged to have been violated; a brief description of the parties' dispute (including how it relates to broadband deployment plans or projects, whether such plans or projects are subject to a deadline under a government funded broadband program, whether the dispute arises in an unserved or underserved area, what harm is occurring or is likely to occur as a result of the situation, and what aspects of the dispute require immediate redress); the specific relief sought; whether the parties have entered into a non-disclosure agreement; the steps the party has taken to resolve the matter with other parties to the dispute; a statement as to whether the parties are amenable to mediation; and a statement indicating whether the party intends to seek inclusion of the matter on the Accelerated Docket. The form also will elicit information relevant to whether the dispute is suitable for accelerated disposition including, for example, the number of poles in question, the number and complexity of claims at issue, and the likely need for discovery or expert affidavits. The RBAT may request additional information from the submitting party if more information is necessary to determine a course of action.)

15. Upon receipt of the completed Request for RBAT Review and Assessment, the RBAT will schedule a meeting through a manner of the RBAT's choosing, with all parties as soon as practicable. The RBAT may

request a written response from the other party or parties to the dispute with respect to one or more issues raised by the party seeking RBAT review. The RBAT also may request that one or both parties provide the RBAT with documentation or other information relevant to the dispute. (NCTA suggests that we specify the information the respondent will be required to provide. We find this approach impracticable, as the information required in a response will depend on the complainant's allegations. We employ a more flexible approach that enables the RBAT to request relevant information and documentation from either party, as appropriate.) In the initial meeting, or in a meeting shortly thereafter, the RBAT will provide guidance and advice to the parties on the most effective means of resolving their dispute, including staff-supervised mediation, use of the Accelerated Docket, and/or other action. (Because mediation will be a prominent feature of the RBAT review, we decline to adopt INCOMPAS's proposal that the 180-day deadline for resolution of a pole access complaint be triggered by the submission of the request for RBAT Review and Assessment. If mediation succeeds, there will be no need for a complaint. If it does not, the filing of a complaint will commence review period deadlines under the relevant Commission rules.) To that end, the RBAT will attempt to distill the issues in dispute and identify issues that are most impacting a party's broadband deployment plans. For example, the RBAT may encourage parties to focus on the resolution of one or more threshold issues, or what appears to be the most urgent issue(s), if it finds that doing so may help the parties to narrow their dispute. Likewise, the RBAT may encourage parties, where appropriate, to streamline the proceeding by agreeing to focus on ''test cases''—*i.e.,* disputes over specific poles that the parties agree are representative of disputes over multiple poles. In this way, deciding the issue as to the test case will have broader impact.

16. Should the RBAT recommend staff-supervised mediation, it shall be conducted pursuant to § 1.737 of the Commission's rules. Because § 1.737 generally contemplates that mediations will be conducted by MDRD staff, we delegate authority to the MDRD Chief, in consultation with the RBAT, to modify or waive the procedures or requirements of § 1.737 as appropriate in this context, or as needed in light of the facts or circumstances of a particular case. (Waiver is appropriate for ''good cause,'' and is warranted only if both: (1) special circumstances warrant a deviation from the general rule, and (2) such deviation will serve the public interest.) The strict confidentiality requirements will apply to all written and oral communications prepared or made for purposes of a mediation pursuant to § 1.737(f), including mediation submissions, offers of compromise, and staff and party comments made during the course of the mediation (Mediation Communications). Through mediation, the RBAT will make every effort to settle or narrow the issues in dispute as expeditiously as possible.

17. In the event that the parties are unable to settle their dispute, and a prospective complainant seeks placement of its complaint on the Accelerated Docket, the RBAT will decide whether the complaint or a portion of the complaint is suitable for inclusion on the Accelerated Docket based on the totality of the criteria set forth below. Because of the very short deadlines that apply in Accelerated Docket proceedings, Commission staff historically have carefully evaluated whether a particular dispute is appropriate for expedited disposition, resulting in the placement of relatively few cases on the Accelerated Docket. In evaluating whether a matter is suitable for expedited disposition, the RBAT must similarly be mindful of the due process concerns raised by commenters, such as the Pennsylvania PUC, regarding affording parties ''the opportunity to be heard at a meaningful time and in a meaningful manner.'' In addition, although mediation is generally voluntary, the RBAT may require that the parties participate, if appropriate, in pre-filing settlement negotiations or mediation under rule 1.737 as a condition for including a matter on the Accelerated Docket. Finally, if the RBAT determines that a matter is suitable for inclusion on the Accelerated Docket, the RBAT is authorized to send appropriate matters to the Commission's Administrative Law Judge (ALJ) for an expedited ''minitrial'' (*i.e.,* trial-type hearing) as contemplated by § 1.736(h).

18. *Criteria for Placement on the Accelerated Docket.* The Commission sought comment in the *Second FNPRM* on the adoption of specific criteria to guide Commission staff on ''when pole attachment complaints should be placed on the Accelerated Docket.'' (For example, the Commission asked if its policy should ''take into account the number and complexity of the claims, need for discovery, need for expert affidavits, and ability of the parties to stipulate to facts.'') Based on the requests of several commenters for greater predictability surrounding Accelerated Docket placement decisions with respect to pole attachment disputes that impede or delay broadband deployment, we establish criteria to aid the RBAT in making determinations regarding the placement of such matters on the Accelerated Docket.

19. In light of the strict time constraints that apply in Accelerated Docket cases, we decline to adopt a ''presumption,'' as suggested by some commenters, that all pole access disputes for active deployments be placed on the Accelerated Docket and, instead, entrust the RBAT with this decision based on the criteria specified below. (There is no basis for us to conclude that a dispute will be suitable for the Accelerated Docket simply based on the number of poles at issue as INCOMPAS's proposal suggests.) We agree with Dominion/Xcel that a ''one-size-fits-all policy'' would not adequately take into account the complexity of the issues in particular complaint proceedings. We also agree with the Coalition of Concerned Utilities that the 60-day timeframe will be ''too short'' to resolve certain pole attachment disputes, and thus ''blanket imposition'' of the Accelerated Docket requirements would be unreasonable and ''raise due process concerns'' for utilities. Although Charter argues that the presumption could simply be rebutted if a particular complaint raises unusually complex issues, we reject this argument based on our experience with formal complaints. In particular, when parties oppose the operation of a presumption in a particular proceeding, these rebuttal efforts often lead to significant additional argumentation attendant to resolving the specific question of the presumption, thus unnecessarily complicating resolution of the underlying issues in dispute. To avoid the potential for unnecessary rounds of argumentation and to ensure that complaints accepted onto the Accelerated Docket are suitable for decision under the relevant time constraints, we reject proposals to create a presumption that all pole access disputes for active deployments be placed on the Accelerated Docket.

20. After careful consideration of the record on this issue, we direct the RBAT to consider the factors below in determining whether to accept onto the Accelerated Docket a pole attachment dispute that is allegedly impeding or delaying a broadband facilities deployment plan or project. The RBAT shall determine eligibility for placement on the Accelerated Docket based on the totality of these factors:

• whether the prospective complainant states a claim for violation of the Act or a Commission rule or order that falls within the Commission's jurisdiction;
• whether the expedited resolution of a particular dispute or category of disputes appears likely to advance the deployment of broadband facilities, especially in an unserved or underserved area;
• whether the parties to the dispute have exhausted all reasonable opportunities for settlement during any staff-supervised mediation;
• the number and complexity of the issues in dispute;
• whether the dispute raises new or novel issues versus settled interpretations of rules or policies;
• the likely need for, and complexity of, discovery;
• the likely need for expert testimony;
• the ability of the parties to stipulate to facts;
• whether the parties have already assembled relevant evidence bearing on the disputed facts;
• the willingness of the prospective complainant to seek a ruling on a subset of claims or issues (*e.g.,* threshold or ''test cases''); and
• such other factors as the RBAT, within its discretion, may deem appropriate and conducive to the prompt and fair adjudication of the complaint proceeding.

The first three of these criteria will help the RBAT to ensure appropriate use of the Commission's processes in support of the goal of timely broadband deployment and ensure that the parties have made a sufficient effort to resolve or, at a minimum, identify and narrow the disputed issues prior to filing a complaint. The remaining criteria will help the RBAT to determine if a dispute is suitable for decision under the strict time constraints of the Accelerated Docket, and also require it to consider whether including a matter on the Accelerated Docket would ensure the prompt and fair adjudication of the dispute. (A responding party's refusal to stipulate to facts or cooperate in the exchange of relevant information bearing on disputed facts will not itself defeat a request for acceptance of a pole attachment dispute on the Accelerated Docket.) By specifying the criteria that the RBAT must consider in making its determination, we hope to make the Accelerated Docket a more useful tool in the resolution of eligible pole attachment disputes and provide prospective complainants with greater certainty regarding which complaints will be deemed suitable for expedited resolution.

21. We will closely monitor the impact of the dispute resolution procedures adopted here and consider additional streamlining measures should we observe ongoing delay tactics or other unreasonable practices that hinder the ability of broadband providers to deploy new services or facilities. (Two commenters suggest narrowing the list of criteria to avoid delay tactics by utilities. We find that eliminating criteria is unnecessary, however, as these criteria are holistic in nature, and no single one will be dispositive. Moreover, the RBAT is not required to credulously accept assertions from either party.)

B. Increasing Transparency by Providing Attachers With Utility Pole Inspection Information

22. We next amend our pole attachment make-ready rules to require utilities to provide to potential attachers, upon request, the information contained in their most recent cyclical pole inspection reports, or any intervening, periodic reports created before the next cyclical inspection, for the poles covered by a submitted attachment application, including whether any of the affected poles have been ''red tagged'' by the utility for replacement, and the scheduled replacement date or timeframe (if any). (The record demonstrates that utilities conduct inspections of their poles on a multi-year cycle, either as part of normal network management or as required by state law.) In the *Second FNPRM,* the Commission sought comment on requiring utilities to provide more information about their poles to prospective attachers, in order to reduce disputes. (Utilities did not challenge the Commission's general jurisdiction to require them to provide relevant information to prospective attachers, and ACA Connects asserted the Commission has such authority.) Several attaching entities indicated pole inspection information would be helpful in planning deployments. (This requirement applies only in the states that have not certified that they regulate pole attachments themselves. To the extent such reports may include sensitive or confidential network or financial information, we rely upon utilities and attachers to address the issue through redactions or non-disclosure agreements.) We believe this new requirement strikes a reasonable balance between additional transparency for prospective attachers and ensuring the utilities' expenditure of resources is no greater than necessary. As discussed below, however, we also strongly encourage utilities to voluntarily share pole-related information that is reasonably available and that they track in the normal course of business, both before and after receiving attachment applications, and we intend to continue to monitor the record in this proceeding to determine if additional information sharing mandates may be required.

23. For the purposes of the new transparency requirement, a cyclical pole inspection report is any report that a utility creates in the normal course of its business that sets forth the results of the routine inspection of its poles during the utility's normal pole inspection cycle, while a periodic pole inspection report is any report that a utility creates in the normal course of its business that sets forth the results of the inspection of any of its poles outside the utility's normal pole inspection cycle. (Electric Utilities request that the new rule not require utilities to provide periodic pole inspection reports, arguing that the requirement will create confusion and invite disputes. We find that the definition of ''periodic inspection report'' is sufficiently clear and note that no other utility commenters claimed the definition was vague or otherwise problematic. We further find that this requirement is an important aspect of the rule. Cyclical pole inspections typically occur several years apart, sometimes by ten or more years, and periodic inspection reports will contain more recent inspection information. We also decline the Electric Utilities' request to seek further comment on transparency requirements in lieu of adopting a rule on report sharing. We find that the record is sufficient to adopt an information sharing rule at this time and the rule we adopt strikes an appropriate balance between providing attachers with additional helpful information while not being overly resource-intensive for utilities. Indeed, several utility parties are supportive of the new transparency requirement.) We note that this new transparency requirement is consistent with the existing practices of certain utilities to prepare such reports. When asking for information about the status of a utility's poles for a planned buildout, the attacher must submit its information request no earlier than contemporaneously with an attachment application. The utility will have ten business days to respond to the request. (The utility has the same amount of time to determine whether the application is complete.) This should allow sufficient time before the make-ready survey for the attacher to revise or amend its application as may be appropriate based

on the information it receives. (''The term *make-ready* means the modification or replacement of a utility pole, or of the lines or equipment on the utility pole, to accommodate additional facilities on the utility pole.'' After receiving a complete attachment application, a utility conducts a make-ready survey and provides a make-ready cost estimate to the attacher. During the survey stage, ''the pole owner conducts an engineering study to determine whether and where attachment is feasible, and what make-ready is required.'')

24. We recognize that in some situations, the information provided by utilities in their pole inspection reports may lead new attachers to amend their attachment applications. In order to ensure that utilities have enough time to review such applications, in situations when the utility receives an amended attachment application prior to granting or denying the original application, we will allow a utility the option to restart the 45-day period for responding to the application on the merits and conducting the survey. (The option to restart the time period also applies to larger orders that are subject to a 60-day timeframe.) Utilities electing to restart the 45-day application review and survey period in this manner must notify the attacher within 5 business days of receipt of the amended application or by the 45th day after the original application is considered complete, whichever is earlier. (For example, if an amended application was filed on the 42nd day following the utility's determination that the original application was complete, the utility would only have three days, not five business days, to notify the attacher that the utility is restarting the 45-day application review and survey.) To avoid unnecessary delays and costs, we strongly encourage attachers to notify utilities of their intent to file, and to file, amended applications as quickly as possible after receiving a pole inspection report from the utility. We also encourage utilities to exercise their right to restart this 45-day period judiciously and to review amended applications as quickly as possible even when electing to restart the 45-day application review and survey period. (Several parties asked that we require an automatic restart of the 45-day response period or start the application process over in such instances by requiring an attacher to file a new application rather than an amended application. We decline these requests and find that the procedures we adopt are sufficiently tailored to account for the needs of utilities to review amended applications while not needlessly slowing deployment. Under the new rule, utilities will always have the option of electing to restart the 45-day review period; but given that there may be instances where an amendment is minor or otherwise will not require a restart of the 45-day period, we find it reasonable to require utilities to actually review an amended application to determine whether a restart is necessary given the specific circumstances.) Regardless of whether the utility elects to restart the 45-day response period, any additional survey costs necessitated by the amended application, such as a second survey after a survey for the original application has been completed, will be borne by the new attacher consistent with the new attacher's obligation to pay for make-ready costs associated with its application.

25. In connection with the new transparency requirement we adopt in this final rule, we also require utilities to retain copies, in whatever form they were created, of any such cyclical or periodic pole inspection reports they conduct in the normal course of business, until such time as the utility completes a superseding cyclical pole inspection report covering the poles included in the attachment application. In creating these obligations, we reiterate that utilities are required to provide only the information they already possess and track in the normal course of conducting pole inspections at the time of the attacher's request for data. The new rule does not require utilities to collect or create new information for the sole purpose of responding to such requests or to provide all information they may possess on the affected poles outside their pole inspection reports. (Edison Electric Institute contends that ''access to critical infrastructure by non-electric company personnel presents serious safety, reliability, and homeland security hazards,'' and that ''existing law bars electric companies from releasing some information about system infrastructure.'' It does not directly assert, however, that utilities would be barred from disclosing information contained in a pole inspection report. And it notes that most of the information is ''already available'' and an attacher ''can readily learn the condition'' of poles by driving a proposed route. Although we do not know exactly what information utilities may include in their pole inspection reports, we anticipate that legal constraints on disclosure of critical infrastructure information can be addressed, to the extent that they arise, by the parties involved via appropriate redactions or use of a non-disclosure agreement. We do not intend our new rule to override laws precluding disclosure of certain information, but expect utilities to work in good faith to provide potential attachers with the information they can from their pole inspection reports.) We find this new limited requirement achieves a balance between a potential attacher's need for more information about the poles that it plans to use as part of a broadband buildout and the utility's interest in minimizing the burden of mandatory disclosures.

26. We conclude that requiring utilities to provide information about the state of their poles to attachers will help improve the attachment process and potentially reduce disputes. In particular, having such information early in the process will help attachers evaluate whether they want to adjust their plans in light of the poles' conditions. At the same time, we recognize the potential burdens on utilities that would result from imposing a mandate to compile extensive information for every pole attachment application the utility receives. We seek to strike a balance by (1) requiring utilities to provide such information as they already collect in the normal course of inspections done as part of managing their network and poles (which the record indicates include which poles have been identified as needing replacement), rather than having to gather information solely for attachers or from many disparate sources, and (2) tying requests for such information to poles contained in submitted attachment applications.

27. In striking this balance, we agree with utilities that they should not be required by rule to gather and provide extensive pole-related data for every pole attachment application about matters they do not track in the normal course of business through their inspections. The record shows that many utilities do not create specific maintenance or replacement schedules for poles. It also shows that some utilities provide a range of pole-related information—including whether any poles are red-tagged or otherwise identified for replacement—when responding to an attachment application after conducting a make-ready survey. We agree with the commenters asserting that a pre-application survey conducted by the attacher, or a make-ready survey conducted by a utility in response to a specific attachment application, are often the best ways to ensure the potential attacher and utility have up-to-

date, accurate information on the current state of poles. (We recognize that a visual inspection may not necessarily provide all the information an attacher might desire. This supports requiring disclosure of pole inspection reports.) We also agree with Dominion/Xcel, however, that the information contained in general survey or pole inspection reports can be useful to prospective attachers in some cases. Therefore, although we decline at this time to impose broader duties on utilities to collect and provide more expansive pole-related information for every attachment application, we will require utilities to furnish already available information in pole inspection reports concerning specific poles upon request at the time an attachment application is submitted. (Some commenters support the balance struck in this new rule. Electric Utilities, on the other hand, request that any consideration of a rule to require disclosure of pole inspection reports be deferred to a further notice of proposed rulemaking.)

28. While we do not at this time codify a requirement for utilities to provide new attachers with information about poles *prior* to the attacher submitting a pole attachment application, as requested by some commenters, we understand that often utilities share pole information with attachers prior to the application process, particularly information not easily attained through visual inspection. We strongly encourage this pre-application collaboration and cooperation because there is value for both utilities and attachers in having the best available pole information to inform deployment forecasts and attachment requests. Although we recognize that some potential attachers could benefit from obtaining pole-related information prior to submitting an application, we decline to impose this requirement on utilities given that the underlying requests for information would be for preliminary build-out plans that may substantially change. Furthermore, establishing a pre-application duty for utilities would require the Commission to create a new process and timeline prior to the codified make-ready process, which has always been triggered by the filing of an application. Finally, given that prospective attachers also have the ability to gather information about poles on prospective routes through pre-application surveys and visual inspection of poles on a prospective route, we find that imposing an additional pre-application requirement on utilities is not justified at this time. (Through such visual inspection, an attacher typically can learn the age of a pole, whether it has been red tagged, when the most recent inspection occurred, and a pole's load and potential suitability for more attachments. As noted above, however, we also recognize that visual inspection alone may not always provide all the information an attacher may desire, thus supporting the new requirement that utilities provide attachers with cyclical and periodic pole inspection reports. For example, with regard to utility tags on poles, Crown Castle asserts that ''not all poles are appropriately tagged or inspection tags may be missing, damaged, or unable to be interpreted without additional information from the pole owner.'')

29. We reject requests at this time that we mandate a variety of other disclosure requirements on utilities. (Several attachers requested that utilities be required to provide any relevant requested information about their poles that they retain in the ordinary course of business, which would go beyond pole inspection reports. While we encourage parties to voluntarily share information, we find that codifying a broad disclosure requirement for all information collected in the ordinary course of business could force utilities to expend significant resources to gather such information and could lead to additional disputes and complaints related to information sharing.) We agree with utilities that the most relevant information for purposes of an attachment request is whether the poles at issue are available or due for replacement. (Some utilities suspect that the purpose of many of the attachers' requests is only to provide ammunition for rate disputes with utilities, not to improve the attachment process.) For example, some attacher commenters ask the Commission to require utilities to create accessible databases (or establish a single database for all utilities) with information on things like pole age, condition, repair/replacement schedules, location, number of attachments, standard rate structure, and applicable engineering standards. They also ask that utilities be required to provide data from the owners' periodic load analyses for poles; the age, height, class, and condition of poles; and data on current attachments and pending attachment requests for relevant poles. And ACA Connects asks the Commission to require utilities to provide more details in their make-ready cost estimates to support those costs. For the reasons discussed below, we decline to adopt these requirements. With respect to certain financial information requested by some commenters regarding pole rates, we do not adopt new disclosure requirements, but make clear that some financial information is already required to be disclosed under our rules.

30. Before addressing these specific proposals, however, we note some attachers express concern that, by adopting a requirement to provide pole inspection reports but not codifying additional mandates, we may be inadvertently discouraging utilities from voluntarily providing pole-related information before receiving an attachment application, which at least some utilities do today. We stress that our actions in this final rule should not be understood to undermine or disincentivize such voluntary sharing. To the contrary, voluntary sharing of pole-related information is consistent with longstanding Commission policy favoring transparency in the pole attachment context, and we strongly encourage both utilities and attachers to collaborate and voluntarily share information with each other whenever such information is reasonably available and obtained in the normal course of business. (We reject claims that our actions here are inconsistent with the policy of promoting transparency, as Crown Castle asserts. To the contrary, this Order increases transparency by adopting a new disclosure requirement.) Voluntary sharing can be helpful to both attachers and utilities to promote more efficient buildouts by informing deployment forecasts, allowing more accurate applications, and decreasing disputes or delays after an application is submitted. (Such voluntary sharing also is helpful because ''not all pole owners conduct these denominated inspections,'' yet attachers still could benefit from receiving the kind of information that would have been included in such inspections had they occurred.) Having better and more accurate information prior to attachment applications will likely reduce make-ready costs, the frequency and severity of disputes, and improve the efficiency of the attachment process—benefiting both attachers and utilities. We will continue to monitor the record in this proceeding and will take further action if it becomes clear that voluntary information sharing arrangements are insufficiently promoting broadband deployment.

31. *Database(s) of Pole Information.* We decline (1) to require that each utility create an accessible database with an array of data on all its poles, or (2) to establish a single pole-information

database for all utilities. The Commission rejected previous calls for a similar database requirement in 2011, in part based on the large burden outweighing potential benefits. We find that the 2011 reasoning remains valid. In particular, we find that the record continues to demonstrate that the burdens and costs of creating such a database (if a utility does not already have one) would be very large given the number of poles many utilities own or jointly own and the scope of pole data attachers seek, and that the alleged benefits of requiring such a database would be reduced by the new requirement we adopt in this final rule that utilities provide information from their pole inspection reports. Commenters contend that requiring such a pole-related database would help speed deployment by helping attachers plan better and avoid intermediate steps for both attachers and utilities. Utilities, however, assert that due to the very large number of poles they own or co-own and the ever-changing nature of pole networks, maintaining a fully up-to-date database would be almost impossible, and so the information for any given group of poles in a database could easily be out of date when the attacher needs it. One utility also submits that granting access to such voluminous pole information could result in the submission of incorrect applications. We find that the benefits of a database requirement remain speculative at best given how difficult it would be to keep such a large database up-to-date.

32. While some commenters argue that circumstances have changed since 2011, with some state utility commissions adopting database requirements for pole-related information, the states cited by these commenters are limited and, in any event, all regulate pole attachments at the state level pursuant to section 224(c) of the Act. As a result, compliance with pre-existing state-specific database requirements would likely offer little, if any, relief in complying with a newly imposed Federal database requirement. To the extent any utilities may have developed pole-related databases in states that do not regulate pole attachments, the record indicates that attachers are interested in specific types of data, not merely access to existing databases, which would require utilities to absorb additional, and potentially substantial, costs of either adding specific types of new data or searching databases for specific data of interest to attachers. (ACA Connects asserts that many utilities have developed pole-related databases since 2011, but it does not identify utilities that have done so in states that do not regulate pole attachments.) Again, we agree with the utilities that the value of such database information to attachers is highly unlikely to outweigh those burdens, as the information may well be out of date by the time an attacher submits an attachment request. Moreover, any added benefit would likely be minimal in light of the new information-sharing requirement we adopt in this final rule.

33. *Loading Studies.* According to NCTA, some utilities provide and allow attachers to rely on loading studies included in the utilities' cyclical pole inspection reports rather than making the attacher do its own loading study, but other utilities do not. NCTA asserts that ''[w]here such studies have been conducted, pole owners should be required to use that existing analysis rather than forcing a new attacher to incur the expense and delay of performing a duplicative and redundant study.'' We decline to adopt this proposal. To the extent pole inspection reports include loading studies, attachers will have access to such information under the new rule we adopt in this final rule. (In cases where the loading study is not part of the inspection report, we decline, at this time, to codify a requirement for a utility to provide an attacher with a loading study as NCTA requests, but strongly encourage utilities to provide such loading studies when reasonably requested and readily available.) We will not, however, dictate when a utility can require a loading study, as NCTA seems to request, as we continue to believe, consistent with the *2018 Wireline Infrastructure Order,* that such studies ''can be important tools to address safety, reliability, and engineering concerns.'' (NCTA also asserts that a utility should have to bear the cost of a loading analysis where none has been performed but the utility believes a study is necessary before allowing an attachment, and that utilities can instead recover the costs of such loading studies through annual attachment rental fees. As that issue relates to cost recovery rather than transparency, we do not address it here.)

34. *Age, Height, Class, and Condition of Poles.* We reject attachers' request to require utilities to provide data on the age, height, class, and condition of their poles, or the last date the pole was inspected, make-ready was conducted, or a pre-existing violation on the pole was fixed. The utilities state that they either routinely provide this type of data with make-ready estimates, that the information is accessible to attachers through their own pre-application surveys or when the attacher accompanies the utility on a make-ready survey, or that they do not track this data. To the extent utilities' pole inspection reports include such data, that information would be covered by the new transparency requirement we adopt in this final rule and available to attachers upon request after an application is filed. Given that attachers can often obtain this information either from the utility or through their own survey or inspection, we reject any additional requirement for pole condition information beyond that which we have already outlined, but we strongly encourage utilities to share this information when it is readily available and collected in the normal course of business.

35. *Existing Attachments and Pending Attachment Requests.* We also decline to require that utilities provide data on the number of attachments or pending attachment applications for each pole covered by an attachment request. As the utilities explain, pole networks are dynamic and pole conditions frequently change. We find that the record sufficiently demonstrates that attempting to keep a fully up-to-date list of the number of attachments or pending applications on every pole would be a very time-consuming and expensive proposition. (Some attachers also sought to require pole owners to produce information on utility transformers or voltage on a pole or the total attachment load on the pole, but utilities either deny the usefulness of such information or state that they do not track it.) Even if some utilities track this information, requiring them to compile the information and send it across a vast and shifting landscape of attachers and poles—and to keep that information updated—would be a considerable burden. Although attachers assert there would be some value in having this kind of data earlier, even if it is old, we find that, as with the proposed pole attachment database discussed above, any purported benefit is outweighed by the potentially considerable cost utilities would have to bear in complying with such a requirement.

36. *Data Supporting Make-Ready Estimates.* With regard to the request that utilities be required to provide more detailed supporting data in their make-ready estimates, particularly regarding the utility's costs, we again decline to adopt any new requirement. Current rules already require utilities to provide supporting cost details in their make-ready cost estimates. If utilities are not complying with those rules,

attachers remain free to invoke the complaint process or seek mediation.

37. *Financial Records Regarding Poles.* We decline attachers' requests to create new obligations requiring utilities to provide additional financial data regarding poles and attachment rates, including outside plant records (also called continuing property records) as part of the rules being adopted at this time. (Continuing Property Records are ''[o]utside plant records relevant to poles,'' typically ''including a detailed accounting of the units associated with accounts used to report pole plant investment such as vintage height, class, etc.'' Several attachers repeated these requests in later submissions, asking that utilities be required to disclose a range of information related to rates, rather than only the information the utility relied on in computing rates, to enable attachers to, for example, evaluate the validity of utilities' reliance on presumptions in the pole attachment rate formula.) Attachers argue that such a duty for utilities to provide information will reduce rate disputes or make them easier to resolve. Our focus here, however, is on deployment rather than rate disputes. Further, § 1.1404(e) and (f) of the Commission's rules—which we do not alter here—already require that pole owners, upon request of a cable operator or telecommunications carrier, provide the information they have relied on in calculating rates, and information an attacher seeks to rely on in establishing that a rate, term, or condition is not just and reasonable. The Commission has explained that ''it is critical that attaching entities have this information well in advance of executive-level discussions to ensure that those pre-complaint negotiations have a chance of success.'' (NCTA contends the former language in § 1.1404(g) was inadvertently removed in a prior rule revision. We disagree. The Commission sought to ''streamline the rules in [§] 1.1404'' by removing the long list of information specified in that section but did not narrow the scope of information utilities must provide attachers. In light of these existing rules and the policy stated by the Commission in 2018, to the extent an attacher has a specific dispute with a utility, it already can seek and obtain certain financial data from the utility, prior to filing a complaint, under current rules.) We therefore decline to impose a new, broader duty to disclose additional financial records related to poles. (USTelecom, whose members include both pole owners and attachers, argues that imposing a duty beyond current law ''would *not* accelerate broadband deployment or reduce its costs, but would likely have the opposite effect by diverting broadband providers' capital away from their own broadband deployment to subsidize their competitors' builds.'')

IV. Final Regulatory Flexibility Analysis

38. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Second FNPRM.* The Commission sought written public comment on the proposals in the *Second FNPRM,* including comment on the IRFA. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Fourth Report and Order

39. In the *Fourth Report and Order,* the Commission adopts rules and policy changes that will make the pole attachment process faster and cheaper, particularly when poles have to be replaced during broadband buildouts. In the last five years, the Commission took significant steps in setting standards for the discussions between utilities and telecommunications companies about the timing and cost of attaching broadband equipment to utility poles, with the backstop of a robust complaint process when parties cannot agree on the rates, terms, and conditions for pole attachments. In the *Fourth Report and Order,* we adopt rules (1) establishing a new process for the Commission's review and assessment of pole attachment disputes that impede or delay broadband deployment in order to expedite resolution of such disputes, and (2) providing telecommunications companies with information about the status of the utility poles they plan to use as they map out their broadband builds.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

40. There were no comments raised that specifically addressed the proposed rules and policies presented in the *Second FNPRM* IRFA. Nonetheless, the Commission considered the potential impact of the rules proposed in the IRFA on small entities and took steps where appropriate and feasible to reduce the compliance burden for small entities in order to reduce the economic impact of the rules enacted herein on such entities.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

41. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

42. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. (Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.) A ''small-business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

43. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.

44. Next, the type of small entity described as a ''small organization'' is generally any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. (The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C. 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.) Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS. (The IRS Exempt Organization Business Master File (E.O. BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS E.O. BMF data for businesses for the tax year 2020 with revenue less than or equal to $50,000 for Region 1—Northeast Area (58,577), Region 2—Mid-Atlantic and Great Lakes Areas (175,272), and Region 3—Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.)

45. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand. U.S. Census Bureau data from the 2017 Census of Governments indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. (The Census of Governments survey is conducted every five (5) years compiling data for years ending with ''2'' and ''7''.) (Local governmental jurisdictions are made up of general purpose governments (county, municipal, and town or township) and special purpose governments (special districts and independent school districts).) Of this number, there were 36,931 general purpose governments (2,105 county, 18,729 municipal, and 16,097 town and township governments) with populations of less than 50,000 and 12,040 special purpose governments (independent school districts) with enrollment populations of less than 50,000. (While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.) Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of ''small governmental jurisdictions.'' (This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments—independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments—Organizations tbls. 5, 6 & 10.)

1. Internet Access Service Providers

46. *Wired Broadband internet Access Service Providers (Wired ISPs).* (Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.) Providers of wired broadband internet access service include various types of providers except dial-up internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules. Wired broadband internet services fall in the Wired Telecommunications Carriers industry. The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.)

47. Additionally, according to Commission data on internet access services as of June 30, 2019, nationwide there were approximately 2,747 providers of connections over 200 kbps in at least one direction using various wireline technologies. (The technologies used by providers include asymmetric and symmetric digital subscriber line (aDSL and sDSL) (collectively xDSL), Other Wireline, Cable Modem, and fiber to the premises (FTTP).) Other wireline includes: all copper-wire based technologies other than xDSL (such as Ethernet over copper, T–1/DS–1 and T3/DS–1) as well as power line technologies which are included in this category to maintain the confidentiality of the providers.) The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, in light of the general data on fixed technology service providers in the Commission's *2022 Communications Marketplace Report,* we believe that the majority of wireline internet access service providers can be considered small entities.

48. Internet Service Providers (Non-Broadband). Internet access service providers using client-supplied telecommunications connections (*e.g.,* dial-up ISPs) as well as voice over internet protocol (VoIP) service providers using client-supplied telecommunications connections fall in the industry classification of All Other Telecommunications. The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small. For this industry, U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than $25 million. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably.) Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

2. Wireline Providers

49. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of

technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers. (Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.)

50. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Additionally, based on Commission data in the *2022 Universal Service Monitoring Report,* as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

51. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers. (Fixed Local Exchange Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.) The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Additionally, based on Commission data in the *2022 Universal Service Monitoring Report,* as of December 31, 2021, there were 4,590 providers that reported they were fixed local exchange service providers. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

52. *Incumbent Local Exchange Carriers* (*Incumbent LECs*). Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Additionally, based on Commission data in the *2022 Universal Service Monitoring Report,* as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers. Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

53. *Competitive Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers. (Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.) Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Additionally, based on Commission data in the *2022 Universal Service Monitoring Report,* as of December 31, 2021, there were 3,378 providers that reported they were competitive local exchange service providers. Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

54. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Additionally, based on Commission data in the *2022 Universal Service Monitoring Report,* as of December 31,

2021, there were 127 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 109 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

55. *Operator Service Providers* (*OSPs*). Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The closest applicable industry with an SBA small business size standard is Wired Telecommunications Carriers. The SBA small business size standard classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Additionally, based on Commission data in the *2022 Universal Service Monitoring Report,* as of December 31, 2021, there were 20 providers that reported they were engaged in the provision of operator services. Of these providers, the Commission estimates that all 20 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, all of these providers can be considered small entities.

56. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Additionally, based on Commission data in the *2022 Universal Service Monitoring Report,* as of December 31, 2021, there were 90 providers that reported they were engaged in the provision of other toll services. Of these providers, the Commission estimates that 87 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

3. Wireless Providers—Fixed and Mobile

57. The broadband internet access service provider category covered by these new rules may cover multiple wireless firms and categories of regulated wireless services. (This includes, among others, the approximately 800 members of the Wireless internet Service Providers Association (WISPA), including those entities who provide fixed wireless broadband service using unlicensed spectrum. We also consider the impact to these entities for the purposes of this FRFA, by including them under the ''Wireless Providers—Fixed and Mobile'' category.) Thus, to the extent the wireless services listed below are used by wireless firms for broadband internet access service, the actions may have an impact on those small businesses as set forth above and further below. In addition, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that claim to qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments and transfers or reportable eligibility events, unjust enrichment issues are implicated.

58. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Additionally, based on Commission data in the *2022 Universal Service Monitoring Report,* as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

59. *Wireless Communications Services.* Wireless Communications Services (WCS) can be used for a variety of fixed, mobile, radiolocation, and digital audio broadcasting satellite services. Wireless spectrum is made available and licensed for the provision of wireless communications services in several frequency bands subject to part 27 of the Commission's rules. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

60. The Commission's small business size standards with respect to WCS involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in WCS. When bidding credits are adopted for the auction of licenses in WCS frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in the designated entities section in part 27 of the Commission's rules for the specific WCS frequency bands. (The Designated entities sections in subparts D through Q each contain the small business size standards adopted for the auction of the frequency band covered by that subpart.)

61. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an

auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

62. *1670–1675 MHz Services.* These wireless communications services can be used for fixed and mobile uses, except aeronautical mobile. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to these services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

63. According to Commission data as of November 2021, there were three active licenses in this service. (Based on an FCC Universal Licensing System search on November 8, 2021, search parameters: Service Group = All, ''Match only the following radio service(s)'', Radio Service = BC; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.) The Commission's small business size standards with respect to 1670–1675 MHz Services involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For licenses in the 1670–1675 MHz service band, a ''small business'' is defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and a ''very small business'' is defined as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years. The 1670–1675 MHz service band auction's winning bidder did not claim small business status.

64. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

65. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite). The size standard for this industry under SBA rules is that a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Additionally, based on Commission data in the *2022 Universal Service Monitoring Report,* as of December 31, 2021, there were 331 providers that reported they were engaged in the provision of cellular, personal communications services, and specialized mobile radio services. Of these providers, the Commission estimates that 255 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

66. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum encompasses services in the 1850–1910 and 1930–1990 MHz bands. The closest industry with an SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (except Satellite). The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

67. Based on Commission data as of November 2021, there were approximately 5,060 active licenses in the Broadband PCS service. (Based on an FCC Universal Licensing System search on November 16, 2021, search parameters: Service Group = All, ''Match only the following radio service(s)'', Radio Service = CW; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.) The Commission's small business size standards with respect to Broadband PCS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. In auctions for these licenses, the Commission defined ''small business'' as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and a ''very small business'' as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years. Winning bidders claiming small business credits won Broadband PCS licenses in C, D, E, and F Blocks.

68. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

69. *Specialized Mobile Radio Licenses.* Special Mobile Radio (SMR) licenses allow licensees to provide land mobile communications services (other

than radiolocation services) in the 800 MHz and 900 MHz spectrum bands on a commercial basis including but not limited to services used for voice and data communications, paging, and facsimile services, to individuals, Federal Government entities, and other entities licensed under part 90 of the Commission's rules. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to these services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Additionally, based on Commission data in the *2022 Universal Service Monitoring Report,* as of December 31, 2021, there were 95 providers that reported they were of SMR (dispatch) providers. Of this number, the Commission estimates that all 95 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, these 119 SMR licensees can be considered small entities. (We note that there were also SMR providers reporting in the ''Cellular/PCS/SMR'' classification, therefore there are maybe additional SMR providers that have not been accounted for in the SMR (dispatch) classification.)

70. Based on Commission data as of December 2021, there were 3,924 active SMR licenses. (Based on an FCC Universal Licensing System search on December 15, 2021, search parameters: Service Group = All, ''Match radio services within this group'', Radio Service = SMR; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.) However, since the Commission does not collect data on the number of employees for licensees providing SMR services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard. Nevertheless, for purposes of this analysis the Commission estimates that the majority of SMR licensees can be considered small entities using the SBA's small business size standard.

71. *Lower 700 MHz Band Licenses.* The lower 700 MHz band encompasses spectrum in the 698–746 MHz frequency bands. Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including frequency division duplex (FDD)- and time division duplex (TDD)-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

72. According to Commission data as of December 2021, there were approximately 2,824 active Lower 700 MHz Band licenses. (Based on an FCC Universal Licensing System search on December 14, 2021, search parameters: Service Group = All, ''Match only the following radio service(s)'', Radio Service = WY, WZ; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.) The Commission's small business size standards with respect to Lower 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For auctions of Lower 700 MHz Band licenses the Commission adopted criteria for three groups of small businesses. A very small business was defined as an entity that, together with its affiliates and controlling interests, has average annual gross revenues not exceeding $15 million for the preceding three years, a small business was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and an entrepreneur was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $3 million for the preceding three years. In auctions for Lower 700 MHz Band licenses seventy-two winning bidders claiming a small business classification won 329 licenses, twenty-six winning bidders claiming a small business classification won 214 licenses, and three winning bidders claiming a small business classification won all five auctioned licenses.

73. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

74. *Upper 700 MHz Band Licenses.* The upper 700 MHz band encompasses spectrum in the 746–806 MHz bands. Upper 700 MHz D Block licenses are nationwide licenses associated with the 758–763 MHz and 788–793 MHz bands. Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services. (We note that in Auction 73, Upper 700 MHz Band C and D Blocks as well as Lower 700 MHz Band A, B, and E Blocks were auctioned.) Wireless Telecommunications Carriers (*except* Satellite) is the closest industry with an SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Thus, under the SBA size standard, the

Commission estimates that a majority of licensees in this industry can be considered small.

75. According to Commission data as of December 2021, there were approximately 152 active Upper 700 MHz Band licenses. (Based on an FCC Universal Licensing System search on December 14, 2021, search parameters: Service Group = All, ''Match only the following radio service(s)'', Radio Service = WP, WU; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.) The Commission's small business size standards with respect to Upper 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For the auction of these licenses, the Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years, and a ''very small business'' an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Pursuant to these definitions, three winning bidders claiming very small business status won five of the twelve available licenses.

76. *Air-Ground Radiotelephone Service.* Air-Ground Radiotelephone Service is a wireless service in which licensees are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft. A licensee may provide any type of air-ground service (*i.e.,* voice telephony, broadband internet, data, etc.) to aircraft of any type, and serve any or all aviation markets (commercial, government, and general). A licensee must provide service to aircraft and may not provide ancillary land mobile or fixed services in the 800 MHz air-ground spectrum.

77. The closest industry with an SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (except Satellite). The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

78. Based on Commission data as of December 2021, there were approximately four licensees with 110 active licenses in the Air-Ground Radiotelephone Service. (Based on an FCC Universal Licensing System search on December 20, 2021, search parameters: Service Group = All, ''Match only the following radio service(s)'', Radio Service = CG, CJ; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.) The Commission's small business size standards with respect to Air-Ground Radiotelephone Service involve eligibility for bidding credits and installment payments in the auction of licenses. For purposes of auctions, the Commission defined ''small business'' as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and a ''very small business'' as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years. In the auction of Air-Ground Radiotelephone Service licenses in the 800 MHz band, neither of the two winning bidders claimed small business status.

79. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, the Commission does not collect data on the number of employees for licensees providing these services therefore, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

80. *3650–3700 MHz band.* Wireless broadband service licensing in the 3650–3700 MHz band provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (*i.e.,* 3650–3700 MHz). Licensees are permitted to provide services on a non-common carrier and/or on a common carrier basis. Wireless broadband services in the 3650–3700 MHz band fall in the Wireless Telecommunications Carriers (except Satellite) industry with an SBA small business size standard that classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

81. The Commission has not developed a small business size standard applicable to 3650–3700 MHz band licensees. Based on the licenses that have been granted, however, we estimate that the majority of licensees in this service are small internet Access Service Providers (ISPs). As of November 2021, Commission data shows that there were 902 active licenses in the 3650–3700 MHz band. (Based on an FCC Universal Licensing System search on November 19, 2021, search parameters: Service Group = All, ''Match only the following radio service(s)'', Radio Service = NN; Authorization Type =All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.) However, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

82. *Fixed Microwave Services.* Fixed microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. (Auxiliary Microwave Service is governed by part 74 of title 47 of the Commission's Rules. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.) They also include the Upper Microwave Flexible Use Service (UMFUS), Millimeter Wave Service (70/80/90 GHz), Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), 24 GHz

Service, Multiple Address Systems (MAS), and Multichannel Video Distribution and Data Service (MVDDS), where in some bands licensees can choose between common carrier and non-common carrier status. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Thus, under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

83. The Commission's small business size standards with respect to fixed microwave services involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in fixed microwave services. When bidding credits are adopted for the auction of licenses in fixed microwave services frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in part 101 of the Commission's rules for the specific fixed microwave services frequency bands.

84. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

85. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). (The use of the term ''wireless cable'' does not imply that it constitutes cable television for statutory or regulatory purposes.) Wireless cable operators that use spectrum in the BRS often supplemented with leased channels from the EBS, provide a competitive alternative to wired cable and other multichannel video programming distributors. Wireless cable programming to subscribers resembles cable television, but instead of coaxial cable, wireless cable uses microwave channels. (Generally, a wireless cable system may be described as a microwave station transmitting on a combination of BRS and EBS channels to numerous receivers with antennas, such as single-family residences, apartment complexes, hotels, educational institutions, business entities and governmental offices. The range of the transmission depends upon the transmitter power, the type of receiving antenna and the existence of a line-of-sight path between the transmitter or signal booster and the receiving antenna.)

86. In light of the use of wireless frequencies by BRS and EBS services, the closest industry with an SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (except Satellite). The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

87. According to Commission data as December 2021, there were approximately 5,869 active BRS and EBS licenses. (Based on an FCC Universal Licensing System search on December 10, 2021, search parameters: Service Group = All, ''Match only the following radio service(s)'', Radio Service = BR, ED; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.) The Commission's small business size standards with respect to BRS involves eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of BRS licenses, the Commission adopted criteria for three groups of small businesses. A very small business is an entity that, together with its affiliates and controlling interests, has average annual gross revenues exceed $3 million and did not exceed $15 million for the preceding three years, a small business is an entity that, together with its affiliates and controlling interests, has average gross revenues exceed $15 million and did not exceed $40 million for the preceding three years, and an entrepreneur is an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $3 million for the preceding three years. Of the ten winning bidders for BRS licenses, two bidders claiming the small business status won 4 licenses, one bidder claiming the very small business status won three licenses and two bidders claiming entrepreneur status won six licenses. One of the winning bidders claiming a small business status classification in the BRS license auction has an active license as of December 2021. (We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.) We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

88. The Commission's small business size standards for EBS define a small business as an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than $55 million for the preceding five (5) years, and a very small business is an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than $20 million for the preceding five (5) years. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the

context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

4. Satellite Service Providers

89. *Satellite Telecommunications.* This industry comprises firms primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications. Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with $35 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year. Of this number, 242 firms had revenue of less than $25 million. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably.) Additionally, based on Commission data in the *2022 Universal Service Monitoring Report,* as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services. Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

90. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (*e.g.,* dial-up ISPs) or voice over internet protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than $25 million. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably.) Based on this data, the Commission estimates that the majority of ''All Other Telecommunications'' firms can be considered small.

5. Cable Service Providers

91. Because section 706 of the Act requires us to monitor the deployment of broadband using any technology, we anticipate that some broadband service providers may not provide telephone service. Accordingly, we describe below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

92. *Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (*e.g.,* limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers. The SBA small business size standard for this industry classifies firms with annual receipts less than $41.5 million as small. Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year. (The U.S. Census Bureau withheld publication of the number of firms that operated for the entire year to avoid disclosing data for individual companies (see Cell Notes for this category).) Of that number, 149 firms operated with revenue of less than $25 million a year and 44 firms operated with revenue of $25 million or more. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in all categories of revenue less than $500,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably.) Based on this data, the Commission estimates that a majority of firms in this industry are small.

93. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. Based on industry data, there are about 420 cable companies in the U.S. Of these, only seven have more than 400,000 subscribers. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Based on industry data, there are about 4,139 cable systems (headends) in the U.S. Of these, about 639 have more than 15,000 subscribers. Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

94. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, contains a size standard for a ''small cable operator,'' which is a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000. For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 498,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator. (In the *2023 Subscriber Threshold Public Notice,* the Commission determined that there were approximately 49.8 million cable subscribers in the United States at that time using the most reliable source publicly available. This threshold will remain in effect until the Commission issues a superseding Public Notice.) Based on industry data, only six cable system operators have more than 498,000 subscribers. Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither

requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. (The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission's rules.) Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

6. All Other Telecommunications

95. *Electric Power Generators, Transmitters, and Distributors.* The U.S. Census Bureau defines the utilities sector industry as comprised of establishments, primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer. This industry group is categorized based on fuel source and includes Hydroelectric Power Generation, Fossil Fuel Electric Power Generation, Nuclear Electric Power Generation, Solar Electric Power Generation, Wind Electric Power Generation, Geothermal Electric Power Generation, Biomass Electric Power Generation, Other Electric Power Generation, Electric Bulk Power Transmission and Control, and Electric Power Distribution.

96. The SBA has established a small business size standard for each of these groups based on the number of employees which ranges from having fewer than 250 employees to having fewer than 1,000 employees. U.S. Census Bureau data for 2017 indicate that for the Electric Power Generation, Transmission, and Distribution industry there were 1,693 firms that operated in this industry for the entire year. Of this number, 1,552 firms had less than 250 employees. (The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.) Based on this data and the associated SBA size standards, the majority of firms in this industry can be considered small entities.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

97. In the *Fourth Report and Order,* we (1) establish a new process for the Commission's review and assessment of pole attachment disputes that impede or delay broadband deployment in order to expedite resolution of such disputes, and (2) adopt a new requirement that utilities retain copies of their cyclical pole inspection reports and, upon request, provide prospective pole attachers with the information included in the most recent report regarding the poles affected by a prospective attacher's submitted attachment application. Our new requirements are minimally burdensome as they merely require (1) parties seeking to have complaints placed on the Accelerated Docket to submit a form to the newly-established Rapid Broadband Assessment Team (RBAT) that will elicit information relevant to the scope and nature of the dispute and to whether the dispute is appropriate for expedited mediation and/or placement on the Accelerated Docket, and (2) utilities to provide information they already collect in the normal course of business for cyclical pole inspection reports.

98. Parties seeking both RBAT review and assessment of a dispute that a party contends is impeding or delaying deployment of broadband facilities, and inclusion of a proceeding relating to broadband facilities deployment on the Accelerated Docket, the party must first notify the Chief of the Enforcement Bureau's Market Disputes Resolution Division (MDRD) of the request by phone and in writing. This initial notification by phone and in writing would need to be made prior to filing the formal complaint and would constitute the notification required under § 1.736(b). Additionally, the RBAT may require that the parties participate, if appropriate, in pre-filing settlement negotiations or mediation under § 1.737 as a condition for including a matter on the Accelerated Docket. We amend our pole attachment make-ready rules to require utilities to provide to potential attachers, upon request, the information contained in their most recent cyclical pole inspection reports, or any intervening, periodic reports created before the next cyclical inspection, for the poles covered by a submitted attachment application, including whether any of the affected poles have been ''red tagged'' by the utility for replacement, and the scheduled replacement date or timeframe. The record indicates that utilities already prepare such reports, making this new transparency requirement consistent with the existing practices. For these reasons, we believe that small and other utilities will not have an issue complying with the new obligation.

99. The Commission does not have sufficient information on the record to determine whether small entities will be required to hire professionals to comply with its decisions, or to quantify the cost of compliance for small entities with the *Fourth Report and Order.* While some small entities may have some unique burdens, the Commission anticipates the requirements for pole attachment disputes and data collection by utility companies will have minimal cost implications because many of these obligations are consistent with existing Commission regulations to file disputes, and existing practices by utilities to prepare pole inspection reports.

F. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

100. The RFA requires an agency to provide a description of the steps the agency has taken to minimize the significant economic impact on small entities including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

101. The Commission took steps to minimize significant economic impact on small entities and considered alternatives to new rules and processes adopted in the *Fourth Report and Order* that may impact small entities. By establishing the RBAT, we addressed commenters' request that we expedite the resolution of pole attachment disputes, the delay of which may impose greater harm on small providers. In considering alternatives to the rules, we declined to adopt certain proposals that are burdensome, unnecessary, or would impose significant costs on utilities with little or no benefit to broadband deployment. For example, we agreed with utilities that they should not be required to gather and provide pole-related data for matters they do not track in the normal course of business through their inspections. We also declined to require that small and other utilities provide new attachers with information about poles prior to the attacher submitting an application because this data would be speculative and the build-out may never occur. Additionally, we declined to establish a

single pole-information database or require each utility to create a database of all its poles. Similar to our prior decisions on this matter, the record demonstrates that the burdens and costs of creating such a database are considerable given that many utilities own or jointly own poles. Further, the scope of pole data attachers seek exists in information from pole inspection reports we require small and other utility companies to provide in the *Fourth Report and Order.* We considered and declined to require small and other utilities to provide financial data regarding poles and attachment rates because this would be overly burdensome for the utilities. We also considered but declined to require small and other utilities to provide information on the age or condition of the poles, or number of current or pending attachment applications for each pole because it could be burdensome, unnecessary, or unfeasible in some cases, and would impose significant costs on utilities with little or no benefit to broadband deployment. Finally, we declined to require small and other utilities to provide more detailed supporting data in their make ready estimates because the current complaint process should be sufficient to address a potential dispute on this matter.

G. Report to Congress

102. The Commission will send a copy of the *Fourth Report and Order,* including the FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Fourth Report and Order and Declaratory Ruling,* including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Fourth Report and Order* (or summaries thereof) will also be published in the **Federal Register**.

V. Procedural Matters

103. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in the Fourth Report and Order on small entities. The FRFA is set forth herein.

104. *Congressional Review Act.* The Commission will send a copy of the Fourth Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

105. *Paperwork Reduction Act.* This document may contain proposed new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. Specifically, the rules adopted in 47 CFR 1.1411, 1.1415, and 1.1416 may require new or modified information collections. All such new or modified information collection requirements will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. In this document, we describe several steps we have taken to minimize the information collection burdens on small entities.

VI. Ordering Clauses

106. Accordingly, *it is ordered* that pursuant to sections 1–4, 201, 202, 224, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–54, 201, 202, 224, and 303(r), the Fourth Report and Order and Declaratory Ruling hereby *is adopted* and part 1 of the Commission's Rules, 47 CFR part 1, *is amended* as set forth in Appendix A of the Fourth Report and Order.

107. *It is further ordered* that the Fourth Report and Order shall become effective 30 days after publication in the **Federal Register**, except that the amendments to § 1.1411(c)(4) and new § 1.1415, 47 CFR 1.1411(c)(4), 1.1415, which may contain new or modified information collection requirements, will not become effective until the Office of Management and Budget completes review of any information collection requirements that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act. The Commission directs the Wireline Competition Bureau to announce the effective date for § 1.1411(c)(4) and new § 1.1415 by subsequent Public Notice.

108. *It is further ordered* that, pursuant to 47 CFR 1.4(b)(1), the period for filing petitions for reconsideration or petitions for judicial review of the Fourth Report and Order will commence on the date that a summary of the Fourth Report and Order is published in the **Federal Register**, and the period for filing petitions for reconsideration or petitions for judicial review of the Declaratory Ruling will commence upon release of the Declaratory Ruling.

109. *It is further ordered* that the Commission's Office of the Secretary, *shall send* a copy of the Fourth Report and Order and Declaratory Ruling, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

110. *It is further ordered* that the Office of the Managing Director, Performance Evaluation and Records Management, *shall send* a copy of the Fourth Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

The Federal Communications Commission amends part 1 of title 47 of the Code of Federal Regulations as follows:

PART 1—PRACTICE AND PROCEDURE

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461.

■ 2. Delayed indefinitely, amend § 1.1411 by adding paragraph (c)(4) to read as follows:

§ 1.1411 Timeline for access to utility poles.

* * * * *

(c) * * *

(4) *Information from cyclical pole inspection reports.* (i) Upon submitting its attachment application, a new attacher may request in writing that the utility provide, as to the poles covered by such attachment application, the information regarding those poles contained in the utility's most recent cyclical pole inspection reports, or, if available, any more recent pole inspection report. The utility shall

provide the new attacher with this information within ten (10) business days of the new attacher's written request.

(ii) Utilities shall retain copies of their pole inspection reports, in the form they are created, until a superseding report covering the poles included in the attachment application is completed.

(iii) For purposes of this section, a cyclical pole inspection report is any report that a utility creates in the normal course of its business that sets forth the results of a routine inspection of its poles during the utility's normal pole inspection cycle.

(iv) After requesting and receiving pole inspection information from a utility related to poles covered by its application, a new attacher may amend an attachment application at any time until the utility grants or denies the original application.

(A) A utility that receives such an amended attachment application may, at its option, restart the 45-day period (or 60-day period for larger orders) for responding to the application and conducting the survey.

(B) A utility electing to restart the 45-day period (or 60-day period for larger orders) shall notify the attacher of its intent to do so within five (5) business days of receipt of the amended application or by the 45th day (or 60th day, if applicable) after the original application is considered complete, whichever is earlier.

* * * * *

§ 1.1415 [Redesignated as § 1.1416]

■ 3. Redesignate § 1.1415 as § 1.1416.

■ 4. Delayed indefinitely, add a new § 1.1415 to read as follows:

§ 1.1415 Dispute resolution procedures for pole attachment disputes that impede or delay broadband deployment; functions of the Rapid Broadband Assessment Team.

(a) An inter-bureau team, to be known as the Rapid Broadband Assessment Team (RBAT), shall be established to prioritize and expedite the resolution of pole attachment disputes that are alleged to impede or delay the deployment of broadband facilities and to provide coordinated review and assessment of such disputes. The RBAT shall consist of one or more staff from the Enforcement Bureau and one or more staff from the Wireline Competition Bureau. Senior staff in the Enforcement Bureau and the Wireline Competition Bureau shall designate individuals from their respective bureaus to serve on the RBAT.

(b) The RBAT shall prioritize the resolution of a pole attachment dispute that a party seeking RBAT review has alleged is impeding or delaying an active broadband deployment project, including where the party is also seeking placement of the dispute on the Accelerated Docket pursuant to § 1.736. The RBAT shall gather and promptly review all pertinent information submitted by the parties and shall have discretion to decide the most appropriate process for resolving the dispute, including recommending an RBAT-supervised mediation process pursuant to § 1.737, use of the Accelerated Docket, and/or other appropriate action. Although RBAT-supervised mediation is generally voluntary, the RBAT may require that the parties participate in pre-filing settlement negotiations or mediation under § 1.737 as a condition for including a matter on the Accelerated Docket. The RBAT may recommend to the parties use of the Accelerated Docket where it determines, based upon a totality of the criteria outlined in paragraph (e) of this section, that a complaint, or a portion of a complaint, is suitable for inclusion on the Accelerated Docket.

(c) A party to a pole attachment dispute, prior to filing a formal complaint, may request RBAT review and assessment of such dispute if the party believes the dispute is impeding or delaying the deployment of a broadband facilities project. The party seeking RBAT review and assessment shall first notify the Chief of the Enforcement Bureau's Market Disputes Resolution Division (MDRD) by phone and in writing of the request. The MDRD Chief shall direct the requesting party to the location of a form on the MDRD website—FCC–5653, Request for RBAT Review and Assessment—and to instructions for completing and electronically transmitting the form to the RBAT.

(d) Upon receipt of the completed Request for RBAT Review and Assessment, the RBAT shall schedule a meeting, through a manner of the RBAT's choosing, with all parties as soon as practicable. The RBAT may request a written response from the other party or parties to the dispute with respect to one or more issues raised by the party seeking RBAT review. The RBAT also may request that the party seeking RBAT review or any other party or parties to the dispute provide the RBAT with documentation or other information relevant to the dispute. In the initial meeting, or shortly thereafter, the RBAT shall provide guidance and advice to the parties on the most effective means of resolving their dispute, including RBAT-supervised mediation pursuant to § 1.737; use of the Accelerated Docket; and/or any other appropriate action. If the parties seek RBAT-supervised mediation, the MDRD Chief, in consultation with the RBAT, may waive the procedures or requirements of § 1.737 as appropriate in this context, or as needed in light of the facts or circumstances of a particular case.

(e) The RBAT shall have discretion to decide whether a complaint, or a portion of a complaint, involving a dispute that a party alleges to be impeding or delaying the deployment of broadband facilities is suitable for inclusion on the Accelerated Docket pursuant to § 1.736. In determining whether to accept a complaint, or a portion of a complaint, on the Accelerated Docket, the RBAT shall base its decision on a totality of the factors from the following list:

(1) Whether the prospective complainant states a claim for violation of the Act, or a Commission rule or order that falls within the Commission's jurisdiction;

(2) Whether the expedited resolution of a particular dispute or category of disputes appears likely to advance the deployment of broadband facilities or services, especially in an unserved or underserved area;

(3) Whether the parties to the dispute have exhausted all reasonable opportunities for settlement during any staff-supervised mediation;

(4) The number and complexity of the issues in dispute;

(5) Whether the dispute raises new or novel issues versus settled interpretations of rules or policies;

(6) The likely need for, and complexity of, discovery;

(7) The likely need for expert testimony;

(8) The ability of the parties to stipulate to facts;

(9) Whether the parties have already assembled relevant evidence bearing on the disputed facts;

(10) Willingness of the prospective complainant to seek a ruling on a subset of claims or issues (*e.g.,* threshold or ''test cases''); and

(11) Such other factors as the RBAT, within its discretion, may deem appropriate and conducive to the prompt and fair adjudication of the complaint proceeding.

[FR Doc. 2024–00416 Filed 1–11–24; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Part 538

[GSAR Case 2022–G514; Docket No. GSA–GSAR–2023–0009; Sequence No. 1]

RIN 3090–AK58

General Services Administration Acquisition Regulation; Standardizing Federal Supply Schedule Clause and Provision Prescriptions

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration is issuing this final rule amending the General Services Administration Acquisition Regulation (GSAR) to clarify when GSAR clauses apply to Federal Supply Schedule contracts.

DATES: *Effective:* February 12, 2024.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Adina Torberntsson, Procurement Analyst, at *gsarpolicy@gsa.gov* or 720–475–0568. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at *gsaregsec@gsa.gov* or 202–501–4755. Please cite GSAR Case 2022–G514.

SUPPLEMENTARY INFORMATION:

I. Background

GSA published a proposed rule in the **Federal Register** at 88 FR 15941 on March 15, 2023 to amend the GSAR to address when the GSAR clauses apply to Federal Supply Schedule contracts established by a delegated agency.

The GSA Schedule, also known as Federal Supply Schedule (FSS), and/or Multiple Award Schedule (MAS), is a long-term governmentwide contract with commercial companies that provide access to millions of commercial products and services at fair and reasonable prices to the Federal Government. GSA may delegate certain responsibilities to other agencies (*i.e.*, GSA has delegated authority to the Department of Veterans Affairs (VA) to procure medical supplies under the VA Federal Supply Schedules Program).

Such delegation provides the authorized agency autonomy over their resulting contract. The contract is published on the FSS website, and often looks like every other available FSS contract apart from the naming convention. Contracts administered solely by GSA have a ''GS'' naming convention.

This change will streamline the prescription language. Prescription language is the language that instructs when a clause is to be applied, when establishing a Schedule contract.

II. Discussion and Analysis

Analysis of Public Comments

GSA provided the public a 60-day comment period (March 15, 2023, to May 15, 2023). GSA did not receive any comments from the public.

Summary of Changes

GSA did not make any significant changes, or changes of any kind, since publication of the proposed rule.

III. Expected Impact of the Rule

This final rule will ensure GSA's contracting officers are using the clauses correctly, clarifies how GSA's delegation to other Government agencies work, provides instruction on how to document the contract file, and the procedures for requesting a deviation. This change will have no impact on the approximately 13,000 FSS contractors already using the existing clauses. The changes do not alter the manner in which the contractors conduct business.

IV. Executive Orders 12866, 13563 and 14094

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 14094 (*Modernizing Regulatory Review*) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in E.O. 12866 and E.O. 13563. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) has determined that this is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a ''major rule'' may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The General Services Administration will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. OIRA has determined this rule is not to be a ''major rule'' under 5 U.S.C. 804.

VI. Regulatory Flexibility Act

GSA does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the described changes clarify the language and only slightly modify the current text. The meaning behind the changed text remains the same, and therefore any burden would have been identified previously. However, a Final Regulatory Flexibility Analysis (FRFA) has been prepared. The FRFA has been prepared consistent with the criteria of 5 U.S.C. 604 and is summarized as follows:

The objective of the final rule is to improve the understanding of delegation and coordination expectations of FSS policies for delegated agencies. There were no comments submitted and therefore no significant issues raised by the public in response to the initial regulatory flexibility analysis.

Title 40 of the United States Code (U.S.C.) Section 121 authorizes GSA to issue regulations, including the GSAR, to control the relationship between GSA and contractors. In addition, 41 U.S.C. 152 provides GSA authority over the FSS program.

The final rule applies to large and small businesses, which are awarded FSS contracts. Information generated from the System for Award Management (SAM), for Fiscal Year 2022 has been used as the basis for estimating the number of contractors that may be involved. Specifically, FSS contracts for delegated agencies (*i.e.,* Department of Veteran Affairs) were analyzed. Examination of this data revealed 1,700 applicable FSS contracts were awarded. Of these 1,700 new awards, 1,417 (83 percent) contract awards were to small business entities.

The final rule does not change reporting, recordkeeping, or other compliance requirements for FSS contracts. The rule merely clarifies requirements currently in use in FSS solicitations and contracts, and does not implement new or changed requirements.

The final rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known alternatives to this final rule which would accomplish the stated objectives. This rule does not initiate or impose any new administrative or performance requirements on small business

contractors because the policies are already being followed. The final rule merely clarifies language in the GSAR to make it more accessible to the reader by removing references to outdated clauses or excessive language.

The Regulatory Secretariat Division will be submitting a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the Regulatory Secretariat Division.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 538

Government procurement.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy, General Services Administration.

Therefore, GSA amends 48 CFR part 538 as set forth below:

PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

■ 1. The authority citation for part 538 continues to read as follows:

Authority: 40 U.S.C. 121(c).

■ 2. Add sections 538.000 and 538.001 to read as follows:

538.000 Scope of part.

(a) This part prescribes policies and procedures for contracting for supplies and services under the Federal Supply Schedule (FSS) program. GSA may delegate certain responsibilities for other agency acquisition programs as they relate to the establishment of individual federal supply schedules.

(b) The authority of other agencies to award FSS contracts can only be accomplished through delegation from GSA. An agency delegated authority by GSA to award contracts under the FSS program is responsible for complying with GSA regulations and policies that apply to the FSS program, unless an exception is approved by GSA (see 538.001).

538.001 General.

If a policy, regulation, or clause is identified as not applicable or in conflict to what is delegated by GSA, the delegated agency shall submit a determination and finding supporting the rationale as to why it does not apply, or is in conflict, in accordance with the delegation that was already received from GSA. The determination and finding must be approved by the GSA Senior Procurement Executive, the Commissioner of the Federal Acquisition Service (FAS) or a designee.

■ 3. Add section 538.201 to subpart 538.2 to read as follows:

538.201 Coordination requirements.

GSA will coordinate with other agencies who administer FSS contracts specific to their delegated authority (*i.e.,* the Department of Veterans Affairs). Coordination will ensure adherence to policies and procedures at the program level, such as providing guidance on approved exceptions (see 538.001).

■ 4. Revise section 538.273 to read as follows:

538.273 FSS solicitation provisions and contract clauses.

The following clauses and provisions apply to FSS solicitations and contracts, unless otherwise excepted (see 538.001) or as otherwise stated below. For example, if only used in solicitations, the prescription will clearly state this. If the language does not specify ''solicitations'' then the clause applies to both FSS solicitations and contracts.

(a) Insert the following provisions in FSS solicitations:

(1) 552.238–70, Cover Page for Worldwide Federal Supply Schedules. Use in all FSS solicitations.

(2) 552.238–71, Notice of Total Small Business Set-Aside. Use in FSS solicitations containing special item numbers (SINs) that are set aside for small business.

(3) 552.238–72, Information Collection Requirements. Use in all FSS solicitations.

(b) Insert the following clauses and provisions in FSS solicitations and contracts as an addendum to FAR 52.212–1, Instructions to Offerors—Commercial Products and Commercial Services:

(1) 552.238–73, Identification of Electronic Office Equipment Providing Accessibility for Individuals with Disabilities. the Handicapped. Use only in FSS solicitations for electronic office equipment.

(2) 552.238–74, Introduction of New Supplies/Services (INSS). Only for those solicitations allowing the introduction of new supplies/services. Note: GSA Form 1649, Notification of Federal Supply Schedule Improvement, may be required if revising a Special Item Number (SIN).

(c) Insert the following provisions in FSS solicitations as an addendum to FAR 52.212–2, Evaluation—Commercial Products and Commercial Services:

(1) 552.238–75, Evaluation—Commercial Products and Commercial Services (Federal Supply Schedule).

(2) 552.238–76, Use of Non-Government Employees to Review Offers. Use only in FSS solicitations when non-government employees may be utilized to review solicitation responses.

(d) Insert the following clauses in FSS solicitations and contracts as an addendum to Clause FAR 52.212–4, Contract Terms and Conditions—Commercial Products and Commercial Services:

(1) 552.238–77, Submission and Distribution of Authorized Federal Supply Schedule Price Lists.

(2) 552.238–78, Identification of Products that have Environmental Attributes. Use only in solicitations and contracts that contemplate products with environmental attributes.

(3) 552.238–79, Cancellation.

(4) 552.238–80, Industrial Funding Fee and Sales Reporting. Use Alternate I for FSS with Transactional Data Reporting requirements.

(5) 552.238–81, Price Reductions. Use Alternate I for FSS with Transactional Data Reporting requirements.

(6) 552.238–82, Modifications (Federal Supply Schedules).

(i) Use Alternate I for FSS that only accept eMod.

(ii) Use Alternate II for FSS with Transactional Data Reporting requirements.

(7) 552.238–83, Examination of Records by GSA (Federal Supply Schedules).

(8) 552.238–84, Discounts for Prompt Payment.

(9) 552.238–85, Contractor's Billing Responsibilities.

(10) 552.238–86, Delivery Schedule. Use only for supplies.

(11) 552.238–87, Delivery Prices.

(12) 552.238–88, GSA Advantage!®. This clause is not required for the Department of Veterans Affairs Federal Supply Schedules.

(13) 552.238–89, Deliveries to the U.S. Postal Service. Use only for mailable articles when delivery to a U.S. Postal Service (USPS) facility is contemplated.

(14) 552.238–90, Characteristics of Electric Current. Use only when the supply of equipment which uses electrical current is contemplated.

(15) 552.238–91, Marking and Documentation Requirements for Shipping. Use only for supplies when the need for outlining the minimum information and documentation required for shipping is contemplated.

(16) 552.238–92, Vendor Managed Inventory (VMI) Program. Use only for supplies when a VMI Program is contemplated.

(17) 552.238–93, Order Acknowledgement. Use only for supplies.

(18) 552.238–94, Accelerated Delivery Requirements. Use only for supplies.

(19) 552.238–95, Separate Charge for Performance Oriented Packaging (POP). Use only for products defined as hazardous under Federal Standard No. 313.

(20) 552.238–96, Separate Charge for Delivery within Consignee's Premises. Use only for supplies when allowing offerors to propose separate charges for deliveries within the consignee's premises.

(21) 552.238–97, Parts and Service.

(22) 552.238–98, Clauses for Overseas Coverage. Use only when overseas acquisition is contemplated. Choose the most appropriate clause(s) to the contract scenario. For example there are multiple free on board (F.o.b.) clauses. Select those that apply best to what is being procured. The following clauses and provisions shall also be inserted in full text, when applicable.

(i) FAR 52.214–34 Submission of Offers in the English Language.

(ii) FAR 52.214–35 Submission of Offers in U.S. Currency.

(iii) 552.238–90 Characteristics of Electric Current.

(iv) 552.238–91 Marking and Documentation Requirements for Shipping.

(v) 552.238–97 Parts and Service.

(vi) 552.238–99 Delivery Prices Overseas.

(vii) 552.238–100 Transshipments.

(viii) 552.238–101 Foreign Taxes and Duties.

(ix) FAR 52.247–29 F.o.b Origin.

(x) FAR 52.247–34 F.o.b. Destination.

(xi) FAR 52.247–48 F.o.b. Destination—Evidence of Shipment.

(23) 552.238–99, Delivery Prices Overseas. Use only when overseas acquisition is contemplated.

(24) 552.238–100, Transshipments. Use only when overseas acquisition is contemplated.

(25) 552.238–101, Foreign Taxes and Duties. Use only when overseas acquisition is contemplated.

(26) 552.238–102, English Language and U.S. Dollar Requirements.

(27) 552.238–103, Electronic Commerce. This clause is not required for Department of Veterans Affairs Federal Supply Schedules.

(28) 552.238–104, Dissemination of Information by Contractor.

(29) 552.238–105, Deliveries Beyond the Contractual Period—Placing of Orders.

(30) 552.238–106, Interpretation of Contract Requirements.

(31) 552.238–107, Export Traffic Release (Supplies). Use in FSS solicitations and contracts for supplies. This clause is not required for vehicles.

(32) 552.238–108, Spare Parts Kit. Use only for products requiring spare part kits. This information is to be specified at the order level.

(33) 552.238–109, Authentication Supplies and Services. Use only for information technology associated with the Homeland Security Presidential Directive 12 (HSPD–12).

(34) 552.238–110, Commercial Satellite Communication (COMSATCOM) Services. Use only for COMSATCOM services.

(35) 552.238–111, Environmental Protection Agency Registration Requirement. Use only for supplies when products may require registration with the Environmental Protection Agency.

(36) 552.238–116, Option to Extend the Term of the FSS Contract. Use when appropriate.

(e) Insert the following fill-in information within the blank of paragraph (d) of FAR clause 52.216–22, Indefinite Quantity: ''the completion of customer order, including options, 60 months following the expiration of the FSS contract ordering period''.

[FR Doc. 2024–00519 Filed 1–11–24; 8:45 am]

BILLING CODE 6820–61–P

SURFACE TRANSPORTATION BOARD

49 CFR Part 1022

[Docket No. EP 716 (Sub-No. 9)]

Civil Monetary Penalties—2024 Adjustment

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board) is issuing a final rule to implement the annual inflationary adjustment to its civil monetary penalties, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: This final rule is effective January 12, 2024.

FOR FURTHER INFORMATION CONTACT: Amy Ziehm at (202) 245–0391. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245–0245.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), enacted as part of the Bipartisan Budget Act of 2015, Public Law 114–74, 701, 129 Stat. 584, 599–601, requires agencies to adjust their civil penalties for inflation annually, beginning on July 1, 2016, and no later than January 15 of every year thereafter. In accordance with the 2015 Act, annual inflation adjustments are to be based on the percent change between the Consumer Price Index for all Urban Consumers (CPI–U) for October of the previous year and the October CPI–U of the year before that. Penalty level adjustments should be rounded to the nearest dollar.

II. Discussion

The statutory definition of civil monetary penalty covers various civil penalty provisions under the Rail (Part A); Motor Carriers, Water Carriers, Brokers, and Freight Forwarders (Part B); and Pipeline Carriers (Part C) provisions of the Interstate Commerce Act, as amended. The Board's civil (and criminal) penalty authority related to rail transportation appears at 49 U.S.C. 11901–11908. The Board's penalty authority related to motor carriers, water carriers, brokers, and freight forwarders appears at 49 U.S.C. 14901–14916. The Board's penalty authority related to pipeline carriers appears at 49 U.S.C. 16101–16106.[1] The Board has regulations at 49 CFR pt. 1022 that codify the method set forth in the 2015 Act for annually adjusting for inflation the civil monetary penalties within the Board's jurisdiction.

As set forth in this final rule, the Board is amending 49 CFR part 1022 to make an annual inflation adjustment to the civil monetary penalties in conformance with the requirements of the 2015 Act. The adjusted penalties set forth in the rule will apply only to violations that occur after the effective date of this regulation.

In accordance with the 2015 Act, the annual adjustment adopted here is calculated by multiplying each current penalty by the cost-of-living adjustment factor of 1.03241, which reflects the percentage change between the October 2023 CPI–U (307.671) and the October 2022 CPI–U (298.012). The table at the end of this decision shows the statutory citation for each civil penalty, a description of the provision, the adjusted statutory civil penalty level for 2023, and the adjusted statutory civil penalty level for 2024.

[1] The Board also has various criminal penalty authority, enforceable in a federal criminal court. Congress has not, however, authorized federal agencies to adjust statutorily prescribed criminal penalty provisions for inflation, and this rule does not address those provisions.

III. Final Rule

The final rule set forth at the end of this decision is being issued without notice and comment pursuant to the rulemaking provision of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), which does not require that process ''when the agency for good cause finds'' that public notice and comment are ''unnecessary.'' Here, Congress has mandated that the agency make an annual inflation adjustment to its civil monetary penalties. The Board has no discretion to set alternative levels of adjusted civil monetary penalties, because the amount of the inflation adjustment must be calculated in accordance with the statutory formula. Given the absence of discretion, the Board has determined that there is good cause to promulgate this rule without soliciting public comment and to make this regulation effective immediately upon publication.

IV. Regulatory Flexibility Statement

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601–612, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because the Board has determined that notice and comment are not required under the APA for this rulemaking, the requirements of the RFA do not apply.

V. Congressional Review Act

Pursuant to the Congressional Review Act, 5 U.S.C. 801–808, the Office of Information and Regulatory Affairs has designated this rule as a non-major rule, as defined by 5 U.S.C. 804(2).

VI. Paperwork Reduction Act

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521.

List of Subjects in 49 CFR Part 1022

Administrative practice and procedures, Brokers, Civil penalties, Freight forwarders, Motor carriers, Pipeline carriers, Rail carriers, Water carriers.

It is ordered:

1. The Board amends its rules as set forth in this decision. Notice of the final rule will be published in the **Federal Register**.

2. This decision is effective on its date of publication in the **Federal Register**.

Decided: January 9, 2024.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz. Board Member Primus concurred with a separate expression.

BOARD MEMBER PRIMUS, concurring:

When the Board adjusted its civil monetary penalties last year, I wrote separately to express concern about the adequacy of the penalties afforded by statute. *Civ. Monetary Penalties—2023 Adjustment,* EP 716 (Sub-No. 8) (STB served Jan. 13, 2023), slip op. at 3–4 (Member Primus concurring). That concern remains today. The Board's decision, consistent with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, makes minor adjustments to its civil penalties—for example, increasing the penalty in 49 U.S.C. 11901(a) from $9,413 to $9,718. For the reasons I stated last year, those penalties are unlikely to provide the deterrent effect intended by Congress, and Congress should address this inadequacy.

Kenyatta Clay,

Clearance Clerk.

For the reasons set forth in the preamble, part 1022 of title 49, chapter X, of the Code of Federal Regulations is amended as follows:

PART 1022—CIVIL MONETARY PENALTY INFLATION ADJUSTMENT

■ 1. The authority citation for part 1022 continues to read as follows:

Authority: 5 U.S.C. 551–557; 28 U.S.C. 2461 note; 49 U.S.C. 11901, 14901, 14903, 14904, 14905, 14906, 14907, 14908, 14910, 14915, 14916, 16101, 16103.

■ 2. Revise § 1022.4(b) to read as follows:

§ 1022.4 Cost-of-living adjustments of civil monetary penalties.

* * * * *

(b) The cost-of-living adjustment required by the statute results in the following adjustments to the civil monetary penalties within the jurisdiction of the Board:

TABLE 1 TO PARAGRAPH (b)

U.S. Code citation	Civil monetary penalty description	2023—Penalty amount EP 716_8 (2023)	2024—Adjusted penalty amount EP 716_9 (2024)
Rail Carrier			
49 U.S.C. 11901(a)	Unless otherwise specified, maximum penalty for each knowing violation under this part, and for each day.	$9,413	$9,718
49 U.S.C. 11901(b)	For each violation under § 11124(a)(2) or (b)	942	973
49 U.S.C. 11901(b)	For each day violation continues	48	50
49 U.S.C. 11901(c)	Maximum penalty for each knowing violation under §§ 10901–10906	9,413	9,718
49 U.S.C. 11901(d)	For each violation under §§ 11123 or 11124(a)(1)	187–942	193–973
49 U.S.C. 11901(d)	For each day violation continues	94	97
49 U.S.C. 11901(e)(1), (4)	For each violation under §§ 11141–11145, for each day	942	973
49 U.S.C. 11901(e)(2), (4)	For each violation under § 11144(b)(1), for each day	187	193
49 U.S.C. 11901(e)(3)–(4)	For each violation of reporting requirements, for each day	187	193
Motor and Water Carrier			
49 U.S.C. 14901(a)	Minimum penalty for each violation and for each day	1,288	1,330
49 U.S.C. 14901(a)	For each violation under §§ 13901 or 13902(c)	12,883	13,301
49 U.S.C. 14901(a)	For each violation related to transportation of passengers	32,208	33,252
49 U.S.C. 14901(b)	For each violation of the hazardous waste rules under § 3001 of the Solid Waste Disposal Act.	25,767–51,534	26,602–53,204

TABLE 1 TO PARAGRAPH (b)—Continued

U.S. Code citation	Civil monetary penalty description	2023—Penalty amount	2024—Adjusted penalty amount
		EP 716_8 (2023)	EP 716_9 (2024)
49 U.S.C. 14901(d)(1)	Minimum penalty for each violation of household good regulations, and for each day.	1,881	1,942
49 U.S.C. 14901(d)(2)	Minimum penalty for each instance of transportation of household goods if broker provides estimate without carrier agreement.	18,826	19,436
49 U.S.C. 14901(d)(3)	Minimum penalty for each instance of transportation of household goods without being registered.	47,061	48,586
49 U.S.C. 14901(e)	Minimum penalty for each violation of a transportation rule	3,765	3,887
49 U.S.C. 14901(e)	Minimum penalty for each additional violation	9,413	9,718
49 U.S.C. 14903(a)	Maximum penalty for undercharge or overcharge of tariff rate, for each violation.	188,257	194,359
49 U.S.C. 14904(a)	For first violation, rebates at less than the rate in effect	376	388
49 U.S.C. 14904(a)	For all subsequent violations	472	487
49 U.S.C. 14904(b)(1)	Maximum penalty for first violation for undercharges by freight forwarders.	942	973
49 U.S.C. 14904(b)(1)	Maximum penalty for subsequent violations	3,765	3,887
49 U.S.C. 14904(b)(2)	Maximum penalty for other first violations under § 13702	942	973
49 U.S.C. 14904(b)(2)	Maximum penalty for subsequent violations	3,765	3,887
49 U.S.C. 14905(a)	Maximum penalty for each knowing violation of § 14103(a), and knowingly authorizing, consenting to, or permitting a violation of § 14103(a) or (b).	18,826	19,436
49 U.S.C. 14906	Minimum penalty for first attempt to evade regulation	2,577	2,661
49 U.S.C. 14906	Minimum amount for each subsequent attempt to evade regulation	6,441	6,650
49 U.S.C. 14907	Maximum penalty for recordkeeping/reporting violations	9,413	9,718
49 U.S.C. 14908(a)(2)	Maximum penalty for violation of § 14908(a)(1)	3,765	3,887
49 U.S.C. 14910	When another civil penalty is not specified under this part, for each violation, for each day.	942	973
49 U.S.C. 14915(a)(1)–(2)	Minimum penalty for holding a household goods shipment hostage, for each day.	14,960	15,445
49 U.S.C. 14916(c)(1)	Maximum penalty for each knowing violation under § 14916(a) for unlawful brokerage activities.	12,883	13,301
Pipeline Carrier			
49 U.S.C. 16101(a)	Maximum penalty for violation of this part, for each day	9,413	9,718
49 U.S.C. 16101(b)(1), (4)	For each recordkeeping violation under § 15722, each day	942	973
49 U.S.C. 16101(b)(2), (4)	For each inspection violation liable under § 15722, each day	187	193
49 U.S.C. 16101(b)(3)–(4)	For each reporting violation under § 15723, each day	187	193
49 U.S.C. 16103(a)	Maximum penalty for improper disclosure of information	1,881	1,942

[FR Doc. 2024–00592 Filed 1–11–24; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 230306–0065; RTID 0648–XD642]

Fisheries of the Exclusive Economic Zone off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from vessels using jig gear to catcher vessels less than 60 feet (18.3 meters) length overall using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area. This action is necessary to allow the A season apportionment of the 2024 total allowable catch of Pacific cod to be harvested.

DATES: Effective January 10, 2024, through 2400 hours, Alaska local time (A.l.t.), December 31, 2024.

FOR FURTHER INFORMATION CONTACT: Krista Milani, 907–581–2062.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands (BSAI) according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season apportionment of the 2024 Pacific cod total allowable catch (TAC) specified for vessels using jig gear in the BSAI is 1,169 metric tons (mt) as established by the final 2023 and 2024 harvest specifications for groundfish in the BSAI (88 FR 14926, March 10, 2023) and inseason adjustment (88 FR 88836, December 26, 2023).

The 2024 Pacific cod TAC allocated to catcher vessels less than 60 feet (18.3 meters (m)) length overall (LOA) using hook-and-line or pot gear in the BSAI is 2,767 mt as established by final 2023 and 2024 harvest specifications for groundfish in the BSAI (88 FR 14926, March 10, 2023) and inseason

adjustment (88 FR 88836, December 26, 2023).

The Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that jig vessels will not be able to harvest 1,100 mt of the A season apportionment of the 2024 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(1). Therefore, in accordance with § 679.20(a)(7)(iv)(C), NMFS apportions 1,100 mt of Pacific cod from the A season jig gear apportionment to the annual amount specified for catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

The harvest specifications for 2024 Pacific cod included in final 2023 and 2024 harvest specifications for groundfish in the BSAI (88 FR 14926, March 10, 2023) and inseason adjustment (88 FR 88836, December 26, 2023) are revised as follows: 69 mt to the A season apportionment and 848 mt to the annual amount for vessels using jig gear, and 3,867 mt to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Pacific cod specified from jig vessels to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 8, 2024.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 9, 2024.

Everett Wayne Baxter,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024–00550 Filed 1–10–24; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 89, No. 9

Friday, January 12, 2024

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Doc. No. AMS–SC–23–0039; 23–J–0080]

Marketing Order for Raisins Produced From Grapes Grown in California (M.O. No. 989); Hearing

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notification of hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to receive evidence on proposals recommended by the Raisin Administrative Committee (Committee) to amend Federal Marketing Order No. 989 (Order). The proposed amendments would reduce Committee membership, eliminate the designated cooperative bargaining association member seat, lower quorum requirements, remove producer district representation, remove the requirement for separate member and alternate nominations, remove factors for establishing marketing policy, add language to clarify the quality of reconditioned raisins, add authority to accept voluntary contributions, and add language regarding ownership of intellectual property. The Committee recommended the proposed amendments after determining a significant reduction in the size of the industry has made it increasingly difficult to fill Committee positions and conduct business. The Agricultural Marketing Service (AMS) also proposes to make additional changes to the Order as may be necessary to conform to any amendatory changes that result from the hearing.

DATES: The hearing will be held February 13–14, 2024, from 9:00 a.m. to 5:00 p.m. Pacific Time (PT) and, if deemed necessary by the presiding administrative law judge, will continue until such time or day as determined by the judge.

ADDRESSES: The hearing will be held at the office of the Raisin Administrative Committee, 2445 Capitol Street, Suite 200, Fresno, California 93721.

FOR FURTHER INFORMATION CONTACT: Christy Pankey, Marketing Specialist, or Matthew Pavone, Chief, Rulemaking Services Branch, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085, or Email: *Christy.Pankey@usda.gov* or *Matthew.Pavone@usda.gov.*

Small businesses may request information on this proceeding by contacting Richard E. Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–8085, or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: This administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' and the applicable rules of practice and procedure governing amendments to marketing agreements and orders (7 CFR part 900). This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866, 13563 and 14094. AMS provided notice of the hearing to Tribal Governments through the U.S. Department of Agriculture's (USDA) Office of Tribal Relations.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling.

The Raisin Administrative Committee (Committee) is established under provisions of the Federal Marketing Order No. 989 (Order), which regulates the handling of raisins produced from grapes grown in California. The Order stipulates that the Committee may recommend to the Secretary amendments to the Order, and subject to USDA's approval, shall establish rules and procedures as may be necessary to accomplish the purposes of the Act and the efficient administration of the Order.

On October 20, 2022, the Committee recommended to USDA proposals to amend Committee size, composition, producer representation, and quorum requirements; to amend nomination procedures for small cooperative and independent producers; to remove two factors for establishing marketing policy, and to add language to clarify the quality of reconditioned raisins. The Committee voted on the above proposed amendments, 20 in favor and 10 opposed, at its August 17, 2022, meeting. On August 16, 2023, the Committee also voted to recommend to USDA the inclusion of additional proposals that would add authority to accept voluntary contributions and add language regarding Committee ownership of intellectual property. AMS received the Committee's unanimous proposal for those two recommendations on August 21, 2023.

After reviewing the proposals and other information submitted by the Committee, USDA has decided to schedule this matter for a public hearing. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals as summarized below. These proposals submitted by the Committee

have not received the approval of USDA.

Proposal 1—Amend Committee Membership Size and Composition, Lower Quorum Requirements, and Remove Producer District Representation

The Committee recommended reducing the Committee's size and lowering quorum requirements after determining that a substantial reduction in the size of the California raisin industry over the past 20 years has made it increasingly difficult to fill Committee positions and at times meet quorum requirements. Further, the Committee recommended the elimination of the member and alternate position dedicated to the cooperative bargaining association, removal of producer district representation, and the addition of an unaffiliated producer member seat. The Committee believes the designated cooperative bargaining association position is no longer warranted after a substantial decrease in total raisin acquisitions. The amendments proposed are as follows:

- Amend § 989.26 by reducing Committee membership from 47 to 21 members. Corresponding changes would also be made to § 989.126.
- Remove producer district representation in § 989.26(c), and add an unaffiliated producer member seat to § 989.126(a)(1). Corresponding changes would also remove §§ 989.22 and 989.122, and references to producer districts in §§ 989.29(b)(2), 989.126(a) and 989.129.
- Remove the designated bargaining association seat in § 989.26. Corresponding changes would also remove the reference to the bargaining association position in § 989.30.
- Amend § 989.38 by lowering quorum requirements from 25 to 14.

Proposal 2—Remove Separate Nomination Procedures for Independent and Small Cooperative Producers

Separate nomination procedures for independent producers or producers affiliated with small cooperative marketing associations' member and alternate positions were added to the Order in 2018 due to the number of vacancies on the Committee, and to encourage participation by alternate members. However, the Committee now recommends eliminating the requirement that independent and small cooperative producers must be nominated separately for either a member or alternate position as it would not be necessary with a reduced Committee size. The amendment proposed is as follows:

- Amend § 989.29 to eliminate the requirement for separate nominations for independent producers or producers affiliated with small cooperative marketing associations.

Proposal 3—Update Marketing Policy and Quality Standards for Reconditioned Raisins

The Committee recommended removing factor number 4, ''An estimated desirable carryout at the end of the crop year;'' and part of factor number 5, '', considering the estimated world raisin supply and demand situation'' from the Committee's marketing policy considerations. The Committee determined that factor 4 is no longer necessary since the Order no longer regulates volume, the authority for which was removed in 2018. Factor number 5 will continue to be part of the marketing policy. However, consideration of part of factor number 5 relied on USDA's National Agricultural Statistic Service (NASS) ''Raisins: World Market and Trade Report'' to determine the estimated world raisin supply and demand situation. NASS no longer publishes the report, and the Committee found it would be cost prohibitive to acquire such information by other means.

Additionally, the Committee recommended adding language to §§ 989.24 and 989.58 clarifying that the quality of reconditioned raisins is the same as that of standard fruit. The Committee believes that there is a negative impression in the raisin market that the quality of reconditioned raisins that have been reworked and reinspected is somehow diminished. The Committee believes that the proposed language will help to dispel this negative impression, stating that natural condition raisins are any raisins that have been inspected and meet the Order's minimum requirements, which would include reconditioned fruit. The amendments proposed are as follows:

- In § 989.54(a), remove factor number 4 ''An estimated desirable carryout at the end of the crop year;'' and the last part of factor number 5 '', considering the estimated world raisin supply and demand situation.''
- Amend §§ 989.24 and 989.58 by adding language to clarify the quality of reconditioned raisins as standard raisins.

Proposal 4—Add Contribution Authority and Patent/Trademark Authority

The Committee recommended the addition of authority to accept voluntary contributions, and recommended adding language that would establish provisions for the collection of voluntary contributions by the Committee. The Committee further recommended the addition of authority related to Committee ownership of and rights to intellectual property, including authority to collect royalties from intellectual property. The amendments proposed are as follows:

- Add § 989.63 to establish the authority to accept voluntary contributions.
- Add § 989.64 to establish authority related to ownership of and rights to intellectual property and add authority for the collection of rents/royalties from the same.

In addition to the proposed amendments submitted by the Committee, AMS proposes to make any such conforming changes to the Order as may be necessary to conform to any amendment that may result from the proposals, or to correct minor inconsistencies and typographical errors.

USDA will oversee this formal rulemaking proceeding. The issuance of this notice of public hearing is the first of several steps in the amendatory rulemaking process, including the issuance of a Recommended Decision, public comment period, Secretary's Decision, and if the prior steps prove favorable, a grower referendum.

At the hearing, interested persons may provide testimony in support of or in opposition to the proposed amendments. Interested persons are invited to testify on the possible regulatory and informational impacts of the proposed amendments on small businesses.

Interested persons will also be provided the opportunity to file briefs in support of or in opposition to the proposed amendments after the hearing, as well as file exceptions to any Recommended Decision that may be issued. Finally, any proposed amendments will be required to be approved in a grower referendum before they can be implemented.

USDA will hold the public hearing for the purposes of: (i) receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the Order; (ii) determining whether there is a need for the proposed amendments to the Order; (iii) determining if there are other alternatives to the proposed amendments or duplicates of the proposed amendments; and (iv) determining whether the proposed amendments or appropriate

modifications thereof will tend to effectuate the declared policy of the Act.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing. Four copies of prepared testimony for presentation at the hearing should also be made available. To the extent practicable, eight additional copies of evidentiary exhibits and testimony prepared as an exhibit should be made available to USDA representatives on the day of appearance at the hearing. Any requests for preparation of USDA data for this rulemaking hearing should be made at least 10 days prior to the beginning of the hearing.

From the time the notice of hearing is issued until the issuance of a final decision in this proceeding, USDA employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees who are or may reasonably be expected to be involved in the decisional process of the proceeding in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel; and the Specialty Crops Program, AMS. Procedural matters are not subject to the above prohibition and may be discussed at any time.

Testimony is invited on the recommended proposals to amend 7 CFR part 989, or appropriate alternatives or modifications to such proposals, as follows:

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

■ 1. The authority citation for part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 989.22 [Removed and Reserved]

■ 2. Remove and reserve § 989.22.

■ 3. Amend § 989.24 by revising paragraph (b) to read as follows:

§ 989.24 Standard raisins, off-grade raisins, other failing raisins, and raisin residual material.

* * * * *

(b) *Off-grade raisins* means raisins which do not meet the then effective minimum grade and condition standards for natural condition raisins: *Provided,* That raisins which are certified as off-grade raisins shall continue to be such until successfully reconditioned as standard raisins or become ‘‘other failing raisins.’’

* * * * *

■ 4. Revise § 989.26 to read as follows:

§ 989.26 Establishment and membership.

A Raisin Administrative Committee is hereby established consisting of 21 members of whom 12 shall represent producers, 8 shall represent handlers and 1 shall be a public member.

(a) The producer members shall be selected as follows:

(1) Producer members representing the cooperative marketing association(s) shall be members of such association(s) engaged in the handling of raisins, each of which acquired not less than 10 percent of the total raisin acquisitions during the preceding crop year, and those members shall be equal to the product, rounded to the nearest whole number, obtained by multiplying 12 by the ratio the cooperative marketing association(s) raisin acquisitions are to the acquisitions of all handlers during the preceding crop year.

(2) Producer members representing cooperative bargaining association(s) shall be members of such association(s), and the number of those members shall be equal to the product, rounded to the nearest whole number, obtained by multiplying 12 by the ratio the raisins acquired by handlers from bargaining association members are to the total acquisitions of all handlers during the preceding crop year.

(3) All other producer members, who shall not be members of a cooperative bargaining association(s), cooperative marketing association(s) engaged in the handling of raisins which acquired 10 percent or more of the total acquisitions during the preceding crop year, nor sold for cash to cooperative marketing association(s), shall represent all producers not defined in paragraphs (a)(1) or (2) of this section and shall be selected as designated in the rules and regulations.

(b) The handler members shall be divided into two groups and include the following:

(1) Handler members shall be selected from and represent cooperative marketing association(s) engaged in the handling of raisins each of which acquired not less than 10 percent of the total raisin acquisitions during the preceding crop year, and the number of those members shall be equal to the product, rounded to the nearest whole number, obtained by multiplying 8 by the ratio of the cooperative marketing association(s) raisin acquisitions are to the total acquisitions of all handlers during the preceding crop year.

(2) The remaining handler members shall be selected from and represent all other handlers, which would include all independent handlers and small cooperative marketing association(s) who acquired less than 10 percent of the total raisin acquisitions during the preceding crop year. Handler nominees for this group shall be nominated by all handlers in the group in a manner determined by the Committee, with the approval of the Secretary, and specified in the rules and regulations.

(c) The public member shall be nominated by the Committee and selected by the Secretary as public member.

(d) For each member of the Committee there shall be an alternate member who shall have the same qualifications as the member for whom they are an alternate.

■ 5. Amend § 989.29 by revising paragraphs (a) and (b)(1) and (2) to read as follows:

§ 989.29 Initial members and nomination of successor members.

(a) *Initial members.* Members and alternate members of the Committee serving immediately prior to the effective date of this amended subpart shall, if thereafter they are eligible, serve on the Committee until April 30, 2026, and until their respective successors have been selected and qualified.

(b) * * *

(1) The Committee shall notify the cooperative marketing association(s) engaged in handling not less than 10 percent of the total raisin acquisitions during the preceding crop year, and cooperative bargaining association(s), of the date by which nominations to fill member and alternate member positions shall be made. The Committee shall give reasonable publicity of a meeting or meetings of producers who are not members of cooperative bargaining association(s), or cooperative marketing association(s) which handled 10 percent or more of the total raisin acquisitions during the preceding crop year, and of independent handlers and cooperative marketing association(s) who handled less than 10 percent of the total raisin acquisitions during the preceding crop year, for the purpose of making nominations to fill the member and alternate member positions prescribed in § 989.26 (a)(3) and (b): *Provided,* That member and alternate member nominations by independent handlers and cooperative marketing association(s) who acquired less than 10 percent of the total raisin acquisitions during the preceding crop year may be

made to the Committee by mail in lieu of meetings.

(2)(i) Any producer representing independent producers and producers who are affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year must have produced grapes which were made into raisins.

(ii) Each such producer whose name is offered in nomination to represent on the Committee independent producers or producers who are affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year shall be given the opportunity to provide the Committee a short statement outlining qualifications and desire to serve if selected. These brief statements, together with a ballot and voting instructions, shall be mailed to all independent producers and producers who are affiliated with cooperative marketing associations handling less than 10 percent of the total raisin acquisitions during the preceding crop year of record with the Committee. The producer candidate receiving the highest number of votes shall be designated as the first member nominee for a member position in which they qualify, the second highest shall be designated as the second member nominee for a member position which they qualify, until nominees for all producer member positions have been filled. Similarly, after all producer member positions have been filled, the producer candidate receiving the highest number of votes shall be designated as the first alternate member nominee for a member position in which they qualify, the second highest shall be designated as the second alternate member nominee for a member position in which they qualify, until nominees for all alternate member positions have been filled.

(iii) In the event there are no qualified candidates for any designated producer member or alternate member positions, such positions may be filled by other producer candidates not otherwise nominated for a position.

(iv) Each independent producer or producer affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year shall cast only one vote with respect to each position for which nominations are to be made. Write-in candidates shall be accepted. The person receiving the most votes with respect to each position to be filled, in accordance with paragraph (b)(2)(ii) and (iii) of this section, shall be the person to be certified to the Secretary as the nominee. The Committee may, subject to the approval of the Secretary, establish rules and regulations to effectuate this section.

* * * * *

■ 6. Revise § 989.30 to read as follows:

§ 989.30 Selection.

The Secretary shall select producer, handler, and public members and alternate members in the number specified in § 989.26, as applicable, and with the qualifications specified in § 989.27. Such selections may be made from nominations certified pursuant to § 989.29 or from other eligible producers, or handlers.

§ 989.38 [Amended]

■ 7. Amend § 989.38 by removing the numeral ''25'' and adding in its place the numeral ''14''.

§ 989.54 [Amended]

■ 8. Amend § 989.54 by:

■ a. Removing paragraph (a)(4);

■ b. Redesignating paragraphs (a)(5) through (9) as paragraphs (a)(4) through (8), respectively; and

■ c. In redesignated paragraph (a)(4), removing the text '', considering the estimated world raisin supply and demand situation''.

■ 9. Amend § 989.58 by adding paragraph (g) to read as follows:

§ 989.58 Natural condition raisins.

* * * * *

(g) All raisins which have been inspected and certified as meeting the minimum grade, quality, and condition standards established pursuant to this section, whether upon incoming inspection or upon later inspection after reconditioning, shall be determined to be standard raisins, labelled accordingly, and shall be eligible for commercial disposition as natural condition raisins or packed raisins in normal outlets.

■ 10. Add § 989.63 to read as follows:

§ 989.63 Contributions.

The Committee may accept voluntary contributions: *Provided,* That such contributions shall only be used to pay expenses authorized under § 989.79. Furthermore, contributions shall be free from any encumbrances by the donor and the Committee shall retain complete control of their use.

■ 11. Add § 989.64 to read as follows:

§ 989.64 Patents, copyrights, trademarks, inventions, product formulations, and publications.

(a) Any patents, copyrights, trademarks, inventions, product formulations, and publications developed through the use of funds received by the Committee under this subpart shall be the property of the U.S. Government, as represented by the Committee, and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, inventions, product formulations, or publications, inure to the benefit of the Committee; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Committee and may be licensed subject to approval by the Secretary.

(b) Upon termination of this subpart, § 989.92 shall apply to determine disposition of any property, including patents, copyrights, trademarks, inventions, product formulations, and publications developed through the use of funds received by the Committee under this subpart.

(c) Should patents, copyrights, trademarks, inventions, product formulations, or publications be developed through the use of funds collected by the Committee under this subpart and funds contributed by another organization or person, ownership and related rights to such patents, copyrights, trademarks, inventions, product formulations, or publications shall be determined by agreement between the Committee and the person or organization contributing funds towards the development of such patents, copyrights, inventions, trademarks, product formulations, or publications in a manner consistent with paragraph (a) of this section.

(d) Should any patents, copyrights, trademarks, inventions, product formulations, or publications, be licensed to the Committee by another person or organization, the rights and obligations regarding such licensed patents, copyrights, trademarks, inventions, product formulations, or publications shall be determined by agreement between the Committee and the person or organization permitting licensure in a manner consistent with paragraph (a) of this section.

§ 989.122 [Removed and Reserved]

■ 12. Remove and reserve § 989.122.

■ 13. Revise § 989.126 to read as follows:

§ 989.126 Representation of the Committee.

(a) Pursuant to § 989.26(a)(3), and commencing with the term of office beginning May 1, 2026, apportionment of independent and small cooperative producers shall be:

(1) One producer member, selected from and representing all producers, who is unaffiliated with any handler (including, but not limited to, ownership, employment, or agent of any handler, and whose family members are similarly unaffiliated with any handler); and

(2) The remaining producer member(s) selected from and representing all other independent and small cooperative producers.

(b) Pursuant to section § 989.26(b)(2), and commencing with the term of office beginning May 1, 2026, apportionment of the independent and small cooperative marketing association handlers shall be:

(1) Two members selected from and representing the four handler(s) other than major cooperative marketing association handler(s) who acquired the largest percentage of the total raisin acquisitions during the preceding crop year; and

(2) The remaining member(s) selected from and representing all other handlers, including small cooperative marketing association handler(s) and all processors.

■ 13. Revise § 989.129 to read as follows:

§ 989.129 Voting at nomination meetings.

Any person (defined in § 989.3 as an individual, partnership, corporation, association, or any other business unit) who is engaged, in a proprietary capacity, in the production of grapes which are sun-dried or dehydrated by artificial means to produce raisins and who qualifies under the provisions of § 989.29(b)(2) shall be eligible to cast one ballot for a nominee for each producer member position and one ballot for a nominee for each producer alternate member position on the Committee which is to be filled. Such person must be the one who or which: Owns and farms land resulting in his or its ownership of such grapes produced thereon; rents and farms land, resulting in his or its ownership of all or a portion of such grapes produced thereon; or owns land which he or it does not farm and, as rental for such land, obtains the ownership of a portion of such grapes or the raisins. In this connection, a partnership shall be deemed to include two or more persons (including a husband and wife) with respect to land the title to which, or leasehold interest in which, is vested in them as tenants in common, joint tenants, or under community property laws, as community property. In a landlord-tenant relationship, wherein each of the parties is a producer, each such producer shall be entitled to one vote for a nominee for each producer member position and one vote for each producer alternate member position. Hence, where two persons operate land as landlord and tenant on a share-crop basis, each person is entitled to one vote for each such position to be filled. Where land is leased on a cash rental basis, only the person who is the tenant or cash renter (producer) is entitled to vote. A partnership or corporation, when eligible, is entitled to cast only one vote for a nominee for each producer position to be filled.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2024–00492 Filed 1–11–24; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–132569–17]

RIN 1545–BO40

Definition of Energy Property and Rules Applicable to the Energy Credit; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects a notice of proposed rulemaking (REG–132569–17) published in the **Federal Register** on November 22, 2023, containing proposed regulations that would amend the regulations relating to the energy credit for the taxable year in which eligible energy property is placed in service.

DATES: Written or electronic comments are still being accepted and must be received by January 22, 2024. The public hearing on these proposed regulations is scheduled to be held on February 20, 2024, at 10 a.m. ET. Requests to speak and outlines of topics to be discussed at the public hearing must be received by January 22, 2024.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–132569–17). Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (the Treasury Department) and the IRS will publish for public availability any comment submitted to its public docket. Send paper submissions to: CC:PA:01:PR (REG–132569–17), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Office of Associate Chief Counsel (Passthroughs & Special Industries) at (202) 317–6853 (not a toll-free number); concerning submissions of comments or the public hearing, Vivian Hayes, (202) 317–6901 (not toll-free number) or by email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG–132569–17) that is the subject of this correction is under section 48 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–132569–17) contains errors that need to be corrected.

Correction of Publication

Accordingly, the notice of proposed rulemaking (REG–132569–17), which was the subject of FR Doc. 2023–25539, published on November 22, 2023, at 88 FR 82188 is corrected:

§ 1.48–9 [Corrected]

■ 1. On page 82214, the third column, the third line of paragraph (f)(2)(ii)(A) is corrected to read, ‘‘paragraph (f)(2)(ii)(B) of this section,’’.

§ 1.48–13 [Corrected]

■ 2. On page 82218, the first column, the third line of paragraph (e)(1) is corrected to read, ‘‘generating energy property, use the’’.

■ 3. On page 82218, the first column, the fourth line of paragraph (e)(2) is corrected to read, ‘‘9(e)(10)(ii)), use the storage device's’’.

§ 1.48–14 [Corrected]

■ 4. On page 82219, the second column, the tenth line of paragraph (c)(2) is corrected to read, ‘‘paragraph (f)(8) of this section, in no’’.

■ 5. On page 82220, the second column, the fifth line from the bottom of paragraph (f)(2)(i) is corrected to read, ‘‘used as an integral part (as defined in’’.

■ 6. On page 82221, the second column, first line of paragraph (f)(6)(i) is corrected to read, ‘‘or any successor form(s), filed with its’’.

■ 7. On page 82221, the second column, the eighth line from the bottom of

paragraph (f)(6)(i) is corrected to read, ''(f)(4) of this section to be treated as a''.

■ 8. On page 82221, the second column, eleventh line of paragraph (f)(6)(ii) is corrected to read, ''any successor form(s), filed with its timely''.

■ 9. On page 82222, the first column, the seventh line from the bottom of paragraph (g)(3)(ii) is corrected to read, ''property. Paragraphs (g)(3)(ii)(A) and (B)''.

■ 10. On page 82222, the first column, the third line of paragraph (g)(3)(ii)(A) is corrected to read, ''generating energy property, use the''.

§ 1.6418–5 [Corrected]

■ 11. On page 82223, the second column, paragraph (f)(1), the fourth line from the bottom of the column is corrected to read, ''described in § 1.48–13(c)(5)), such''.

■ 12. On page 82223, the third column, the last line of paragraph (f)(2) is corrected to read, ''defined in § 1.48–13(c)(4).''.

■ 13. On page 82223, the third column, the last line of paragraph (f)(3) is corrected to read, ''13(c)(3)(ii).''.

Oluwafunmilayo A. Taylor,

Section Chief, Publications and Regulations Section, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2024–00496 Filed 1–11–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 35

[Docket Number CRT 143 AG Order No. 5852–2024]

RIN 1190–AA78

Nondiscrimination on the Basis of Disability; Accessibility of Medical Diagnostic Equipment of State and Local Government Entities

AGENCY: Civil Rights Division, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Justice (''Department'') is proposing to revise the regulations implementing title II of the Americans with Disabilities Act (''ADA'') to establish specific requirements, including the adoption of specific technical standards and scoping requirements, for making accessible to the public the services, programs, and activities offered by State and local governments through their Medical Diagnostic Equipment (''MDE'').

DATES: All comments must be submitted on or before February 12, 2024. Commenters should be aware that the electronic Federal Docket Management System (''FDMS'') will accept comments submitted prior to midnight Eastern Time on the last day of the comment period. Comments received after the close of the comment period are highly disfavored and will be marked ''late.'' The Department is not required to consider late comments.

ADDRESSES: You may submit comments, identified by RIN 1190–AA78, by any one of the following methods:

- *Federal eRulemaking website: https://www.regulations.gov.* Follow the website's instructions for submitting comments.
- *Overnight, courier, or hand delivery:* Disability Rights Section, Civil Rights Division, U.S. Department of Justice, 150 M St. NE, 9th Floor, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Rebecca B. Bond, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, at (202) 307–0663 (voice or TTY). This is not a toll-free number. Information may also be obtained from the Department's toll-free ADA Information Line at (800) 514–0301 (voice) or (833) 610–1264 (TTY). You may obtain copies of this notice of proposed rulemaking (''NPRM'') in an alternative format by calling the ADA Information Line at (800) 514–0301 (voice) or (833) 610–1264 (TTY). A link to this NPRM is also available on *https://www.ada.gov.*

Electronic Submission of Comments and Posting of Public Comments

Interested persons are invited to participate in this rulemaking by submitting written comments on all aspects of this rule via one of the methods and by the deadline stated above. When submitting comments, please include ''RIN 1190–AA78'' in the subject field. The Department also invites comments that relate to the economic, environmental, or federalism effects that might result from this rule. Comments that will provide the most assistance to the Department in developing this rule will reference a specific portion of the rule or respond to a specific question, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Please note that all comments received are considered part of the public record and made available for public inspection at *https://www.regulations.gov.* Such information includes personally identifiable information (''PII'') (such as your name and address). Interested persons are not required to submit their PII in order to comment on this rule. However, any PII that is submitted is subject to being posted to the publicly accessible *https://www.regulations.gov* site without redaction.

Confidential business information clearly identified as such in the first paragraph of the comment will not be placed in the public docket file.

The Department may withhold from public viewing information provided in comments that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.* To inspect the agency's public docket file in person, you must make an appointment with the agency. Please see the **FOR FURTHER INFORMATION CONTACT** paragraph above for agency contact information.

SUPPLEMENTARY INFORMATION

I. Executive Summary

In this NPRM, the Department is proposing to revise its title II ADA regulations, 28 CFR part 35, to adopt the standards for accessible MDE issued by the Architectural and Transportation Barriers Compliance Board (''Access Board''), 36 CFR part 1195, app. (''MDE Standards''). The Access Board issued the MDE Standards under section 510 of the Rehabilitation Act, 29 U.S.C. 794f. The Department is proposing to adopt specific technical standards and scoping requirements under the ADA to ensure that MDE used by public entities to offer services, programs, and activities at places such as hospitals and other health care facilities is accessible to individuals with disabilities. MDE includes things like medical examination tables, weight scales, dental chairs, and radiological diagnostic equipment. Without accessible MDE, individuals with disabilities may not be afforded an equal opportunity to receive medical care, including routine examinations, which could have serious implications for their health. A lack of accessible MDE may also undermine the quality of care received by individuals with disabilities, ''leading to delayed and incomplete care, missed diagnoses, exacerbation of the original disability, and increases in the likelihood of the development of secondary conditions.'' [1] For instance, patients

[1] Nat'l Council on Disability, *Enforceable Accessible Medical Equipment Standards: A Necessary Means to Address the Health Care Needs of People with Mobility Disabilities* 7 (May 20,

Continued

with disabilities have had to forgo Pap smears because they could not safely transfer from their wheelchairs to a fixed-height exam table.[2] Similarly, inaccessible mammography machines have contributed to low breast cancer screening rates for patients with disabilities.[3]

Section 510 requires the Access Board to promulgate regulatory standards setting forth minimum technical criteria for MDE used in physicians' offices, clinics, emergency rooms, hospitals, and other medical settings.[4] Under the statute, the standards must ensure that such equipment is accessible to, and usable by, individuals with accessibility needs, which include people with disabilities, and must allow independent entry to, use of, and exit from the equipment by such individuals to the maximum extent possible. Section 510 does not give the Access Board authority to enforce these standards.[5] Compliance with the standards is mandatory only if an enforcing authority adopts the standards as mandatory for entities subject to its jurisdiction.[6] In this NPRM, the Department proposes to adopt the MDE Standards under title II of the ADA.

II. Background

A. Statutory and Rulemaking Overview

Title II of the ADA protects qualified persons with disabilities from discrimination on the basis of disability in services, programs, and activities provided by State and local government entities. 42 U.S.C. 12132.

The ADA authorizes the Attorney General to promulgate regulations to carry out the provisions of title II, with the exception of certain discrete transportation provisions.[7] The ADA also authorizes the Attorney General to promulgate regulations to carry out the provisions of title III, which focuses on public accommodations.[8] In 1991, the Department issued its final rules implementing titles II and III, which were codified at 28 CFR part 35 (title II) and part 36 (title III) and adopted the ADA Standards for Accessible Design.[9]

In 2004, the Department published an advance notice of proposed rulemaking (''2004 ANPRM'') to begin the process of updating the 1991 regulations and to adopt revised ADA Standards based on the relevant parts of the Access Board's 2004 ADA/Architectural Barriers Act Accessibility Guidelines (''2004 ADA/ABA Guidelines'').[10] The 2004 ANPRM asked for public comment on a range of issues not specifically addressed in the ADA regulations, including coverage of movable or portable equipment and furniture.[11] The Department subsequently issued an NPRM in 2008.[12] Although public comments in response to the ANPRM had supported the promulgation of specific accessibility standards for equipment and furniture, the Department's 2008 NPRM announced its decision not to address equipment and furniture at that time.[13] Instead, the Department continued its approach of requiring covered entities to provide accessible equipment and furniture as needed to comply with the ADA's general nondiscrimination requirements under the Department's existing regulations.

On July 26, 2010, the Department announced its plan to issue final rules updating its title II and III regulations and adopting standards consistent with 2004 ADA/ABA Guidelines and the requirements contained in 28 CFR 35.151, naming them the 2010 ADA Standards for Accessible Design (''2010 ADA Standards'').[14] On that same day, the Department issued an ANPRM to consider possible changes to requirements under the ADA to ensure that equipment and furniture, including MDE, used in services, programs, and activities provided by State and local governments and public accommodations, are accessible to people with disabilities.[15] The Department subsequently bifurcated the rulemaking considered in the 2010 ANPRM with the intent to address the accessibility requirements for MDE in a separate rulemaking.[16] However, in December 2017, the Department withdrew the 2010 ANPRM to reevaluate whether the imposition of specific regulatory standards for the accessibility of non-fixed equipment and furniture was necessary and appropriate.[17]

In 2021, the Department indicated its plan to issue an ANPRM on possible revisions to its ADA regulations to ensure the accessibility of equipment and furniture in public entities' and public accommodations' programs and services.[18] Subsequently, in 2022, the Department decided to bifurcate this rulemaking and announced that it planned to publish a separate ANPRM that solely addresses the accessibility of MDE under both title II and title III.[19] The Department has since decided to proceed with its MDE rulemaking under title II through an NPRM, rather than first issuing an ANPRM. The Department has received complaints indicating that more specific technical guidance would help give covered entities and individuals with disabilities more clarity about existing obligations and rights concerning the accessibility of MDE under title II.

The Department is coordinating its publication of this proposed rule with the Department of Health and Human Services (''HHS''), which issued an NPRM under section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, that addresses the accessibility of MDE for recipients of Federal financial assistance.[20] Title II is modeled on

2021), *https://ncd.gov/sites/default/files/Documents/NCD_Medical_Equipment_Report_508.pdf* (''NCD Report'') [*https://perma.cc/6W4U-TVEX*].

[2] *See id.* at 17.

[3] *See id.* at 18.

[4] 29 U.S.C. 794f(a).

[5] *See id.* at 794f.

[6] *See* 36 CFR 1195.1 (''Other agencies, referred to as an enforcing authority in the standards, may adopt the standards as mandatory requirements for entities subject to their jurisdiction.''); 36 CFR pt. 1195, app., sec. M102.1 (stating that enforcing authorities may include the Department of Justice).

[7] 42 U.S.C. 12134.

[8] *Id.* 12186(b).

[9] 56 FR 35694 (July 26, 1991); 56 FR 35544 (July 26, 1991).

[10] 69 FR 58768 (Sept. 30, 2004); *see also* 69 FR 44084 (July 23, 2004).

[11] 69 FR at 58774–75.

[12] 73 FR 34466 (June 17, 2008).

[13] *Id.* at 34474–75.

[14] *See* U.S. Dep't of Just., *Justice Department's 2010 ADA Standards for Accessible Design Go into Effect* (Mar. 15, 2012), *https://www.justice.gov/opa/pr/justice-department-s-2010-ada-standards-accessible-design-go-effect* [*https://perma.cc/52UB-WRR4*]. These final rules were published on September 15, 2010. *See* 75 FR 56164 (Sept. 15, 2010); 75 FR 56236 (Sept. 15, 2010).

[15] 75 FR 43452 (July 26, 2010).

[16] *See,* Off. of Mgmt. & Budget, Off. of Info. and Regul. Affs., *Unified Agenda of Federal Regulatory and Deregulatory Actions* (Fall 2011), *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201110&RIN=1190-AA66* [*https://perma.cc/D6TE-RUHR*].

[17] 82 FR 60932 (Dec. 26, 2017).

[18] *See* Off. of Mgmt. & Budget, Off. of Info. and Regul. Affs., *Unified Agenda of Federal Regulatory and Deregulatory Actions* (Fall 2021), *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202110&RIN=1190-AA76* [*https://perma.cc/D6TE-RUHR*].

[19] *See* Off. of Mgmt. & Budget, Off. of Info. and Regul. Affs., *Unified Agenda of Federal Regulatory and Deregulatory Actions* (Spring 2022), *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202204&RIN=1190-AA78* [*https://perma.cc/8BJ3-RYYY*] (explaining that ''[t]he Department previously announced that it intends to issue an ANPRM, titled Nondiscrimination on the Basis of Disability by State and Local Governments and Places of Public Accommodation; Equipment and Furniture (RIN 1190–AA76) addressing possible revisions to its ADA regulations to ensure the accessibility of equipment and furniture generally. However, the Department has decided to publish a separate ANPRM that solely addresses the accessibility of medical diagnostic equipment (MDE) under titles II and III of the ADA, given the specialized nature of MDE.'').

[20] 88 FR 63392 (Sept. 14, 2023).

section 504,[21] and title II and section 504 are generally understood to impose similar requirements, given the similar language employed in the ADA and the Rehabilitation Act.[22] The legislative history of the ADA makes clear that title II was intended to extend the requirements of section 504 to apply to all State and local governments, regardless of whether they receive Federal funding, demonstrating Congress's intent that title II and section 504 be interpreted consistently.[23]

The legislative history of the Rehabilitation Act Amendments of 1992 [24] states that the revisions to the Rehabilitation Act's findings, purpose, and policy provisions are ''a reaffirmation of the precepts of the Americans with Disabilities Act,'' [25] and that these principles are intended to guide the Rehabilitation Act's policies, practices, and procedures.[26] Further, courts interpret the ADA and section 504 consistently.[27] Thus, the Department believes there is and should be parity between the relevant provisions of title II and section 504.

Given the relationship between title II and section 504 and congressional intent that the two disability rights laws be interpreted consistently, both Departments are proceeding with rulemakings that provide the same requirements, one for public entities subject to title II of the ADA and the other for recipients of Federal financial assistance from HHS.

The Department will continue to consider the remaining issues concerning MDE under title III as well as equipment and furniture under both titles, although those issues are not the subjects of rulemaking at this time.

B. Legal Foundation for Accessible MDE

This NPRM applies to health care services, programs, and activities that public entities offer through or with the use of MDE. Title II of the ADA prohibits discrimination on the basis of disability in all services, programs, and activities offered by public entities.[28] Through this mandate and the Department's implementing regulations, the ADA requires public entities to provide accessible equipment and furniture as necessary to comply with title II's reasonable modification, effective communication, and program accessibility requirements. However, the Department has never adopted specific technical standards that address what constitutes accessible MDE.

Under title II, public entities must provide reasonable modifications when necessary to avoid discrimination on the basis of disability unless those modifications would fundamentally alter the nature of the public entity's service, program, or activity.[29] Title II entities also must ensure that communications with individuals with disabilities are as effective as communications with others, including through the provision of appropriate auxiliary aids and services.[30] These auxiliary aids include the ''[a]cquisition or modification of equipment or devices.'' [31]

Under the program accessibility requirement of title II, no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.[32] A public entity must operate each service, program, or activity so that, when viewed in its entirety, the service, program, or activity is readily accessible to and usable by persons with disabilities, subject to a defense of fundamental alteration or undue burden.[33] A public entity may comply with the program accessibility requirement through such means as redesign or acquisition of equipment.[34]

C. Overview of Access Board's MDE Standards

In implementing the mandate set forth in section 510 of the Rehabilitation Act to promulgate technical standards for accessible MDE, the Access Board received input from various stakeholders through a multi-year deliberative process and published the MDE Standards on January 9, 2017.[35] The Access Board divides the MDE Standards into four separate technical criteria based on how the equipment is used by the patient: (1) supine, prone, or side-lying position; (2) seated position; (3) seated in a wheelchair; and (4) standing position.[36] For each category of use, the MDE Standards provide for independent entry to, use of, and exit from the equipment by patients with disabilities to the maximum extent possible.

The technical requirements for MDE used by patients in the supine, prone, or side-lying position (such as examination tables) and MDE used by patients in the seated position (such as examination chairs) focus on ensuring that the patient can transfer from a mobility device onto the MDE.[37] The other two categories set forth the necessary technical requirements to allow the patient to use the MDE while seated in their wheelchair (such as during a mammogram) or while standing (such as on a weight scale), respectively.[38] The MDE Standards also include technical criteria for supports, including for transfer, standing, leg, head, and back supports; instructions or other information communicated to patients through the equipment; and operable parts used by patients.[39]

The Access Board's MDE Standards currently contain a temporary standard governing the minimum low height requirement for transfers from diagnostic equipment used by patients in a supine, prone, side-lying, or seated position.[40] Specifically, the temporary standard provides for a minimum low transfer height requirement of 17 inches to 19 inches. The temporary nature of this standard was due to insufficient data on the extent to which, and how many, individuals would benefit from a transfer height lower than 19 inches. While this temporary standard is in effect, any low transfer height between 17 and 19 inches will meet the MDE Standards. Under a sunset provision, as extended, this low height range remains in effect only until January 10, 2025.[41]

On May 23, 2023, the Access Board issued an NPRM that proposes removing the sunset provisions in the Board's existing MDE Standards related to the low height specifications for transfer surfaces, and replacing them with final specifications for the low transfer height of medical diagnostic equipment used in the supine, prone, side-lying, and seated positions.[42] Following an extension, the comment period for that

[21] *See, e.g.,* H.R. Rep. No. 101–485(II), at 84 (1990).

[22] *See, e.g.,* 42 U.S.C. 12201(a).

[23] *See* H. Rep. No. 101–485(II), at 84 (1990).

[24] Public Law 102–569 (1992).

[25] S. Rep. No. 102–357, at 14 (1992).

[26] *See id.; see also* H.R. Rep. No. 102–822, at 81 (1992).

[27] *See, e.g., Smith* v. *Harris Cnty.,* 956 F.3d 311, 317 (5th Cir. 2020); *K.M. ex rel. Bright* v. *Tustin Unified Sch. Dist.,* 725 F.3d 1088, 1098 (9th Cir. 2013).

[28] 42 U.S.C. 12132.

[29] 28 CFR 35.130(b)(7)(i).

[30] *See* 28 CFR 35.160.

[31] 28 CFR 35.104; *see also* 36 CFR pt. 1195, app., sec. M306.1 (setting forth technical standards for MDE that communicates instructions or other information to the patient).

[32] *Id.* 35.149.

[33] *Id.* 35.150(a).

[34] *Id.* 35.150(b)(1).

[35] 82 FR 2810 (Jan. 9, 2017).

[36] 36 CFR pt. 1195, app., sec. M301–04.

[37] *See id.* sec. M301–02.

[38] *See id.* sec. M303–04.

[39] *See id.* sec. M305–07.

[40] *See id.* sec. M301.2.1, 302.2.1.

[41] *See id.* sec. M301.2.2, 302.2.2; 87 FR 6037 (Feb. 3, 2022).

[42] 88 FR 33056 (May 23, 2023).

NPRM closed on August 31, 2023.[43] After the Access Board analyzes the comments that it receives, the Board will issue a final, updated minimum low transfer height standard. After this new standard is adopted, the Department will consider issuing a supplemental rulemaking under title II proposing to adopt the updated standards.

D. Need for the Adoption of MDE Standards

The accessibility of MDE is essential to providing equal access to medical care to people with disabilities. In developing this proposed subpart, the Department considered the well-documented barriers that individuals with disabilities face when accessing MDE, as well as the benefits for people with disabilities and health care workers alike of using accessible MDE.[44] The accessibility or inaccessibility of MDE impacts a substantial population—according to an estimate by the Centers for Disease Control and Prevention, approximately 61 million adults live with a disability in the U.S., and 13.7 percent of those individuals have a mobility disability with serious difficulty walking or climbing stairs.[45] According to a 2022 estimate by the U.S. Census Bureau, over 44 million people with disabilities live outside of institutional settings in the United States, and the most common category of disability is mobility or ambulatory impairment.[46]

While not all individuals with a mobility disability with serious difficulty walking or climbing stairs or individuals with mobility or ambulatory impairments will require accessible MDE, or benefit from it to the same extent, significant portions of these populations will benefit from accessible MDE. Further, a number of studies and reports have shown that individuals with disabilities may be less likely to get routine or preventative medical care than people without disabilities because of barriers to accessing appropriate care through MDE.[47] In one case, a patient with a disability remained in his wheelchair for the entirety of his annual physical exam, which consisted of his doctor listening to his heart and lungs underneath his clothing, looking inside his ears and throat, and then stating, ''I assume everything below the waist is fine.'' [48] In another case, a patient with a disability could be transferred to a standard exam table, but extra staff was needed to keep her from falling off the table since it did not have any side rails. As a result of this and a number of other frightening experiences, the patient avoided going to the doctor unless she was very ill.[49] Multiple studies have found that individuals with certain disabilities face barriers to accessing MDE and are often denied accessible MDE by their health care providers.[50] Accessible MDE is thus often critical to a public entity's ability to provide a person with a disability equal access to, and opportunities to benefit from, its health care services, programs, and activities.

In the over 30 years since the ADA was enacted, the Department, in implementing and enforcing the ADA, has gained a better understanding of the ongoing barriers posed by inaccessible MDE and the solutions provided by accessible MDE. The Department has received numerous complaints from patients with disabilities whose health care providers have forgone the most basic of care—from performing a full body examination to obtaining an accurate weight before administering anesthesia—because of the lack of accessible MDE. In recognition of the importance of accessible health care, the Department launched the Barrier-Free Health Care Initiative, which, among other goals, sought to advance physical access to medical care for people with disabilities. As part of this initiative, the Department has entered into numerous settlement agreements with health care providers that have required the providers to purchase accessible MDE, including patient lifts and examination and treatment equipment, for their facilities.[51] These settlement agreements, and a description of the Barrier-Free Health Care Initiative, are available to the public at *https://www.ada.gov/barrierfree healthcare.htm[https://perma.cc/9TT7-BCRN].*

The Department has also consistently provided information to covered entities on how they can make their health care services, programs, and activities accessible to individuals with mobility disabilities. For example, the Department and the Department of Health and Human Services jointly issued a technical assistance document on medical care for people with mobility disabilities, addressing how accessible MDE can be critical to ensure that people with disabilities receive medical services equal to those received by people without disabilities.[52] In particular, the document explains that the ''[a]vailability of accessible medical equipment is an important part of providing accessible medical care, and doctors and other providers must ensure that medical equipment is not a barrier to individuals with disabilities.'' [53] The guidance also provides examples of accessible medical equipment, including adjustable-height exam tables and chairs, wheelchair-accessible scales, adjustable-height radiologic equipment, portable floor and overhead track lifts, gurneys, and stretchers, and it discusses how people with mobility disabilities use this equipment.

The Department recognizes that in addition to its efforts to enforce and provide technical assistance on the ADA to ensure that people with disabilities have equal access to medical care, providing enforceable technical standards will help ensure clarity to

[43] 88 FR 50096 (Aug. 1, 2023).

[44] Nat'l Council on Disability, The Current State of Health Care for People with Disabilities (Sept. 30, 2009), *https://files.eric.ed.gov/fulltext/ED507726.pdf* [*https://perma.cc/5FR5-DZU6*]; *see, e.g.,* Dep't of Health & Human Servs., Administration for Community Living, *Wheelchair-Accessible Medical Diagnostic Equipment: Cutting Edge Technology, Cost-Effective for Health Care Providers, and Consumer-Friendly* (July 26, 2019), *https://acl.gov/sites/default/files/Aging%20 and%20Disability%20in%20America/MDE%20 Fact%20Sheet%20Final.docx* [*https://perma.cc/GW83-62WW*].

[45] U.S. Dep't of Health & Human Servs., Ctrs. for Disease Control & Prevention, *Disability Impacts All of Us, https://www.cdc.gov/ncbddd/disability andhealth/documents/disabilities_impacts_all_of_us.pdf* [*https://perma.cc/AX9E-9WU3*].

[46] U.S. Census Bureau, American Community Survey, *Disability Characteristics, https://data.census.gov/cedsci/table?t=Disability&tid=ACSST1Y2019.S1810* [*https://perma.cc/KX82-VMYD*].

[47] *See, e.g.,* Anna Marrocco & Helene J. Krouse, *Obstacles to Preventive Care for Individuals with Disability: Implications for Nurse Practitioners,* 29 J. Am. Ass'n of Nurse Pract. 282, 289 (May 2017); U.S. Dep't of Health & Human Servs., Office of the Surgeon Gen., *The Surgeon General's Call to Action to Improve the Health and Wellness of Persons with Disabilities* (2005), *https://www.ncbi.nlm.nih.gov/books/NBK44667/* [*https://perma.cc/77DZ-WRM9*]; NCD Report at 14.

[48] NCD Report at 15.

[49] *Id.* at 16–17.

[50] *See* Anne Ordway et al., *Health Care Access and the Americans with Disabilities Act: A Mixed Methods Study,* 14 Disability and Health J. 1, 2, 5 (2021) (stating that of 562 people with disabilities surveyed, 27 percent had difficulty accessing exam tables); *see also* Jennifer L. Wong et al., *Identification of Targets for Improving Access to Care in Persons with Long Term Physical Disabilities,* 12 Disability and Health J. 366, 369 (2019) (stating that of the 462 people who needed a height-adjustable examination table, 56 percent received it).

[51] *See, e.g.,* Settlement Agreement between the United States and Charlotte Radiology, P.A. (Aug. 13, 2018), *https://archive.ada.gov/charlotte_radiology_sa.html* [*https://perma.cc/ZC5W-LV3M*]; Settlement Agreement between the United States and Tufts Medical Center (Feb. 28, 2020), *https://archive.ada.gov/tufts_medical_ctr_sa.html* [*https://perma.cc/YQG3-ZDZC*].

[52] *See* U.S. Dep't of Just., Civ. Rts. Div., *Access to Medical Care for Individuals with Mobility Disabilities, https://www.ada.gov/resources/medical-care-mobility/* [*https://perma.cc/UH8Y-NZWL*] (June 26, 2020).

[53] *Id.*

public entities on how to fulfill their existing obligations under title II in their health care services, programs, and activities. The COVID–19 pandemic had a devastating and disproportionate impact on people with disabilities and underscored how dire the consequences may be for those who lack adequate access to medical care and treatment. As the National Council on Disability (NCD) Report on accessible medical equipment standards notes, significant health care disparities for persons with disabilities are due in part to the lack of physical access to MDE, and ''[e]nsuring physical access to care through accessible MDE is necessary to equitably provide medical care for all people, and the need continues to grow.'' [54] As a result of its findings, NCD called upon the Department to revise its ADA regulations to formally adopt the MDE Standards.[55]

Accordingly, the Department is proposing changes to its ADA regulations that can help ensure that vital health care services, programs, and activities are equally available to individuals with disabilities. Specifically, the Department is considering adopting and incorporating into its title II ADA regulations the specific technical requirements for accessible MDE that are set forth in the Access Board's MDE Standards.

III. Section-by-Section Analysis

This section details the Department's proposed changes to the title II ADA regulations, including the reasoning behind the proposals, and poses questions for public comment.

§ 35.104 Definitions

The Department proposes to revise 28 CFR 35.104 to add definitions for the terms ''*medical diagnostic equipment*'' and ''*Standards for Accessible Medical Diagnostic Equipment.*''

Medical Diagnostic Equipment

The Department proposes that the term ''*medical diagnostic equipment*'' be defined consistently with the MDE Standards, as ''[e]quipment used in, or in conjunction with, medical settings by health care providers for diagnostic purposes.'' This definition includes the examples in 29 U.S.C. 794f, which states that the MDE Standards shall ''set[ ] forth the minimum technical criteria for medical diagnostic equipment used in (or in conjunction with) physician's offices, clinics, emergency rooms, hospitals, and other medical settings,'' and ''shall apply to equipment that includes examination tables, examination chairs (including chairs used for eye examinations or procedures, and dental examinations or procedures), weight scales, mammography equipment, x-ray machines, and other radiological equipment commonly used for diagnostic purposes by health professionals.'' These examples are illustrative of types of MDE but are not exhaustive.

Standards for Accessible Medical Diagnostic Equipment

The Department proposes that the term ''*Standards for Accessible Medical Diagnostic Equipment*'' means the standards at 36 CFR part 1195, promulgated by the Access Board under section 510 of the Rehabilitation Act of 1973, as amended, found in the Appendix to 36 CFR part 1195.

§ 35.210 Requirements for Medical Diagnostic Equipment

This section provides general accessibility requirements for services, programs, and activities that public entities provide through or with the use of MDE. Public entities must ensure that their services, programs, and activities offered through or with the use of MDE are accessible to individuals with disabilities.

Under this general provision (barring an applicable limitation or defense), a public entity that provides health care cannot deny services that it would otherwise provide to a patient with a disability because the provider lacks accessible MDE. A health care provider also cannot require a patient with a disability to bring someone along with them to help during an exam. A patient may choose to bring another person such as a friend, family member, or personal care aide to an appointment, but regardless, the health care provider may need to provide reasonable assistance to enable the patient to receive medical care.[56] Such assistance may include helping a person who uses a wheelchair to transfer from their wheelchair to the exam table or diagnostic chair.[57] The health care provider cannot require the person accompanying the patient to assist.

§ 35.211 Newly Purchased, Leased, or Otherwise Acquired Medical Diagnostic Equipment

For MDE that public entities purchase, lease, or otherwise acquire more than 60 days after the publication of the final rule in the **Federal Register**, the Department proposes to adopt an approach that draws on the approach that the existing title II regulations applied to new construction and alterations of buildings and facilities.[58] The Department would require that all MDE that a public entity purchases, leases, or otherwise acquires after the rule's effective date must be accessible, unless and until the proposed rule's scoping requirements, set forth in more detail in § 35.211(b), are satisfied.

- *Issue 1: The Department seeks public comment on whether 60 days would be an appropriate amount of time for these requirements, and, if 60 days would not be an appropriate amount of time, what the appropriate amount of time would be.*

As in the fixed or built-in environment, this rule is proposing that the accessibility of MDE will be governed by a specific set of design standards promulgated by the Access Board that sets forth technical requirements for accessibility. So long as a public entity has the amount of accessible MDE set forth in the scoping requirements in § 35.211(b), the public entity is not required to continue to obtain accessible MDE when it purchases, leases, or otherwise acquires MDE after the effective date. However, a public entity may choose to acquire additional accessible MDE after it satisfies the scoping requirements.

§ 35.211(a) Requirements for Newly Purchased, Leased, or Otherwise Acquired Medical Diagnostic Equipment

Paragraph (a) would adopt the Access Board's MDE Standards as the standard governing whether MDE is accessible and establish one of the proposed rule's key requirements: that subject to applicable limitations and defenses, all MDE that public entities purchase, lease, or otherwise acquire after the effective date must meet the MDE Standards unless and until the public entity already has a sufficient amount of accessible MDE to satisfy the scoping requirements of the proposed rule.

As explained above in more detail, the MDE Standards include technical criteria for equipment that is used when patients are either (1) in a supine, prone, or side-lying position; (2) in a seated

[54] NCD Report at 14.

[55] *Id.* at 52.

[56] *See* 28 CFR 35.130(b)(7).

[57] *See* U.S. Dep't of Just., Civ. Rts. Div., *Access to Medical Care for Individuals with Mobility Disabilities, https://www.ada.gov/resources/medical-care-mobility/* [*https://perma.cc/UH8Y-NZWL*] (June 26, 2020).

[58] *See generally* 28 CFR 35.151.

position; (3) in a wheelchair; or (4) in a standing position. They also contain standards for supports, communication, and operable parts. In addition, the MDE Standards also contain requirements for equipment to be compatible with patient lifts where a patient would transfer under positions (1) and (2) above.

Consistent with the language in 29 U.S.C. 794f(b), MDE covered under this subpart includes examination tables, examination chairs (including chairs used for eye examinations or procedures, and dental examinations or procedures), weight scales, mammography equipment, x-ray machines, and other radiological equipment commonly used for diagnostic purposes by health professionals. This section covers medical equipment used by health professionals for diagnostic purposes even if it is also used for treatment purposes.

Given the many barriers to health care that people with disabilities encounter due to inaccessible MDE, adopting the MDE Standards will give many people with disabilities an equal opportunity to participate in and benefit from health care services, programs, and activities.

§ 35.211(b) Scoping

Paragraph (b) proposes scoping requirements for accessible MDE. Accessibility standards generally contain scoping requirements (how many accessible features are needed) and technical requirements (what makes a particular feature accessible). For example, the 2010 ADA Standards provide scoping requirements for how many toilet compartments in a particular toilet room must be accessible and provide technical requirements on what makes these toilet compartments accessible.[59] The MDE Standards issued by the Access Board contain technical requirements, but they do not specify scoping requirements. Rather, the MDE Standards state that ''[t]he enforcing authority shall specify the number and type of diagnostic equipment that are required to comply with the MDE Standards.'' [60] For the technical requirements to be implemented and enforced effectively, it is necessary for the Department to provide scoping requirements to specify how much accessible MDE is needed for a public entity's health care service, program, or activity to comply with the ADA.

The scoping requirements that the Department proposes are based on the requirements that the 2010 ADA Standards establish for accessible patient sleeping rooms and parking in hospitals, rehabilitation facilities, psychiatric facilities, detoxification facilities, and outpatient physical therapy facilities.[61] Because public entities must comply with title II of the ADA, many public entities are likely already familiar with these standards.

According to the 2010 ADA Standards, licensed medical care facilities and licensed long-term care facilities where the period of stay exceeds 24 hours shall provide accessible patient or resident sleeping rooms and disperse them proportionately by type of medical specialty.[62] Where sleeping rooms are altered or added, the sleeping rooms being altered or added shall be made accessible until the minimum number of accessible sleeping rooms is provided.[63] Hospitals, rehabilitation facilities, psychiatric facilities, and detoxification facilities that do not specialize in treating conditions that affect mobility shall have at least 10 percent of their patient sleeping rooms, but no fewer than one, provide specific accessibility features for patients with mobility disabilities.[64] Hospitals, rehabilitation facilities, psychiatric facilities, and detoxification facilities that specialize in treating conditions that affect mobility must have 100 percent of their patient sleeping rooms provide specific accessibility features for patients with mobility disabilities.[65] In addition, at least 20 percent of patient and visitor parking spaces at outpatient physical therapy facilities and rehabilitation facilities specialized in treating conditions that affect mobility must be accessible.[66]

- *Issue 2: The Department seeks public comment on whether and how to apply the existing scoping requirements for patient or resident sleeping rooms or parking spaces in certain medical facilities to MDE and on whether there are meaningful differences between patient or resident sleeping rooms, accessible parking, and MDE that the Department should consider when finalizing the scoping requirements.*
- *Issue 3: The Department seeks public comment on whether different scoping requirements should apply to different types of MDE (e.g., requiring a higher percentage of accessible exam tables and scales than accessible x-ray machines).*

Proposed paragraphs (b)(1) to (3) lay out scoping requirements for this section. Paragraph (b)(1) provides the general requirement for physician's offices, clinics, emergency rooms, hospitals, outpatient facilities, multi-use facilities, and other medical services, programs, and activities that do not specialize in treating conditions that affect mobility. When these entities use MDE to provide services, programs, or activities, they must ensure that at least 10 percent, but no fewer than one unit, of each type of equipment complies with the MDE Standards. For example, a medical practice with 20 examination chairs would be required to have two examination chairs (10 percent of the total) that comply with the MDE Standards. In a medical practice with five examination chairs, the practice would be required to have one examination chair that complies with the MDE Standards (because every entity covered by this provision must have no fewer than one unit of each type of equipment that is accessible). If a dental practice has one x-ray machine, that x-ray machine would be required to be accessible.

Proposed paragraph (b)(2) provides the scoping requirement for rehabilitation facilities that specialize in treating conditions that affect mobility; outpatient physical therapy facilities; and other medical services, programs, and activities that specialize in treating conditions that affect mobility. This paragraph requires that at least 20 percent of each type of MDE used in these types of services, programs, and activities, but no fewer than one unit of each type of MDE, must comply with the MDE Standards. Because these facilities specialize in treating patients who are likely to need accessible MDE, it is reasonable for them to have more accessible MDE than is required for the health care providers covered by paragraph (b)(1), who do not have the same specialization. The Department considered whether to require 100 percent of MDE in these programs to be accessible, like section 223.2.2 of the 2010 ADA Standards for Accessible Design, which requires that 100 percent of patient sleeping rooms in similar facilities provide specific accessibility features for patients with mobility disabilities. However, the Department is instead proposing a scoping requirement analogous to section 208.2.2 of the 2010 ADA Standards, which requires 20 percent of visitor and patient parking spaces at such facilities to be accessible. The time-limited use of MDE is more analogous to the use of

[59] *See* 36 CFR pt. 1191, app. B, sec. 213.3.1.

[60] 36 CFR pt. 1195, app., sec. M201.

[61] *See* 36 CFR pt. 1191, app. B, secs. 208.2.2, 223.2.1, 223.2.2.

[62] *See* 28 CFR 35.151(h); 36 CFR pt. 1191, app. B, sec. 223.1.

[63] *See* 36 CFR pt. 1191, app. B, sec. 223.1.1.

[64] *See id.* sec. 223.2.1.

[65] *See id.* sec. 223.2.2.

[66] *See id.* sec. 208.2.2.

parking spaces at a rehabilitation facility than to the use of sleeping rooms. As with parking spaces, several different patients with mobility disabilities could use the same piece of MDE in a day, while patients generally occupy a sleeping room for all or a significant part of the day. Thus, the Department's proposed rule draws on the 2010 ADA Standards' scoping requirements by requiring at least 20 percent (but no fewer than one unit) of each type of equipment in use in facilities that specialize in treating conditions that affect mobility to meet the MDE Standards, and requiring at least 10 percent (but no fewer than one unit) of each type of equipment in use in other facilities to meet the MDE Standards.

• *Issue 4: Because more patients with disabilities may need accessible MDE than need accessible parking, the Department seeks public comment on whether the Department's suggested scoping requirement of 20 percent is sufficient to meet the needs of persons with disabilities.*

• *Issue 5: The Department seeks public comment on any burdens that this proposed requirement or a higher scoping requirement might impose on public entities.*

Paragraph (b)(3) addresses facilities or programs with multiple departments, clinics, or specialties. The current title II ADA regulation requires medical care facilities that do not specialize in the treatment of conditions that affect mobility to disperse the accessible patient sleeping rooms in a manner that is proportionate by type of medical specialty.[67] The proposed rule includes an analogous dispersion requirement. In any facility or program that has multiple departments, clinics, or specialties, where a service, program, or activity utilizes MDE, the accessible MDE required by paragraphs (b)(1) and (2) shall be dispersed proportionately across departments, clinics, or specialties. For example, a hospital that is required to have five accessible x-ray machines cannot place all the accessible x-ray machines in the orthopedics department and none in the emergency department. People with disabilities must have an opportunity to benefit from each type of medical care provided by the public entity that is equal to the opportunity provided to people without disabilities.[68] The proposed rule would not require public entities to acquire additional MDE, beyond the amount specified in proposed paragraphs (b)(1) and (2), to ensure that accessible MDE is available in every department, clinic, and specialty. The Department believes that this approach is consistent with many provisions of the 2010 ADA Standards.[69] Additionally, the Department believes that if the rule were to require full dispersion across every department, clinic and specialty, it could be difficult to determine whether the scoping requirements have been satisfied. For example, a clinic may be part of a department and also part of a specialty (or include providers with multiple specialties), so calculating the percentages of accessible MDE that each department, clinic, or specialty has could become complex. However, the Department also recognizes that it is critically important for people with disabilities to have access to all types of medical care. Therefore, public entities would still be required to ensure that all of their services, programs, and activities are accessible to and usable by individuals with disabilities, regardless of whether a specific department, clinic, or specialty would be required to acquire accessible MDE under proposed paragraph (b)(3).

• *Issue 6: The Department seeks public comment on whether the proposed approach to dispersion of accessible MDE is sufficient to meet the needs of individuals with disabilities, including the need to receive different types of specialized medical care.*

• *Issue 7: The Department seeks public comment on whether additional requirements should be added to ensure dispersion (e.g., requiring at least one accessible exam table and scale in each department, clinic, or specialty, or requiring each department, clinic, and specialty to have a certain percentage of accessible MDE).*

• *Issue 8: The Department seeks information regarding:*

(a) The extent to which accessible MDE can be moved or otherwise shared between clinics or departments.

(b) The burdens that the rule's proposed approach to dispersion or additional dispersion requirements may impose on public entities.

(c) The burdens that the rule's proposed approach to dispersion may impose on people with disabilities e.g., increased wait times if accessible MDE needs to be located and moved; embarrassment, frustration, or impairment of treatment that may result if a patient must go to a different part of a hospital or clinic to use accessible MDE).

• *Issue 9: The Department seeks public comment on whether higher, lower, or different scoping requirements than those proposed should be established.*

• *Issue 10: The Department seeks public comment on the burden that the proposed scoping requirements would impose on public entities.*

§ 35.211(c) Requirements for Examination Tables and Weight Scales

Paragraph (c) sets forth specific requirements for examination tables and weight scales. Proposed paragraph (c)(1) would require public entities that use at least one examination table in their service, program, or activity to purchase, lease, or otherwise acquire, within two years after the publication of this part in final form, at least one examination table that meets the requirements of the Standards for Accessible MDE, unless the entity already has one in place. Similarly, proposed paragraph (c)(2) requires public entities that use at least one weight scale in their service, program, or activity, to purchase, lease, or otherwise acquire, within two years after the publication of this part in final form, at least one weight scale that meets the requirements of the Standards for Accessible MDE, unless the entity already has one in place. This requirement is subject to the other requirements and limitations set forth in § 35.211. Thus, this section does not require a public entity to acquire an accessible examination table and an accessible weight scale if doing so would result in a fundamental alteration in the nature of the service, program, or activity or in undue financial and administrative burdens, per § 35.211(e) and (f). In addition, public entities may use designs, products, or technologies as alternatives to those prescribed by the MDE Standards if the criteria set forth in § 35.211(d) are satisfied.

• *Issue 11: The Department seeks public comment on the potential impact of the requirements in paragraph (c) on people with disabilities and public entities, including the impact on the availability of accessible MDE that will be available for purchase and lease. The Department also seeks public comment on whether two years would be an appropriate amount of time for such a requirement and, if two years would not be an appropriate amount of time, what the appropriate amount of time would be.*

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[67] 28 CFR 35.151(h). A similar dispersion requirement was not necessary for medical care facilities that specialize in the treatment of conditions that affect mobility, because 100 percent of patient sleeping rooms in those facilities are required to be accessible. *See* 36 CFR pt. 1191, app. B, sec. 223.2.2.

[68] *See* 28 CFR 35.130(b)(ii), 35.150(a).

[69] *See, e.g.,* 36 CFR pt. 1191, app. B, secs. 221.2.3, 224.5, 225.3.1, 235.2.1. According to these sections, when the required number of accessible elements has been provided, further dispersion is not required.

§ 35.211(d) Equivalent Facilitation

Paragraph (d) specifies that a public entity may use designs, products, or technologies as alternatives to those prescribed by the MDE Standards, for example, to incorporate innovations in accessibility. However, this exception applies only where the public entity provides substantially equivalent or greater accessibility and usability than the MDE Standards require. It does not permit a public entity to use an innovation that reduces access below what the MDE Standards would provide. The responsibility for demonstrating equivalent facilitation rests with the public entity.

§ 35.211(e) Fundamental Alteration and Undue Burden

Paragraph (e) addresses the fundamental alteration and undue financial and administrative burden defenses. While the proposed rule generally requires public entities to adhere to the MDE Standards when newly purchasing, leasing, or otherwise acquiring equipment, it does not require public entities to take steps that would result in a fundamental alteration in the nature of their services, programs, or activities or in an undue financial or administrative burden. These proposed limitations mirror the existing title II regulation at 28 CFR 35.150(a)(3). If a particular action would result in a fundamental alteration or undue burden, the public entity would be obligated to take other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services the public entity provides.

§ 35.211(f) Diagnostically Required Structural or Operational Characteristics

Paragraph (f) incorporates what the Access Board's MDE Standards refer to as a General Exception.[70] The paragraph states that, where a public entity can demonstrate that compliance with the MDE Standards would alter diagnostically required structural or operational characteristics of the equipment, preventing the use of the equipment for its intended diagnostic purpose, compliance with the Standards would result in a fundamental alteration and therefore would not be required. The Department expects that this provision will apply only in rare circumstances.

In such circumstances, the public entity would still be required to take other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities could receive the services, programs, or activities the public entity provides. For example, the Department has been informed that certain positron emission tomography (''PET'') machines cannot meet the MDE Standards' technical requirements for accessibility and still serve their diagnostic function. If this is so, then public entities would not be required to make those PET machines fully accessible, but they would be required to take other action that would enable individuals with disabilities to access PET machines in some other way without fundamentally altering the nature of the service, program, or activity, or imposing an undue financial or administrative burden. Such actions may include assisting patients who use wheelchairs with transferring so that they can receive a PET scan.

- *Issue 12: The Department seeks public comment on whether the proposed exception set forth in § 35.211(f) is needed.*

§ 35.212 Existing Medical Diagnostic Equipment

In addition to the requirements for newly purchased, leased, or otherwise acquired MDE, proposed § 35.212 requires that public entities address access barriers resulting from a lack of accessible MDE in their existing inventory of equipment. Here the proposed rule adopts an approach analogous to the concept of program accessibility in the existing regulation implementing title II of the ADA.[71] Under this approach, public entities may make their services, programs, and activities available to individuals with disabilities without extensive retrofitting of their existing buildings and facilities that predate the regulations, by offering access to those programs through alternative methods. The Department intends to adopt a similar approach with MDE to provide flexibility to public entities, address financial concerns about acquiring new MDE, and at the same time ensure that individuals with disabilities will have access to public entities' health care services, programs, and activities.

Proposed § 35.212 requires that each service, program, or activity of a public entity, when viewed in its entirety, be readily accessible to and usable by individuals with disabilities. Section 35.212(a)(1) makes clear, however, that a public entity is not required to make each piece of its existing MDE accessible. Like § 35.211(e), § 35.212(a)(2) incorporates the concepts of fundamental alteration and undue financial and administrative burden. These provisions do not excuse a public entity from addressing the accessibility of the program. If a particular action would result in a fundamental alteration or undue burden, the public entity would still be obligated to ensure that individuals with disabilities are able to receive the public entity's benefits and services.

§ 35.212(b) Methods

Paragraph (b) sets forth various methods by which public entities can make their services, programs, and activities readily accessible to and usable by individuals with disabilities when the requirements in proposed § 35.211 have not been triggered by the new acquisition of MDE. Of course, the purchase, lease, or other acquisition of accessible MDE may often be the most effective way to achieve program accessibility. However, except as stated in proposed § 35.211, a public entity is not required to purchase, lease, or acquire accessible MDE if other methods are effective in achieving compliance with this subpart.

For example, if doctors at a medical practice have staff privileges at a local hospital that has accessible MDE, the medical practice may be able to achieve program accessibility by ensuring that the doctors see a person with a disability who needs accessible MDE at the hospital, rather than at the local office, so long as the person with a disability is afforded an opportunity to participate in or benefit from the service, program, or activity equal to that afforded to others. Similarly, if a medical practice has offices in several different locations, and one of the locations has accessible MDE, the medical practice may be able to achieve program accessibility by serving the patient who needs accessible MDE at that location. However, such an arrangement would not provide an equal opportunity to participate in or benefit from the service, program, or activity if it was, for example, significantly less convenient for the patient or if the visit to a different location resulted in higher costs for the patient.

Similarly, if the scoping requirements set forth in § 35.211(b) would require a public entity's medical practice to have three height-adjustable exam tables and an accessible weight scale, but the practice's existing equipment includes only one accessible exam table and one accessible scale, then until the practice must comply with § 35.211, the practice could ensure that its services are readily accessible to and usable by people with

[70] 36 CFR pt. 1195, app., sec. M201.2.

[71] 28 CFR 35.150.

disabilities by establishing operating procedures such that, when a patient with a mobility disability schedules an appointment, the accessible MDE can be reserved for the patient's visit. In some cases, a public entity may be able to make its services readily accessible to and usable by individuals with disabilities by using a patient lift or a trained lift team, especially in instances in which a patient cannot or chooses not to independently transfer to the MDE in question.[72]

If the means by which a public entity carries out its obligation under § 35.212(a) to make its service, program, or activity readily accessible to and usable by individuals with disabilities is by purchasing, leasing, or otherwise acquiring accessible MDE, the requirements for newly purchased, leased, or otherwise acquired MDE set forth in § 35.211 would apply.

- *Issue 13: The Department seeks information about other ways that public entities can make their services, programs, and activities readily accessible to and usable by individuals with disabilities when proposed § 35.211 does not apply.*

The Department is also aware that there may be initial supply issues for accessible MDE, particularly if a large number of public entities seek to purchase accessible MDE at the same time. The Department notes that the fundamental alteration and undue financial and administrative burden limitations may apply if supply chain issues hamper the ability of public entities to purchase, lease, or otherwise acquire accessible MDE.

The proposed rule's requirements apply regardless of whether public entities are using MDE that is leased, purchased, or acquired through other means. The Department is aware that some public entities may lease MDE, rather than purchasing it outright. The Department's existing title II regulation, at 28 CFR 35.130(b)(3), provides that a public entity may not, directly or through contractual or other arrangements, use criteria or methods of administration that subject qualified persons with disabilities to discrimination on the basis of disability. The Department's existing title II regulation, at 28 CFR 35.130(b)(1)(i)–(ii), also prohibits a public entity from, directly or through contractual or other arrangements, denying a qualified individual with a disability the opportunity to participate in or benefit from a service or affording a qualified individual with a disability an opportunity to participate in or benefit from a service that is not equal to the opportunity afforded others. Under these longstanding regulatory provisions, the manner in which a public entity acquires its equipment does not alter the entity's obligation to provide an accessible program, service, or activity. The proposed rule's requirements also apply if the public entity contracts with a third party to provide medical programs, services, or activities.

- *Issue 14: The Department seeks information regarding public entities' leasing practices, including how many and what types of public entities use leasing, rather than purchasing, to acquire MDE; under what circumstances public entities lease equipment; whether leasing is limited to certain types of equipment (e.g., costlier and more technologically complex types of equipment); and the typical length of public entities' MDE lease agreements.*
- *Issue 15: The Department seeks information regarding whether there is a price differential for MDE lease agreements for accessible equipment.*
- *Issue 16: The Department seeks information regarding any methods that public entities use to acquire MDE other than purchasing or leasing.*

Medical Equipment Used for Treatment, not Diagnostic, Purposes

Many types of medical equipment other than MDE are used in the provision of health care. The accessibility, or lack thereof, of these types of equipment can determine whether people with disabilities have an equal opportunity to participate in and benefit from health services, programs, and activities. This non-diagnostic medical equipment may be used by public entities and includes, for example, devices intended to be used for therapeutic or rehabilitative care such as treatment tables and chairs for oncology, obstetrics, physical therapy, and rehabilitation medicines; lifts; infusion pumps used for dispensing chemotherapy drugs, pain medications, or nutrients into the circulatory system; dialysis chairs used while a patient's blood is pumped between a patient and a dialyzer; other tables or chairs designed for highly specialized procedures; general exercise and rehabilitation equipment used while seated or standing; and ancillary equipment[73] needed to ensure the safety and comfort of patients in the use of medical equipment.[74] Although the MDE Standards do not address non-diagnostic medical equipment, certain types of other medical equipment that are not diagnostic in purpose may still fall into the technical criteria categories set out by the MDE Standards (equipment used in (1) supine, prone, or side-lying position, (2) seated position, (3) while seated in a wheelchair, and (4) standing position; certain technical requirements concerning methods of communication and operable parts). As noted above, equipment used for both diagnostic purposes and other purposes is MDE if it otherwise meets the definition of MDE.

The Department is considering adding a provision establishing that when the MDE Standards contain technical standards that can be applied to a particular piece of non-diagnostic medical equipment, the requirements set forth in §§ 35.210 through 35.213 apply to the non-diagnostic medical equipment at issue. Although the MDE Standards were promulgated by the Access Board in response to a statutory mandate to provide standards specific to diagnostic equipment, public entities have an obligation under title II to provide equal opportunity to benefit from medical care of all types, including through the use of equipment that does not satisfy the definition of MDE. The Department seeks comment on whether to apply the Access Board's MDE Standards to non-diagnostic equipment—for example, because the relevant characteristics of some types of non-diagnostic equipment may be sufficiently similar to MDE to warrant applying the same standards—and if there is adequate justification for applying the MDE Standards' technical specifications to non-diagnostic equipment, which non-diagnostic equipment should be covered. For example, infusion chairs used only to dispense chemotherapy drugs are not used for diagnostic purposes and therefore would not fall under the definition of MDE. But if the MDE Standards contained technical standards that could be applied to infusion chairs, the requirements set forth in §§ 35.210 through 35.213 could apply to such equipment. The Department seeks public comment on whether this rule should apply to medical equipment that

[72] *See* U.S. Dep't of Just., Civ. Rts. Div., *Access to Medical Care for Individuals with Mobility Disabilities* (June 26, 2020), *https://www.ada.gov/medcare_mobility_ta/medcare_ta.htm* [*https://perma.cc/UH8Y-NZWL*].

[73] Ancillary equipment may include equipment such as cushions, bolsters, straps, sliding boards, or other items used to facilitate transfers and to help position patients.

[74] *See* U.S. Access Board, Medical Diagnostic Equipment Accessibility Standards Advisory Committee, *Advancing Equal Access to Diagnostic Services: Recommendations on Standards for the Design of Medical Diagnostic Equipment for Adults with Disabilities* (Dec. 6, 2013), *https://www.access-board.gov/advisory-committee-reports/mde/mde-report/* [*https://perma.cc/L2WC-S89L*].

is not used for diagnostic purposes, and if so, in what situations it should apply.

• *Issue 17: If this rule were to apply to medical equipment that is not used for diagnostic purposes:*

○ *Should the technical standards set forth in the Standards for Accessible Medical Diagnostic Equipment be applied to non-diagnostic medical equipment, and if so, in what situations should those technical standards apply to non-diagnostic medical equipment?*

○ *Are there particular types of non-diagnostic medical equipment that should or should not be covered?*

§ 35.213 Qualified Staff

The proposed rule requires public entities to ensure that their staff are able to successfully operate accessible MDE, assist with transfers and positioning of individuals with disabilities, and carry out the program access obligation with respect to existing MDE. This will enable public entities to carry out their obligation to make the programs, services, and activities that they offer through or with the use of MDE readily accessible to and usable by individuals with disabilities. The Department believes that public entities must have, at all times when services are provided to the public, appropriate and knowledgeable personnel who can operate MDE in a manner that ensures services are available and timely provided. Often, the most effective way for public entities to ensure that their staff are able to successfully operate accessible MDE is to provide staff training on the use of MDE.

• *Issue 18: The Department seeks public comment on this proposal, as well as any specific information on:*

○ *The effectiveness of programs used by public entities in the past to ensure that their staff is qualified;*

○ *Any information on the costs associated with such programs; and*

○ *Whether there are any barriers to complying with this proposed requirement, and if so, how they may be addressed.*

IV. Regulatory Process Matters

The Department has examined the likely economic and other effects of this proposed rule addressing the accessibility of MDE under applicable Executive Orders, Federal administrative statutes (*e.g.,* the Regulatory Flexibility Act, Paperwork Reduction Act, and Unfunded Mandates Reform Act) and other regulatory guidance.[75]

As discussed previously, the purpose of this proposed regulation is to revise the regulations implementing title II of the ADA to establish specific requirements, including the adoption of specific technical standards, for making accessible the services, programs, and activities offered by State and local governments to the public through their medical diagnostic equipment.

The Department has carefully crafted this proposed regulation to apply the protections of title II of the ADA in the most economically efficient manner possible. The Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, has determined that this regulatory action is significant. As such, the Department has undertaken a Preliminary Regulatory Impact Analysis (PRIA) pursuant to Executive Order 12866, as amended by Executive Order 14094. The Department has undertaken an initial Regulatory Flexibility Analysis as specified in § 603(a) of the Regulatory Flexibility Act (RFA). The results of both of these analyses are set forth below. Lastly, the Department does not believe that this proposed regulation will have any impact—significant or otherwise—relative to the Paperwork Reduction Act, the Unfunded Mandates Reform Act, or the federalism principles outlined in Executive Order 13132.

A. Preliminary Regulatory Impact Analysis Summary

The Department has prepared a PRIA for this rulemaking. This summary of the PRIA provides an overview of the Department's initial economic analysis. The full PRIA will be made available at *https://www.ada.gov/assets/pdfs/mde-pria.pdf.*

The Department estimates that this title II ADA proposed regulation would affect 6,905 public entities.[76] The Department quantifies incremental costs that affected entities may incur in (1) purchasing or leasing accessible MDE and (2) ensuring that qualified staff operate MDE. The Department also quantifies incremental benefits that people with mobility disabilities may enjoy due to higher shares of accessible MDE, which yield improved health outcomes. In addition, the Department discusses other benefits flowing from the proposed rule that cannot be quantified due to lack of data or other methodological reasons.

Table 1 below summarizes findings of the economic impact analysis of the likely incremental monetized costs and benefits of the proposed rule, on an annualized basis. All monetized costs and benefits are estimated for a 10-year period using a discount rate of 3 or 7 percent.

TABLE 1—ANNUALIZED VALUE OF MONETIZED COSTS AND BENEFITS UNDER THE PROPOSED RULE OVER A 10-YEAR PERIOD IN 2022 DOLLARS

[Millions][77]

	Discount rate (3 percent)	Discount rate (7 percent)
Monetized Incremental Costs	$38.5	$38.7
Monetized Incremental Benefits	7.7	4.8

In addition to these monetized benefit estimates, the PRIA discusses potential enormous unquantified benefits under the proposed rule. The Department expects that the proposed rule will result in a myriad of benefits for individuals with mobility disabilities flowing from greater access to health care and a reduction in discriminatory actions, such as the successful drug dosing for persons with disabilities who will now be able to be weighed and given proper drug regimens due to accessible weight scales, and the removal of multiple causes of loss of self-esteem, frustration, and embarrassment.

As further discussed in the PRIA, there are likely no public entities in the healthcare sector that do not receive some form of Federal financial assistance. Therefore, all or virtually all entities that are subject to title II of the ADA are also subject to section 504 of the Rehabilitation Act. Further, as also noted in the PRIA, title II and section 504 impose parallel requirements, and courts have interpreted them to be consistent. Maintaining that consistency, this rule under title II

[75] *See* E.O. 13563, 76 FR 3821 (Jan. 21, 2011); E.O. 13272, 67 FR 53461 (Aug. 13, 2002); E.O. 13132, 64 FR 43255 (Aug. 4, 1999); E.O. 12866, 58 FR 51735 (Sept. 30, 1993), as amended by E.O. 14094, 88 FR 21879 (Apr. 6, 2023); Regulatory Flexibility Act of 1980 (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.,*; Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.;* Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.;* OMB Circular A–4 (Sept. 17, 2003).

[76] The estimate of 6,905 public entities comes from the Department of Health and Human Services and the Centers for Medicare & Medicaid Services, based on information in the U.S. Census Bureau's 2019 SUSB Annual Data Table by Establishment Industry, U.S. & states, 6-digit NAICS. *See* Table 2 of the PRIA for more information.

[77] In addition to these specific point estimates, the Department in the PRIA reports a full range of cost estimates of $18.6 million to $68.6 million at a 3 percent discount rate, and a full range of cost estimates of $18.7 million to $68.8 million at a 7 percent discount rate. The PRIA reports a full range of benefit estimates of $5.1 million to $10.2 million at a 3 percent discount rate, and a full range of benefit estimates of $3.2 million to $6.4 million at a 7 percent discount rate.

imposes virtually the same obligations on public entities as HHS's rule imposes under section 504.

If we take as an alternative baseline the prior adoption of HHS's section 504 rule, assuming it is finalized, public entities will incur no additional costs to comply with title II as to accessible MDE. Entities that comply with the section 504 rule as to MDE will necessarily comply with the title II rule as well.

Under this alternative baseline, it also follows that the title II rule would engender no affirmative benefits with regard to accessible MDE. However, the title II rule could potentially avert significant administrative or transaction costs. Absent the proposed rule setting technical standards and scoping requirements for accessible MDE under title II of the ADA, courts might interpret title II to impose obligations on public entities that differ in some respects from those under section 504. Such differences would result in confusion, uncertainty, duplication, litigation, and increased compliance costs for regulated entities. One advantage of adopting the title II rule is thus avoidance of these pitfalls.

The PRIA includes both quantitative and qualitative discussions of regulatory alternatives directed toward the same goals while imposing lower costs. The PRIA concludes that the proposed rule maximizes net benefits to society while also achieving the regulatory goals.

The Department has examined the impact of the proposed rule on small entities as required by the RFA. For the purpose of this analysis, impacted small entities are independent State and local governmental units in the United States that serve a population less than 50,000.[78] Based on this definition, the Department estimates, in the PRIA at Table 13, a total of 38,514 small governmental entities, of which less than 7 percent have public entities that would be required to purchase accessible MDE. The PRIA estimates the annualized costs of the proposed rule at no more than 1 percent of the annual revenues of small government entities. The Department thus certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. The PRIA contains further data and analysis under the RFA.

B. Executive Order 13132: Federalism

Executive Order 13132 requires executive branch agencies to consider whether a proposed rule will have federalism implications. That is, the rulemaking agency must determine whether the rule is likely to have substantial direct effects on State and local governments, the relationship between the Federal government and the States and localities, or the distribution of power and responsibilities among the different levels of government. If an agency believes that a proposed rule is likely to have federalism implications, it must consult with State and local government officials about how to minimize or eliminate the effects.

Title II of the ADA covers State and local government services, programs, and activities, and, therefore, has some federalism implications. State and local governments have been subject to the ADA since 1991, and the majority of them have also been required to comply with the requirements of section 504. Hence, the ADA and the title II regulations are not novel for State and local governments. This proposed rule will preempt State laws affecting entities subject to the ADA only to the extent that those laws provide less protection for the rights of individuals with disabilities. This proposed rule does not invalidate or limit the remedies, rights and procedures of any State laws that provide greater or equal protection for the rights of individuals with disabilities. To minimize any potential conflicts, the Department believes it is prudent to consult with public entities about the potential federalism implications of the proposed title II regulation.

The Department intends to amend the regulations in a manner that meets the objectives of the ADA while also minimizing conflicts between State law and Federal interests. The Department is now soliciting comments from State and local officials and their representative national organizations through this NPRM.

- *Issue 19: The Department seeks public comment on the potential federalism implications of the proposed rule, including whether the proposed rule may have direct effects on State and local governments, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government.*

C. National Technology Transfer and Advancement Act of 1995

The National Technology Transfer and Advancement Act of 1995 (NTTAA) directs that, as a general matter, all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, which are private, generally nonprofit organizations that develop technical standards or specifications using well-defined procedures that require openness, balanced participation among affected interests and groups, fairness and due process, and an opportunity for appeal, as a means to carry out policy objectives or activities.[79] In addition, the NTTAA directs agencies to consult with voluntary, private sector, consensus standards bodies and requires that agencies participate with such bodies in the development of technical standards when such participation is in the public interest and is compatible with agency and departmental missions, authorities, priorities, and budget resources.[80]

The Department is proposing to adopt the Standards for Accessible Medical Diagnostic Equipment issued by the Access Board to apply to the purchase and lease of MDE by public entities. These MDE Standards were adopted by the U.S. Access Board in 2017 after a five-year review period that included participation by an Advisory Committee composed of representatives from the health care industry, architects, persons with disabilities, and organizations representing a variety of interested stakeholders. The MDE Standards were developed after extensive notice and comment. The development of these standards was required by section 510 of the Rehabilitation Act of 1973, as amended, and were developed with the participation of the Food and Drug Administration. They have gained wide recognition in the United States. The Department is unaware of any privately developed standards created with the same wide participation and open process. As a result, the Department believes that it is appropriate to use these MDE Standards for this rule.

- *Issue 20: The Department seeks public comment on the Standards for Accessible Medical Diagnostic Equipment and whether there are any other standards for accessible medical diagnostic equipment that the Department should consider.*

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[78] 5 U.S.C. 601(5) and Small Business Admin., *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act* (Aug. 2017), *https://advocacy.sba.gov/wp-content/uploads/2019/06/How-to-Comply-with-the-RFA.pdf* [*https://perma.cc/6BFB-2QWH*].

[79] Public Law 104–113, sec. 12(d)(1) (15 U.S.C. 272 note).

[80] *Id.* sec. 12(d)(2).

D. Plain Language Instructions

The Department makes every effort to promote clarity and transparency in its rulemaking. In any regulation, there is a tension between drafting language that is simple and straightforward and drafting language that gives full effect to issues of legal interpretation. The Department operates a toll-free ADA Information Line at (800) 514–0301 (voice); (800) 514–0383 (TTY) that the public is welcome to call to get assistance understanding anything in this proposed rule. If any commenter has suggestions for how the regulation could be written more clearly, please contact Rebecca B. Bond, Chief, Disability Rights Section, whose contact information is provided in the introductory section of this proposed rule entitled, **FOR FURTHER INFORMATION CONTACT**.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), no person is required to respond to a ''collection of information'' unless the agency has obtained a control number from OMB.[81] This proposed rule does not contain any collections of information as defined by the PRA.

F. Unfunded Mandates Reform Act

Section 4(2) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1503(2), excludes from coverage under that Act any proposed or final Federal regulation that ''establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.'' Accordingly, this rulemaking is not subject to the provisions of the Unfunded Mandates Reform Act.

List of Subjects in 28 CFR Part 35

Administrative practice and procedure, Buildings and facilities, Civil rights, Individuals with disabilities, State and local requirements.

V. Proposed Regulatory Text

By the authority vested in me as Attorney General by law, including 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 12134, 12131, and 12205a of the Americans with Disabilities Act, as amended, and for the reasons set forth in Appendix A to 28 CFR part 35, chapter I of title 28 of the Code of Federal Regulations is proposed to be amended as follows—

[81] 44 U.S.C. 3501 *et seq.*

PART 35—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES

■ 1. The authority citation for part 35 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 12134, 12131, and 12205a.

Subpart A—General

■ 2. Amend § 35.104 by adding the following definitions of ''medical diagnostic equipment'' and ''Standards for Accessible Medical Diagnostic Equipment'' in alphabetical order:

§ 35.104 Definitions.

* * * * *

Medical diagnostic equipment (''*MDE*'') means equipment used in, or in conjunction with, medical settings by health care providers for diagnostic purposes. MDE includes, for example, examination tables, examination chairs (including chairs used for eye examinations or procedures, and dental examinations or procedures), weight scales, mammography equipment, x-ray machines, and other radiological equipment commonly used for diagnostic purposes by health professionals.

* * * * *

Standards for Accessible Medical Diagnostic Equipment (''*Standards for Accessible MDE*'') means the standards at 36 CFR part 1195, promulgated by the Architectural and Transportation Barriers Compliance Board under section 510 of the Rehabilitation Act of 1973, as amended, in effect as of the date of promulgation of the final version of this rule, found in the Appendix to 36 CFR part 1195.

* * * * *

Subpart I—Accessible Medical Diagnostic Equipment

■ 3. Add new subpart I to read as follows:

Subpart I—Accessible Medical Diagnostic Equipment

Sec.

35.210 Requirements for medical diagnostic equipment.
35.211 Newly purchased, leased, or otherwise acquired medical diagnostic equipment.
35.212 Existing medical diagnostic equipment.
35.213 Qualified staff.
35.214–35.219 [Reserved]

§ 35.210 Requirements for medical diagnostic equipment.

No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the health care services, programs, or activities of a public entity offered through or with the use of medical diagnostic equipment (MDE), or otherwise be subjected to discrimination by any public entity because the public entity's MDE is not readily accessible to or usable by persons with disabilities.

§ 35.211 Newly purchased, leased, or otherwise acquired medical diagnostic equipment.

(a) Requirements for all newly purchased, leased, or otherwise acquired medical diagnostic equipment. All MDE that public entities purchase, lease, or otherwise acquire more than 60 days after the publication of this part in final form shall, subject to the requirements and limitations set forth in this section, meet the Standards for Accessible MDE, unless and until the public entity satisfies the scoping requirements set forth in paragraph (b) of this section.

(b) Scoping requirements.

(1) *General requirement for medical diagnostic equipment.* Where a service, program, or activity of a public entity, including physicians' offices, clinics, emergency rooms, hospitals, outpatient facilities, and multi-use facilities, utilizes MDE, at least 10 percent of the total number of units, but no fewer than one unit, of each type of equipment in use must meet the Standards for Accessible MDE.

(2) *Facilities that specialize in treating conditions that affect mobility.* In rehabilitation facilities that specialize in treating conditions that affect mobility, outpatient physical therapy facilities, and other services, programs, or activities that specialize in treating conditions that affect mobility, at least 20 percent, but no fewer than one unit, of each type of equipment in use must meet the Standards for Accessible MDE.

(3) *Facilities with multiple departments.* In any facility or program with multiple departments, clinics, or specialties, where a service, program, or activity uses MDE, the facility shall disperse the accessible MDE required by paragraphs (b)(1) and (2) of this section in a manner that is proportionate by department, clinic, or specialty using MDE.

(c) Requirements for examination tables and weight scales. Within two years after the publication of this part in final form, public entities shall, subject to the requirements and limitations set forth in this section, purchase, lease, or otherwise acquire the following, unless the entity already has them in place:

(1) At least one examination table that meets the Standards for Accessible

MDE, if the public entity uses at least one examination table; and

(2) At least one weight scale that meets the Standards for Accessible MDE, if the public entity uses at least one weight scale.

(d) Equivalent facilitation. Nothing in these requirements prevents the use of designs, products, or technologies as alternatives to those prescribed by the Standards for Accessible MDE, provided they result in substantially equivalent or greater accessibility and usability of the health care service, program, or activity. The responsibility for demonstrating equivalent facilitation rests with the public entity.

(e) Fundamental alteration and undue burdens. This section does not require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity, or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with paragraph (a) or (c) of this section would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or their designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.

(f) Diagnostically required structural or operational characteristics. A public entity meets its burden of proving that compliance with paragraph (a) or (c) of this section would result in a fundamental alteration under paragraph (e) if it demonstrates that compliance with paragraph (a) or (c) of this section would alter diagnostically required structural or operational characteristics of the equipment and prevent the use of the equipment for its intended diagnostic purpose. This paragraph does not excuse compliance with other technical requirements where compliance with those requirements does not prevent the use of the equipment for its diagnostic purpose.

§ 35.212 Existing medical diagnostic equipment.

(a) Accessibility. A public entity shall operate each service, program, or activity offered through or with the use of MDE so that the service, program, or activity, in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not—

(1) Necessarily require a public entity to make each of its existing pieces of MDE accessible to and usable by individuals with disabilities; or

(2) Require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity, or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with § 35.212(a) of this part would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or their designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services, programs, and activities provided by the public entity.

(3) A public entity meets its burden of proving that compliance with § 35.211(a) or (c) of this part would result in a fundamental alteration under paragraph (a)(2) if it demonstrates that compliance with § 35.211(a) or (c) of this part would alter diagnostically required structural or operational characteristics of the equipment and prevent the use of the equipment for its intended diagnostic purpose.

(b) Methods. A public entity may comply with the requirements of this section through such means as reassignment of services to alternate accessible locations; home visits; delivery of services at alternate accessible sites; purchase, lease, or other acquisition of accessible MDE; or any other methods that result in making its services, programs, or activities readily accessible to and usable by individuals with disabilities. A public entity is not required to purchase, lease, or otherwise acquire accessible MDE where other methods are effective in achieving compliance with this section. In choosing among available methods for meeting the requirements of this section, a public entity shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.

§ 35.213 Qualified staff.

Public entities must ensure their staff are able to successfully operate accessible MDE, assist with transfers and positioning of individuals with disabilities, and carry out the program access obligation regarding existing MDE.

§§ 35.214–35.219 [Reserved]

Dated: January 8, 2024.

Merrick B. Garland,

Attorney General.

[FR Doc. 2024–00553 Filed 1–11–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 350, 365, 385, 386, 387, and 395

[Docket No. FMCSA–2022–0003]

RIN 2126–AC52

Safety Fitness Determinations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of data availability; request for comments.

SUMMARY: This notice of data availability (NODA) is to alert stakeholders and members of the public about information that FMCSA believes may be relevant to this proceeding. This NODA identifies information the Agency has become aware of and provides an opportunity for public comment. The Agency may consider this information in preparation for further regulatory action following an advance notice of proposed rulemaking (ANPRM).

DATES: Comments must be received by February 12, 2024.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2022–0003 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov/docket/*

FMCSA-2022-0003/document. Follow the online instructions for submitting comments.

• *Mail:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

• *Fax:* (202) 493–2251. To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Stacy Ropp, (609) 661–2062, *SafetyFitnessDetermination@dot.gov.* FMCSA office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays. If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this proceeding (FMCSA–2022–0003), indicate the specific section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission. To submit your comment online, go to *https://www.regulations.gov/docket/FMCSA-2022-0003/document,* click on this NODA, click ''Comment,'' and type your comment into the text box on the following screen. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

FMCSA will consider all comments and material received during the comment period.

Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the NODA contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the NODA, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as ''PROPIN'' to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the proceeding. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 or via email at *brian.g.dahlin@dot.gov.* At this time, you need not send a duplicate hardcopy of your electronic CBI submissions to FMCSA headquarters. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this rulemaking.

B. Viewing Comments and Documents

To view any documents mentioned as being available in the docket, go to *https://www.regulations.gov/docket/FMCSA-2022-0003/document* and choose the document to review. To view comments, click this notice, then click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL 14—Federal Docket Management System (FDMS)), which can be reviewed at *www.transportation.gov/privacy.* The comments are posted without edit and are searchable by the name of the submitter.

II. Background

FMCSA published an ANPRM in this proceeding stating the Agency was interested in developing a new methodology to determine when a motor carrier is not fit to operate commercial motor vehicles (CMVs) in or affecting interstate commerce (Safety Fitness Determinations, 88 FR 59489 (Aug. 29, 2023)). The original deadline for submitting comments in response to the ANPRM was extended from October 30, 2023, to November 29, 2023 (88 FR 72727 (Oct. 23, 2023)). The background and history of the procedures and standards for safety fitness determinations, as well as the legal basis for such determinations, were set out in detail in the ANPRM (88 FR at 59489–59493).

III. What information is available?

The following reports and studies provide information that FMCSA may consider in responding to the public comments on the issues raised and questions posed in the ANPRM and in the context of further regulatory action. The list also provides links for the source of these items.

The following material is available on the internet at the locations specified below and in the docket for this rulemaking:

Bell, Jennifer L., et al. (2017). ''Evaluation of an in-vehicle monitoring system (IVMS) to reduce risky driving behaviors in commercial drivers: Comparison of in-cab warning lights and supervisory coaching with videos of driving behavior.'' *Journal of Safety Research.* 60: 125–136, *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5427714/.*

Cai, Maio, et al. (2021). ''The association between crashes and safety-critical events: Synthesized evidence from crash reports and naturalistic driving data among commercial truck drivers.'' *Transportation Research Part C: Emerging Technologies.* 126: 103016, *https://doi.org/10.1016/j.trc.2021.103016.*

Chen, Guang Xiang (2008). ''Impact of federal compliance reviews of trucking companies in reducing highway truck crashes.'' *Accident Analysis & Prevention.* 40: 238–245, *https://doi.org/10.1016/j.aap.2007.06.002.*

Cicchino, Jessica B. (2017). ''Effectiveness of forward collision warning and autonomous emergency braking systems in reducing front-to-rear crash rates.'' *Accident Analysis &*

Prevention. 99 (Pt A): 142–152, *https://dx.doi.org/10.1016/j.aap.2016.11.009.*

Lotan, Tsippy and Toledo, Tomer (2006). ''In-vehicle data recorder for evaluation of driving behavior and safety.'' *Transportation Research Record: Journal of the Transportation Research Board.* 1953: 112–119, *https://journals.sagepub.com/doi/pdf/10.1177/0361198106195300113.*

NHTSA (2023). *2021 FARS/CRSS coding and validation manual.* Report No. DOT HS 813 426. DOT, National Highway Traffic Safety Administration, *https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813426.*

IV. What is FMCSA taking comment on and what supporting documentation do I need to include in my comments?

FMCSA has become aware of the reports and studies listed above. The Agency will be considering whether any material information contained in these reports and studies may be relied upon by the Agency in developing a proposed or final rule. This NODA is necessary to disclose such possible reliance and to provide the interested public an opportunity to comment on the accuracy and relevance of the information (49 CFR 5.5(a)(1)).

The comment period for the ANPRM ended on November 29, 2023. Comments submitted in response to this NODA must be limited to addressing any relevant information in the reports and studies listed above. Comments addressing other matters will not be considered by FMCSA.

Issued under authority delegated in 49 CFR 1.87.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024–00522 Filed 1–11–24; 8:45 am]

BILLING CODE 4910–EX–P

Notices

Federal Register

Vol. 89, No. 9

Friday, January 12, 2024

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–TM–23–0066]

Notice of Availability of the Final Programmatic Environmental Assessment and Finding of No Significant Impact for AMS Local Meat Capacity Grant Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of availability.

SUMMARY: The Agricultural Marketing Service (AMS) announces the availability of the Final Programmatic Environmental Assessment (PEA) and Finding of No Significant Impact (FONSI) for the AMS Local Meat Capacity Grant Program.

FOR FURTHER INFORMATION CONTACT: Betsy Rakola, Associate Deputy Administrator, Transportation and Marketing Program; Telephone: (202) 690–1300; Email: *LocalMCap@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Final PEA and FONSI analyze and disclose the potential environmental impacts associated with the establishment of the Local Meat Capacity Grant Program (Local MCap). The United States Department of Agriculture (USDA) AMS has proposed to fund grants to support independently owned meat and poultry processing businesses. These grants will help them provide additional and more efficient processing options for local livestock producers by modernizing, increasing, diversifying, and decentralizing meat and poultry processing capacity, including support for rendering.

This program will expand processing capacity for small and midsized meat and poultry processors, which are particularly vulnerable to disruption. It will also increase capacity and promote competition in the meat and poultry processing sector. Based on public input, USDA identified an urgent need to expand and diversify meat and poultry processing capacity.

The Local MCap Program is authorized by section 1001 (b)(4) of the American Rescue Plan Act (ARPA) (Pub. L. 117–2), which funds ''loans and grants and other assistance to maintain and improve food and agricultural supply chain resiliency.'' Recipients of funding from this proposed program would be allowed 36 months to complete work funded by the grant awards.

The environmental impacts of funding projects to enhance existing meat and poultry processing facilities have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA) of 1969, Public Law 91–190, 42 U.S.C. 4321–4347, as amended.

A Final PEA and FONSI have been prepared, and based on this analysis, AMS has determined there will not be a significant impact to the human environment. As a result, an Environmental Impact Statement (EIS) has not been initiated (40 CFR 1501.6). AMS intends for this PEA to create efficiencies by establishing a framework that can be used for ''tiering,'' where appropriate, to project-specific actions that require additional analysis. As decisions on specific applications are made, to the extent additional NEPA analysis is required, environmental review will be conducted to supplement the analysis set forth in this PEA.

The Final PEA and FONSI are available for review online at the program website: *https://www.ams.usda.gov/services/grants/localmcap.*

Comments

AMS published a Draft PEA for public comment on October 31, 2023. The public comment period ended on November 30, 2023. One non-substantive comment was received and is therefore excluded from consideration in the Final PEA and FONSI. Consistent with 40 CFR 1503.4(b), all substantive comments would have received a response. AMS is not required to respond to non-substantive comments. Comments are carefully considered and reviewed; non-substantive comments do not receive a detailed response. A non-substantive comment is categorized as one of the following:

- General comment, opinion, or position statement
- Concern is outside the scope or irrelevant to the proposed action and decision
- Means of addressing the concern are already decided by law, regulation, or policy
- Concern can be better addressed through another decision process (*e.g.,* project level analysis)
- Concern requests action that has already been considered in an alternative

Melissa Bailey,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2024–00520 Filed 1–11–24; 8:45 am]

BILLING CODE 3410–02–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Delaware Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Announcement of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Delaware Advisory Committee (Committee) to the U.S. Commission on Civil Rights will convene a business meeting on Wednesday, January 24, 2024, at 1:00 p.m. Eastern Time. The purpose of the meeting is for the committee to discuss the progress of their report on the COVID–19 impact on people of color in Delaware.

DATES: Wednesday, January 24, 2024; 1:00 p.m. (ET)

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual): https://tinyurl.com/bdeax2vv; passcode: USCCR–DE

Join by Phone (Audio Only): 1–833–435–1820 USA Toll-Free; Meeting ID: 160 070 5129#

FOR FURTHER INFORMATION CONTACT: Ivy Davis, Designated Federal Official at *idavis@usccr.gov* or 202–381–8915.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the link above. Any

interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email *ebohor@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Ivy Davis at *idavis@usccr.gov*. Persons who desire additional information may contact the Regional Programs Coordination Unit at 1–312–353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Delaware Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *ebohor@usccr.gov*.

Agenda

I. Welcome and Roll Call
II. Project Planning, Report Discussion, and Potential Report Vote
III. Public Comment
IV. Discuss Next Steps
V. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of staffing limitations during the holiday season.

Dated: January 9, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–00580 Filed 1–11–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

[Docket Number: 231218–0307]

RIN 0607–XC073

Draft Plan for Providing Public Access to the Results of Federally Funded Research

AGENCY: Census Bureau, Department of Commerce.

ACTION: Notice; request for public comment.

SUMMARY: The United States Census Bureau seeks comments on the Draft U.S. Census Bureau Plan for Providing Public Access to Results of Federally Funded Research. The Census Bureau is taking steps to make its scientific data and publications more readily available and accessible by the public, as directed in an August 2022 Memorandum from the Office of Science and Technology Policy (OSTP). The Census Bureau's Public Access Plan applies to the results of research funded wholly or in part by the Census Bureau, presented in peer-reviewed scholarly publications including book chapters and peer-reviewed conference proceedings as appropriate, and scientific data as defined in the OSTP Memo. The document outlines the Census Bureau's plan for implementing new requirements to manage the public access of scientific data and publications. Public comments received on the Public Access Plan will inform Census Bureau as it develops policies and procedures to implement the Plan.

DATES: Responses must be received by 11:59 p.m. Eastern Time on March 12, 2024 to be considered.

ADDRESSES: Comments may be submitted by either of the following methods:

• *Electronic submission:* Submit electronic public comments via the Federal eRulemaking Portal.

1. Go to *www.regulations.gov* and enter Docket Number USBC–2023–0015 in the search field.

2. Click the ''Comment Now!'' icon, complete the required fields.

3. Enter or attach your comments.

• *By email:* Comments in electronic form may also be sent to *pco.policy.office@census.gov* in any of the following formats: HTML, ASCII, Word, RTF, or PDF.

Please submit comments only and include your name, organization's name (if any), and cite ''Census Bureau Public Access Plan'' in all correspondence. Comments containing references, studies, research, and other empirical data that are not widely published should include copies of the referenced materials.

All comments responding to this document will be a matter of public record. Relevant comments will generally be available on the Federal eRulemaking Portal at *https://www.Regulations.gov.*

The Census Bureau will not accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. Therefore, do not submit confidential business information or otherwise sensitive, protected, or personal information, such as account numbers, Social Security numbers, or names of other individuals.

FOR FURTHER INFORMATION CONTACT: For questions about this notice contact: Mike Castro, email address *michael.castro@census.gov,* (301) 763–6280. Please direct media inquiries to the Census Bureau's Public Information office at 301–763–3030.

SUPPLEMENTARY INFORMATION: The U.S. Census Bureau (Census Bureau) mission is to serve as the nation's leading provider of quality data about its people and economy. This can be accomplished in part through equitable delivery of federally funded research results and data.

The Census Bureau publishes this notice to seek comments on the *Draft U.S. Census Bureau Plan for Providing Public Access to Results of Federally Funded Research,* posted at *www.census.gov/open.* The Census Bureau developed this Public Access Plan in response to a public access memorandum, *Ensuring Free, Immediate, and Equitable Access to Federally Funded Research* issued by the Office of Science and Technology Policy (OSTP) on August 25, 2022 which expanded on the February 22, 2013, memorandum *Increasing Access to the Results of Federally Funded Scientific Research* and brought the Census Bureau's research activities in scope.

The *Draft U.S. Census Bureau Plan for Providing Public Access to Results of Federally Funded Research* applies to the results of research funded wholly or in part by the Census Bureau, presented in peer-reviewed scholarly publications including book chapters and peer-reviewed conference proceedings as appropriate, and ''scientific data'' as defined in the OSTP memorandum. This Public Access Plan, promotes the following objectives:

• Fulfill the requirement in the Office of Science and Technology Policy

(OSTP's) August 25, 2022, memorandum subject ''Ensuring Free, Immediate, and Equitable Access to Federally Funded Research'' to develop a Public Access Plan.

• Reaffirm the Census Bureau's commitments to

• promote open science including reproducibility and trust in federal statistics;

• be transparent with respondents about how their data is used; and

• protect respondent privacy and confidentiality.

• Ensure effective access to and reliable preservation of Census Bureau peer-reviewed scholarly publications and digital scientific data for use in research, development, education, and scientific discovery by depositing them in appropriate repositories, including data repositories that align with the OSTP's guidance on ''Desirable Characteristics of Data Repositories for Federally Funded Research.''

The Census Bureau Public Access Plan was reviewed by the Office of Science and Technology Policy in the Office of Management and Budget, and those comments have been addressed in the plan being posted for comment.

The Census Bureau invites respondents to comment on the plan including, but not limited to, the following questions that pertain to the implementation its new public access plan:

• What are the best practices (from academia, industry, and other stakeholder communities) in managing public access of data and research results?

• What are the biggest challenges to implementing a public access policy, and how can these challenges be addressed?

• How can the Census Bureau ensure equity in publication opportunities?

• How can the Census Bureau ensure public access and accessibility to outputs of Census Bureau-funded research?

• How can the Census Bureau monitor impacts on affected communities—authors and readers alike?

• How can the Census Bureau improve the plan to provide greater public access to Census Bureau-funded research results?

Comments relating to the text of the *Draft U.S. Census Bureau Plan for Providing Public Access to Results of Federally Funded Research* should reference the document by page and line number. All comments must be received in accordance with the **DATES** and **ADDRESSES** sections of the notice above.

Robert L. Santos, Director, Census Bureau, approved the publication of this notice in the **Federal Register**.

Dated: January 4, 2024.

Shannon Wink,

Program Analyst, Policy Coordination Office, U.S. Census Bureau.

[FR Doc. 2024–00538 Filed 1–11–24; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Import, End-User, Delivery Verification Certificates and Firearms Entry Clearance Requirements

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on September 19, 2023, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: Bureau of Industry and Security, Commerce.

Title: Import, End-User, Delivery Verification Certificates and Firearms Entry Clearance Requirements.

OMB Control Number: 0694–0093.

Form Number(s): BIS–645P, BIS 647–P.

Type of Request: Extension of a current information collection.

Number of Respondents: 11,776.

Average Hours per Response: 1 to 30 minutes.

Burden Hours: 1,630.

Needs and Uses: This collection of information addresses three activities: (1) Import Certificates/End Use Certificates, (2) Delivery Verification, and (3) Firearms Entry Clearance Requirements.

Import Certificates or End-User Certificates (IC/EUC)—The IC/EUC, BIS–645P, is obtained by the foreign importer and transmitted to the U.S. exporter. They are issued by the government of the country of ultimate destination to exercise legal control over the disposition of the items covered by the IC/EUC. The control exercised by the government issuing the IC/EUC is in addition to the conditions and restrictions placed on the transaction by BIS.

Delivery Verification—The Delivery Verification Certificate (DV) is required by BIS as part of its export control program. The license holder is responsible for having the ultimate consignee complete the BIS–647P, Delivery Verification Certificate Form when the goods are delivered. BIS uses the DV procedure on an ''as needed'' basis. The DV is usually required when there is suspicion of violation of the EAR. Therefore, if the exporter cannot supply the DV, BIS must be notified to determine if an exception is legitimate. Otherwise, the exporter would be in violation of the EAR.

Firearms Entry Clearance Requirements—This entry clearance requirement is necessary due to the changes by the President in determining that certain items no longer warrant control under United States Munitions List (USML) Category I—Firearms, Close Assault Weapons and Combat Shotguns; Category II—Guns and Armament; and Category III—Ammunition/Ordnance would be controlled under the Commerce Control List (CCL). As the State Department previously collected this same type of information, the Department of Commerce controls the CCL and must now take over this collection of information.

Affected Public: Business or other for-profit organizations.

Frequency: On Occasion.

Respondent's Obligation: Mandatory.

Legal Authority: §§ 748.9, 748.10, 748.12, 748.14, Part 748 Supplement No. 5, 758.10, 762.5(d), 762.6, 764.2(g)(2), and of the Export Administration Regulations (EAR).

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and

entering either the title of the collection or the OMB Control Number 0694–0093.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–00582 Filed 1–11–24; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–870]

Certain Oil Country Tubular Goods From the Republic of Korea: Notice of Court Decision Not in Harmony With the Results of Antidumping Duty Administrative Review; Notice of Amended Final Results; Correction

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice; correction.

SUMMARY: The U.S. Department of Commerce (Commerce) published notice in the **Federal Register** of December 27, 2023, in which Commerce provided notice of a court decision which was not in harmony with the results of the 2019–2020 antidumping duty (AD) administrative review of certain oil country tubular goods from Korea and announced amended final results for that administrative review. This notice contained incorrect information concerning the cash deposit requirements.

FOR FURTHER INFORMATION CONTACT: Mike Heaney or Mark Flessner, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4475 or (202) 482–6312, respectively.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of December 27, 2023, in FR Doc. 2023–28526, on page 89371, in the first column, correct the paragraph entitled ''Cash Deposit Requirements'' to read as follows: Because AJU Besteel, Husteel, Hyundai Steel, and NEXTEEL do not have a superseding cash deposit rate, *i.e.,* there have been no final results published in a subsequent administrative review of certain oil country tubular goods from Korea,[1] and because of the change to the rate assigned to all other producers and exporters of subject merchandise, Commerce will issue revised cash deposit instructions to U.S. Customs and Border Protection.

Background

On December 27, 2023, Commerce published in the **Federal Register** the *OCTG from Korea Notice of Amended Final Results.*[2] This notice contained incorrect information concerning the cash deposit requirements.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516(A)(c) and (e) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: January 8, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–00570 Filed 1–11–24; 8:45 am]

BILLING CODE 3510–DS–P

[1] Commerce rescinded the 2020–2021 AD administrative review. *See Rescission of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 24097 (April 22, 2022). Commerce has not yet completed the 2021–2022 AD administrative review. *See Certain Oil Country Tubular Goods from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2021–2022,* 88 FR 69118 (October 5, 2023).

[2] *See Certain Oil Country Tubular Goods from the Republic of Korea: Notice of Court Decision Not in Harmony with the Results of Antidumping Duty Administrative Review; Notice of Amended Final Results,* 88 FR 89370 (December 27, 2023) (*OCTG from Korea Notice of Amended Final Results*).

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; National Environmental Policy Act (NEPA) Financial Disclosure Information Collection Request (ICR)

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on 09/20/2023 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Institute of Standards and Technology (NIST), Commerce.

Title: National Environmental Policy Act (NEPA) Financial Disclosure (ICR).

OMB Control Number 0693–XXXX.

Form Number(s): None.

Type of Request: Regular submission—new information collection.

Number of Respondents: 20.

Average Hours per Response: 15 minutes.

Burden Hours: 5 hours.

Needs and Uses: NIST developed a NEPA financial disclosure statement for project sponsors to use in conjunction with preparation of environmental review documents under the agency's supervision. This statement will be used in a variety of contexts at NIST. NIST will request recipients of funds for extramural construction to prepare environmental review documents and to submit the NEPA financial disclosure statement.

This statement will also be used by the CHIPS Incentives Program. The CHIPS Incentives Program is authorized by Title XCIX—Creating Helpful Incentives to Produce Semiconductors for America of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116–283, referred to as the CHIPS Act or Act), as amended by the CHIPS Act of 2022 (Division A of Pub. L. 117–167).

Affected Public: Business or other for-profit organizations.

Frequency: Once.

Respondent's Obligation: Mandatory to obtain benefits.

Legal Authority: 42 U.S.C. 4336a(f), 40 CFR 1506.5 and 1507.3.

This information collection request may be viewed at *www.reginfo.gov*. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or

by using the search function and entering either the title of the collection.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–00585 Filed 1–11–24; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD563]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the City of Oceanside's Harbor Fishing Pier and Non-Motorized Vessel Launch Improvement Project in Oceanside, California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the City of Oceanside to incidentally harass, by Level B harassment only, marine mammals during construction activities associated with harbor fishing pier and non-motorized vessel launch improvement in Oceanside, California. There are no changes from the proposed authorization to the final authorization.

DATES: This authorization is effective from March 1, 2024, through February 28, 2025.

ADDRESSES: Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-city-oceansides-harbor-fishing-pier-and-non-motorized-vessel.* In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Alyssa Clevenstine, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On May 16, 2023, NMFS received a request from the City of Oceanside for an IHA to take marine mammals incidental to construction activities associated with fishing pier and non-motorized vessel launch improvement in Oceanside Harbor, Oceanside, CA. Following NMFS' review of the application, the City of Oceanside submitted revised versions on July 18 and October 17, 2023. The application was deemed adequate and complete on November 2, 2023. The City of Oceanside's request is for take of seven species of marine mammals by Level B harassment only. Neither the City of Oceanside nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate. There are no changes from the proposed IHA to the final IHA.

Description of Specified Activity

The City of Oceanside plans to remove and replace the existing public fishing pier and non-motorized vessel launch in Oceanside Harbor, Oceanside, CA. The applicant plans to use vibratory extraction to remove four 16-inch octagonal concrete support piles; vibratory driving to install up to 18 18-inch round plastic-coated steel piles to within 0.61–1.52 meters (m; 2–5 feet (ft)) of required depth; and, potentially, impact driving to complete pile installation depending on observed soil resistance. While not expected to be required based on site geology, 18 10-inch steel piles may be used as temporary guide piles to aid in the installation of the larger 18-inch structural piles.

A maximum of 6 non-consecutive days of piling activities will occur during the course of construction (5–6 months) from March 2024 through February 2025 (table 1). All project activities for which take is being requested will be located in Oceanside Harbor, Oceanside, CA.

A detailed description of the planned construction project is provided in the **Federal Register** notice for the proposed IHA (88 FR 83081, November 28, 2023). Since that time, no changes have been made to the planned activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specified activity.

TABLE 1—PILE EXTRACTION AND INSTALLATION ACTIVITIES

Pile activity	Method	Pile size (inch), material	Piles per day	Duration of activity (days)	Duration of vibratory activity per pile (minutes)	Estimated blows of impact driving per pile (strikes)
Extraction	Vibratory	16, concrete	4	1	25	N/A
Installation	Vibratory	18, steel	4	* 5	25	N/A
Installation	Impact	18, steel	4	* 5	N/A	300

TABLE 1—PILE EXTRACTION AND INSTALLATION ACTIVITIES—Continued

Pile activity	Method	Pile size (inch), material	Piles per day	Duration of activity (days)	Duration of vibratory activity per pile (minutes)	Estimated blows of impact driving per pile (strikes)
Installation	Vibratory	10, steel	4	N/A	10	N/A

Note: Impact pile installation will be used for driving piles 0.61–1.52 m to final depth, depending on observed sediment resistance.
* Vibratory and impact installation of 18-inch steel piles will occur in the same 5 days.

Comments and Responses

A notice of NMFS' proposal to issue an IHA to the City of Oceanside was published in the **Federal Register** on November 29, 2023 (88 FR 83081). That notice described, in detail, the City of Oceanside's planned activities, the marine mammal species that may be affected by the activities, and the anticipated effects on marine mammals. In that notice, we requested public input on the request for authorization described therein, our analyses, the proposed authorization, and any other aspect of the notice of proposed IHA, and requested that interested persons submit relevant information, suggestions, and comments. During the 30-day public comment period no substantive comments were received.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the IHA application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species).*

Table 2 lists all species for which take is authorized for this activity and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Pacific SARs. All values presented in table 2 are the most recent available at the time of publication (including from the 2022 SARs) and are available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 2—MARINE MAMMAL SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES [1]

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [2]	Stock abundance (CV, N_{min}, most recent abundance survey) [3]	PBR	Annual M/SI [4]
Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Bottlenose dolphin	*Tursiops truncatus*	California Coastal	-/-; N	453 (0.06, 346, 2011)	2.7	≥2
Long-beaked common dolphin.	*Delphinus delphis capensis*	California	-/-; N	83,379 (0.216, 69,636, 2018)	668	≥29.7
Short-beaked common dolphin.	*Delphinus delphis delphis*	California/Oregon/Washington.	-/-; N	1,056,308 (0.21, 888,971, 2018).	8,889	≥30.5
Pacific white-sided dolphin.	*Lagenorhynchus obliquidens*	California	-/-; N	34,999 (0.222, 29,090, 2018)	279	7
Order Carnivora—Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California sea lion	*Zalophus californianus*	U.S.	-/-; N	257,606 (N/A, 233,515, 2015).	14,011	>321
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina richardii*	California	-/-; N	30,968 (0.157, 27,348, 2012)	1,641	42.8
Northern elephant seal	*Mirounga angustirostris*	California Breeding	-/-; N	187,386 (N/A, 85,369, 2013)	5,122	13.7

[1] Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (*https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/;* Committee on Taxonomy (2022)).

[2] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[3] NMFS marine mammal stock assessment reports online at: *https://www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[4] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, vessel strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

As indicated above, all seven species in table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. Based on previous marine mammal monitoring events near the mouth of Oceanside Harbor (Merkel and Associates, Inc., 2022; Merkel and Associates, Inc., 2023), other marine mammals rarely occur within Oceanside Harbor and any occurrence in the project area would be very rare. While Risso's dolphins (*Grampus griseus*) and gray whales (*Eschrichtius robustus*) have been sighted outside of the harbor and in coastal waters, these species' general spatial occurrence is such that take is not expected to occur as they typically occur more offshore, and they are not discussed further.

A detailed description of the species likely to be affected by this project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (88 FR 83081, November 28, 2023); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to the NMFS website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995, Wartzok and Ketten, 1999, Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006, Kastelein *et al.,* 2009, Reichmuth *et al.,* 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from the City of Oceanside's construction activities have the potential to result in Level B harassment of marine mammals in the project area. The notice of the proposed IHA (88 FR 83081, November 28, 2023) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from the City of Oceanside's construction activities on marine mammals and their habitat. That information and analysis is referenced in this final IHA determination and is not repeated here; please refer to the notice of the proposed IHA (88 FR 83081, November 28, 2023).

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes authorized through this IHA, which informed both NMFS' consideration of ''small numbers'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance,

which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to the acoustic sources. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* shutdown), Level A harassment is neither anticipated nor authorized (see Mitigation and Monitoring and Reporting sections).

As described previously, no serious injury or mortality is anticipated or authorized for this activity. Below we describe how the take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the authorized take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur Permanent Threshold Shift (PTS) of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, Southall *et al.,* 2021, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared sound pressure levels (RMS SPL) of 120 dB (referenced to 1 microPascal (re 1 μPa)) for continuous (*e.g.,* vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 μPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by temporary threshold shift (TTS) as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (*e.g.,* conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

The City of Oceanside's construction activities include the use of continuous (vibratory pile removal and installation) and, potentially, impulsive (impact pile installation) sources, and therefore the RMS SPL thresholds of 120 and 160 dB re 1 μPa are both applicable.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0, Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The City of Oceanside's activities include the use of impulsive (impact hammer) and non-impulsive (vibratory hammer) sources.

These thresholds are provided in table 4 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds* (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa²s. In this table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI, 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activities that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss (TL) coefficient.

Pile driving activities using an impact hammer as well as a vibratory hammer generate underwater noise that could result in disturbance to marine mammals near the project area. A review of underwater sound measurements for similar projects was conducted to estimate the near-source sound levels for impact and vibratory pile driving and vibratory extraction. Source levels and sound exposure levels (SEL) for planned removal and installation activities derived from this review are shown in table 5.

TABLE 5—PROJECT SOUND SOURCE LEVELS

Activity	Method	Pile size (inch, material)	Peak SPL dB re 1 μPa [1]	RMS SPL dB re 1 μPa [1]	SEL dB re 1 μPa [1]	Source
Extraction	Vibratory	16, concrete [2]	N/A	163	N/A	NAVFAC SW, 2022.
Installation	Vibratory	18, steel	196	158	N/A	Caltrans, 2020.
Installation	Impact	18, steel [3]	200	185	175	Caltrans, 2020.
Installation	Vibratory	10, steel [4]	171	155	N/A	Illingworth and Rodkin, 2007.

Note: All 18-inch round steel piles will be installed using both vibratory and impact driving, therefore, the total number of 18-inch piles proposed for use is 18. Use of 10-inch piles will be as temporary support, and will be driven and removed in the same day as the permanent 18-inch piles.

[1] As measured, or calculated, at 10 m (33 ft).

[2] Proxy source levels provided by NMFS from Pier 6 Replacement Project, San Diego Bay (NAVFAC SW, 2022).

[3] Analysis of pooled reported data provided by NMFS (Caltrans, 2020).

[4] In the absence of information on vibratory installation of 10-inch round steel piles, source data from 12-inch round steel piles (Illingworth and Rodkin, 2007) was used as a proxy source level.

Level B Harassment Zone—TL is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition topography. The general formula for underwater TL is:

$$TL = B * Log_{10} (R_1/R_2),$$

where

TL = transmission loss in dB;

B = transmission loss coefficient;

R_1 = the distance of the modeled SPL from the driven pile; and

R_2 = the distance from the driven pile of the initial measurement.

The recommended TL coefficient for most nearshore environments is the practical spreading value of 15. This value results in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions, known as practical spreading, which is the most appropriate assumption for the City of Oceanside's activities in the absence of specific modeling and site-specific information. Sound propagation in Oceanside Harbor is limited by physical structures and substantial sound will be confined within the harbor (see figures 6–1, 6–2 in the IHA application). The Level A and Level B harassment isopleths for the City of Oceanside's activities are shown in table 6.

TABLE 6—DISTANCE TO THE LEVEL A AND LEVEL B HARASSMENT THRESHOLDS FOR CONSTRUCTION ACTIVITIES

Activity	Method	Pile size (inch, material)	Level A threshold for MF (m)	Level A threshold for PW (m)	Level A threshold for OW (m)	Level B harassment zone (m)
Extraction	Vibratory	16, concrete	1.2	7.9	0.6	7,356
Installation	Vibratory	18, steel	0.5	3.7	0.3	3,415
Installation	Impact	18, steel	11.7	176.7	12.9	100
Installation	Vibratory	10, steel	0.2	1.3	0.1	2,154

Note: For impact pile driving, the single strike SEL was used to calculate distances to Level A harassment thresholds.
Abbreviations: MF = mid-frequency cetaceans, PW = phocid pinnipeds, OW = otariid pinnipeds.

Level A Harassment Zones—The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an

overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources (*i.e.,* vibratory and impact piling), the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS. Inputs used in the optional User Spreadsheet tool, and the resulting estimated isopleths, are reported in tables 6 and 7. The isopleths generated by the User Spreadsheet used the same TL coefficients as the Level B harassment isopleth calculations, as indicated above for each activity type. Inputs used in the User Spreadsheet (*e.g.,* number of piles per day, duration and/or strikes per pile) are presented in table 1. The maximum RMS SPL, SEL, and peak SPL are reported in table 7. The cumulative SEL and peak SPL were used to calculate Level A harassment isopleths for vibratory pile driving and extraction activities, while the single strike SEL value was used to calculate Level A harassment isopleths for impact pile driving activity.

TABLE 7—SOUND LEVELS USED FOR PREDICTING UNDERWATER SOUND IMPACTS

Activity	Method	Pile size (inch, material)	Duration (hours/day)	Peak SPL dB re 1 µPa	RMS SPL dB re 1 µPa	Single strike SEL dB re 1 µPa² sec
Extraction	Vibratory	16, concrete	1.67	N/A	163	N/A
Installation	Vibratory	18, steel	1.67	196	158	N/A
Installation	Impact	18, steel	0.13	200	185	175
Installation	Vibratory	10, steel	0.67	171	155	N/A

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including density or other relevant information which will inform the take calculations.

Bottlenose Dolphin—Bottlenose dolphins can occur at any time of year in the waters around Oceanside Harbor. Based on previous monitoring (Merkel and Associates, Inc., 2022), an average of 6 bottlenose dolphins per day were observed with a maximum of 12 individuals being observed on a single day. This higher peak of 12 individuals was used to calculate Level B harassment for bottlenose dolphin.

Common Dolphin—Common dolphins are generally abundant in the outer coastal waters but are not known to occur regularly in Oceanside Harbor. Based on marine mammal monitoring by NAVFAC SW (2015), during El Niño conditions an average of 8.5 common dolphins per day (rounded to nine per day) were observed in northwest San Diego Bay. This expected daily individual count was used to calculate the take by Level B harassment for common dolphins within Oceanside Harbor as no local data exists.

Pacific White-Sided Dolphin—Pacific white-sided dolphins are commonly seen offshore of southern California but are not known to occur regularly in Oceanside Harbor. Based on the observations presented by NAVFAC SW (2015), during El Niño conditions an average of 0.3 Pacific white-sided dolphins per day (rounded to one per day) were observed. This expected daily individual count was used to calculate the Level B harassment for Pacific white-sided dolphins.

California Sea Lion—California sea lions are present in Oceanside Harbor year-round and numbers vary considerably. The daily estimate provided by the Oceanside Harbor Department is over 100 individuals. Limited counts from photographs and spot counts average approximately 50 individuals and are known to be incomplete estimates. Based on the variability in the number of sea lions present in the harbor, an estimate of 100 sea lions per day was used to estimate take.

Harbor Seal—Based on marine mammal monitoring by NAVFAC SW (2015), during El Niño conditions an average of 2.5 harbor seals per day (rounded to three per day) were observed. This expected daily individual count was used to calculate the Level B harassment for harbor seals in Oceanside Harbor.

Northern Elephant Seal—Due to increasing population size of northern elephant seals, presence in the Southern California Bight is considered a reasonable possibility (Carretta *et al.,* 2023). Based on marine mammal monitoring by NAVFAC SW (2015), an average of 0.1 northern elephant seals per day (rounded to one per day) were observed during El Niño conditions. This expected daily individual count was used to calculate the Level B harassment for northern elephant seals in Oceanside Harbor.

Take Estimation

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and is authorized.

No take by Level A harassment is expected for any species of marine mammal due to the small zone sizes for most taxa and the low likelihood that an animal would approach during in-water construction or remain within the Level A harassment isopleth long enough to incur PTS during the specified activities. Planned shutdown zones will encompass the extent of the estimated Level A harassment isopleths (180 m for phocid pinnipeds during impact driving, 15 m for all other species and activities) and are expected to be effective at avoiding Level A harassment for all species. Given the locations of protected species observers (PSOs) described in the Monitoring and Reporting section, in conjunction with the City of Oceanside's shutdown mitigation measure, NMFS agrees that monitoring and shutdown measures are likely to be successful at avoiding take by Level A harassment.

Incidental take by Level B harassment was estimated for each species by multiplying the expected average number of individuals per day by the number of work days (6 days; table 8). Take estimates for each species were calculated by multiplying the estimated site-specific abundance of each species by the area of impact where noise levels exceed acoustic thresholds for marine mammals during each type of piling activity (vibratory removal, vibratory driving, impact driving) and pile size (16-inch concrete, 18-inch steel, 10-inch steel). Estimated daily exposures for each species were based on evaluation of the potential presence of each marine mammal species using recent

occurrence data from Oceanside Harbor (Merkel and Associates, Inc., 2022; Merkel and Associates, Inc., 2023).

Estimated Take = Expected Average Individuals per Day × Number of Work Days

Due to a paucity of marine mammal occurrence data within Oceanside Harbor, and with the probability of El Niño conditions persisting throughout 2024 (*https://www.cpc.ncep.noaa.gov/products/analysis_monitoring/enso_advisory/ensodisc.shtml*), four species of marine mammal (common dolphin, Pacific white-sided dolphin, harbor seal, northern elephant seal) that are unlikely to occur within a semi-enclosed harbor environment were included to account for a potential increase in occurrence that has been previously documented for those species under similar climatological conditions (NAVFAC SW, 2015).

TABLE 8—TAKE BY LEVEL B HARASSMENT AUTHORIZED

Common name	Scientific name	Stock	Expected average individuals per day	Maximum estimated Level B harassment takes	Estimated takes as a percentage of population
Bottlenose dolphin [1]	*Tursiops truncatus*	California Coastal	12	72	15.9
Common dolphin (long-beaked) [2].	*Delphinus capensis*	California	* 9	* 54	<1
Common dolphin (short-beaked) [2].	*Delphinus delphis*	California/Oregon/Washington.	* 9	* 54	<1
Pacific white-sided dolphin [2]	*Lagenorhynchus obliquidens*	California/Oregon/Washington—Northern and Southern.	1	6	<1
California sea lion [3]	*Zalophus californianus*	U.S	100	600	<1
Harbor seal [2]	*Phoca vitulina richardii*	California	3	18	<1
Northern elephant seal [2]	*Mirounga angustirostris*	California breeding	1	6	<1

[1] Average daily counts based on observations during Oceanside Harbor Dredging 2022 Project Monitoring, rounded up to nearest individual count (Merkel and Associates Inc., 2022).
[2] Average daily counts based on observations during Year 2 of Navy Base Point Loma's Fuel Pier Replacement Project Monitoring, rounded up to nearest individual count (NAVFAC SW, 2015).
[3] Reported high estimate of sea lions observed on pinniped float by Oceanside Harbor District staff.
* A total of 54 takes are estimated and may be attributed to either long- or short-beaked common dolphin species.

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

The City of Oceanside must ensure that construction supervisors and crews, the monitoring team, and relevant staff/contractors are trained prior to the start of all piling activities so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work.

Timing Restrictions

All piling activities will be conducted during daylight hours, generally between 45 minutes post-sunrise and 45 minutes pre-sunset. All piling will occur in March 2024 and/or September 2024 through February 2025, when the likelihood of ESA-listed California least tern breeding and nesting in the work area is minimal, as proposed by the City of Oceanside.

Protected Species Observers

The placement of PSOs during all pile driving activities (described in the Monitoring and Reporting section) will ensure that the entire shutdown zone is visible. Should environmental conditions deteriorate such that the entire shutdown zone is not visible (*e.g.,* fog, heavy rain), pile driving will be delayed until the PSO is confident marine mammals within the shutdown zone can be detected.

PSOs will monitor the full shutdown zones and the Level B harassment zones to the extent practicable. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project areas outside the shutdown zones and thus prepare for a potential cessation of activity should the animal enter the shutdown zone.

Pre- and Post-Activity Monitoring

Monitoring will take place from 30 minutes prior to initiation of pile driving activities (*i.e.,* pre-clearance

monitoring) through 30 minutes post-completion of pile driving. Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be considered cleared when a marine mammal has not been observed within the zone for a 30-minute period. If a marine mammal is observed within the shutdown zones listed in table 9, pile driving activity will be delayed or halted. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones will commence. A determination that the shutdown zone is clear must be made during a period of good visibility (*i.e.,* the entire shutdown zone and surrounding waters must be visible to the naked eye).

Soft-Start Procedures for Impact Driving

Soft-start procedures provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. If impact pile driving is necessary to achieve required tip elevation, City of Oceanside staff and/or contractors are required to provide an initial set of three strikes from the hammer at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. Soft-start will be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

Shutdown Zones

The City of Oceanside must establish shutdown zones for all pile driving activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity will occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones are based upon the Level A harassment isopleth for each pile size/type and driving method where applicable, as shown in table 6. During all in-water piling activities, the City of Oceanside plans to implement a buffered 15 m shutdown zone, with the exception of a 180 m shutdown zone for phocids during the use of impact pile driving of 18-inch piles. These distances exceed the estimated Level A harassment isopleths described in table 6. Adherence to this expanded shutdown zone will avoid the potential for the take of phocids by Level A harassment during impact pile driving. For pile driving, the radii of the shutdown zones are rounded to the next largest 10 m interval in comparison to the Level A harassment isopleth for each activity type. If a marine mammal is observed entering, or detected within, a shutdown zone during pile driving activity, the activity must be stopped until there is visual confirmation that the animal has left the zone or the animal is not sighted for a period of 15 minutes. Shutdown zones for each activity type are shown in table 9.

All marine mammals will be monitored in the Level B harassment zones and throughout the area as far as visual monitoring can take place. If a marine mammal enters the Level B harassment zone, in-water activities will continue and PSOs will document the animal's presence within the estimated harassment zone.

TABLE 9—SHUTDOWN AND HARASSMENT ZONES

Activity	Method	Pile size (inch), material	Shutdown zone for MF (m)	Shutdown zone for PW (m)	Shutdown zone for OW (m)	Harassment zone (m)
Extraction	Vibratory	16, concrete	15	15	15	7,360
Installation	Vibratory	18, steel	15	15	15	3,420
Installation	Impact	18, steel	15	180	15	100
Installation	Vibratory	10, steel	15	15	15	2,160

Based on our evaluation of the City of Oceanside's planned measures, NMFS has determined that the planned mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Visual Monitoring

Marine mammal monitoring must be conducted in accordance with the conditions in this section and this IHA. Marine mammal monitoring during pile driving activities will be conducted by two PSOs meeting NMFS' standards and

in a manner consistent with the following:

- PSOs must be independent of the activity contractor (for example, employed by a subcontractor) and have no other assigned tasks during monitoring periods;
- At least one PSO will have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;
- Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training for prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;
- Where a team of three or more PSOs is required, a lead observer or monitoring coordinator must be designated. The lead observer must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization; and
- PSOs must be approved by NMFS prior to beginning any activity subject to the IHA.

PSOs should have the following additional qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

The City of Oceanside will have two PSOs stationed at the best possible vantage points in the project area to monitor during all pile driving activities. Monitoring will occur from elevated locations along the shoreline where the entire shutdown zones are visible. PSOs will be equipped with high quality binoculars for monitoring and radios or cells phones for maintaining contact with work crews. Monitoring will be conducted 30 minutes before, during, and 30 minutes after all in-water construction activities. In addition, PSOs will record all incidents of marine mammal occurrence, regardless of distance from activity, and will document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

Reporting

The City of Oceanside will provide the following reporting as necessary during active pile driving activities:

- The applicant will report any observed injury or mortality as soon as feasible and in accordance with NMFS' standard reporting guidelines. Reports will be made by phone (866–767–6114) and by email (*PR.ITP.MonitoringReports@noaa.gov*) and will include the following:
  - Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
  - Species identification (if known) or description of the animal(s) involved;
  - Condition of the animal(s) (including carcass condition if the animal is dead);
  - Observed behaviors of the animal(s), if alive;
  - If available, photographs or video footage of the animal(s); and
  - General circumstances under which the animal was discovered;
- An annual report summarizing the prior year's activities will be provided that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, estimates the number of listed marine mammals that may have been incidentally taken during project pile driving, and provides an interpretation of the results and effectiveness of all monitoring tasks. The annual draft report will be provided no later than 90 days following completion of construction activities. Any recommendations made by NMFS will be addressed in the final report, due after the IHA expires and including a summary of all monitoring activities, prior to acceptance by NMFS. Final reports will follow a standardized format for PSO reporting from activities requiring marine mammal mitigation and monitoring; and
- All PSOs will use a standardized data entry format (see Monitoring Plan).

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to all species listed in table 2, given that the anticipated effects of the construction activities on these different marine mammal stocks are expected to be similar. There is little information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that would lead to a different analysis for these activities.

Level A harassment is extremely unlikely for any species given the small size of the Level A harassment isopleths and the required mitigation measures designed to minimize the possibility of injury to marine mammals (see Mitigation section). No mortality or serious injury is anticipated given the nature of the activity.

Pile installation and removal activities are likely to result in the Level B harassment of marine mammals that move into the ensonified area, primarily

in the form of disturbance or displacement of marine mammals.

Take would occur within a limited, confined area of each stock's range. Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. Further, the amount of take authorized is extremely small when compared to stock abundance.

No marine mammal stocks for which incidental take is authorized are listed as threatened or endangered under the ESA or determined to be strategic or depleted under the MMPA. The relatively low marine mammal occurrences in the area, small shutdown zones, and planned monitoring make injury takes of marine mammals unlikely. The shutdown zones will be thoroughly monitored before vibratory pile installation and removal begins, and construction activities will be postponed if a marine mammal is sighted within the shutdown zone. There is a high likelihood that marine mammals will be detected by PSOs under environmental conditions described for the project. Limiting construction activities to daylight hours will also increase detectability of marine mammals in the area. Therefore, the planned mitigation and monitoring measures are expected to eliminate the potential for injury and Level A harassment as well as reduce the amount and intensity for Level B behavioral harassment. Furthermore, the pile installation and removal activities analyzed here are similar to, or less impactful than, numerous construction activities conducted in other similar locations which have occurred with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment.

Anticipated and authorized takes are expected to be limited to short-term Level B harassment (behavioral disturbance) as construction activities will occur over the course of 5–6 months. Effects on individuals taken by Level B harassment, based upon reports in the literature as well as monitoring from other similar activities, may include increased swimming speeds, increased surfacing time, or decreased foraging (*e.g.,* NAVFAC SW, 2018). Individual animals, even if taken multiple times, would likely move away from the sound source and be temporarily displaced from the area due to elevated noise level during pile removal. There are no known feeding or other biologically important areas (BIAs) for any species in or near the project area (Ferguson *et al.,* 2015). Marine mammals could also experience TTS if they move into the Level B harassment monitoring zone. TTS is a temporary loss of hearing sensitivity when exposed to loud sound and, given the likely levels and duration of exposure to pile driving, any shift of the hearing threshold is expected to recover completely within minutes to hours. While TTS could occur, it is not considered a likely outcome of this activity.

Given the limited number of total predicted exposures, no individual marine mammals of any species, with the possible exception of California sea lions, are expected to be taken on more than a few days during the construction activities. California sea lions are relatively common in the area and potential takes would likely involve sea lions loafing on, or in the vicinity of, physical structures or moving through the area en route to foraging areas or structures where they haul out. Relocation of the float where they frequently haul out is expected to reduce both the number of sea lions present in the area during construction and also the likelihood that they may be repeatedly impacted.

The project is not expected to have significant adverse effects on marine mammal habitat. There is no ESA-designated critical habitat within the project area, and the planned activities will not permanently modify existing marine mammal habitat. The activities may cause fish to leave the area temporarily which could impact marine mammals' foraging opportunities in a limited portion of the foraging range. However, due to the short duration of the planned activities and the relatively small area of affected habitat, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities will have only minor, short-term effects on individuals. The specified activities are not expected to impact reproduction or survival of any individual marine mammals, much less affect rates of recruitment or survival and will therefore not result in population-level impacts.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality, or Level A harassment, is anticipated or authorized;
- The specified activities are of a very short duration and associated ensonified areas are very small relative to the overall habitat ranges of both species;
- The project area does not overlap with known BIAs or ESA-designated critical habitat;
- Significant or long-term effects to marine mammal habitat are not anticipated; and
- Mitigation measures are expected to reduce the effects of the specified activity to the level of least practicable adverse impact.

Based on the analysis contained herein of the likely effects of the specified activities on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS has authorized is below one-third of the estimated stock abundances for all seven species (see table 8). For all but one species, the authorized take of individuals is less than 1 percent of the abundance of the affected stock (with the exception for bottlenose dolphins at less than 16 percent). This is likely a conservative estimate because it assumes all takes are of different individual animals, which is likely not the case. Some individuals may return multiple times in a day, but PSOs will count them as separate takes if they cannot be individually identified.

Based on the analysis contained herein of the activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the ESA of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is authorized for this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of this IHA qualifies to be categorically excluded from further NEPA review.

Authorization

NMFS has issued an IHA to the City of Oceanside for the potential harassment of small numbers of seven marine mammal species incidental to construction activities in Oceanside Harbor, Oceanside, CA, that includes the previously explained mitigation, monitoring, and reporting requirements.

Dated: January 8, 2024.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–00485 Filed 1–11–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Vessel Monitoring System Requirements for the Pacific Islands Fisheries

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on September 1, 2023, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic & Atmospheric Administration (NOAA), Commerce.

Title: Vessel Monitoring System Requirements for the Pacific Islands Fisheries.

OMB Control Number: 0648–0441.

Form Number(s): None.

Type of Request: Regular submission. Extension of a current information collection.

Number of Respondents: 69.

Average Hours per Response: 4 hours for installation of a VMS unit; 2 hours for VMS unit replacement, and 1.5 hours for annual maintenance.

Total Annual Burden Hours: 131.

Needs and Uses: This request is for extension of a currently approved information collection. National Oceanic and Atmospheric Administration (NOAA) Fisheries, Pacific Islands Region, and the NOAA Office of Law Enforcement (OLE), Pacific Islands Division, collect vessel tracking information through a Vessel Monitoring System (VMS). The authority for this collection is specified at 50 CFR 665.19.

As part of fishery ecosystem plans developed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, owners of commercial fishing vessels in the Hawaii pelagic longline fishery, American Samoa pelagic longline fishery (only vessels longer than 50 feet), Northwestern Hawaiian Islands lobster fishery (currently inactive), and Northern Mariana Islands bottomfish fishery (only vessels longer than 40 feet) must allow NOAA to install VMS units on their vessels when directed by OLE personnel. VMS units automatically send periodic reports on the position of the vessel to OLE. NOAA uses the reports to monitor the vessel's location and activities, primarily to enforce regulated fishing areas. NOAA pays for all costs related to the VMS systems for the aforementioned fisheries. There is no public burden for the automatic messaging; however, VMS installation and maintenance are considered public burden. Aside from updates to the burden estimates, there are no changes to the collection.

Affected Public: Business or other for-profit organizations; individuals or households.

Frequency: On occasion.

Respondent's Obligation: Mandatory

Legal Authority: 50 CFR 665.19

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0441.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–00579 Filed 1–11–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD643]

Marine Mammals and Endangered Species

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of permits and permit amendments.

SUMMARY: Notice is hereby given that permits and permit amendments have been issued to the following entities under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), as applicable.

ADDRESSES: The permits and related documents are available for review upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Shasta McClenahan, Ph.D. (Permit No. 21636–01), Carrie Hubard (Permit No. 27460), and Jennifer Skidmore (Permit No. 26667–01); at (301) 427–8401.

SUPPLEMENTARY INFORMATION: Notices were published in the **Federal Register** on the dates listed below that requests for a permit or permit amendment, had been submitted by the below-named applicants. To locate the **Federal Register** notice that announced our receipt of the application and a complete description of the activities, go to *https://www.federalregister.gov* and search on the permit number provided in table 1 below.

TABLE 1—ISSUED PERMITS AND PERMIT AMENDMENTS

Permit No.	RTID	Applicant	Previous **Federal Register** notice	Issuance date
21636–01	0648–XG493	Joshua Schiffman, M.D., University of Utah, 2000 Circle of Hope Drive, Salt Lake City, UT 84112.	84 FR 4441, February 15, 2019.	December 19, 2023.
26667–02	0648–XD507	North Slope Borough Department of Wildlife Management, P.O. Box 69, Barrow, AK 99723 (Taqulik Hepa, Responsible Party).	88 FR 77083, November 8, 2023.	December 19, 2023.
27460	0648–XD363	José Vázquez-Medina, Ph.D., University of California, Berkeley, 3040 Valley Life Sciences Bldg, No. 3140, Berkeley, CA 94720.	88 FR 64413, September 19, 2023.	December 14, 2023.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, as applicable, issuance of these permit was based on a finding that such permits: (1) were applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Authority: The requested permits have been issued under the MMPA of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), as applicable.

Dated: January 8, 2024.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–00515 Filed 1–11–24; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product(s) and service(s) previously furnished by such agencies.

DATES: *Comments must be received on or before:* February 11, 2024.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785–6404 or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice will be required to procure the service(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

In accordance with 41 CFR 51–5.3(b), the Committee intends to add this services requirement to the Procurement List as a mandatory purchase only for the contracting activity listed at the location shown, with the proposed qualified nonprofit agency as the authorized source of supply. Prior to adding the service to the Procurement List, the Committee will consider other pertinent information, including information from Government personnel and relevant comments from interested parties regarding the Committee's intent to geographically limit this services requirement.

The following service(s) are proposed for addition to the Procurement List for delivery by the nonprofit agencies listed:

Service(s)

Service Type: Custodial & Grounds Maintenance
Mandatory for: Defense Contract Management Agency, Hancock Field Air National Guard Base, Building 613, Syracuse, NY
Designated Source of Supply: Oswego Industries, Inc., Fulton, NY
Contracting Activity: DEFENSE CONTRACT

MANAGEMENT AGENCY (DCMA), DEFENSE CONTRACT MANAGMENT OFFICE

Deletions

The following product(s) and service(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
7530–01–516–7577—Pad, Writing Paper, Glue Bound Top, Legal Rule, White, 8½″ x 13¼″
7530–01–516–7572—Pad, Writing Paper, Glue Bound Top, Legal Rule, Canary, 5″ x 8″
Designated Source of Supply: Blind Industries & Services of Maryland, Baltimore, MD
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

NSN(s)—Product Name(s):
3030–01–375–8087—Belt, Micro-V, V-ribbed, 4 Ribs, EPDM Rubber, 35.5″ long
3030–01–466–9476—Belt, V-shaped, Micro, EPDM Rubber, 8 Ribs, 98.07″
Designated Source of Supply: Northeastern Association of the Blind at Albany, Inc., Albany, NY
Contracting Activity: DLA LAND AND MARITIME, COLUMBUS, OH

NSN(s)—Product Name(s):
8445–01–436–2695—Belt, Trousers, Women's, Type XII, Black, Size 45
Designated Source of Supply: Travis Association for the Blind, Austin, TX
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):
8140–00–NSH–0014—Tube, Cardboard, Grenade, 155mm Projectile
Designated Source of Supply: SVRC Industries, Inc., Saginaw, MI
Contracting Activity: W4MM USA JOINT MUNITIONS CMD, ROCK ISLAND, IL

Service(s)

Service Type: Document Destruction
Mandatory for: VA Medical Clinic: 25 North Spruce, NULL, Colorado Springs, CO
Designated Source of Supply: Bayaud Enterprises, Inc., Denver, CO
Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, 259–NETWORK CONTRACT OFFICE 19

Service Type: Document Destruction
Mandatory for: Department of Veterans Affairs, Network Contracting Office, NCO 19, Glendale, CO
Designated Source of Supply: Bayaud Enterprises, Inc., Denver, CO
Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, 259–NETWORK CONTRACT OFFICE 19

Michael R. Jurkowski,
Acting Director, Business Operations.

[FR Doc. 2024–00545 Filed 1–11–24; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Quarterly Public Meeting

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Notice of public meeting.

DATES: January 25, 2024, from 1 p.m. to 4 p.m. ET.

ADDRESSES: The meeting will be held virtually only via Zoom webinar.

FOR FURTHER INFORMATION CONTACT: Angela Phifer, 355 E Street SW, Suite 325, Washington, DC 20024, (703) 798–5873, *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION:

Background: The Committee for Purchase From People Who Are Blind or Severely Disabled is an independent government agency operating as the U.S. AbilityOne Commission. It oversees the AbilityOne Program, which provides employment opportunities through Federal contracts for people who are blind or have significant disabilities in the manufacture and delivery of products and services to the Federal Government. The Javits-Wagner-O'Day Act (41 U.S.C. chapter 85) authorizes the contracts.

Registration: Attendees *not* requesting speaking time should register not later than 11:59 p.m. ET on January 24, 2024. Attendees requesting speaking time must register not later than 11:59 p.m. ET on January 16, 2024, and use the comment fields in the registration form to specify the intended speaking topic/s. The registration link will be available by December 15, 2023, on the Commission's home page, *www.abilityone.gov,* under News and Events.

Commission Statement: This regular quarterly meeting will include updates from the Commission Chairperson, Executive Director, and Inspector General.

Public Participation: The public engagement session will address how the AbilityOne Program supports, and can increasingly support, the Federal Government's hiring of individuals with disabilities. Scheduled speakers will include Federal agency partners as well as former AbilityOne Program employees who now work for the Federal Government.

The Commission invites public comments and suggestions on the public engagement topic. During registration, you may choose to submit comments, or you may request speaking time at the meeting. The Commission may invite some attendees who submit advance comments to discuss their comments during the meeting. Comments submitted will be reviewed by staff and the Commission members before the meeting. Comments posted in the chat box during the meeting will be shared with the Commission members after the meeting. The Commission is not subject to the requirements of 5 U.S.C. 552(b); however, the Commission published this notice to encourage the broadest possible participation in its meeting.

Personal Information: Speakers should not include any information that they do not want publicly disclosed.

Michael R. Jurkowski,
Acting Director, Business Operations.

[FR Doc. 2024–00563 Filed 1–11–24; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Adoption of Department of Navy Categorical Exclusion Pursuant to Section 109 of the National Environmental Policy Act (NEPA)

AGENCY: Defense Advanced Research Projects Agency (DARPA), Department of Defense (DoD).

ACTION: Notice of adoption of the Department of Navy's (DoN) categorical exclusion for passive scientific measurement devices pursuant to section 109 of the NEPA.

SUMMARY: DARPA is adopting the DoN's categorical exclusion 19 for the installation and operation of passive scientific measurement devices. This notice describes the proposed action for which DARPA intends to use the DoN categorical exclusion and details the consultation between the agencies.

DATES: This action is effective January 12, 2024.

FOR FURTHER INFORMATION CONTACT: Dr. Catherine Campbell, 703–526–2044 (Voice), *Catherine.Campbell@darpa.mil* (Email).

SUPPLEMENTARY INFORMATION:

I. Background

National Environmental Policy Act and Categorical Exclusions

NEPA, 42 U.S.C. 4321–4347, requires all Federal agencies to assess the environmental impacts of their actions. Congress enacted NEPA to encourage productive and enjoyable harmony between humans and the environment, recognizing the profound impact of human activity and the critical

importance of restoring and maintaining environmental quality to the overall welfare of humankind. NEPA seeks to ensure agencies consider the environmental effects of their proposed actions in their decision-making processes and inform and involve the public in that process. NEPA created the Council on Environmental Quality (CEQ), which promulgated NEPA implementing regulations, 40 Code of Federal Regulations (CFR) parts 1500 through 1508 (CEQ regulations).

To comply with NEPA, agencies determine the appropriate level of review—an Environmental Impact Statement (EIS), Environmental Assessment (EA), or categorical exclusion. (42 U.S.C. 4336). If a proposed action is likely to have significant environmental effects, the agency must prepare an EIS and document its decision in a record of decision. *Id.* If the proposed action is not likely to have significant environmental effects or the effects are unknown, the agency may instead prepare an EA, which involves a more concise analysis and process than an EIS. *Id.* Following the EA, the agency may conclude the process with a finding of no significant impact if the analysis shows that the action will have no significant effects. If the analysis in the EA finds that the action is likely to have significant effects, however, then an EIS is required.

Under NEPA and the CEQ regulations, a Federal agency may establish in its NEPA implementing procedures categorical exclusions, which are categories of actions the agency has determined normally do not significantly affect the quality of the human environment. (40 CFR 1501.4, 1507.3(e)(2)(ii), 1508.1(d)). If an agency determines that a categorical exclusion covers a proposed action, it then evaluates the proposed action for extraordinary circumstances in which a normally excluded action may have a significant effect. (40 CFR 1501.4(b)). If no extraordinary circumstances are present or if further analysis determines that the extraordinary circumstances do not involve the potential for significant environmental impacts, the agency may apply the categorical exclusion to the proposed action without preparing an EA or EIS. (40 CFR 1501.4). If the extraordinary circumstances have the potential to result in significant effects, the agency is required to prepare an EA or EIS.

Section 109 of NEPA, enacted as part of the Fiscal Responsibility Act of 2023, allows a Federal agency to adopt a categorical exclusion listed in another agency's NEPA procedures for a category of proposed agency actions for which the categorical exclusion was established 42 U.S.C. 4336(c). To adopt another agency's categorical exclusion under section 109, an agency must identify the relevant categorical exclusion listed in that agency's (''establishing agency'') NEPA procedures that cover its category of proposed actions or related actions; consult with the establishing agency to ensure that the proposed adoption of the categorical exclusion to a category of actions is appropriate; identify to the public the categorical exclusion that the agency plans to use for its proposed actions; and document adoption of the categorical exclusion. *Id.*

This notice documents DARPA's adoption of DoN's categorical exclusion under Section 109 of NEPA.

II. Identification of the Categorical Exclusion

DoN's categorical exclusion for the use of passive scientific measurement devices is codified in DoN's NEPA procedures as categorical exclusion 19 in 32 CFR 775.6(f)(19).

Proposed Action

DARPA proposes to deploy a single reef mimicking structure (RMS, 258.2 ft^2) on the seafloor of the Kilo Nalu Observatory (KNO) on the south shore of Oʻahu, Hawaiʻi for a period of no longer than five years. A Particle Image Velocimeter (PIV), coral larval settlement modules (20 to 40 dome-shaped concrete structures), and two Acoustic Doppler Velocimeters (ADVs) would be attached to the RMS to test material durability and water flow characteristics. The overall footprint on the seafloor does not increase beyond the size of the RMS when the instruments are attached. The need to collect oceanographic data with this equipment is to inform the design and deployment of reef mimicking structures as part of DARPA's Reefense Program.

III. Rationale for the Categorical Exclusion

The RMS is a passive oceanographic tool developed to dissipate wave energy. The amount of wave energy that is dissipated will be measured by the attached oceanographic instruments (PIV, larval settlement modules, and ADVs). The RMS would not be shallow enough to function as a breakwater; it is a tool to learn whether consistent wave energy can be effectively dissipated (*e.g.,* energy coming in through the exterior holes then bouncing around within the RMS) and to ensure the durability of the materials. The PIV and ADVs would measure velocity fields of ocean currents and the larval settlement modules would measure material durability. The RMS would not be deployed with any living organisms attached to it. KNO is an established research site managed by the University of Hawaii at Manoa. The site was chosen for this testing because it is already supplied with infrastructure (*e.g.,* electric power) to support other ongoing scientific research and the ground swell is consistent and predictable, thus it can allow for better data collection.

IV. Consideration of Extraordinary Circumstances

If an agency determines that a categorical exclusion covers a proposed action, the agency must evaluate the proposed action for extraordinary circumstances in which a normally excluded action may have a significant effect. (40 CFR 1501.4(b)). DARPA does not currently have its own NEPA implementing procedures to guide its application of extraordinary circumstances. Until DARPA establishes NEPA implementing procedures, for purposes of considering extraordinary circumstances in connection with the DoN categorical exclusion discussed in this notice, DARPA has considered whether the proposed action has the potential to result in significant effects, including by considering the factors listed in DoN's definition of extraordinary circumstances. (32 CFR 775.6(e)(1)).

DARPA has assessed the extraordinary circumstances and determined they are not present.

V. Consultation With DoN and Determination of Appropriateness

DARPA and DoN consulted on the appropriateness of DARPA's adoption of the categorical exclusion from July to November 2023. This consultation included a review of DoN's experience applying the categorical exclusion and the proposed action for which DARPA plans to utilize it. Following this consultation and review, DARPA has determined that the impacts of the proposed action to install and operate passive scientific measurement devices for a temporary period of time, no longer than five years, in an existing scientific observatory, KNO, is similar to the impacts, which are not significant, of projects for which DoN may apply the categorical exclusion. Additionally, DARPA determined that there are no extraordinary circumstances. Therefore, DARPA has determined that its proposed use of DoN's categorical

exclusion 19, as described within this notice, would be appropriate.

Notice to the Public and Documentation of Adoption

This notice documents adoption of the DoN categorical exclusion listed above in accordance with 32 CFR 775.6(e)(1) and is available for use by DARPA, effective immediately.

Dated: January 9, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–00564 Filed 1–11–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2023–FSA–0180]

Privacy Act of 1974; Matching Program

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice of a new matching program.

SUMMARY: Pursuant to the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988 and the Computer Matching and Privacy Protection Amendments of 1990 (Privacy Act), and Office of Management and Budget (OMB) guidance on the conduct of matching programs, notice is hereby given of the re-establishment of a matching program between the U.S. Department of Education (Department), as the recipient agency, and the Social Security Administration (SSA), as the source agency, to enable the Department to contact individuals whom SSA identifies as disabled using Medical Improvement Not Expected (MINE) data, to inform them that the Department will issue Total and Permanent Disability (TPD) discharges of their balances of loans under title IV of the Higher Education Act of 1965, as amended (HEA), their title IV HEA loans that have been written off due to default, or, their outstanding service or repayment obligations under the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program unless they opt out of the TPD discharge. Such TPD discharges will occur no earlier than 61 days from the date that the Department sends the notification to those individuals, unless those individuals choose to have their loans or outstanding service or repayment obligations discharged earlier, or choose to opt out of the TPD discharge within 60 days from the date that the Department sends the notification to them.

DATES: Submit your comments on the proposed re-establishment of the matching program on or before February 12, 2024.

The matching program will go into effect on the later of the following three dates: (1) March 30, 2024; (2) at the expiration of the 60-day period following the Department's transmittal of a report concerning the matching program to OMB and to the appropriate Congressional Committees, along with a copy of the Computer Matching Agreement, unless OMB waives any of this 60-day review period for compelling reasons, in which case, 60 days minus the number of days waived by OMB from the date of the Department's transmittal of the report of the matching program; or (3) at the expiration of the 30-day public comment period following the Department's publication of notice of this matching program in the **Federal Register**, assuming that the Department receives no public comments or receives public comments but makes no changes to the Matching Notice as a result of the public comments, or 30 days from the date on which the Department publishes a Revised Matching Notice in the **Federal Register**, assuming that the Department receives public comments and revises the Matching Notice as a result of public comments. If the latest date occurs on a non-business day, then that date will be counted for purposes of this paragraph as occurring on the next business day.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *regulations.gov.* However, if you require an accommodation or cannot otherwise submit your comments via *regulations.gov,* please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments submitted by fax or by email, or comments submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov,* including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''FAQ''.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Ron Bennett, Group Director Program Technical & Business Support Group, Federal Student Aid, U.S. Department of Education, 830 First Street NE, Washington, DC 20202–5320. Telephone: (202) 377–3181. Email: *Ron.Bennett@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act; OMB ''Final Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988,'' published in the **Federal Register** on June 19, 1989 (54 FR 25818); and OMB Circular No. A–108, notice is hereby given of the re-establishment of a matching program between the Department and SSA to enable the Department to contact certain individuals with loans under title IV of the HEA or outstanding service or repayment obligations under the TEACH Grant Program whom SSA identifies as disabled using MINE disability data to inform them that, should they wish, the Department will facilitate a TPD discharge of their loans under title IV of the HEA or TEACH Grant service or repayment obligations.

Participating Agencies

The Department and SSA.

Authority for Conducting the Matching Program

The Department's legal authority to enter into the matching program and to disclose information thereunder includes sections 420N(c), 437(a)(1), 455(a)(1), and 464(c)(1)(F)(ii & iii) of the HEA (20 U.S.C. 1070g–2(c), 1087(a)(1), 1087e(a)(1)), and 1087dd((c)(1)(F)(ii & iii)).

SSA's legal authority to disclose information under this Agreement is section 1106 of the Act (42 U.S.C. 1306) and the regulations promulgated pursuant to that section (20 CFR part 401). Subsection (b)(3) of the Privacy Act (5 U.S.C. 552a(b)(3) allows SSA to make the disclosure without the prior written consent of the individuals to whom the records pertain.

Purpose(s)

This matching program will enable the Department to send notices to certain borrowers with loans under title IV of the HEA and TEACH Grant

recipients whom SSA identifies as disabled based on MINE disability data to inform them that the Department will discharge the individuals' title IV loans or TEACH Grant service or repayment obligations no earlier than 61 days from the date that the Department sends the notification to the individual, unless the individual chooses to have their loans or service or repayment obligations discharged earlier or chooses to opt out of the TPD discharge within 60 days from the date that the Department sends the notification to the individual.

Categories of Individuals

Under the Computer Matching Agreement (CMA) for this matching program, the Department will disclose information to SSA from the system of records entitled ''National Student Loan Data System (NSLDS)'' (18–11–06) on individuals who owe a balance on one or more title IV, HEA loans, who have had a title IV, HEA loan written off due to default, or who have an outstanding service or repayment obligation under the TEACH Grant Program.

Under the CMA for this matching program, SSA will disclose information to the Department from the Disability Control File (DCF), which originates from the ''Completed Determination Record—Continuing Disability Determinations'' (60–0050) system of records, on individuals whom SSA identifies as disabled using MINE disability data.

Categories of Records

The Department will disclose to SSA from the system of records entitled ''National Student Loan Data System (NSLDS)'' (18–11–06) the name, date of birth (DOB), and Social Security number (SSN) of the individuals identified in the preceding section. These individuals will be matched with SSA data recorded in the DCF, which originates from the ''Completed Determination Record— Continuing Disability Determinations'' (60–0050) system of records, in order to provide the Department with MINE disability data.

System(s) of Records

The Department will disclose records to SSA from its system of records identified as ''National Student Loan Data System (NSLDS)'' (18–11–06), as last published in the **Federal Register** in full on June 28, 2023 (88 FR 41934).

SSA will disclose records back to the Department from its systems of records identified as the ''Completed Determination Record—Continuing Disability Determinations'' (60–0050), which was last fully published in the **Federal Register** at 71 FR 1813 on January 11, 2006, and updated on December 10, 2007 (72 FR 69723), November 1, 2018 (83 FR 54969), and April 26, 2019 (84 FR 17907).

The Department will maintain matched records that it receives from SSA in the aforementioned system of records identified as ''National Student Loan Data System (NSLDS)'' (18–11–06), along with the Department's system of records identified as ''Common Services for Borrowers (CSB)'' (18–11–16), last published in the **Federal Register** in full on July 27, 2023 (88 FR 48449).

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Richard Cordray,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 2024–00584 Filed 1–11–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0005]

Agency Information Collection Activities; Comment Request; Joint Consolidation Loan Separation Application

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before March 12, 2024.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2024–SCC–0005. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, (202) 377–4018.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the

information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Joint Consolidation Loan Separation Application.

OMB Control Number: 1845–NEW.

Type of Review: New ICR.

Respondents/Affected Public: Individuals or Households; Private Sector.

Total Estimated Number of Annual Responses: 74,000.

Total Estimated Number of Annual Burden Hours: 24,051.

Abstract: This is a new collection. The Joint Consolidation Loan Separation Act (JCLSA), amended the Higher Education Act of 1965, as amended (HEA) to allow joint consolidation co-borrowers to apply to separate an existing joint Direct Consolidation Loan or Federal Consolidation Loan into individual Direct Consolidation Loans. The HEA, as amended by the JCLSA, requires joint consolidation loan borrowers to apply to the U.S. Department of Education if they wish to separate an existing joint consolidation loan into one or more individual Direct Consolidation Loans. The JCLSA allows for either joint application or separate application. Under the joint application option, each joint consolidation loan co-borrower applies for an individual Direct Consolidation Loan. Unless the co-borrowers agree on an alternate amount specified in a divorce decree, court order, or settlement agreement, each co-borrowers new individual Direct Consolidation Loan will be made for an amount equal to the co-borrowers' portion of the remaining outstanding balance of the joint consolidation loan. Under the separate application option, a co-borrower who certifies that they have experienced an act of domestic violence or economic abuse from the other co-borrower, or that they are unable to reasonably reach or access the loan information of the other co-borrower, may apply separately for a new individual Direct Consolidation Loan, without regard to whether or when the other co-borrower applies. In this circumstance, the applying co-borrowers new Direct Consolidation Loan will be made for an amount equal to that individual's portion of the joint consolidation loan, determined as described above for the joint application option.

Dated: January 8, 2024.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–00486 Filed 1–11–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0007]

Agency Information Collection Activities; Comment Request; Family Educational Rights and Privacy Act (FERPA) Regulatory Requirements

AGENCY: Office of Finance and Operations (OFO), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before March 12, 2024.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2024–SCC–0007. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Regina Miles, 202–260–3968.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Family Educational Rights and Privacy Act (FERPA) Regulatory Requirements.

OMB Control Number: 1880–0543.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 20,293,021.

Total Estimated Number of Annual Burden Hours: 1,914,593.

Abstract: The Family Educational Rights and Privacy Act (FERPA) requires that subject educational agencies and institutions notify parents and students of their rights under FERPA and requires that they record disclosures of personally identifiable information from education records, with certain exceptions.

Dated: January 9, 2024.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–00565 Filed 1–11–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Advisory Commission on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics

AGENCY: Department of Education, President's Advisory Commission on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics.

ACTION: Announcement of an open meeting.

SUMMARY: This notice sets forth the agenda for the January 26, 2024, meeting of the President's Advisory Commission on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics (Commission), and how members of the public may attend the meeting and submit written comments pertaining to the work of the Commission. Notice of this meeting is required by section 1009(a)(2) of 5 U.S.C. chapter 10 (Federal Advisory Committees)

DATES: The meeting of the Commission will be held on Friday, January 26, 2024, from 12 p.m. to 5 p.m. Eastern Standard Time.

ADDRESSES: U.S. Department of Commerce Herbert Hoover Building, 1401 Constitutional Avenue NW, Washington, DC 20230. Members of the public can attend the meeting in-person or virtually.

FOR FURTHER INFORMATION CONTACT: Emmanuel Caudillo, Designated Federal Official, President's Advisory Commission on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics, U.S. Department of Education, 400 Maryland Avenue SW, Room 7E220, Washington, DC 20202, telephone: (202) 453–5529, or email: *Emmanuel.Caudillo@ed.gov*.

SUPPLEMENTARY INFORMATION:

The Commission's Statutory Authority and Function: The Commission is established by Executive Order 14045 (September 13, 2021) and continued by Executive Order 14109 (September 29, 2023). The Commission is also governed by the provisions of 5 U.S.C. chapter 10 (Federal Advisory Committees), which sets forth standards for the formation and use of advisory committees. The Commission's duties are to advise the President, through the Secretary of Education, on matters pertaining to educational equity and economic opportunity for the Hispanic and Latino community in the following areas: (i) what is needed for the development, implementation, and coordination of educational programs and initiatives at the U.S. Department of Education (Department) and other agencies to improve educational opportunities and outcomes for Hispanics and Latinos; (ii) how to promote career pathways for in-demand jobs for Hispanic and Latino students, including registered apprenticeships, internships, fellowships, mentorships, and work-based learning initiatives; (iii) ways to strengthen the capacity of institutions, such as Hispanic-serving Institutions, to equitably serve Hispanic and Latino students and increase the participation of Hispanic and Latino students, Hispanic-serving school districts, and the Hispanic community in the programs of the Department and other agencies; (iv) how to increase public awareness of and generate solutions for the educational and training challenges and equity disparities that Hispanic and Latino students face and the causes of these challenges; and (v) approaches to establish local and national partnerships with public, private, philanthropic, and nonprofit stakeholders to advance the mission and objectives of this order, consistent with applicable law.

Meeting Agenda: The agenda for the Commission meeting builds upon conversations and information shared in the Commission's four prior meetings and will provide an outlook at the Commission's 2024 plans. Specifically, during the meeting, the Commission will (1) receive updates and vote on recommendations from the Commission's four subcommittees: Advancing PreK–12 Educational Equity; Advancing Higher Education and Hispanic Serving Institutions (HSIs); Strengthening Economic Opportunity & Workforce Development; and Strengthening Public Partnerships and Public Awareness; (2) hear presentations from federal and community leaders on topics related to Executive Order 14045; and (3) and discuss strategies to advance the Commission's approved recommendations from prior meetings and next steps towards advancing duties of the Commission, as outlined by Executive Order 14045.

Access to the Meeting: Members of the public may register to attend the meeting virtually by accessing the link at *https://www.ed.gov/hispanicinitiative* or emailing *WhiteHouseHispanicInitiative@ed.gov* by 5 p.m. EST on Tuesday, January 23, 2024, for in-person attendance, and by 5 p.m. EST on Thursday, January 25, 2024. Instructions on how to access the meeting will be emailed to members of the public that register to attend and will be posted to *https://www.ed.gov/hispanicinitiative* no later than Thursday, January 25, 2024, by 6 p.m. EST.

Public Comment: Written comments pertaining to the work of the Commission may be submitted electronically to *WhiteHouseHispanicInitiative@ed.gov* by 5 p.m. EST on Thursday, January 25, 2024. Include in the subject line: ''Written Comments: Public Comment.'' The email must include the name(s), title, organizations/affiliation, mailing address, email address, and telephone number of the person(s) making the comment. Comments should be submitted as a Microsoft Word document or in a medium compatible with Microsoft Word (not a PDF file) that is attached to the electronic mail message (email) or provided in the body of an email message. Please do not send material directly to members of the Commission.

Reasonable Accommodations: The meeting platform and access code are accessible to individuals with disabilities. If you will need an auxiliary aid or service for the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least one week before the meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Access to Records of the Meeting: The Department will post the official report of the meeting on the Commission's website, at *https://sites.ed.gov/hispanic-initiative/presidential-advisory-commission* no later than 90 days after the meeting. Pursuant to 5 U.S.C. 1009(b), the public may request to inspect records of the meeting, and other Commission records, at 400 Maryland Avenue SW, Washington, DC, by emailing *Emmanuel.Caudillo@ed.gov* or by calling (202) 453–5529 to schedule an appointment.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or PDF. To use PDF, you must have Adobe Acrobat Reader, which is available free at the site. You also may access documents of the Department published in the **Federal Register** by

using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: Executive Order 14045 (September 13, 2021) and continued by Executive Order 14109 (September 29, 2023)

Alexis Barrett,

Chief of Staff, Office of the Secretary.

[FR Doc. 2024–00548 Filed 1–11–24; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meetings

AGENCY: U.S. Election Assistance Commission.

ACTION: Sunshine Act Notice; Notice of Public Meeting Agenda.

SUMMARY: Public Meeting: U.S. Election Assistance Commission.

DATES: Tuesday, January 30, 10:00 a.m.–5:30 p.m. Eastern.

ADDRESSES: The meeting will be held in person at the University of Maryland, Stamp Student Union, 3972 Campus Dr, College Park, MD 20742. It will also be live streamed on the U.S. Election Assistance Commission YouTube Channel: *https://www.youtube.com/channel/UCpN6i0g2rlF4ITWhwvBwwZw.*

FOR FURTHER INFORMATION CONTACT: Kristen Muthig, Telephone: (202) 897–9285, Email: *kmuthig@eac.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: In accordance with the Government in the Sunshine Act (Sunshine Act), Public Law 94–409, as amended (5 U.S.C. 552b), the U.S. Election Assistance Commission (EAC) will conduct an open meeting with the University of Maryland on topics related to the 2024 elections.

Agenda: During the meeting, election officials and other key stakeholders will join the EAC's Commissioners for in-depth panel discussions ahead of the 2024 elections on topics such as confidence in elections, election security, serving all voters, challenges for new election officials, and communicating about elections.

The full agenda will be posted in advance on the EAC website: *https://www.eac.gov.*

Background: The Help America Vote Act of 2002 (HAVA) charged the EAC to serve as a national clearinghouse and resource for the compilation of information and review of procedures with respect to the administration of federal elections. This meeting will provide information on emerging topics in elections to help inform stakeholders as well as the general public and members of the media.

Status: This meeting will be open to the public.

Camden Kelliher,

Acting General Counsel, U.S. Election Assistance Commission.

[FR Doc. 2024–00690 Filed 1–10–24; 4:15 pm]

BILLING CODE 4810–71–P

DEPARTMENT OF ENERGY

National Petroleum Council

AGENCY: Office of Fossil Energy and Carbon Management, Department of Energy (DOE).

ACTION: Notice of renewal.

SUMMARY: Pursuant to the Federal Advisory Committee Act, and the Code of Federal Regulations, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the National Petroleum Council has been renewed for a two-year period.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Johnson at (202) 586–6458, or email: *nancy.johnson@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The Council will continue to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas, and the oil and natural gas industries. The Secretary of Energy has determined that renewal of the National Petroleum Council is essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed by law upon the Department of Energy. The Council will continue to operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), the General Services Administration Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those Acts.

Signing Authority

This document of the Department of Energy was signed on January 5, 2024, by Sarah E. Butler, Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on January 9, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024–00537 Filed 1–11–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24–64–000.
Applicants: Atrisco Solar LLC.
Description: Atrisco Solar LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 1/4/24.
Accession Number: 20240104–5023.
Comment Date: 5 p.m. ET 1/25/24.

Docket Numbers: EG24–65–000.
Applicants: Atrisco Energy Storage LLC.
Description: Atrisco Energy Storage LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 1/4/24.
Accession Number: 20240104–5025.
Comment Date: 5 p.m. ET 1/25/24.

Docket Numbers: EG24–66–000.
Applicants: Quail Ranch Solar LLC.
Description: Quail Ranch Solar LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 1/4/24.
Accession Number: 20240104–5029.
Comment Date: 5 p.m. ET 1/25/24.

Docket Numbers: EG24–67–000.
Applicants: Quail Ranch Energy Storage LLC.
Description: Quail Ranch Energy Storage LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 1/4/24.
Accession Number: 20240104–5030.
Comment Date: 5 p.m. ET 1/25/24.

Docket Numbers: EG24–68–000.
Applicants: Atrisco Solar SF LLC.
Description: Atrisco Solar SF LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 1/4/24.
Accession Number: 20240104–5033.
Comment Date: 5 p.m. ET 1/25/24.

Docket Numbers: EG24–69–000.
Applicants: Atrisco BESS SF LLC.
Description: Atrisco BESS SF LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 1/4/24.
Accession Number: 20240104–5034.
Comment Date: 5 p.m. ET 1/25/24.

Docket Numbers: EG24–70–000.
Applicants: Quail Ranch Solar SF LLC.
Description: Quail Ranch Solar SF LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 1/4/24.
Accession Number: 20240104–5035.
Comment Date: 5 p.m. ET 1/25/24.

Docket Numbers: EG24–71–000.
Applicants: Quail Ranch BESS SF LLC.
Description: Quail Ranch BESS SF LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 1/4/24.
Accession Number: 20240104–5038.
Comment Date: 5 p.m. ET 1/25/24.

Docket Numbers: EG24–72–000.
Applicants: Alton Post Office Solar, LLC.
Description: Alton Post Office Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 1/4/24.
Accession Number: 20240104–5071.
Comment Date: 5 p.m. ET 1/25/24.

Docket Numbers: EG24–73–000.
Applicants: Foxglove Solar Project, LLC.
Description: Foxglove Solar Project, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 1/4/24.
Accession Number: 20240104–5074.
Comment Date: 5 p.m. ET 1/25/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23–1445–001; ER23–2937–001; ER23–2938–001; ER23–2939–001.
Applicants: Wolfskin Solar, LLC, Blackwater Solar, LLC, Bird Dog Solar, LLC, Hobnail Solar, LLC.
Description: Notice of Non-Material Change in Status of Hobnail Solar, LLC, et al.
Filed Date: 1/4/24.
Accession Number: 20240104–5149.
Comment Date: 5 p.m. ET 1/25/24.

Docket Numbers: ER24–185–000.
Applicants: The United Illuminating Company.
Description: Refund Report: Refund Report: Localized Costs Sharing Agreement, Generation Bridge CT Holdings to be effective N/A.
Filed Date: 1/4/24.
Accession Number: 20240104–5076.
Comment Date: 5 p.m. ET 1/25/24.

Docket Numbers: ER24–186–000.
Applicants: The United Illuminating Company.
Description: Refund Report: Refund Report: Localized Costs Sharing Agreement, Generation Bridge M&M Holdings to be effective N/A.
Filed Date: 1/4/24.
Accession Number: 20240104–5079.
Comment Date: 5 p.m. ET 1/25/24.

Docket Numbers: ER24–187–000.
Applicants: The United Illuminating Company.
Description: Refund Report: Refund Report: Localized Costs Sharing Agreement, Quinebaug Solar, LLC to be effective N/A.
Filed Date: 1/4/24.
Accession Number: 20240104–5081.
Comment Date: 5 p.m. ET 1/25/24.

Docket Numbers: ER24–811–000.
Applicants: Southwest Power Pool, Inc.
Description: 205(d) Rate Filing: 3789 Flat Ridge 4 Wind GIA Cancellation to be effective 12/12/2023.
Filed Date: 1/3/24.
Accession Number: 20240103–5165.
Comment Date: 5 p.m. ET 1/24/24.

Docket Numbers: ER24–812–000.
Applicants: Southwest Power Pool, Inc.
Description: 205(d) Rate Filing: 3945 Skyview Wind Project/ITC Great Plains E&P Agr Cancel to be effective 9/27/2023.
Filed Date: 1/3/24.
Accession Number: 20240103–5167.
Comment Date: 5 p.m. ET 1/24/24.

Docket Numbers: ER24–813–000.
Applicants: Public Service Company of New Mexico.
Description: 205(d) Rate Filing: Limited-Scope, Single Issue Filing to Revise Depreciation Rates to be effective 1/4/2024.
Filed Date: 1/3/24.
Accession Number: 20240103–5172.
Comment Date: 5 p.m. ET 1/24/24.

Docket Numbers: ER24–814–000.
Applicants: Consolidated Edison Company of New York, Inc., New York Independent System Operator, Inc.
Description: 205(d) Rate Filing: Consolidated Edison Company of New York, Inc. submits tariff filing per 35.13(a)(2)(iii: NYISO-Con Edison Joint 205: LGIA Empire Wind 1 Project SA2811 (CEII) to be effective 12/19/2023.
Filed Date: 1/4/24.
Accession Number: 20240104–5088.
Comment Date: 5 p.m. ET 1/25/24.

Docket Numbers: ER24–815–000.
Applicants: Northern States Power Company, a Minnesota corporation.
Description: 205(d) Rate Filing: 2024–01–04 MMPA East Shakopee FSA 753–NSP to be effective 1/5/2024.
Filed Date: 1/4/24.
Accession Number: 20240104–5093.
Comment Date: 5 p.m. ET 1/25/24.

Docket Numbers: ER24–816–000.
Applicants: Puget Sound Energy, Inc.
Description: 205(d) Rate Filing: Boeing NITSA (SA–5016), NOA (SA–5017) and IA (SA–5018) to be effective 1/1/2024.
Filed Date: 1/4/24.
Accession Number: 20240104–5110.
Comment Date: 5 p.m. ET 1/25/24.

Docket Numbers: ER24–817–000.
Applicants: Babbitt Ranch Energy Center, LLC.
Description: Baseline eTariff Filing: Babbitt Ranch Energy Center, LLC Application for MBR Authorization to be effective 3/5/2024.
Filed Date: 1/4/24.
Accession Number: 20240104–5126.
Comment Date: 5 p.m. ET 1/25/24.

Docket Numbers: ER24–818–000.
Applicants: Yellow Pine Solar II, LLC.
Description: Baseline eTariff Filing: Yellow Pine Solar II, LLC Application for MBR Authorization to be effective 3/5/2024.
Filed Date: 1/4/24.
Accession Number: 20240104–5130.
Comment Date: 5 p.m. ET 1/25/24.

Docket Numbers: ER24–819–000.
Applicants: Indianapolis Power & Light Company, Hardy Hills Solar Energy LLC.
Description: Request for Authorization to Undertake Affiliate Sales of Hardy Hills Solar Energy LLC, et. al.
Filed Date: 1/3/24.
Accession Number: 20240103–5208.
Comment Date: 5 p.m. ET 1/24/24.

Docket Numbers: ER24–820–000.
Applicants: Duke Energy Florida, LLC.
Description: Tariff Amendment: DEF–G2—Notice of Cancellation SA No. 155 to be effective 3/5/2024.
Filed Date: 1/4/24.
Accession Number: 20240104–5152.
Comment Date: 5 p.m. ET 1/25/24.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206

of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: January 4, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–00578 Filed 1–11–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP24–300–000.

Applicants: LA Storage, LLC.

Description: 4(d) Rate Filing: Filing of Negotiated Rate, Conforming IW Agreements to be effective 1/5/2024.

Filed Date: 1/3/24.

Accession Number: 20240103–5161.

Comment Date: 5 p.m. ET 1/16/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: January 4, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–00577 Filed 1–11–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–105]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed December 29, 2023 10 a.m. EST Through January 8, 2024 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search.*

EIS No. 20240001, Draft, BLM, NV, Rough Hat Clark Solar Project Draft EIS and Resource Management Plan, Comment Period Ends: 04/11/2024, Contact: Whitney Wirthlin 725–249–3318.

EIS No. 20240002, Draft, BOEM, NY, New York Bight, Comment Period Ends: 02/26/2024, Contact: Jill Lewandowski 703–787–1703.

EIS No. 20240003, Draft, APHIS, CA, California Wildlife Damage Management Joint EIR–EIS, Comment Period Ends: 03/12/2024, Contact: Jeff Flores, State Director 916–979–2675.

Dated: January 8, 2024.

Julie Smith,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2024–00533 Filed 1–11–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2023–0428; FRL–11111–02–OCSPP]

Pesticides; Petition Seeking Rulemaking for Registration of Neonicotinoid Insecticides and Other Systemic Insecticides; Notice of Availability and Request for Comment; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: In the **Federal Register** of November 24, 2023, EPA announced the availability of and solicited comment on a petition received from the Public Employees for Environmental Responsibility (PEER) and the American Bird Conservancy (ABC) requesting that the Agency initiate a rulemaking for neonicotinoid insecticides and other systemic insecticides. This document extends the comment period, which was scheduled to end on January 23, 2024, to March 25, 2024.

DATES: The comment period for the document published in the **Federal Register** of November 24, 2023, at 88 FR 82286 (FRL–11111–01–OCSPP) is extended. Comments must be received on or before March 25, 2024.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2023–0428, through the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Caleb Hawkins, Office of Pesticide

Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1430; email address: *Hawkins.caleb@epa.gov.*

SUPPLEMENTARY INFORMATION: To give stakeholders additional time to review materials and prepare comments, EPA is hereby extending the comment period established in the **Federal Register** document of November 24, 2023, at 88 FR 82286 (FRL–11111–01–OCSPP) from January 23, 2024, to March 25, 2024. More information on the action can be found in the **Federal Register** of November 24, 2023.

To submit comments or access the docket, please follow the detailed instructions provided under **ADDRESSES**. If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 7 U.S.C. 136 *et seq.*

Dated: January 8, 2024.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2024–00518 Filed 1–11–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2014–0128; FRL–5788–04–OAR]

Release of Policy Assessment for the Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen, Oxides of Sulfur and Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: On or about January 12, 2024, the Environmental Protection Agency (EPA) will make available the document, *Policy Assessment for the Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen, Oxides of Sulfur and Particulate Matter* (PA, EPA–452/R–24–003). This document was prepared as part of the current review of the secondary national ambient air quality standards (NAAQS) for Oxides of Nitrogen (NO_X), Oxides of Sulfur (SO_X), and Particulate Matter (PM). The PA serves to ''bridge the gap'' between the currently available scientific and technical information and the judgments required of the Administrator in determining whether to retain or revise the existing secondary NO_2, SO_2 and PM NAAQS. The secondary NAAQS for oxides of nitrogen, oxides of sulfur, and particulate matter are set to protect the public welfare from known or anticipated effects of these pollutants in the ambient air.

DATES: This document will be available on or about January 12, 2024.

ADDRESSES: This document will be available on the EPA's website at *https://www.epa.gov/naaqs/nitrogen-dioxide-no2-and-sulfur-dioxide-so2-secondary-air-quality-standards.* The document will be accessible under ''Policy Assessments'' from the current review.

FOR FURTHER INFORMATION CONTACT: Ginger Tennant, Office of Air Quality Planning and Standards, (Mail Code C504–06), U.S. Environmental Protection Agency, P.O. Box 12055, Research Triangle Park, NC 27711; telephone number: 919–541–4072, or email: *tennant.ginger@epa.gov.*

SUPPLEMENTARY INFORMATION: Two sections of the Clean Air Act (CAA or the Act) govern the establishment and revision of the NAAQS. Section 108 directs the Administrator to identify and list certain air pollutants and then issue ''air quality criteria'' for those pollutants. The air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air . . .'' (CAA section 108(a)(2)). Under section 109 of the Act, the EPA is then to establish primary (health-based) and secondary (welfare-based) NAAQS for each pollutant for which the EPA has issued air quality criteria. Section 109(d)(1) of the Act requires periodic review and, if appropriate, revision of existing air quality criteria. Revised air quality criteria are to reflect advances in scientific knowledge on the effects of the pollutant on public health and welfare. Under the same provision, the EPA is also to periodically review and, if appropriate, revise the NAAQS, based on the revised air quality criteria.

The Act additionally requires appointment of an independent scientific review committee that is to periodically review the existing air quality criteria and NAAQS and to recommend any new standards and revisions of existing criteria and standards as may be appropriate (CAA section 109(d)(2)(A)–(B)). Since the early 1980s, the requirement for an independent scientific review committee has been fulfilled by the Clean Air Scientific Advisory Committee (CASAC).

The EPA's overall plan for this review is presented in the Integrated Review Plan for the Secondary National Ambient Air Quality Standards for Ecological Effects of Oxides of Nitrogen, Oxides of Sulfur and Particulate Matter (IRP).[1] As described in the IRP, the EPA has prepared the *Integrated Science Assessment (ISA) for Oxides of Nitrogen, Oxides of Sulfur and Particulate Matter Ecological Criteria* (U.S. EPA, 2020), drafts of which were released in March 2017 and June 2018 for public comment and review by the CASAC.[2] A draft of the PA was also reviewed by the CASAC (88 FR 17572, March 23, 2023; 88 FR 45414, July 17, 2023). The final PA reflects consideration of the advice and comments from the CASAC on the draft PA, as well as public comments. The PA serves to ''bridge the gap'' between the scientific and technical information in the 2020 ISA and any air quality, exposure, and risk analyses available in this review, and the judgments required of the Administrator in determining whether to retain or revise the existing secondary ambient air quality standards for NO_2, SO_2 and PM. The final PA document will be available on EPA's website at *https://www.epa.gov/naaqs/nitrogen-dioxideno2-and-sulfur-dioxide-so2-secondaryair-quality-standards.* The document briefly described here does not represent and should not be construed to represent any final EPA policy, viewpoint, or determination.

Dated: January 3, 2024.

Erika N. Sasser,

Director, Health and Environmental Impacts Division.

[FR Doc. 2024–00168 Filed 1–11–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0952; FR ID 196204]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal

[1] The IRP is available at *https://www.epa.gov/naaqs/nitrogen-dioxide-no2-and-sulfur-dioxide-so2-secondary-standards-planning-documents-current.*

[2] The ISA is available at: *https://www.epa.gov/naaqs/nitrogen-dioxide-no2-and-sulfur-dioxide-so2-secondary-air-quality-standards-integrated.*

Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before March 12, 2024. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0952.

Title: Proposed Demographic Information and Notifications, Second Further Notice of Proposed Rulemaking (FNPRM), CC Docket No. 98–147 and Fifth NPRM (NPRM), CC Docket No. 96–98.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 589 respondents; 1,178 responses.

Frequency of Response: On occasion reporting requirements and third party disclosure requirement.

Estimated Time per Response: 2 hours.

Total Annual Burden: 2,356 hours.

Total Annual Cost: No cost.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–154, 201, 202, 251–254, 256 and 271 of the Communications Act of 1934, as amended.

Needs and Uses: The Commission asked whether physical collocation in remote terminals presents technical or security concerns, and if so, whether these concerns warrant modification of its collocation rules. The Commission asked whether incumbent LECs should be required to provide requesting carriers with demographic and other information regarding particular remote terminals similar to the information available regarding incumbent LEC central offices. Requesting carriers use demographic and other information obtained from incumbent LECs to determine whether they wish to collocate at particular remote terminals. This proposed information collection in the Second Further Notice of Proposed Rulemaking, FCC 98–147, will be used by the Commission, state commissions, and competitive carriers to facilitate the deployment of advanced services and other telecommunications services in implementation of section 251(c)(6) of the Communications Act of 1934, as amended. The number of respondents, annual responses, and annual burden hours have decreased due to a decrease in the current total number of active incumbent local exchange carriers who may have to respond to this information collection. This decrease in the number of respondents accounts for a concomitant reduction in both total annual responses and total annual burden hours. There are no program changes to this information collection.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–00581 Filed 1–11–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1272; FR ID 196129]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before March 12, 2024. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1272.

Title: 3.7 GHz Band Space Station Operator Accelerated Relocation Elections and Transition Plans; 3.7 GHz Band Earth Station Lump Sum Payment Elections.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Estimated Number of Respondents and Responses: 3,010 respondents and 3,010 responses.

Estimated Time per Response: 16 hours per response for accelerated relocation elections, 2,720 hours per response for transition plans, and 32

hours per response for lump sum payment elections.

Frequency of Response: One time reporting requirement.

Obligation to Respond: Statutory authority for this information collection is contained in sections 1, 2, 4(i), 4(j), 5(c), 201, 302, 303, 304, 307(e), and 309of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 155(c), 201, 302, 303, 304, 307(e), 309.

Total Annual Burden: 109,680 hours.

Total Annual Cost: $900,000.

Needs and Uses: Under this information collection, the Commission will collect information that will be used to determine when, how, and at what cost existing operations in the lower portion of the 3.7–4.2 GHz band will be relocated to the upper portion of the band. This collection will serve as the starting point for planning and managing the process of efficiently and expeditiously clearing of the lower portion of the band, so that this spectrum can be auctioned for flexible-use service licenses.

The transition relocation process began in 2020. Initial Transition Plans were filed on June 19, 2020 with final Transition Plans due August 14, 2020. Throughout the relocation process, the Wireless Telecommunications Bureau (Bureau) opened limited windows to amend their Transition Plans on several occasions. In addition to submitting and modifying Transition Plans during these periods, eligible space station operators were required to file quarterly status reports with the Commission beginning on December 31, 2020 to demonstrate their efforts to ensure a timely transition.

The 3.7 GHz band auction, Auction 107, took place from December 8, 2020 to February 17, 2021, and, on February 24, 2021, the Commission announced the winning bidders of the C-band auction for all 5,684 licenses. In the same year, the Bureau directed eligible space station operators to submit updates for their final Transition Plans during limited windows opened for operators to provide these updates.

Later that year, on August 4, 2021, the Bureau issued a Public Notice implementing filing procedures for Phase I Certifications. Originally, Phase I's deadline was set for December 5, 2021, but the deadline was met eleven days earlier than anticipated. On November 24, 2021, the Commission validated the certification of Phase I.

The C-band transition continued into 2023. On May 15, 2023, the Bureau announced procedures for filing C-band Phase II Certifications of Accelerated Relocation and implementation of the Commission's incremental reduction plan for Phase II Accelerated Relocation Payments as part of the ongoing transition. The C-Band Relocation Payment Clearinghouse (RPC) is responsible for disbursing the Accelerated Relocation Payments within a certain *time period.*

On June 1, 2023, all eligible space station operators were permitted to submit their Phase II certifications. Also on June 1, 2023, the Bureau opened a limited, final window for eligible space station operators to file modified Transition Plans to accurately account for any updates since September 30, 2021.

Phase II's deadline to complete the transition of space station operations to the upper 200 megahertz of the band was originally set for December 5, 2023. Instead, on August 10, 2023, the last of the Phase II Certifications was deemed granted. Even though Phases I and II of the satellite transition are complete, the Commission continues to work through the C-band relocation process. On October 13, 2023, the Bureau released a Public Notice seeking comment on proposed deadlines for claimants to submit reimbursement claims. The Public Notice stated that the RPC's operations are currently scheduled to conclude on June 30, 2025, which is still more than a year and a half away. The relocation of the fixed service licensees is also ongoing.

On December 5, 2023, the Commission issued a Public Notice adopting two final reimbursement claims submission deadlines for eligible incumbents and other eligible stakeholders to submit any outstanding transition-related claims to the RPC for processing as part of this ongoing transition. The two deadlines are: (1) February 5, *2024* as the submission deadline to the RPC for all reimbursement claims for costs incurred and paid by claimants as of December 31, 2023, and (2) July 1, *2024* as the submission deadline to the RPC for all reimbursement claims for costs incurred and paid by claimants after December 31, 2023. In the Public Notice, the Commission stated that these adopted dates are important because they will aid in facilitating a timely conclusion of the C-band reimbursement program. Furthermore, the Commission highlighted the fact that all lump sum electees and many other eligible claimants and eligible stakeholders have had ample time within which to submit their claims to the RPC.

It is important to continue to collect information because it is crucial to ensure that managing this process is efficiently and quickly done, and that transition is still underway. Because this process remains ongoing, this information collection should be renewed to ensure that a complete set of information is maintained. If this collection were to expire now, stakeholders would be missing ongoing information about the transition process. Renewing this collection will provide stakeholders with complete information instead of an information collection that ends before the entire transition process is officially accomplished in 2025.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–00495 Filed 1–11–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2024–N–1]

Notice of Annual Adjustment of the Cap on Average Total Assets That Defines Community Financial Institutions

AGENCY: Federal Housing Finance Agency.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Agency (FHFA) has adjusted the cap on average total assets that is used in determining whether a Federal Home Loan Bank (Bank) member qualifies as a ''community financial institution'' (CFI) to $1,461,000,000, based on the annual percentage increase in the Consumer Price Index for all urban consumers (CPI–U), as published by the Department of Labor (DOL). These changes are effective as of January 1, 2024.

FOR FURTHER INFORMATION CONTACT: Janna Bruce, Division of Federal Home Loan Bank Regulation, (202) 649–3202, *Janna.Bruce@fhfa.gov;* or Carly Malamud, Counsel, Office of General Counsel, (202) 649–3098, *Carly.Malamud@fhfa.gov,* (these are not toll-free numbers), Federal Housing Finance Agency, Constitution Center, 400 Seventh Street SW, Washington, DC 20219. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

The Federal Home Loan Bank Act (Bank Act) confers upon insured depository institutions that meet the

statutory definition of a CFI certain advantages over non-CFI insured depository institutions in qualifying for Bank membership, and in the purposes for which they may receive long-term advances and the collateral they may pledge to secure advances.[1] Section 2(10)(A) of the Bank Act and § 1263.1 of FHFA's regulations define a CFI as any Bank member the deposits of which are insured by the Federal Deposit Insurance Corporation and that has average total assets below the statutory cap.[2] The Bank Act was amended in 2008 to set the statutory cap at $1 billion and to require FHFA to adjust the cap annually to reflect the percentage increase in the CPI–U, as published by the DOL.[3] For 2023, FHFA set the CFI asset cap at $1,417,000,000, which reflected a 7.1 percent increase over 2022, based upon the increase in the CPI–U between 2021 and 2022.[4]

II. The CFI Asset Cap for 2024

As of January 1, 2024, FHFA will increase the CFI asset cap to $1,461,000,000, which reflects a 3.1 percent increase in the unadjusted CPI–U from November 2022 to November 2023. Consistent with the practice of other Federal agencies required to calculate and make annual adjustments based on CPI–U changes, FHFA bases the annual adjustment to the CFI asset cap on the percentage increase in the CPI–U from November of the year prior to the preceding calendar year to November of the preceding calendar year, because the November figures represent the most recent available data as of January 1st of the current calendar year. The new CFI asset cap was obtained by applying the percentage increase in the CPI–U to the unrounded amount for the preceding year and rounding to the nearest million, as has been FHFA's practice for all previous adjustments.

In calculating the CFI asset cap, FHFA uses CPI–U data that have not been seasonally adjusted (*i.e.,* the data have not been adjusted to remove the estimated effect of price changes that normally occur at the same time and in about the same magnitude every year). The DOL encourages use of unadjusted CPI–U data in applying ''escalation'' provisions such as that governing the CFI asset cap, because the factors that are used to seasonally adjust the data are amended annually, and seasonally adjusted data that are published earlier are subject to revision for up to five years following their original release. Unadjusted data are not routinely subject to revision, and previously published unadjusted data are only corrected when significant calculation errors are discovered.

Joshua R. Stallings,

Deputy Director, Division of Federal Home Loan Bank Regulation, Federal Housing Finance Agency.

[FR Doc. 2024–00491 Filed 1–11–24; 8:45 am]

BILLING CODE 8070–01–P

[1] *See* 12 U.S.C. 1424(a), 1430(a).

[2] *See* 12 U.S.C. 1422(10)(A); 12 CFR 1263.1.

[3] *See* 12 U.S.C. 1422(10)(B); 12 CFR 1263.1 (defining the term ''CFI asset cap'').

[4] *See* 87 FR 80184 (Dec. 29, 2022).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Supplemental Evidence and Data Request on The Effect of Dietary Digestible Carbohydrate Intake on Risk of Cardiovascular Disease

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for supplemental evidence and data submission.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review on *The Effect of Dietary Digestible Carbohydrate Intake on Risk of Cardiovascular Disease,* which is currently being conducted by the AHRQ's Evidence-based Practice Centers (EPC) Program. Access to published and unpublished pertinent scientific information will improve the quality of this review.

DATES: *Submission Deadline* on or before February 12, 2024.

ADDRESSES:

Email submissions: epc@ahrq.hhs.gov.

Print submissions:

Mailing Address: Center for Evidence and Practice Improvement Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E53A, Rockville, MD 20857

Shipping Address (FedEx, UPS, etc.): Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E77D, Rockville, MD 20857

FOR FURTHER INFORMATION CONTACT: Kelly Carper, Telephone: 301–427–1656 or Email: *epc@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Agency for Healthcare Research and Quality has commissioned the Evidence-based Practice Centers (EPC) Program to complete a review of the evidence for *The Effect of Dietary Digestible Carbohydrate Intake on Risk of Cardiovascular Disease.* AHRQ is conducting this review pursuant to Section 902 of the Public Health Service Act, 42 U.S.C. 299a.

The EPC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (*e.g.,* details of studies conducted). We are looking for studies that report on *The Effect of Dietary Digestible Carbohydrate Intake on Risk of Cardiovascular Disease.*

The entire research protocol is available online at: *https://effectivehealthcare.ahrq.gov/products/risk-cardiovascular-disease.*

This is to notify the public that the EPC Program would find the following information on *The Effect of Dietary Digestible Carbohydrate Intake on Risk of Cardiovascular Disease* helpful:

▪ A list of completed studies that your organization has sponsored for this topic. In the list, please *indicate whether results are available on ClinicalTrials.gov along with the ClinicalTrials.gov trial number.*

▪ *For completed studies that do not have results on ClinicalTrials.gov,* a summary, including the following elements, if relevant: study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.

▪ *A list of ongoing studies that your organization has sponsored for this topic.* In the list, please provide the ClinicalTrials.gov trial number or, if the trial is not registered, the protocol for the study including, if relevant, a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.

▪ Description of whether the above studies constitute *ALL Phase II and above clinical trials* sponsored by your organization for this topic and an index outlining the relevant information in each submitted file.

Your contribution is very beneficial to the Program. Materials submitted must be publicly available or able to be made public. Materials that are considered confidential; marketing materials; study types not included in the review; or information on topics not included in the review cannot be used by the EPC Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EPC Program website and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *https://www.effectivehealthcare.ahrq.gov/email-updates.*

The review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions.

Key Questions (KQ)

KQ 1: What is the association between dietary digestible carbohydrate intake and the incidence of cardiovascular disease?

PICOTS (Populations, Interventions, Comparators, Outcomes, Timing, and Setting)

INCLUSION AND EXCLUSION CRITERIA BY POPULATION, INTERVENTION, COMPARATOR, OUTCOME, TIMING, SETTING/STUDY DESIGN (PICOTS)

PICOTS elements	Inclusion criteria	Exclusion criteria
Population	• Participants who are generally healthy, including participants who are determined to be overweight/obese, women who are pregnant or lactating. • Age of participants: ○ Between 2 years and 9 years (before puberty). ○ Between 9 and 17 years. ○ 18 years and older.	• Participants with diseases/health-related conditions that impact carbohydrate absorption or metabolism, cancer, and malabsorption syndromes. • Participants hospitalized with an illness or injury. • Participants with the endpoint outcomes of CVD (*i.e.,* studies that aim to treat participants already been diagnosed with the endpoint outcomes of interest). • Participants who intend to reduce weight or receive treatments for being overweight and having obesity through energy restriction or hypocaloric diets for the purposes of treating additional or other medical conditions. • Participants who are determined to be undernourished, underweight, stunted, or wasted. • Participants who are pre-bariatric or post-bariatric surgery. • People younger than 2 years old.
Interventions	• Total dietary digestible carbohydrate intake from foods, beverages, and dietary supplements. ○ Total dietary digestible carbohydrate intake defined as collective starch and sugar intake; carbohydrate intake not including dietary fiber. • A dietary pattern that quantifies the intake of total dietary digestible carbohydrates and allows the isolation of the effect of carbohydrate intake from the effect of the intake of other macronutrients.	• Studies that do not specify the amount of total digestible carbohydrate intake (*e.g.,* studies that only report type or source of digestible carbohydrate). • Studies that do not describe the entire macronutrient distribution of the diet (*i.e.,* studies that do not report total digestible carbohydrate, total fat, and total protein contents of experimental or baseline diets). • Studies that only assess digestible carbohydrate intake via infusions (rather than the GI tract). • Studies that primarily measure postprandial responses, as opposed to longer term studies. • Studies that examine food products or dietary supplements not widely available to U.S. consumers. • Multi-component interventions that do not isolate the effect or association of digestible carbohydrate.
Comparators	• Different total dietary digestible carbohydrate intake level(s).	• Comparison of different sources of carbohydrate without specifying amount of carbohydrate intake. • Studies that do not attempt to control for energy intake of participants such that comparisons are made on an isocaloric basis. • Comparisons of available carbohydrate exposure should not be confounded by differences in participants' energy intake.
Outcomes	• Intermediate outcomes: ○ LDL cholesterol (LDL). ○ Total cholesterol (TC). ○ HDL cholesterol (HDL). ○ Non-HDL cholesterol. ○ TC:HDL ratio. ○ LDL:HDL ratio. ○ Triglycerides. ○ Blood pressure (systolic and/or diastolic) and hypertension. • Final outcomes: ○ Cardiovascular disease *(e.g.,* myocardial infarction, coronary heart disease, congestive heart failure, peripheral artery disease). ○ Stroke. ○ Cardiovascular disease-related mortality.	• Hypertensive disorders during pregnancy and/or lactation (*e.g.,* chronic hypertension, gestational hypertension, preeclampsia-eclampsia, chronic hypertension with superimposed preeclampsia).

INCLUSION AND EXCLUSION CRITERIA BY POPULATION, INTERVENTION, COMPARATOR, OUTCOME, TIMING, SETTING/STUDY DESIGN (PICOTS)—Continued

PICOTS elements	Inclusion criteria	Exclusion criteria
Timing	• At least 4 weeks	• Less than 4 weeks.
Settings	• All except hospital and acute care	• Hospital and acute care.
Study design	• Randomized controlled trials • Nonrandomized controlled trials, including quasi-experimental and controlled before-and-after studies. • Prospective cohort studies. • Nested case-control studies. • Relevant systematic reviews, or meta-analyses (used for identifying additional studies).	• In vitro studies, nonoriginal data (*e.g.,* narrative reviews, scoping reviews, editorials, letters, or erratum), retrospective cohort studies, case series, qualitative studies, cost-benefit analysis, cross-sectional (*i.e.,* nonlongitudinal) studies, survey.
Publications	• Studies published in English only • Studies published in peer-reviewed journals. • Studies published at and after the year 2000.	• Non-English language studies.

Abbreviations: CVD = cardiovascular disease; GI = gastrointestinal; HDL = high-density lipoprotein; KQ = Key Question; LDL = low-density lipoprotein PICOTS = populations, interventions, comparators, outcomes, timing, and settings; RCT = randomized controlled trial; TC = total cholesterol; U.S. = United States.

Dated: January 8, 2024.

Marquita Cullom,

Associate Director.

[FR Doc. 2024–00505 Filed 1–11–24; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; CAREWare Customer Satisfaction and Usage Survey, OMB No. 0906–xxxx–New

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with of the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30-day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than February 12, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Joella Roland, the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–3983.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: CAREWare Customer Satisfaction and Usage Survey, OMB No. 0906–xxxx–New.

Abstract: HRSA developed CAREWare, a software application first released in 2000, to help meet the data collection and reporting needs of Ryan White HIV/AIDS Program (RWHAP) grant recipients. The secure software is a free, electronic health and social support services information system for RWHAP grant recipients and their subrecipients to assist in the data requirement submissions that inform the development of the Ryan White HIV/AIDS Program Service Report, the AIDS Drug Assistance Program Data Report, the Ending the HIV Epidemic Initiative Triannual Report, and the voluntary Clinical Quality Measures Performance Measures module. Over time, the software has evolved into a comprehensive health information system and is now the source of more than half of all the RWHAP client-level data received from recipients and subrecipients of RWHAP grant funding. CAREWare software manages HIV clinical and support service data from more than 360,000 client records in 48 states; Washington, DC; Puerto Rico; and the U.S. Virgin Islands.

The CAREWare software application contains customizable modules for tracking demographic information, services, medications, laboratory test results, immunization history, diagnoses (updated with International Classification of Diseases, Tenth Revision codes), referrals to outside agencies, and an appointment scheduler. There is a custom report generator and a performance measures module that supports quality of care initiatives at the provider level. The software also has several ways to import data from third-party sources, including commercial labs and other electronic health records (using both Health Level Seven and simple Comma Separated Value-formatted files), HIV surveillance systems, and for RWHAP Part B AIDS Drug Assistance Programs, pharmacy benefit programs. The software and user support materials can be accessed here: *https://hab.hrsa.gov/program-grants-management/careware.* Finally, CAREWare supports users through an experienced helpdesk with ongoing software maintenance issues and enhancements to the user interface.

HRSA is proposing a customer satisfaction survey to gather feedback from CAREWare users regarding their experiences and satisfaction with the software platform and to obtain suggestions for improvement.

A 60-day **Federal Register** Notice (FRN) was published in the **Federal Register** on October 20, 2023 (Volume 88, No. 202, pages 72493–94). There was one out-of-scope public comment received in response to the FRN.

Need and Proposed Use of the Information: HRSA aims to understand CAREWare users' needs and concerns by collecting information on current software features and inquiring about opportunities to improve the user experience and product features. The survey will address the software's functionality and how well it meets the data collection, reporting, and quality

management needs of the CAREWare user. The feedback will enable HRSA to assess, benchmark, and improve customer satisfaction with RWHAP grant recipients.

Likely Respondents: RWHAP recipients and providers who use CAREWare to produce data files for the Ryan White HIV/AIDS Program Service Report, the AIDS Drug Assistance Program Data Report, the Ending the HIV Epidemic Initiative Triannual Report, and the voluntary Clinical Quality Measures Performance Measures module.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

A pilot with seven RWHAP grant recipients concluded on November 20, 2023, one month after the 60-day FRN publication date of October 20, 2023. The pilot resulted in a lesser burden estimate than initially reported in the 60-day FRN.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
CAREWare User Survey	1,160	1	1,160	0.88	1,021
Total	1,160	1	1,160	0.88	1,021

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2024–00534 Filed 1–11–24; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Small Business Innovation Research (SBIR) Phase II Program Contract Solicitation (PHS 2022–1) Topic 109—Development of Monoclonal Antibody-mediated Interventions to Combat Malaria (N01).

Date: February 6, 2024.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F36, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Noton K. Dutta, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F36, Rockville, MD 20852, 240–669–2857, *noton.dutta@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 9, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–00556 Filed 1–11–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; HHS–NIH–CDC–SBIR PHS 2024–1 Phase I: Alternatives to Benzathine Penicillin for Treatment of Syphilis (Topic 134).

Date: February 12, 2024.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F52A Rockville, MD 20892 (Virtual Meeting).

Contact Person: Shilpakala Ketha, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious

Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F52A, Rockville, MD 20852, (301) 761–6821, *shilpa.ketha@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 9, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–00557 Filed 1–11–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; PA20–186, Midcareer Investigator Award in Patient-Oriented Research (Parent K24 Independent Clinical Trial Not Allowed).

Date: January 24, 2024.

Time: 2:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F40, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Robert C. Unfer, Ph.D,. Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F40, Rockville, MD 20852, 240–669–5035, *unferrc@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 9, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–00558 Filed 1–11–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; Review of Clinical Study Applications.

Date: March 1, 2024.

Time: 12:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Dental and Craniofacial Research, 6701 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Yun Mei, MD, Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Bethesda, MD 20892, (301) 827–4639, *yun.mei@nih.gov*.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; Collaborative Science to Achieve Disruptive Innovations in Dental, Oral and Craniofacial Research.

Date: March 20, 2024.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Dental and Craniofacial Research, 6701 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Christopher Campbell, Ph.D., MD, Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Bethesda, MD 20892, (301) 827–4603, *christopher.campbell@nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 8, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–00483 Filed 1–11–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[DOI–2023–0010; FF10T03000/234/FXGO16640970500]

Privacy Act of 1974; System of Records

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Interior (DOI) is issuing a public notice of its intent to modify the U.S. Fish and Wildlife Service (FWS) Privacy Act system of records, INTERIOR/FWS–21, Permits System. FWS is consolidating all of the FWS permits systems of records under this system of records notice (SORN) and making updates to accurately reflect management of the system of records. This modified system will be included in DOI's inventory of record systems.

DATES: This modified system will be effective upon publication. New or modified routine uses will be effective February 12, 2024. Submit comments on or before February 12, 2024.

ADDRESSES: You may send comments identified by docket number [DOI–2023–0010] by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for sending comments.
- *Email: DOI_Privacy@ios.doi.gov.* Include docket number [DOI–2023–0010] in the subject line of the message.
- *U.S. mail or hand-delivery:* Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240.

Instructions: All submissions received must include the agency name and docket number [DOI–2023–0010]. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jennifer L. Schmidt, Associate Privacy Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: IRTM, Falls Church, VA 22041–3803, *FWS_privacy@fws.gov* or (703) 358–2291.

SUPPLEMENTARY INFORMATION:

I. Background

FWS maintains five permitting systems of records to help FWS perform its conservation and wildlife management mission. These permitting systems enable the collection and maintenance of necessary information about individuals and entities such as businesses, museums, zoos, universities, or government agencies in order to establish and verify their eligibility for a permit or license to conduct varied activities such as development, implementing conservation actions, recreation, subsistence, research and/or rehabilitation that affect wildlife and plants protected under various Federal wildlife laws and treaties and on National Wildlife Refuges or National Fish Hatcheries. FWS has implemented an ePermits System to automate the administration of these permits into one consolidated system in order to standardize and ensure consistency of information collected across FWS and reduce the burden on the public.

FWS is publishing this notice to consolidate all the permitting systems of records listed below under the INTERIOR/FWS–21, Permits System, 68 FR 52610 (September 4, 2003); modification published 73 FR 31877 (June 4, 2008) and 88 FR 16277 (March 16, 2023). FWS will rescind the remaining permits systems of records listed below once this modified INTERIOR/FWS–21 notice is published.

- INTERIOR/FWS–5, National Wildlife Refuge Special Use Permits, 64 FR 29055 (May 28, 1999); modification published 73 FR 31877 (June 4, 2008) and 88 FR 16277 (March 16, 2023);
- INTERIOR/FWS–7, Water Development Project and/or Effluent Discharge Permit Application Review, 46 FR 18367 (March 24, 1981); modification published 73 FR 31877 (June 4, 2008) and 88 FR 16277 (March 16, 2023);
- INTERIOR/FWS–10, National Fish Hatchery Special Use Permits, 64 FR 29055 (May 28, 1999); modification published 73 FR 31877 (June 4, 2008) and 88 FR 16277 (March 16, 2023);
- INTERIOR/FWS–30, Marine Mammals Management, Marking, Tagging and Reporting Program, 58 FR 41803 (August 5, 1993); modification published 73 FR 31877 (June 4, 2008) and 88 FR 16277 (March 16, 2023).

FWS is modifying the AUTHORITY FOR MAINTENANCE OF THE SYSTEM section by adding its establishing legislation, the Fish and Wildlife Act of 195616 U.S.C. 742a *et seq.* FWS is adding the Alaska National Interests Lands Conservation Act (ANILCA), U.S.C. Titles 16 and 43 (various sections) which authorizes the collection and maintenance of information necessary to administer the Federal Subsistence Management Program. From INTERIOR/FWS–5 and INTERIOR/FWS–10, FWS will also add the Refuge Recreation Act of 1962, 16 U.S.C. 460k—460k–4; The National Wildlife Refuge System Administration Act of 1966, 16 U.S.C. 668dd–ee); and the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57. These authorities govern the administration and public uses of national wildlife refuges, wetland management districts, and national fish hatcheries. From INTERIOR/FWS–7 FWS is adding the Fish and Wildlife Coordination Act, 16 U.S.C. 661–666c. This Act requires FWS to investigate and report on proposed Federal actions that affect any stream or other body of water and to provide recommendations to minimize impacts on fish and wildlife resources. The authority from INTERIOR/FWS–30, the Marine Mammal Protection Act of 1972, 16 U.S.C. Chapter 31, is already included in INTERIOR/FWS–21 as an authority.

FWS is updating the PURPOSE(S) OF THE SYSTEM section to include additional purposes from the consolidated notices including: to conduct permitted activities on a National Wildlife Refuges or a National Fish Hatchery, to review and comment on other Federal agency permit applications as required by law; to monitor authorized subsistence harvests by Alaska natives, and to help control illegal activities in take, trade, and transport of protected wildlife.

FWS is reorganizing and expanding the CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM and the CATEGORIES OF RECORDS IN THE SYSTEM sections. The categories of individuals are grouped into three main categories: (1) FWS employees and contractors with official roles in the permitting process and their profile records; (2) Applicants, including applicant sponsors, affiliates, assistants, and others involved in the permitted activity and application records including waivers and appeals; and (3) Experts, consultants, and other authorized officials within and outside of the Federal government who provide insight or advice on an application, and the records of the agency's decision. This modification will also expand the categories of records listed in the referenced SORNs to cover all permits, licenses and application records received from individuals within and external to the Federal government involved in a specific application or permitting program. The RECORD SOURCE CATEGORIES section will also be expanded to include not only individuals and entities that apply for a permit or license, but also those with an official role in the processing or adjudication of a permit application; others who may have information relevant to an inquiry; and members of the public who interact with FWS through a permit program.

FWS is modifying the ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES section to ensure the efficient and effective wildlife management and conservation functions, to carry out statutory responsibilities and to promote integrity of the records in the system. FWS is proposing new and modified routine uses in INTERIOR/FWS–21 to make them consistent with DOI standard routine uses and revise them from a numeric to an alphabetic list (A—N). Routine use A has been modified to further clarify disclosures to the Department of Justice or other Federal agencies when necessary in relation to litigation or judicial proceedings. Routine use B has been modified to clarify disclosures to a congressional office to respond to or resolve an individual's request made to that office. Routine use D has been modified to allow DOI to share information with other agencies when there is an indication of a violation of law. Routine use I has been modified to include the sharing of information with grantees and shared service providers of DOI that perform services requiring access to these records on DOI's behalf to carry out the purposes of the system.

Additionally, routine uses from the INTERIOR/FWS–21 SORN were included in this notice as routine uses O–T. Routine use O has been modified to include sharing with international agencies and to clarify that decisions may also be made on licenses. Routine use P was revised to clarify when permitting information must be released to the public for notice and/or comment. Routine use Q was modified to include Tribal and international wildlife and plant agencies for the purpose of exchanging information on permits or licenses to meet applicable permitting requirements. Routine use S has been modified to include sharing information

with international authorities who receive, treat or diagnose sick, orphaned, and injured birds. Routine use T was modified to correct the name of the U.S. Government Accountability Office.

Proposed routine use C facilitates sharing of information with the Executive Office of the President to resolve issues concerning individual's records. Proposed routine use E allows DOI to share information with other Federal agencies to assist in the performance of their responsibility to ensure records are accurate and complete, and to respond to requests from individuals who are the subject of the records. Proposed routine use F facilitates sharing of information related to hiring, issuance of a security clearance, or a license, contract, grant or benefit. Proposed routine use G allows sharing with the National Archives and Records Administration to conduct records management inspections. Proposed routine use H allows sharing of information with territorial organizations in response to court orders or for discovery purposes related to litigation. Proposed routine use L allows sharing with OMB in relation to legislative affairs mandated by OMB Circular A–19. Proposed routine use M allows sharing of information with the Department of the Treasury to recover debts owed to the United States. Proposed routine use N allows sharing with the news media and the public, when it is necessary to preserve the confidence in the integrity of DOI, demonstrate the accountability of its officers, employees, or individuals covered in the system, or where there exists a legitimate public interest in the disclosure of the information such as circumstances that support a legitimate law enforcement or public safety function, or protects the public from imminent threat of life or property. Proposed routine uses U–X were added to authorize the release of certain permitting information to the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS), the U.S. Department of Commerce's National Oceanic and Atmospheric Administration (NOAA), and the U.S. Department of Homeland Security's Customs and Border Patrol, and other Federal, Tribal, State, local and international agencies for the purpose of coordinating response to emergencies or natural disasters. Finally, FWS will make general updates to the remaining sections to accurately reflect management of the system of records in accordance with OMB Circular A–108.

DOI has exempted records maintained in this system from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). *See* Privacy Act exemptions at 43 CFR 2.254. This revised notice makes a correction from the previous publication which erroneously referenced Privacy Act exemptions at 5 U.S.C. 552a(j)(2) in the Exemptions section. DOI will apply the exemptions on a case-by-case basis to the extent records from the consolidated system include investigatory material compiled for law enforcement purposes.

Pursuant to 5 U.S.C. 552a(b)(12), FWS may disclose information from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)) to aid in the collection of outstanding debts owed to the Federal Government.

II. Privacy Act

The Privacy Act of 1974, as amended, embodies fair information practice principles in a statutory framework governing the means by which Federal agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to records about individuals that are maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act defines an individual as a United States citizen or lawful permanent resident. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DOI by complying with DOI Privacy Act regulations at 43 CFR part 2, subpart K, and following the procedures outlined in the Records Access, Contesting Record, and Notification Procedures sections of this notice.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the existence and character of each system of records that the agency maintains, and the routine uses of each system. The INTERIOR/FWS–21, Permits System, SORN is published in its entirety below. In accordance with 5 U.S.C. 552a(r), DOI has provided a report of this system of records to the Office of Management and Budget and to Congress.

III. Public Participation

You should be aware your entire comment including your personally identifiable information, such as your address, phone number, email address, or any other personal identifying information in your comment, may be made publicly available at any time. While you may request to withhold your personally identifiable information from public review, we cannot guarantee we will be able to do so.

SYSTEM NAME AND NUMBER:

INTERIOR/FWS–21, Permits System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Information Technology Resources Management (IRTM), U.S. Fish and Wildlife Service, 5275 Leesburg Pike MS: IRTM, Falls Church, VA 22041–3803, FWS Regional Offices and field locations, and DOI/FWS contractor facilities. A current listing of these offices may be obtained by writing to the System Manager/s or by visiting the FWS website at *https://www.fws.gov.*

SYSTEM MANAGER(S):

(1) Assistant Director, U.S. Fish and Wildlife Service, Division of Migratory Birds, 1849 C Street NW, MS: MB MIB, Washington, DC 20240, has overall responsibility for the policies and procedures used to operate the system.

(2) FWS permitting programs in headquarters and field offices have responsibility for the data inputted and maintained in the system and for responding to requests for records from their respective programs. These programs are as follows:

- Assistant Director, Ecological Services, U.S. Fish and Wildlife Service, 1849 C Street NW, MS: ES MIB, Washington, DC 20240;
- Assistant Director, Office of Law Enforcement, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: OLE, Falls Church, VA 22041–3803;
- Assistant Director, International Affairs, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: DMA, Falls Church, VA 22041–3803;
- Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1849 C Street NW, MS: NWRS MIB, Washington, DC 20240; and
- Assistant Director, Fish and Aquatic Conservation, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: FAC, Falls Church, VA 22041–3803.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Fish and Wildlife Act of 1956, 16 U.S.C. 742a *et seq.;* Refuge Recreation Act of 1962, 16 U.S.C. 460k—460k-4; The National Wildlife Refuge System Administration Act of 1966, 16 U.S.C. 668dd *et seq.;* The National Wildlife Refuge System Improvement Act of

1977, Pub. L. 105–57; Fish and Wildlife Coordination Act, 16 U.S.C. 661–666c; Bald and Golden Eagle Protection Act, 16 U.S.C. 668–668d; Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*); Migratory Bird Treaty Act, 16 U.S.C. 703–712; Marine Mammal Protection Act of 1972, 16 U.S.C. Chapter 31; Wild Bird Conservation Act, 16 U.S.C. Chapter 69; Lacey Act, 18 U.S.C. 42, and the Lacey Act Amendments, 16 U.S.C. 3371–3378; and the Alaska National Interest Lands Conservation Act (ANILCA), U.S.C. Titles 16 and 43 (various sections).

PURPOSE(S) OF THE SYSTEM:

The purpose of the permits system of records is to establish and verify an applicant's eligibility for a permit or license to conduct activities which affect wildlife and plants protected under various Federal wildlife laws and conservation treaties or on National Wildlife Refuges or National Fish Hatcheries. FWS uses the system to conduct the review and approval or denial process for a permit or license, evaluate the effectiveness of permit programs, meet administrative reporting requirements, generate budget estimates and track performance, and provide the public and permittees with permit-related information. The system also helps FWS monitor the use and trade of protected wildlife and plants including the import and export of wildlife and wildlife products into and out of the U.S.; assess the impact of permitted activities on the conservation and management of species and their habitats, including authorized subsistence harvests by Alaska Natives; help control illegal activities in take, trade, and transport of protected wildlife; analyze data and produce reports on the use and trade in protected wildlife and plants in support of listing decisions and other actions; review and comment on other Federal agency permit applications as required by law, and assist foreign conservation agencies with analyses of international trade in wildlife species between the U.S. and foreign countries.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system include:

(1) Current and former FWS employees and contractors responsible for processing permit or license applications and/or monitoring compliance.

(2) Applicants, including members of the public or individuals acting on behalf of entities such as businesses, museums, zoos, universities, non-governmental organizations (NGOs) and government agencies, who submit an application for a permit or license to conduct certain activities regulated by FWS, or have a permit application or permit itself initiated, issued, amended, modified, inactivated, denied or revoked; permit applicants' business principal officer and/or customs agents, if applicable; and other individuals that may assist the applicant in conducting the permitted activity such as assistants, subcontractors, sub-permittees, associates, or consultants, as well as individuals who provide professional recommendations or personal references.

(3) Expert consultants or others who participate in administering the permit program, have information relevant to an inquiry or application, and/or assist the FWS in make permitting decisions such as State-licensed veterinarians, specialists, Tribal Representatives, or Title 50 Certifying Officials.

The system contains records on corporations and other business entities including Tax Identification Numbers (TINs), which are not subject to the Privacy Act. However, records pertaining to individuals acting on behalf of corporations and other business entities may reflect personal information that is subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in the system include:

(1) FWS employee and contractor profile records that contain name, username, title/position, business address, business fax number, business phone number, and business email address to facilitate communication between the permitting program and permit applicants and holders.

(2) Permit and license application records and supporting documentation for permitted activities which include but are not limited to: applicant/holder name, address, date of birth, TIN, or the last four digits of individual applicant's Social Security number if TIN is not available, occupation, home and work phone numbers, facsimile number, email address, type of permit, permit number, region where applicant is located, and application received date, effective date; species, import/export license number, Convention on the International Trade in Endangered Species (CITES) Document Number, Foreign Law Document Number, Custom Document Number; carrier information, insurance coverage if applicable; locational information, time and map of permitted activity; logistical and transportation details including description of onsite or living or working accommodations, vehicle, boat or plane descriptions and license plate numbers, and other related information depending on the permit type; parent or guardian name and contact information for all refuge hunting and fishing permit applicants aged 16 and 17 in case of an emergency; refuge mentored or sponsored hunting and fishing permit applicants' disability status, if applicable; health or medical information in case of an emergency; names and addresses of applicant assistants, subcontractors or sub-permittees; any other certifications, licenses or permits issued by another organization that are required for the permitted activity; current or past history of violations of State, Federal, or local laws or regulations related to fish and wildlife; professional references and institutional affiliations, cooperators or sponsors and their relationship to applicant; and records of requests for reconsideration and appeals of permit or license denials or revocation decisions.

(3) Determinations of eligibility including: decisions, correspondence or evaluations of information to make a decision on an application for a permit, or an appeal of a denial for a permit including Letters of Authorization; documents and records related to the FWS monitoring of activities that occur under the permit or license once issued; and documents that reflect the general administrative processing of the application and permit program such as public review required by certain laws, including comments received, consultations with subject matter experts, within FWS and in State, Federal, local, and foreign agencies for the purpose of obtaining scientific, management, and legal advice.

RECORD SOURCE CATEGORIES:

Records in the system are obtained primarily from permit applicants, permittees and those who have had a permit or license application or permit itself initiated, issued, amended, modified, inactivated, denied, or revoked. Information is also obtained from other individuals or agencies with an official role in the processing or adjudication of a FWS permit application such as DOI and other Federal officials, Tribal, State and local officials, subject matter experts, or others who may have information relevant to an inquiry, and members of the public who communicate, interact with, or request assistance or services from a FWS permit program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DOI as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

(1) DOI or any component of DOI;

(2) Any other Federal agency appearing before the Office of Hearings and Appeals;

(3) Any DOI employee or former employee acting in his or her official capacity;

(4) Any DOI employee or former employee acting in his or her individual capacity when DOI or DOJ has agreed to represent that employee or pay for private representation of the employee; or

(5) The United States Government or any agency thereof when DOJ determines that DOI is likely to be affected by the proceeding.

B. To a congressional office when requesting information on behalf of, and at the request of, the individual who is the subject of the record.

C. To the Executive Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf, or for a purpose compatible with the reason for which the records are collected or maintained.

D. To any criminal, civil, or regulatory law enforcement authority (whether Federal, State, Territorial, local, Tribal or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

E. To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

F. To Federal, State, Territorial, local, Tribal, or foreign agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee or contractor, or the issuance of a security clearance, license, contract, grant or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

G. To representatives of the National Archives and Records Administration (NARA) to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

H. To State, Territorial, and local governments and Tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

I. To an expert, consultant, grantee, shared service provider, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system.

J. To appropriate agencies, entities, and persons when:

(1) DOI suspects or has confirmed that there has been a breach of the system of records;

(2) DOI has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOI (including its information systems, programs, and operations), the Federal Government, or national security; and

(3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DOI's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

K. To another Federal agency or Federal entity, when DOI determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in:

(1) responding to a suspected or confirmed breach; or

(2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

L. To the Office of Management and Budget (OMB) during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A–19.

M. To the Department of the Treasury to recover debts owed to the United States.

N. To the news media and the public, with the approval of the Public Affairs Officer in consultation with counsel and the Senior Agency Official for Privacy, where there exists a legitimate public interest in the disclosure of the information, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

O. To subject matter experts, including but not limited to experts in Federal, Tribal, State, local and international agencies, for the purpose of obtaining scientific, management, and legal advice relevant to deciding on an application for a permit or license.

P. To the public as a result of publishing **Federal Register** notices announcing the receipt of permit applications under the *U.S. Endangered Species Act, the Marine Mammal Protection Act, and the Wild Bird Conservation Act* to provide the public opportunity to comment and provide relevant information to assist in the decision making; as a result of publishing approved Candidate Conservation Agreements and Assurances (CCAAs), Safe Harbor Agreements (SHAs), and Habitat Conservation Plans; or otherwise required by law.

Q. To Federal, Tribal, State, local and international wildlife and plant agencies for the exchange of information on permits or licenses granted or denied to assure compliance with all applicable permitting requirements.

R. To individuals authorized as Captive-bred Wildlife registrants under the *Endangered Species Act* for the exchange of captive-born, non-native endangered and threatened species, and to share information on new developments and techniques of captive breeding of these protected species.

S. To Federal, Tribal, State, local and international authorities, federally permitted rehabilitators and licensed veterinarians who are permitted to receive, treat, or diagnose sick, orphaned, and injured birds under the *Migratory Bird Treaty Act* and *the Bald and Golden Eagle Protection Act,* and individuals seeking a permitted rehabilitator, in order to place a sick, injured, or orphaned bird in need of care.

T. To the U.S. Government Accountability Office or Congress when the information is required for the evaluation of the permit programs.

U. To the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) for the exchange of information related to wildlife damage to agriculture, human

health and safety, natural resources, and human property.

V. To the U.S. Department of Commerce's National Oceanic and Atmospheric Administration (NOAA) for the exchange of information related to management of national fisheries.

W. To the U.S. Department of Homeland Security's U.S. Customs and Border Protection to facilitate inspections of wildlife and wildlife product shipments into and out of the U.S. and enforce wildlife import and export laws and regulations.

X. To Federal, Tribal, State, local and international agencies for the purpose of coordinating response to emergencies or natural disasters in regards to wildlife or habitat impacts.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper records are contained in file folders stored in file cabinets. Electronic records are contained in removable drives, computer servers, email, and electronic databases.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved primarily by the permit application or file number or the name of permit applicant or holder. Records are also retrieved by date, wildlife species or location.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this system are primarily maintained under the FWS Records Schedule for Permits which is approved by NARA (N1–022–05–01/108). The disposition is temporary. Records are destroyed 10 years after the permit expires.

Approved destruction methods for temporary records that have met their retention period include shredding or pulping paper records and erasing or degaussing electronic records in accordance with Departmental policy and NARA guidelines.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The records contained in this system are safeguarded in accordance with 43 CFR 2.226 and other applicable security and privacy rules and policies. During normal hours of operation, paper records are maintained in locked file cabinets under the control of authorized personnel. Computer servers on which electronic records are stored are located in secured DOI controlled facilities with physical, technical and administrative levels of security to prevent unauthorized access to the DOI network and information assets. Access is granted to authorized personnel based on roles, and each person granted access to the system must be individually authorized to use the system. A Privacy Act Warning Notice appears on computer monitor screens when records containing information on individuals are first displayed. Data exchanged between the servers and the system is encrypted. Backup tapes are encrypted and stored in a locked and controlled room in a secure, off-site location.

Computerized records systems follow the National Institute of Standards and Technology (NIST) privacy and security standards as developed to comply with the Privacy Act of 1974, as amended, 5 U.S.C. 552a; Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.;* Federal Information Security Modernization Act of 2014 (FISMA), 44 U.S.C. 3551 *et seq.;* and the Federal Information Processing Standards 199: Standards for Security Categorization of Federal Information and Information Systems. The system is hosted in a certified Federal Risk and Authorization Management Program (FedRAMP) cloud-based environment employing security and privacy controls defined by NIST Special Publication (SP) 800–53. The system cloud-based environment meets FedRAMP and FISMA compliance standards for Moderate impact systems. Security controls include multi-factor authentication, database permissions, encryption, firewalls, audit logs, and network system security monitoring, and software controls.

Access to records in the system is limited to authorized personnel who have a need to access the records in the performance of their official duties, and each user's access is restricted to only the functions and data necessary to perform that person's job responsibilities. System administrators and authorized users are trained and required to follow established internal security protocols and must complete all security, privacy, and records management training and sign the DOI Rules of Behavior. A Privacy Impact Assessment was conducted on the ePermits system to ensure that Privacy Act requirements are met, and appropriate privacy controls were implemented to safeguard the personally identifiable information contained in the system.

RECORD ACCESS PROCEDURES:

DOI has exempted portions of this system from the access provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). FWS will make access determinations on a case-by-case basis.

To the extent that portions of this system are not exempt, an individual requesting access to their records should send a written inquiry to the System Manager identified above. DOI forms and instructions for submitting a Privacy Act request may be obtained from the DOI Privacy Act Requests website at *https://www.doi.gov/privacy/privacy-act-requests.* The request must include a general description of the records sought and the requester's full name, current address, and sufficient identifying information such as date of birth or other information required for verification of the requester's identity. The request must be signed and dated and be either notarized or submitted under penalty of perjury in accordance with 28 U.S.C. 1746. Requests submitted by mail must be clearly marked ''PRIVACY ACT REQUEST FOR ACCESS'' on both the envelope and letter. A request for access must meet the requirements of 43 CFR 2.238.

CONTESTING RECORD PROCEDURES:

DOI has exempted portions of this system from the amendment provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). FWS will make amendment determinations on a case-by-case basis.

To the extent that portions of this system are not exempt, an individual requesting amendment of their records should send a written request to the applicable System Manager as identified above. DOI instructions for submitting a request for amendment of records are available on the DOI Privacy Act Requests website at *https://www.doi.gov/privacy/privacy-act-requests.* The request must clearly identify the records for which amendment is being sought, the reasons for requesting the amendment, and the proposed amendment to the record. The request must include the requester's full name, current address, and sufficient identifying information such as date of birth or other information required for verification of the requester's identity. The request must be signed and dated and be either notarized or submitted under penalty of perjury in accordance with 28 U.S.C. 1746. Requests submitted by mail must be clearly marked ''PRIVACY ACT REQUEST FOR AMENDMENT'' on both the envelope and letter. A request for amendment must meet the requirements of 43 CFR 2.246.

NOTIFICATION PROCEDURES:

DOI has exempted portions of this system from the notification provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). FWS will make notification determinations on a case-by-case basis.

To the extent that portions of this system are not exempt, an individual requesting notification of the existence

of records about them should send a written inquiry to the applicable System Manager as identified above. DOI instructions for submitting a request for notification are available on the DOI Privacy Act Requests website at *https://www.doi.gov/privacy/privacy-act-requests.* The request must include a general description of the records and the requester's full name, current address, and sufficient identifying information such as date of birth or other information required for verification of the requester's identity. The request must be signed and dated and be either notarized or submitted under penalty of perjury in accordance with 28 U.S.C. 1746. Requests submitted by mail must be clearly marked ''PRIVACY ACT INQUIRY'' on both the envelope and letter. A request for notification must meet the requirements of 43 CFR 2.235.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

This system contains records related to law enforcement activities that are exempt from certain provisions of the Privacy Act, 5 U.S.C. 552a(k)(2). Pursuant to the Privacy Act, 5 U.S.C. 552a(k)(2), DOI has exempted portions of this system from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (e)(4)(I), and (f).

HISTORY:

68 FR 52610 (September 4, 2003); modification published at 73 FR 31877 (June 4, 2008) and 88 FR 16277 (March 16, 2023).

Teri Barnett,

Departmental Privacy Officer, Department of the Interior.

[FR Doc. 2024–00535 Filed 1–11–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[DOI–2023–0021; 243G0804MD GGHDFA3540 GF0200000 GX24FA35PR00000]

Privacy Act of 1974; System of Records

AGENCY: Geological Survey, Interior.

ACTION: Rescindment of system of records notices.

SUMMARY: The Department of the Interior (DOI) is issuing a public notice of its intent to rescind three United States Geological Survey (USGS) Privacy Act systems of records from its existing inventory: INTERIOR/USGS–13, Manuscript Processing, INTERIOR/USGS–15, Earth Science Information Customer Records, and INTERIOR/USGS–20, Photo File System, as the associated records are no longer subject to the provisions of the Privacy Act.

DATES: These changes take effect on January 12, 2024.

ADDRESSES: You may send comments identified by docket number [DOI–2023–0021] by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for sending comments.
- *Email: DOI_Privacy@ios.doi.gov.* Include docket number [DOI–2023–0021] in the subject line of the message.
- *U.S. Mail or Hand-Delivery:* Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240.

Instructions: All submissions received must include the agency name and docket number [DOI–2023–0021]. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.*

You should be aware your entire comment including your personally identifiable information, such as your address, phone number, email address, or any other personal information in your comment, may be made publicly available at any time. While you may request to withhold your personally identifiable information from public review, we cannot guarantee we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Cozenja Berry, Associate Privacy Officer, Office of the Associate Chief Information Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive, Mail Stop 159, Reston, VA 20192, *privacy@usgs.gov* or (571) 455–2415.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the USGS is rescinding three system of records notices (SORNs) from its inventory. During a review of USGS system of records notices, it was determined the records associated with INTERIOR/USGS–13, Manuscript Processing, INTERIOR/USGS–15, Earth Science Information Customer Records, and INTERIOR/USGS–20, Photo File System, are no longer subject to the provisions of the Privacy Act. Rescindment of these notices will ensure statutory compliance with the Privacy Act, and Office of Management and Budget Circular A–108, *Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act.* A description of the affected records and the justification for rescindment of each SORN follows.

The records associated with INTERIOR/USGS–13, Manuscript Processing, consist of scientific information products (IP), such as scientific reports, articles, abstracts, data releases, presentations, visual aids, and other deliverables that are subject to USGS Fundamental Science Practices. The IP records are maintained by the Office of Science Quality and Integrity (OSQI) in the Information Product Data System (IPDS), an internal USGS workflow application. The records in IPDS are not stored or retrieved by use of personal identifiers. Rather, records are indexed and retrieved by their product number which is a unique identifier for the publication record. Accordingly, the records associated with INTERIOR/USGS–13 no longer meet the statutory definition of a system of records under the Privacy Act.

The records associated with INTERIOR/USGS–15, Earth Science Information Customer Records, are now covered by INTERIOR/USGS–28, USGS Store Customer Records, 88 FR 55714 (August 16, 2023). These records, previously maintained by the Earth Science Information Office (ESIO), consisted of customer account and inquiry files related to the sale and distribution of satellite imagery prints produced by the USGS. The ESIO records were decommissioned and migrated to the USGS Store (Science Information Delivery Branch, Office of the Associate Chief Information Officer). Accordingly, this rescindment eliminates an unnecessary duplicate SORN from the DOI inventory.

The records associated with INTERIOR/USGS–20, Photo File System, have been decommissioned and are no longer maintained by the USGS. The records, which consisted of non-digital photographs of USGS senior leaders, have been transferred for historical preservation or destroyed in accordance with USGS General Records Disposition Schedule N1–57–03–01, Items 1101–01b and 1101–01c, as approved by the National Archives and Records Administration (NARA). Accordingly, this SORN is hereby rescinded as it is no longer needed.

The USGS records are maintained in accordance with Federal records laws and are handled as required by the Privacy Act and the Freedom of Information Act (FOIA) to ensure the greatest protection of personal privacy. Rescission of these SORNs will have no

adverse impact on individual privacy as they are no longer in use or no longer needed due to being superseded by other published SORNs. This rescindment will also promote the overall streamlining and management of DOI Privacy Act systems of records.

SYSTEM NAME AND NUMBER:

1. INTERIOR/USGS–13, Manuscript Processing.

2. INTERIOR/USGS–15, Earth Science Information Customer Records.

3. INTERIOR/USGS–20, Photo File System.

HISTORY:

1. INTERIOR/USGS–13, Manuscript Processing, 63 FR 60374 (November 9, 1998); modification published at 74 FR 23430 (May 19, 2009).

2. INTERIOR/USGS–15, Earth Science Information Customer Records, 55 FR 36907 (September 7, 1990); modification published at 74 FR 23430 (May 19, 2009).

3. INTERIOR/USGS–20, Photo File System, 63 FR 60377 (November 9, 1998); modification published at 74 FR 23430 (May 19, 2009).

Teri Barnett,

Departmental Privacy Officer, Department of the Interior.

[FR Doc. 2024–00561 Filed 1–11–24; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[245A2100DD/AAKC001030/A0A501010.999900]

Indian Gaming; Approval by Operation of Law of Amendment to Class III Tribal-State Gaming Compact (Ewiiaapaayp Band of Kumeyaay Indians & State of California)

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the approval by operation of law of an amendment to the Tribal-State Gaming Compact between the Ewiiaapaayp Band of Kumeyaay Indians and the State of California governing Class III gaming for the Ewiiaapaayp Band of Kumeyaay Indians in the State of California.

DATES: The Amendment takes effect on January 12, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act of 1988, 25 U.S.C. 2701 *et seq.,* (IGRA) provides the Secretary of the Interior (Secretary) with 45 days to review and approve or disapprove the Tribal-State compact governing the conduct of Class III gaming activity on the Tribe's Indian lands. *See* 25 U.S.C. 2710(d)(8). If the Secretary does not approve or disapprove a Tribal-State compact within the 45 days, IGRA provides the Tribal-State compact is considered to have been approved by the Secretary but only to the extent the compact is consistent with IGRA. *See* 25 U.S.C. 2710(d)(8)(C). The IGRA also requires the Secretary of the Interior to publish in the **Federal Register** notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. *See* 25 U.S.C. 2710(d)(8)(D). The Department's regulations at 25 CFR 293.4 require all compacts and amendments to be reviewed and approved by the Secretary prior to taking effect. The Secretary took no action on the Compact amendment between the Ewiiaapaayp Band of Kumeyaay Indians and the State of California, within the 45-day statutory review period. Therefore, the Compact amendment is considered to have been approved, but only to the extent it is consistent with IGRA. *See* 25 U.S.C. 2710(d)(8)(C).

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2024–00543 Filed 1–11–24; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[DOI–2023–0017; 24X PPWOHAFCD0 PMO00HF05D00000]

Privacy Act of 1974; System of Records

AGENCY: National Park Service, Interior.

ACTION: Rescindment of a system of records notice.

SUMMARY: The Department of the Interior (DOI) is issuing a public notice of its intent to rescind the National Park Service (NPS) Privacy Act system of records, INTERIOR/NPS–6, Audiovisual Performance Selection Files, from its existing inventory.

DATES: These changes take effect on January 12, 2024.

ADDRESSES: You may send comments identified by docket number [DOI–2023–0017] by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for sending comments.

• *Email: DOI_Privacy@ios.doi.gov.* Include docket number [DOI–2023–0017] in the subject line of the message.

• *U.S. Mail or Hand-Delivery:* Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240.

Instructions: All submissions received must include the agency name and docket number [DOI–2023–0017]. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

You should be aware your entire comment including your personally identifiable information, such as your address, phone number, email address, or any other personal information in your comment, may be made publicly available at any time. While you may request to withhold your personally identifiable information from public review, we cannot guarantee we will be able to do so.

FOR FURTHER INFORMATION CONTACT: (1) Chad Beale, HFC Technical Services Manager, National Park Service, Harpers Ferry Center, 67 Mather Place, Room 50, Harpers Ferry, West VA 25425, *hfc_information@nps.gov* or 304–535–6451; or (2) Felix Uribe, Associate Privacy Officer, National Park Service, 12201 Sunrise Valley Drive, Reston, VA 20192, *nps_privacy@nps.gov* or 202–354–6925.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the NPS is rescinding the INTERIOR/NPS–6, Audiovisual Performance Selection Files, system of records notice (SORN) and removing it from its system of records inventory. This system was used to evaluate voice and photograph quality and to select performers and narrators for NPS productions. During a review of NPS SORNs, it was determined that this notice is no longer necessary as the records in the system are covered under the Department-wide SORN, INTERIOR/DOI–87, Acquisition of Goods and Services: FBMS, 73 FR 43766 (July 28, 2008); modification published at 86 FR 50156 (September 7, 2021). Therefore, DOI is rescinding the INTERIOR/NPS–6, Audiovisual Performances Selection Files, SORN to eliminate an unnecessary duplicate notice and ensure compliance with the Privacy Act of 1974 and Office of

Management and Budget (OMB) Circular A–108, *Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act.* Rescinding the INTERIOR/NPS–6, Audiovisual Performance Selection Files, SORN will have no adverse impact on individuals as the records are covered under the INTERIOR/DOI–87, Acquisition of Goods and Services: FBMS, SORN. This rescindment will also promote the overall streamlining and management of DOI Privacy Act systems of records.

SYSTEM NAME AND NUMBER:

INTERIOR/NPS–6, Audiovisual Performance Selection Files.

HISTORY:

42 FR 19073 (April 11, 1977); modification published at 73 FR 63992 (October 28, 2008) and 86 FR 50156 (September 7, 2021).

Teri Barnett,

Departmental Privacy Officer, Department of the Interior.

[FR Doc. 2024–00554 Filed 1–11–24; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[DOI–2023–0022; LLHQ510000, L18500000.YC0000, LIITRCM10000, 245]

Privacy Act of 1974; System of Records

AGENCY: Bureau of Land Management, Interior.

ACTION: Rescindment of systems of records notices.

SUMMARY: The Department of the Interior (DOI) is issuing a public notice of its intent to rescind four Bureau of Land Management (BLM) Privacy Act systems of records notices (SORNs): INTERIOR/BLM–10, Vehicle Use Authorization; INTERIOR/BLM–18, Criminal Case Investigation; INTERIOR/BLM–19, Civil Trespass Case Investigations; and INTERIOR/BLM–30, Uniform Accountability System, from its existing inventory. During an annual review it was determined they are duplicative and covered by other DOI published SORNs. This rescindment will promote the overall streamlining and management of DOI's Privacy Act systems of records.

DATES: These changes take effect on January 12, 2024.

ADDRESSES: You may send comments identified by docket number [DOI–2023–0022] by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for sending comments.
- *Email: DOI_Privacy@ios.doi.gov.* Include docket number [DOI–2023–0022] in the subject line of the message.
- *U.S. Mail or Hand-Delivery:* Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240.

Instructions: All submissions received must include the agency name and docket number [DOI–2023–0022]. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.*

You should be aware your entire comment including your personally identifiable information, such as your address, phone number, email address, or any other personal information in your comment, may be made publicly available at any time. While you may request to withhold your personally identifiable information from public review, we cannot guarantee we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Phyllis St. John, Acting Associate Privacy Officer, Bureau of Land Management, 1849 C Street NW, Room No. 5644, Washington, DC 20240, *blm_wo_privacy@blm.gov* or (202) 281–0131.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the DOI is rescinding the following four BLM SORNs from its inventory. The Office of Management and Budget (OMB) requires that each agency provide assurance that system notices do not duplicate any existing agency or government-wide SORNs. Accordingly, the following BLM SORNs were identified for rescindment during a routine review, as it was determined these SORNs are covered under three Department-wide SORNs. Therefore, DOI is rescinding these four BLM SORNs to avoid duplication of existing SORNs in accordance with the OMB Circular A–108, *Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act.*

INTERIOR/BLM–10, Vehicle Use Authorization, 42 FR 19113 (April 11, 1977); modification published at 73 FR 17376 (April 1, 2008) and 86 FR 50156 (September 7, 2021). This system helped BLM maintain records of authorized uses of government vehicles by BLM employees. The records contained in the system of records are covered by and maintained in INTERIOR/DOI–58, Employee Administrative Records, 64 FR 19384 (April 20, 1999); modification published at 73 FR 8342 (February 13, 2008) and 86 FR 50156 (September 7, 2021).

INTERIOR/BLM–18, Criminal Case Investigation, 47 FR 55317 (December 8, 1982); modification published at 73 FR 17376 (April 1, 2008) and 86 FR 50156 (September 7, 2021). This system helped the BLM maintain records to manage incidents, accidents, and criminal investigations and support law enforcement activities. The records contained in the system of records are covered by and maintained in INTERIOR/DOI–10, Incident Management, Analysis and Reporting System, 79 FR 31974 (June 3, 2014); modification published at 86 FR 50156 (September 7, 2021).

INTERIOR/BLM–19, Civil Trespass Case Investigations, 47 FR 55317 (December 8, 1982); modification published at 73 FR 17376 (April 1, 2008) and 86 FR 50156 (September 7, 2021). This system helped the BLM accumulate investigative data to determine whether a trespass had been committed. The records contained in the system of records are covered by and maintained in INTERIOR/DOI–10, Incident Management, Analysis and Reporting System, 79 FR 31974 (June 3, 2014); modification published at 86 FR 50156 (September 7, 2021).

INTERIOR/BLM–30, Uniform Accountability System, 52 FR 36635 (September 30, 1987); modification published at 73 FR 17376 (April 1, 2008) and 86 FR 50156 (September 7, 2021). This system helped the BLM maintain internal processing and tracking of issuance and expenditures for BLM individuals authorized to wear uniforms. The administrative and financial records contained in the system of records are covered by and maintained in INTERIOR/DOI–58, Employee Administrative Records, 64 FR 19384 (April 20, 1999); modification published at 73 FR 8342 (February 13, 2008) and 86 FR 50156 (September 7, 2021), and INTERIOR/DOI–87, Acquisition of Goods and Services: FBMS, 73 FR 43766 (July 28, 2008); modification published at 86 FR 50156 (September 7, 2021).

These four SORNs were identified as no longer needed due to being superseded by other published SORNs. Rescinding these SORNs will have no adverse impacts on individuals as the records are covered by other published Department-wide SORNs. This rescindment will also promote the overall streamlining and management of

DOI Privacy Act systems of records. This notice hereby rescinds the BLM SORNs identified below.

SYSTEM NAME AND NUMBER:

INTERIOR/BLM–10, Vehicle Use Authorization.

INTERIOR/BLM–18, Criminal Case Investigation.

INTERIOR/BLM–19, Civil Trespass Case Investigations.

INTERIOR/BLM–30, Uniform Accountability System.

HISTORY:

INTERIOR/BLM–10, Vehicle Use Authorization, 42 FR 19113 (April 11, 1977); modification published at 73 FR 17376, (April 1, 2008) and 86 FR 50156 (September 7, 2021).

INTERIOR/BLM–18, Criminal Case Investigation, 47 FR 55317 (December 8, 1982); modification published at 73 FR 17376 (April 1, 2008) and 86 FR 50156 (September 7, 2021).

INTERIOR/BLM–19, Civil Trespass Case Investigations, 47 FR 55317 (December 8, 1982); modification published at 73 FR 17376 (April 1, 2008) and 86 FR 50156 (September 7, 2021).

INTERIOR/BLM–30, Uniform Accountability System 52 FR 36635 (September 30, 1987); modification published at 73 FR 17376 (April 1, 2008) and 86 FR 50156 (September 7, 2021).

Teri Barnett,

Departmental Privacy Officer, Department of the Interior.

[FR Doc. 2024–00551 Filed 1–11–24; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_NV_FRN_MO4500176465]

Notice of Availability of the Draft Resource Management Plan Amendment and Environmental Impact Statement for the Rough Hat Clark Solar Project in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan (RMP) Amendment and Draft Environmental Impact Statement (EIS) for the Rough Hat Clark Solar Project and by this notice is providing information announcing the opening of the comment period on the Draft RMP Amendment/EIS.

DATES: This notice announces the opening of a 90-day comment period for the Draft RMP Amendment/EIS beginning with the date following the Environmental Protection Agency's (EPA) publication of its Notice of Availability (NOA) in the **Federal Register**.

To afford the BLM the opportunity to consider comments on the Draft RMP Amendment/EIS, please ensure your comments are received prior to the close of the 90-day comment period or 15 days after the last public meeting, whichever is later.

The BLM will be holding one in-person public meeting and one virtual public meeting during the public comment period.

- In-Person Meeting
  - *Date and Time:* January 30, 2024, 6 p.m. to 8 p.m. Pacific standard time (PST)
  - *Location:* Pahrump Nugget Hotel and Casino, 681 NV Highway 160, Pahrump, Nevada 89048
- Virtual Meeting
  - *Date and Time:* February 1, 2024, 6 p.m. to 8 p.m. PST
  - *Registration information: https://eplanning.blm.gov/eplanning-ui/project/2019992/510*

Details on public meetings will be provided on the National NEPA Register project website: *https://eplanning.blm.gov/eplanning-ui/project/2019992/510.*

ADDRESSES: The Draft RMP Amendment/EIS is available for review on the BLM National NEPA Register project website at *https://eplanning.blm.gov/eplanning-ui/project/2019992/510.* Additionally, a copy of the Draft RMP Amendment/EIS is physically available at the following locations:

- BLM Southern Nevada District Office, Pahrump Field Office, 4701 N Torrey Pines Drive, Las Vegas, Nevada 89130
- Pahrump Community Library, 701 East Street, Pahrump, NV 89408
- Tecopa Branch Library, 408 Tecopa Hot Springs Road, Tecopa, CA 92389

Written comments related to the Draft RMP Amendment/EIS for the Rough Hat Clark Solar Project in Clark County, NV may be submitted by any of the following methods:

- *Website: https://eplanning.blm.gov/eplanning-ui/project/2019992/510.*
- *Email: BLM_NV_SND_EnergyProjects@blm.gov.*
- *Mail:* BLM Southern Nevada District Office, Attn: Rough Hat Clark Solar Project, 4701 N Torrey Pines Drive, Las Vegas, NV 89130.
- Documents pertinent to this proposal may be examined online at *https://eplanning.blm.gov/eplanning-ui/project/2019992/510* and at the locations above.

FOR FURTHER INFORMATION CONTACT: Whitney Wirthlin, Project Manager, telephone (725) 249–3318; address 4701 N Torrey Pines Drive, Las Vegas, NV 89130; email *BLM_NV_SND_EnergyProjects@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Whitney Wirthlin. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM Nevada State Director has prepared a Draft RMP Amendment/EIS and provides information announcing the opening of the comment period on the Draft RMP Amendment/EIS. The RMP Amendment is being considered to allow the BLM to evaluate the effects of modifying the Visual Resource Management (VRM) Class III designated lands south of State Route 160 and west of Tecopa Road to the Town of Pahrump, Nevada to VRM Class IV, which would require amending the existing 1998 Las Vegas RMP.

The planning area in Clark and Nye Counties, Nevada encompasses approximately 9,890,365 acres within the Southern Nevada District area. The total acreage for the VRM Class I through IV areas designated under the 1998 Las Vegas RMP is approximately 3,297,016 acres.

The RMP Amendment would encompasses approximately 9,960 acres of BLM-administered land currently designated as VRM Class III. An amendment to the Las Vegas RMP is being considered to update the BLM's VRM management objectives in this area to VRM Class IV. The amendment area would include the proposed Rough Hat Clark Solar Project area along with other constructed projects and proposed solar applications within the Pahrump Valley.

The BLM is utilizing the NEPA substitution process to comply with the requirements of section 106 of the National Historic Preservation Act, 54 U.S.C. 306108, consistent with 36 CFR 800.8(c). The BLM, as lead Federal agency, has incorporated information and the steps of the section 106 process into the Draft EIS, and publication of the

Draft EIS will allow the consulting parties and the public an opportunity to review and comment on the process as provided in 36 CFR 800.8(c)(2).

Purpose and Need

The need for the BLM's action (processing the Applicant's application) is to respond to the Applicant's request for a right-of-way (ROW) authorization to construct, operate, maintain, and decommission the proposed Project in accordance with the BLM's responsibility under title V of FLPMA and 43 CFR part 2800. The BLM's action of considering the ROW application also would meet the BLM's obligation to contribute towards the legislative and administrative goals of advancing the development of renewable energy production on Federal public lands as directed by section 3104 of the Energy Act of 2020 and Executive Order 14057.

The Project as proposed would not conform to the 1998 Las Vegas RMP as required by 43 CFR 1610.5–3(a). The BLM would need to amend the RMP to bring it into compliance. In particular, the Applicant's proposed Project does not conform with the management objectives of the Project area's VRM classification (Class III).

The purpose of the BLM's action is to determine if the Applicant's Project and alternatives are consistent with relevant laws, regulations, and policies, and to consider whether to grant, grant with modifications, or deny the ROW. The purpose of the RMP Amendment is to ensure that any development of renewable energy production in the general vicinity of the Applicant's proposed Project area conforms with the RMP's provisions, as provided for in 43 CFR 1610.5–3(c), specifically by reclassifying this geographic area as VRM Class IV.

The Draft EIS addresses the direct, indirect, and cumulative environmental impacts of the Proposed Action and alternatives. Alternatives to the Proposed Action were developed by the BLM to avoid or reduce various resource conflicts. Key resource constraints include habitat for and presence of Mojave desert tortoise, which is listed as threatened under the Endangered Species Act, presence of waters of the United States, limited groundwater resources, vegetation at the Project site, and generation of dust.

Alternatives Including the Preferred Alternative

The BLM has analyzed three alternatives in detail, including the no action alternative. These are the Applicant Proposed Action, Alternative Action 1, and the No Action Alternative.

Alternative Action 1 (referred to as the Resources Integration Alternative) was identified in response to issues raised by the public and agency considerations. The intent of the Resources Integration Alternative is to minimize disturbance to vegetation and soils within the solar facility by setting maximum allowable disturbance thresholds to vegetation during construction, setting restoration goals, and utilizing topography-spanning technologies for solar panel array installation. Setting a disturbance cap would ensure a consistent comparison of alternatives and outcomes for NEPA analysis purposes. Specifically, Alternative Action 1—Resources Integration Alternative would implement non-traditional development methods (overland travel), as this construction method is less intensive than traditional methods and is expected to improve the retention of native vegetation, wildlife habitat, soils, seed banks, and biological soil crusts while minimizing water quality impacts and air quality impacts from fugitive dust.

The No Action Alternative would be a continuation of existing conditions and no new action would be taken.

The BLM further considered seven additional alternatives but dismissed these alternatives from detailed analysis as explained in the Draft RMP Amendment/EIS.

The State Director has identified Alternative Action 1—Resources Integration Alternative as the Preferred Alternative. Alternative Action 1—Resources Integration Alternative was found to best meet the State Director's planning guidance and is designed to be a Project lifecycle alternative to not only address the impacts of construction, but also operations, maintenance, and decommissioning of the solar facility. Alternative Action 1—Resources Integration Alternative minimizes disturbance to vegetation and soils within the solar facility, thereby minimizing impacts to wildlife habitat, soils, air quality, and water quality.

Mitigation

The BLM included seven mitigation measures: dust control and stabilization (MM AIR–1), reducing the Project footprint (MM WILD–1), holding a job fair in a nearby community (MM EJ–1), facilitating Tribal consultation (MM NA–1), fire prevention and safety (MM PS–3), reducing cumulative transportation effects (MM TRAF–1), and advanced notification to Clark County Department of Aviation (MM V–1). These mitigation measures, along with required Solar Programmatic EIS Programmatic Design Features (PDFs), Southern Nevada District Office PDFs, and required management plans, are described in appendix B of the Draft RMP Amendment/EIS.

Schedule for the Decision-Making Process

The BLM will provide additional opportunities for public participation consistent with the NEPA and land use planning processes, including a 30-day public protest period and a concurrent 60-day Governor's consistency review on the Proposed RMP Amendment. The Proposed RMP Amendment/Final EIS is anticipated to be available for public protest by August 2024 with an Approved RMP Amendment and Record of Decision by October 2024.

The BLM will continue to consult with Indian Tribal Nations on a government-to-government basis in accordance with Executive Order 13175, BLM MS 1780 and other Departmental policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2)

Jon K. Raby,

State Director.

[FR Doc. 2024–00393 Filed 1–11–24; 8:45 am]

BILLING CODE 4331–21–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–BSAD–CONC–NPS0036729; PPWOBSADC6, PPMVSCS1Y.Y00000, (244) P103601; OMB Control Number 1024–0233]

Agency Information Collection Activities; National Park Service Leasing Program

AGENCY: National Park Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before March 12, 2024.

ADDRESSES: Written comments on this information collection request (ICR) can be sent by mail to Phadrea Ponds, NPS Information Collection Clearance Officer (ADIR–ICCO), 13461 Sunrise Valley Drive (MS–244) Reston, VA 20192 (mail); or *phadrea_ponds@nps.gov* (email). Please reference Office of Management and Budget (OMB) Control Number 1024–0233 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Gordy Kito, Leasing Program Manager, Commercial Services Division by email at *gordy_kito@nps.gov;* or by telephone at 202–354–2096. Please reference Office of Management and Budget (OMB) Control Number 1024–0233 in the subject line of your comments. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility.

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used.

(3) Ways to enhance the quality, utility, and clarity of the information to be collected.

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The NPS Leasing Program allows any person or entity to lease buildings and associated property administered by the Secretary of the Interior as part of the National Park System, under the authority of the Director of the NPS. A lease may not authorize an activity that could be authorized by a concessions contract or commercial use authorization. All leases must provide for the payment of fair market value rent. The Director may retain rental payments for park infrastructure needs and, in some cases, to provide administrative support of the leasing program.

The authority to collect information for the Leasing Program is derived from 54 U.S.C. 102101 *et seq.,* 54 U.S.C. 306121, and 36 CFR part 18. For competitive leasing opportunities, the regulations require the submission of proposals or bids by parties interested in applying for a lease. The regulations also require that the Director approve lease amendments, construction or demolition of structures, and encumbrances on leasehold interests.

We collect information from anyone who wishes to submit a bid or proposal to lease a property. The Director may issue a request for bids if the amount of rent is the only criterion for award of a lease. The Director issues a request for proposals when the award of a lease is based on selection criteria other than the rental rate. A request for proposals may be preceded by a request for qualifications to select a "short list" of potential offerors that meet the minimum management, financial, and other qualifications necessary for the submission of a proposal.

We use the information collected to evaluate offers, proposed subleases or assignments, proposed construction or demolition, the merits of proposed lease amendments, and proposed encumbrances. The completion times for each information collection requirement vary substantially depending on the complexity of the leasing opportunity.

Title of Collection: National Park Service Leasing Program, 36 CFR part 18.

OMB Control Number: 1024–0233.

Form Number: NPS Forms 10–352, 10–353, 10–354, 10–355A and 10–355B.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals and businesses seeking to submit a bid or proposal to lease NPS property.

Total Estimated Number of Annual Responses: 250.

Estimated Completion Time per Response: Varies from 4 hours to 45 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 1,649.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2024–00546 Filed 1–11–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037229; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Rhode Island, South Kingstown, RI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Rhode Island, South Kingstown, RI (URI) has completed an inventory of human remains and associated funerary objects and has

determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Bristol County, RI; Barnstable County, MA; Nantucket County, MA; and Plymouth County, MA.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after February 12, 2024.

ADDRESSES: Kristine M. Bovy, University of Rhode Island, Dept. of Sociology & Anthropology, 508 Chafee Hall, Kingston, RI 02881, telephone (401) 874–4143, email *kbovy@uri.edu* and Fiona Jones, University of Rhode Island, 232 Chafee Hall, Kingston, RI 02881, telephone (860) 338–4288, email *fionaj@uri.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Rhode Island. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the University of Rhode Island.

Description

Harding Estates Site (RI–1755)

Human remains representing, at minimum, one individual were removed from Bristol County, RI. From late 1987 to mid-1988, the Public Archaeology Program (Rhode Island College) conducted Phase I through III survey of the future Harding Estates condominiums in the town of Bristol, RI. This site was designated as RI–1755.

In May of 1988, upon returning for Phase II excavation, the archeologists learned that a human burial had been discovered during bulldozing for an access road. The bulldozing took place in between Phase I and Phase II; archaeologists were not present at the time. The access road where the burial was recovered was not within the initial survey region. The Bristol Police and Rhode Island Historic Preservation Commission (RIHPC) were immediately contacted by the archaeologists. It was determined that the human remains should be transferred to Dr. Marc Kelley, a professor of biological anthropology at URI for evaluation.

Radiocarbon dating on artifacts found outside of the burial context concluded the site to date to the transitional Archaic-Woodland period. After inventorying in 2022, it was determined that there is, at minimum, one individual represented. The two associated funerary objects are two shell fragments.

Seneca Road Site (MAS–HA–15)

Human remains representing, at minimum, one individual were removed from Barnstable County, MA. In May of 1990, the Massachusetts Historical Commission (MHC) excavated the Seneca Road Site (MAS–HA–15) after a burial was disturbed during housing construction. Textiles were recovered from an unmarked grave dating to the 18th or 19th century. The textiles were transferred from the MHC to the University of Rhode Island (URI) for conservation, study, and curation. Hair and cranium fragments of one individual were not initially recognized and inadvertently sent to URI along with the textiles. The 21 associated funerary objects are lots of textile fragments.

Abrams Point II Site (NAN–HA–10)

In 1992, 11 associated funerary objects were removed from Nantucket County, MA. During the construction of homes in Nantucket County, MA, 20 graves were disturbed. This site was later excavated by the Massachusetts Historical Commission (MHC) and named the Abrams Point II Site (NAN–HA–10). It was determined that the burials most likely dated to the 18th century. One burial contained nine buttons, textiles, and fragments of a woven mat. These associated funerary objects were transferred to the University of Rhode Island for further analysis and preservation. No human remains from this site were transferred to the University of Rhode Island. The 11 associated funerary objects are nine buttons, one lot of woven mat fragments, and one lot of textile fragments.

Santuit Pond Road Site (MSH–HA–4)

In May of 1988, three associated funerary objects were removed from Barnstable County, MA. During housing construction, the burial of one individual was recovered by the Massachusetts Historical Commission (MHC). The site was later named the Santuit Pond Road Site (MSH–HA–4). It was determined that the site most likely dated to the 18th or 19th century. The individual recovered was determined to be Native American. Textiles were found within the burial and were sent to URI in 1991 for analysis and preservation. No human remains from this site were transferred to the University of Rhode Island. The three associated funerary objects are three lots of textile fragments.

Descas Site

Human remains representing, at minimum, two individuals were removed from Plymouth County, MA. The Decas Site was excavated in Rochester, MA, from 1962 to 1964 by members of the Massachusetts Archaeological Society (MAS). At an unknown time during the excavations, a cremation burial was recovered. A cranium was recovered, and the associated unidentifiable bone fragments and ashes were stored in a box. Subsequently, a member of the MAS gave the human remains to Carol Barnes, a professor of anthropology at Rhode Island College. The box has a label that reads: ''Cremation burial Dekas Site, S.E Mass. Gift of Mr. Thomas (C. Barnes) Box 2 252–3–D, Skull also.'' At this time no excavation reports from the MAS have been located, only short references in MAS annual bulletins. At an unknown time, the human remains were transferred to the University of Rhode Island. After inventorying in 2022, it was determined that there is a minimum of two individuals represented. No associated funerary objects are present.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological information, geographical information, historical information, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the University of Rhode Island has determined that:

- The human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- The 37 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or

later as part of the death rite or ceremony.

• There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Mashpee Wampanoag Tribe and the Wampanoag Tribe of Gay Head (Aquinnah), the only Federally recognized Indian Tribes of the Wampanoag Tribes.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice and, if joined to a request from one or more of the Indian Tribes, Indian groups without Federal recognition that are a part of the Wampanoag Tribes.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after February 12, 2024. If competing requests for repatriation are received, the University of Rhode Island must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The University of Rhode Island is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, § 10.10, and § 10.14.

Dated: January 5, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–00526 Filed 1–11–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037231; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion Amendment: U.S. Department of the Interior, Bureau of Land Management, Alaska State Office, Anchorage, AK

AGENCY: National Park Service, Interior.

ACTION: Notice; amendment.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, Bureau of Land Management, Alaska State Office (BLM Alaska) has amended a Notice of Inventory Completion published in the **Federal Register** on May 4, 2010. This notice amends the minimum number of individuals and number of associated funerary objects in a collection removed from Umnak Island, Aleutians West Borough, AK.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after February 12, 2024.

ADDRESSES: Miriam (Nicole) Hayes, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, #13, Anchorage, AK 99513, telephone (907) 271–4354, email *mnhayes@blm.gov*.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of BLM Alaska. The National Park Service is not responsible for the determinations in this notice. Additional information on the amendments and determinations in this notice, including the results of consultation, can be found in the inventory or related records held by BLM Alaska.

Amendment

This notice amends the determinations published in a Notice of Inventory Completion in the **Federal Register** (73 FR 47224, August 13, 2008) and corrected on May 4, 2010 (75 FR 23804–23805). Repatriation of the items in the original and corrected Notices of Inventory Completion has not occurred. Additional human remains and associated funerary objects have been found.

From the Chaluka Site at the Native Village of Nikolski, Ogalodox site, Sandy Beach site, and nearby smaller sites on Umnak Island, Aleutians West Borough, AK, 290 individuals were removed (previously identified as 222 individuals). The 1,546 associated funerary objects (previously identified as 276 associated funerary objects) include a variety of stone, bone, shell, and ivory items identified as harpoons, scrapers, perforators, abraders, adzes, awls, gravers, reamers, sinkers, labrets, a comb, a necklace, knives, needles, pins, bowls, pestles, spoons, hooks, flakes, and undetermined tool or personal adornment fragments.

Determinations (as amended)

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the BLM Alaska has determined that:

• The human remains represent the physical remains of 290 individuals of Native American ancestry.

• The 1,546 objects are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

• There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects and the Native Village of Nikolski.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after February 12, 2024. If competing requests for repatriation are received, the BLM Alaska must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The BLM Alaska is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25

U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, 10.13, and 10.14.

Dated: January 5, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–00528 Filed 1–11–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037230; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion Amendment: Michigan State Historic Preservation Office, Lansing, MI

AGENCY: National Park Service, Interior.

ACTION: Notice; amendment.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Michigan State Historic Preservation Office (Michigan SHPO) has amended a Notice of Inventory Completion in the **Federal Register** on October 17, 2022. This notice amends the aboriginal land determination in a collection removed from Wexford County, MI.

DATES: Disposition of the human remains and associated funerary objects in this notice may occur on or after February 12, 2024.

ADDRESSES: Dr. Sarah Surface-Evans, Senior Archaeologist, State Historic Preservation Office, Michigan Economic Development Corporation, 300 N Washington Square, Lansing, MI 48913, telephone (517) 282–7959, email *SurfaceEvansS1@michigan.gov*.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Michigan SHPO. The National Park Service is not responsible for the determinations in this notice. Additional information on the amendments and determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Michigan SHPO.

Amendment

This notice amends the determinations published in a Notice of Inventory Completion in the **Federal Register** (87 FR 62889–62890, October 17, 2022). Disposition of the items in the original Notice of Inventory Completion has not occurred. Two Tribes consulted were inadvertently omitted from Notice of Inventory Completion as published. They are the Little River Band of Ottawa Indians, Michigan and the Little Traverse Bay Bands of Odawa Indians, Michigan.

Determinations (as Amended)

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, the Michigan SHPO has determined that:

- The human remains described in this amended notice represent the physical remains of three individuals of Native American ancestry.
- The one object described in this amended notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- No relationship of shared group identity can be reasonably traced between the human remains and associated funerary objects and any Indian Tribe.
- The human remains and associated funerary objects described in this notice were removed from the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Ottawa Tribe of Oklahoma; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; and the Turtle Mountain Band of Chippewa Indians of North Dakota.

Requests for Disposition

Written requests for disposition of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains and associated funerary objects in this notice to a requestor may occur on or after February 12, 2024. If competing requests for disposition are received, the Michigan SHPO must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains and associated funerary objects are considered a single request and not competing requests. The Michigan SHPO is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.11, and 10.13.

Dated: January 5, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–00527 Filed 1–11–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037226; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, Navajo National Monument, Shonto, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), U.S. Department of the Interior, National Park Service, Navajo National Monument (NAVA) has completed an inventory of human remains and associated funerary objects and has determined that there is no cultural affiliation between the human remains

and associated funerary objects and any Indian Tribe. The human remains and associated funerary objects were removed from Coconino or Navajo Counties, AZ.

DATES: Disposition of the human remains and associated funerary objects in this notice may occur on or after February 12, 2024.

ADDRESSES: Lyn Carranza, Superintendent, Navajo National Monument, End of AZ Hwy 564 North, P.O. Box 7717, Shonto, AZ 86054–7717, telephone (928) 624–5500 Ext. 244, email *lyn_carranza@nps.gov*.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the superintendent, NAVA. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by NAVA.

Description

Human remains representing, at minimum, nine individuals were removed from Coconino or Navajo County, AZ. The human remains were found in, or accessioned into, NAVA collections between 1954 and 1999 with no clear locational information. NAVA reasonably believes that they were either removed from within the monument or from the vicinity of the monument. The 37 associated funerary objects are one pendant, 30 beads, one worked stone, and five sherds.

Tribal Land

The human remains and associated funerary objects in this notice were removed from known geographic locations. At the time of removal, these locations were the tribal land of one or more Indian Tribes.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, NAVA has determined that:

- The human remains described in this notice represent the physical remains of nine individuals of Native American ancestry.
- The 37 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. The National Park Service intends to convey the associated funerary objects to the Tribes pursuant to 54 U.S.C. 102503(g) through (i) and 54 U.S.C. 102504.
- No relationship of shared group identity can be reasonably traced between the human remains and associated funerary objects and any Indian Tribe.
- The human remains and associated funerary objects described in this notice were removed from the tribal land of the Navajo Nation, Arizona, New Mexico, & Utah.

Requests for Disposition

Written requests for disposition of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is a tribal land Indian Tribe.

Disposition of the human remains and associated funerary objects described in this notice to a requestor may occur on or after February 12, 2024. If competing requests for disposition are received, NAVA must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains and associated funerary objects are considered a single request and not competing requests. NAVA is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9 and 10.11.

Dated: January 5, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–00523 Filed 1–11–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037232; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Cincinnati Museum Center, Cincinnati, OH

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Cincinnati Museum Center (CMC) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Butler and Hamilton Counties, OH.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after February 12, 2024.

ADDRESSES: Tyler Swinney, Cincinnati Museum Center, 1301 Western Avenue, Cincinnati, OH 45203, telephone (513) 287–7000 Ext. 7287, email *tswinney@cincymuseum.org*.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Cincinnati Museum Center. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Cincinnati Museum Center.

Description

Human remains representing, at minimum, five individuals were removed from site 33Bu297 (Watson Gravel) in Butler County, OH. The site was excavated by Bob Koth, most likely with assistance from Cincinnati Museum of Natural History archeology personnel, during the summer of 1973 and subsequently donated to the museum in October 1973. A Fort Ancient determination for these ancestral Native American human remains is based on the presence of associated diagnostic shell-tempered pottery. The 49 associated funerary objects are one small shell-tempered jar with three-line guilloche-incised neck, two copper-stained bi-pointed bone pins/needles, 17 eroded sheet copper earspool fragments, one shell disc bead, one tee-shaped bone awl, one shell-tempered decorated rim sherd, one freshwater mussel shell, one flint flake, one soil sample, six unburned animal bones, and 17 glacial pebbles.

Human remains representing, at minimum, three individuals were

removed from site 33Ha124(38) (Perin Village). The site was surface collected by Cincinnati Museum of Natural History archeology personnel in 1975 following disturbances associated with a golf course expansion. A Late Woodland determination for these ancestral Native American human remains is based on proximity to nearby sites and comparison to diagnostic lithic artifacts recovered from the site during earlier 1960s surveys. The nine associated funerary objects are one polished proximal deer phalanx and eight unburned animal bones.

Human remains representing, at minimum, 23 individuals were removed from site 33Ha243(157) (Sayler Park Mound) in Hamilton County, Ohio. The site was excavated from 1955–1957 by Dr. James Kellar on behalf of the Cincinnati Museum of Natural History prior to housing development. An Early Woodland determination for these ancestral Native American human remains is based on mound dimensions, mortuary behavior (log tombs), and associated diagnostic objects. The 83 associated funerary objects are one bear effigy tubular pipe, one bird effigy pipe, one banded slate expanding center gorget, 13 copper bracelets, three copper bracelet fragments, one copper ring fragment, one unburned split bone awl, one antler billet, one sandstone slot abrader, five barrel-shaped marine shell beads, 10 lots of marine shell beads and fragments, 28 botanical/soil samples, one mending unburned deer humerus, 13 untyped chert bifaces, one limestone-tempered body sherd, one freshwater bivalve shell fragment, and one modified sedimentary stone.

Human remains representing, at minimum, 19 individuals were removed from site 33Ha368 (Luebkeman Mound) in Hamilton County, Ohio. The site was surface collected by Miami Purchase Association for Historic Preservation (MPAHP) archeologists in 1980 after the mound has been extensively looted and destroyed in 1978 and all MPAHP collections were subsequently transferred to the museum in 1990. An Early or Middle Woodland determination for these ancestral Native American human remains is based on mound dimensions and Ohio Archaeological Inventory documentation for the site. The 86 associated funerary objects include one lot of unburned animal bone, one lot of worked animal bone, one lot of saw-cut animal bone, one chert biface fragment, one lot of unmodified gastropods, one lot of unmodified freshwater bivalve shells, and one lot of worked freshwater bivalve shell fragments that were surface collected along with ancestral remains.

Human remains representing, at minimum, six individuals were removed from site 33Ha400 (Schomaker Site) in Hamilton County, Ohio. The site was surveyed by Miami Purchase Association for Historic Preservation (MPAHP) in 1978; excavated by amateur archeologists Mike Sedler and Tom Stumpf in 1984–1985; and, surveyed by the museum in 1985 during the Great Miami River Survey, which expanded to unit excavations in 1986–1987. A Fort Ancient determination for these ancestral Native American human remains is based on circular village orientation and wall-trench domestic architecture, as well as the presence of diagnostic shell-tempered ceramics and triangular arrow points. The 13 associated funerary objects are unburned animal bone; however, Tom Stumpf apparently sold a human effigy smoking pipe to Jan Sorgenfri before Mike Sedler donated ancestral Native American human remains in his collection to the museum in 1991. The current location of the human effigy smoking pipe is unknown.

Human remains representing, at minimum, 12 individuals were removed from site 33Ha586 (Driving Range Site) in Hamilton County, Ohio. The site was surveyed and excavated by Kemron Environmental Services in 1992–1993 as part of a Metropolitan Sewer District project and recovered cultural material was subsequently deposited at the museum in 1997. Late Archaic, Woodland, and Fort Ancient determinations for these ancestral Native American human remains are based on the presence of diagnostic shell- and rock-tempered ceramics, C14 dates, and diagnostic stone tools characteristic of the Late Archaic period in southwest Ohio. The 93 associated funerary objects include 17 soil samples, a suspected toolkit (consisting of two bifaces, 10 burned limestone pieces, one sandstone abrader, one retouched uniface, two mending turtle shell fragments, one Merom cluster projectile point, 16 retouched flakes, one McWhinney cluster projectile point, three chert flakes, and three unmodified freshwater bivalve shells with one associated soil sample), 28 unburned animal bones, one bone awl distal tip, one chert flake, one shell-tempered cord marked body sherd, and four burned animal bones.

Human remains representing, at minimum, two individuals were removed from site 33Ha588 (Martin Field Site) in Hamilton County, Ohio. The site was partially excavated by Gray and Pape, Inc., in 1993 as part of a Metropolitan Sewer District project and recovered cultural material was subsequently deposited at the museum in 1996 and accessioned in 2002. Although these ancestral Native American human remains were recovered from highly disturbed contexts, a Late Archaic period determination is probable based on diagnostic stone tools (McWhinney cluster projectile points) recovered from nearby midden deposits and features. The two associated funerary objects are one burned Ordovician trilobite fossil and one chert flake.

Human remains representing, at minimum, two individuals were removed from site 33Ha641 (Clear Creek Site) in Hamilton County, Ohio. Cincinnati Museum Center conducted salvage excavations at the site in 1994 after the site had been graded in preparation for recreational soccer fields and community park. A Fort Ancient determination for these ancestral Native American human remains is based on the presence of associated diagnostic shell-tempered pottery and triangular arrow points. No associated funerary objects are present.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archeological, folkloric, geographic, historical, linguistic, and oral traditional.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Cincinnati Museum Center has determined that:

- The human remains described in this notice represent the physical remains of 72 individuals of Native American ancestry.
- The 335 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in

this notice and the Absentee Shawnee Tribe of Indians of Oklahoma; Eastern Shawnee Tribe of Oklahoma; Miami Tribe of Oklahoma; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Shawnee Tribe; The Osage Nation; and the Wyandotte Nation.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after February 12, 2024. If competing requests for repatriation are received, the Cincinnati Museum Center must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Cincinnati Museum Center is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: January 5, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–00529 Filed 1–11–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037227; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Amistad National Recreation Area, Del Rio, TX

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, National Park Service, Amistad National Recreation Area (AMIS) has completed an inventory of human remains and associated funerary objects and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any Indian Tribe. The human remains and associated funerary objects were removed from Val Verde County, TX.

DATES: Disposition of the human remains and associated funerary objects in this notice may occur on or after February 12, 2024.

ADDRESSES: Christopher Ryan, Superintendent, Amistad National Recreation Area, 10477 Hwy. 90 West, Del Rio, TX 78840, telephone (830) 775–7491, email *chris_ryan@nps.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the superintendent, AMIS. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by AMIS.

Description

Most human remains and associated funerary objects in the collections of Amistad National Recreation Area were removed by the NPS-sponsored Texas Archeological Salvage Project (TASP) salvage excavations carried out by the University of Texas at Austin in 1958–1968, during the planning and construction of the Amistad Reservoir in Val Verde County, Texas. Later, after Amistad National Recreation Area was established to manage the federal lands surrounding the completed reservoir, some additional human remains were removed by NPS personnel.

In 1958, human remains representing, at minimum, five individuals were removed from the Damp Cave site in Val Verde County, TX. The site, a small rockshelter, was located by the Texas Archaeological Salvage Project and excavated by the University of Texas. No associated funerary objects are present.

In 1958, human remains representing, at minimum, two individuals were removed from the Centipede Cave site in Val Verde County, TX. The site, an intermediate-sized rockshelter, was located by the Texas Archaeological Salvage Project and excavated by the University of Texas. No associated funerary objects are present.

In 1959, human remains representing, at minimum, one individual were removed from the Devils Mouth site in Val Verde County, TX during a reservoir survey by the University of Texas. No associated funerary objects are present.

In 1962, human remains representing, at minimum, 14 individuals were removed from the Coontail Spin site in Val Verde County, TX. The site, a large rockshelter, was located in 1958 by the University of Texas and tested in 1962 by the Texas Archaeological Salvage Project. The 47 associated funerary objects are four manos, one soil sample, one metate, two dart points, 29 pieces of matting and fragments, one non-human vertebra (possibly bear or cow), one other faunal bone, and eight wooden stakes.

In 1988, human remains representing, at minimum, one more individual were removed from the Coontail Spin site during salvage excavations by NPS staff. There were no associated funerary objects.

In 1963, human remains representing, at minimum, two individuals were removed from the Mosquito Cave site in Val Verde County, TX, by the Texas Archaeological Salvage Project. No associated funerary objects are present.

In 1963, human remains representing, at minimum, one individual were removed from the Eagle Cave site, in Val Verde County, TX. No associated funerary objects are present.

In 1965, human remains representing, at minimum, one individual were removed from site 41VV88 in Val Verde County, TX. The site, a small rockshelter, was located in 1958 by the University of Texas and excavated in 1965. The one associated funerary object is one lot of perishable objects including cordage and possible ''fur cordage'' (robe fragments?).

In 1965, human remains representing, at minimum, 10 individuals were removed from the Perpetual Care Shelter site in Val Verde County, TX. No associated funerary objects are present.

Between 1965 and 1968, human remains representing, at minimum, six individuals were removed from the Conejo Shelter site in Val Verde County, TX by the University of Texas. The 241 associated funerary objects are three metates/grinding slabs; two *Sophora segundiflora* fragments; four prickly pear cactus *Opuntia sp.* fragments; six bags of unidentified vegetal material; one bundle of tied grass; one fiber object of miscellaneous leaves, twigs, and fibers with cordage; three lots of fur objects (rabbit fur robe fragments, or bags of robe fragments); one fiber tied with cordage; one grass bundle with rabbit fur robe remnants; one bracelet;

one basket/basket fragments; one piece of red ochre; one unifacial tool; one bifacial tool; four pieces of modified bone (including one antler tine); 19 pieces of bone (one burned bone fragment, one an antler fragment, and 17 mammal bones); one piece of leather; 116 pieces of sinew; 51 pieces of cordage (including one coiled); 19 mat fragments; three sandals; and one chipped stone flake.

Between 1965 and 1968, human remains representing, at minimum, two individuals were removed from the Arenosa Shelter site in Val Verde County, TX. No associated funerary objects are present.

In 1967, human remains representing, at minimum, five individuals were removed from the Parida Cave site in Val Verde County, TX. The site was documented by the University of Texas in 1958 and excavated in 1967. No associated funerary objects are present.

In 1967, human remains representing, at minimum, two individuals were removed from the Perry Calk site in Val Verde County, TX. The site, which consists of an intermediate size rockshelter and an adjacent horizontal shaft cave, was located in 1958 by the University of Texas. Excavations were conducted in 1967 by the Texas Archaeological Salvage Project. The one associated funerary object is a small rabbit fur robe.

In 1967, human remains representing, at minimum, four individuals were removed from the Rio Grande Canyon site in Val Verde County, TX. The site was located during a 1958 survey by the University of Texas, and later excavated by the Texas Archaeological Salvage Project. No associated funerary objects are present.

In 1967, human remains representing, at minimum, two individuals were removed from the Techo Bajo Shelter site in Val Verde County, TX. The site is a small rockshelter. The four associated funerary objects are one awl made from a *Canis sp.* ulna, and three modified bone fragments.

In 1977 and 1989, human remains representing, at minimum three individuals were removed from the Four Turtle Cave site in Val Verde County, TX. Wave action exposed human remains in 1977, which were then removed by NPS personnel. A second set of human remains were removed in 1989. Thirty-nine associated funerary objects include pebbles, quartz crystals, seeds, rabbit bone, snail shell fossil, wood, burned wood, rabbit fur, and chipped stone.

Around 1978, human remains representing, at minimum, one individual were removed from the Keyhole Cave site in Val Verde County, TX. Fishermen found the human remains eroding out of the cave as a result of wave action. Sixteen associated funerary objects include stakes, mussel shell, a burnt wood fragment, burned pecan shell, and faunal remains (peccary).

In 1979, human remains representing, at minimum, two individuals were removed from site 41VV962 in Val Verde County, TX. The human remains had been exposed by wave action and were removed by NPS personnel. No associated funerary objects are present.

In 1983, human remains representing, at minimum, one individual were removed from the Sin Piernas Cave site in Val Verde County, TX by NPS personnel. Wave action exposed the human remains, which appear to have been interred in a flexed position. The one associated funerary object is a hammerstone.

In 1988, human remains representing, at minimum, one individual were removed from the Dust Mask Shelter site in Val Verde County, TX, by NPS personnel. No associated funerary objects are present.

Aboriginal Land

The human remains and associated funerary objects in this notice were removed from known geographic locations. These locations are the aboriginal lands of one or more Indian Tribes. The following information was used to identify the aboriginal land: treaties.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, AMIS has determined that:

- The human remains described in this notice represent the physical remains of 66 individuals of Native American ancestry.
- The 350 associated funerary objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. The National Park Service intends to convey the associated funerary objects to the tribes pursuant to 54 U.S.C. 102503(g) through (i) and 54 U.S.C. 102504.
- No relationship of shared group identity can be reasonably traced between the human remains and associated funerary objects and any Indian Tribe.
- The human remains and associated funerary objects described in this notice were removed from the aboriginal land of the Apache Tribe of Oklahoma; Comanche Nation, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; and the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona.

Requests for Disposition

Written requests for disposition of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains and associated funerary objects described in this notice to a requestor may occur on or after February 12, 2024. If competing requests for disposition are received, AMIS must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains and associated funerary objects are considered a single request and not competing requests. AMIS is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9 and § 10.11.

Dated: January 5, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–00524 Filed 1–11–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037228; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion Amendment: University of Oregon Museum of Natural and Cultural History, Eugene, OR

AGENCY: National Park Service, Interior.

ACTION: Notice; amendment.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Oregon Museum of Natural and Cultural History has amended a Notice of Inventory Completion published in the **Federal Register** on September 10, 2018. This notice amends the minimum number of individuals and number of associated funerary objects in a collection removed from Catron County, NM.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after February 12, 2024.

ADDRESSES: Dr. Pamela Endzweig, Director of Anthropological Collections, University of Oregon Museum of Natural and Cultural History, 1224 University of Oregon, Eugene, OR 97403–1224, telephone (541) 346–5120, email *endzweig@uoregon.edu*.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Oregon Museum of Natural and Cultural History. The National Park Service is not responsible for the determinations in this notice. Additional information on the amendments and determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the University of Oregon Museum of Natural and Cultural History.

Amendment

This notice amends the determinations published in a Notice of Inventory Completion in the **Federal Register** (83 FR 45656–45657, September 10, 2018). Repatriation of the items in the original Notice of Inventory Completion has not occurred. From the SU Ranch Site, a minimum of 10 individuals (previously reported as nine individuals) were removed from the Tularosa River area in Catron County, NM. This notice adds a 1–2-year-old child of unknown sex. One associated funerary object (previously no associated funerary objects), catalogued as 2–2937, is a Tularosa corrugated bowl.

Determinations (as amended)

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the University of Oregon Museum of Natural and Cultural History has determined that:

- The human remains described in this amended notice represent the physical remains of 10 individuals of Native American ancestry.
- The one object described in this amended notice is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Fort Sill Apache Tribe of Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after February 12, 2024. If competing requests for repatriation are received, the University of Oregon Museum of Natural and Cultural History must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The University of Oregon Museum of Natural and Cultural History is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, § 10.10, § 10.13, and § 10.14.

Dated: January 5, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–00525 Filed 1–11–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2024–0001]

Notice of Availability of a Draft Programmatic Environmental Impact Statement for Expected Wind Energy Development in the New York Bight

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: The Bureau of Ocean Energy Management (BOEM) announces the availability of the draft programmatic environmental impact statement (PEIS) to analyze the potential impacts of wind energy development in six lease areas of the New York (NY) Bight. The PEIS also identifies possible changes in those impacts that could result from adopting certain avoidance, minimization, mitigation, and monitoring (AMMM) measures (the Proposed Action). This notice of availability (NOA) announces the start of the public review and comment period and the dates and times for public meetings on the draft PEIS. After the public comment period and meetings, BOEM will address the issues raised and will publish a final PEIS. The final PEIS will inform BOEM's decision whether to adopt certain AMMM measures at this stage that would potentially be required as conditions of approval for activities proposed by NY Bight lessees in their construction and operations plans (COPs) or defer the decision to adopt such measures to each project-specific environmental review.

DATES: Comments must be received no later than February 26, 2024. BOEM will conduct a total of five virtual and in-person public meetings. BOEM's public meetings will be held at the following times (all times Eastern):

- January 31, 2024, 5:00 p.m.–9:00 p.m., virtual meeting;
- * February 5, 2024, 4:00 p.m.–7:00 p.m., University of Massachusetts, Dartmouth, The Marketplace, MacLean Campus Center, 285 Old Westport Rd., North Dartmouth, MA 02747;
- * February 7, 2024, 4:00 p.m.–7:00 p.m., Stony Brook University, Bauman Center for Leadership and Service, Benedict D013, Room C029, 200 Circle Rd., Stony Brook, NY 11790;
- * February 8, 2024, 4:00 p.m.–7:00 p.m., Clarion Hotel Toms River, 815 Route 37 West, Toms River, NJ 08755; and
- February 13, 2024, 1:00 p.m.–5:00 p.m., virtual meeting.

* *In the event the in-person public meetings are cancelled due to inclement weather, they will be replaced with a single virtual meeting on February 8, 2024, 4:00 p.m.–7:00 p.m.*

Registration for the public meetings may be completed on the NY Bight website here: *https://www.boem.gov/renewable-energy/state-activities/new-york-bight* or by calling (202) 517–1249. Registration for the virtual meetings is required. Registration for the in-person public meetings is voluntary but strongly encouraged. Meeting information will be sent to registrants via their email address provided during registration. In the event of inclement weather, in-person public meetings will be replaced with one virtual meeting on February 8, 2024, 4:00 p.m.–7:00 p.m. This inclement weather notification and the virtual meeting link will be shared with registrants via their email address provided during registration. BOEM will also send a Notice to Stakeholders, post on the NY Bight website, and share on BOEM's digital media accounts.

ADDRESSES: The draft PEIS can be found on the NY Bight website at: *https://www.boem.gov/renewable-energy/state-activities/new-york-bight*. Comments can be submitted in any of the following ways:

• Orally or in written form during any of the public meetings identified in this NOA.

• *In-Person Meetings:* BOEM will follow an informal, open house format with a series of informational posters staffed by BOEM subject matter experts who can share information with individual attendees and answer questions one-on-one. Attendees can submit formal public comments for the record by submitting comments on laptops through the *regulations.gov* web portal, via handwritten comment cards, or by individually recording oral comments. If additional accommodations are needed, please contact *boempublicaffairs@boem.gov* or call (202) 517–1249 at least 7 days prior to the in-person meeting date.

• *Virtual Meetings:* BOEM will provide an overview presentation. Afterwards, members of the public may make formal, oral public statements for the record. The meeting facilitator will mute the audience during the meeting until individuals are called on to provide comments in front of all attendees. Attendees can ask clarifying questions to BOEM staff through the webinar Q&A function, which will be explained after the public statements.

• All comments and questions received during the five public meetings will be part of the public record.

• Delivered by mail or delivery service, enclosed in an envelope labeled, ''NY BIGHT PEIS'' and addressed to Chief, Division of Environmental Assessment, Office of Environmental Programs, Bureau of Ocean Energy Management, 45600 Woodland Road, VAM–OEP, Sterling, Virginia 20166; or

• Through the *regulations.gov* web portal: Navigate to *https://www.regulations.gov* and search for Docket No. BOEM–2024–0001. Select the document in the search results on which you want to comment, click on the ''Comment'' button, and follow the online instructions for submitting your comment. A commenter's checklist is available on the comment web page. Enter your information and comment, then click ''Submit.''

For more information about submitting comments, please see ''*Information on Submitting Comments*'' under the **SUPPLEMENTARY INFORMATION** heading below.

FOR FURTHER INFORMATION CONTACT: Jill Lewandowski, BOEM Office of Environmental Programs, 45600 Woodland Road, VAM–OEP, Sterling, Virginia 20166, (703) 787–1703 or *jill.lewandowski@boem.gov*.

SUPPLEMENTARY INFORMATION:

Proposed Action: The draft PEIS assumes that a representative project, including associated export cables, within a range of design parameters informed by lessees, will be developed for the NY Bight and considers the potential environmental impacts of that development. The Proposed Action for the PEIS is the adoption of programmatic AMMM measures that BOEM would require as conditions of approval for activities proposed by lessees in COPs submitted for the NY Bight unless the COP-specific NEPA analysis shows that implementation of such measures is not warranted or effective. BOEM may require additional or different measures based on subsequent, project-specific environmental analyses. These AMMM measures are considered programmatic insofar as they may be applied to COPs within the whole NY Bight area, not because they necessarily will apply to COPs under BOEM's renewable energy program outside of the NY Bight area. The PEIS considers the possible change in potential impacts resulting from the application of individual AMMM measures. The Proposed Action does not itself require any actions by BOEM or lessees.

Alternatives: BOEM considered 19 alternatives when preparing the draft PEIS and carried forward 3 alternatives for further analysis. These three alternatives include two action alternatives and the no action alternative. Sixteen alternatives were rejected because they did not meet the purpose and need for the proposed action or did not meet screening criteria, which are presented in chapter 2 of the draft PEIS. The screening criteria included consistency with law and regulations; technical and economic feasibility; environmental impact; and geographic considerations.

Availability of the Draft PEIS: The draft PEIS and associated information are available on the New York Bight website at: *https://www.boem.gov/renewable-energy/state-activities/new-york-bight*. If you need a flash drive or paper copy, BOEM will provide one upon request, as long as copies are available. You may request a flash drive or paper copy of the draft PEIS by calling (703) 787–1703.

Cooperating Agencies: The following 13 Federal, State, and local agencies participated as cooperating agencies in the preparation of the draft PEIS: the Bureau of Safety and Environmental Enforcement; U.S. Environmental Protection Agency; National Marine Fisheries Service; U.S. Army Corps of Engineers; U.S. Coast Guard; U.S. Fish and Wildlife Service; National Park Service; New Jersey Department of Environmental Protection; New Bedford Port Authority; New York State Department of State; New York State Department of Environmental Compliance; New Jersey Board of Public Utilities; and the Massachusetts Office of Coastal Zone Management. The following Tribal Nations participated as Cooperating Tribal Governments in the preparation of the draft PEIS: the Stockbridge-Munsee Community Band of Mohican Indians and the Mashantucket (Western) Pequot Tribal Nation. The New York City Mayor's Office of Environmental Coordination served as a participating agency in the preparation of the draft PEIS.

Information on Submitting Comments: BOEM discourages anonymous comments. Please include your full name as part of your comment. BOEM makes all comments, including your name and any other personally identifiable information (PII) in your comment, available for public review. You may request that BOEM withhold your name, address, and any other PII included in your comment from the public record. However, BOEM cannot guarantee that it will be able to do so. If you wish your name, address, and other PII to be withheld, you must state your request prominently in a cover letter and explain the harm that you fear

from its disclosure, such as unwarranted privacy invasion, embarrassment, or injury.

Even if BOEM withholds your information in the context of this notice, your comment is subject to the Freedom of Information Act (FOIA) and any relevant court orders. If your comment is requested under FOIA or any court order, your information will only be withheld if BOEM determines that one of the FOIA exemptions to disclosure applies or if the applicable court order is challenged. BOEM will make its determination in accordance with the Department's FOIA regulations and applicable law.

Please label privileged or confidential information as ''Contains Confidential Information,'' and consider submitting such information as a separate attachment. BOEM may consider information that is not labeled as privileged or confidential as suitable for public release.

Request for Comment: BOEM requests data, comments, views, information, analysis, or suggestions relevant to the analysis of the Proposed Action from the public; affected Federal, Tribal, State, and local governments, agencies, and offices; the scientific community; industry; or any other interested party. Specifically, BOEM requests information on the following topics:

1. In an effort to fully meet the intent of Executive Order (E.O.) 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' and E.O. 14096, ''Revitalizing Our Nation's Commitment to Environmental Justice for All,'' BOEM is considering several AMMM measures intended to mitigate impacts to communities with environmental justice (EJ) concerns. These measures include communication plans, provision of mitigation resources, and reporting requirements (AMMM measures EJ–1 through EJ–3). BOEM seeks input on the potential for these measures to reduce impacts on communities with EJ concerns. In addition, BOEM developed an EJ compensatory mitigation framework (EJ–4), per guidance issued by the Federal Interagency Working Group on Environmental Justice and NEPA Committee in its report ''Promising Practices for EJ Methodologies in NEPA Reviews'' (2016). On page 48, the guidance states that agencies ''may wish to consider appropriate compensating mitigation'' when there are unavoidable adverse impacts to environmental justice populations.

EJ engagement participants have indicated that offshore wind energy development has potential for impacts that are not identified in advance of construction and operations. Therefore, BOEM is seeking feedback on the proposed language outlined in the EJ compensatory mitigation AMMM measure (EJ–4) to address impacts that cannot be avoided or minimized. In particular, BOEM requests feedback on the following: (1) the lessee's financial contribution and how it is calculated over the life of mitigation implementation; (2) what constitutes an eligible impact to receive compensation; (3) appropriate level of description and guidance surrounding a board of trustees to administer the compensatory mitigation funds, including its composition, bylaws, governance, and oversight; (4) fund management criteria that need to be stated at the programmatic stage to advance equity considerations; (5) fund distribution objectives; and (6) defining recipients of fund distributions.

2. BOEM is soliciting feedback on AMMM measures related to measuring, monitoring, and reducing noise and its impacts on marine life. Specifically, BOEM seeks information on operational measures, noise abatement technologies, and other techniques and procedures that may be helpful to meet any marine noise reduction targets or to reduce the impact of any noise introduced into the marine environment; the cost and commercial feasibility of such measures and technologies in meeting a target; and what criteria BOEM should consider in determining whether a specific project could be exempted from a target. BOEM is also seeking similar feedback on AMMM measures related to sound field verification and long-term passive acoustic monitoring. BOEM requests feedback on the currently written acoustic assessment and the use of the relativistic risk assessment framework (appendix J in draft PEIS). BOEM appreciates any information that can help improve its applicability to the NY Bight and future projects.

Authority: 42 U.S.C. 4321 *et seq.* (NEPA, as amended), and 40 CFR 1506.6.

Karen Baker,

Chief, Office of Renewable Energy Programs, Bureau of Ocean Energy Management.

[FR Doc. 2024–00512 Filed 1–11–24; 8:45 am]

BILLING CODE 4340–98–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2024–0004]

Notice of Availability of a Draft Environmental Assessment for Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf Offshore Delaware, Maryland, and Virginia

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: The Bureau of Ocean Energy Management (BOEM) announces the availability of a draft environmental assessment (EA) to consider the potential environmental impacts associated with possible wind energy-related leasing, site assessment, and site characterization activities on the U.S. Atlantic Outer Continental Shelf (OCS). This notice of availability (NOA) announces the start of the public review and comment period, as well as the dates and times for public meetings on the draft EA. After BOEM holds the public meetings and addresses public comments submitted during the review period, BOEM will publish a final EA. The EA will inform BOEM's decision whether to issue wind energy leases in the Central Atlantic Wind Energy Areas (WEAs).

DATES: Comments must be received no later than February 12, 2024. BOEM's virtual public meetings will be held on the following dates at the times (eastern time) indicated.

- Tuesday, January 30; 5:00 p.m.
- Thursday, February 1; 1:00 p.m.

Registration for the virtual public meeting is required and may be completed at *https://www.boem.gov/renewable-energy/state-activities/central-atlantic*. Meeting information will be sent to registrants via their email address provided during registration.

ADDRESSES: The draft EA and detailed information about the Central Atlantic WEAs can be found on BOEM's website at: *https://www.boem.gov/renewable-energy/state-activities/central-atlantic*. Comments can be submitted in any of the following ways:

- Orally or in written form during any of the public meetings identified in this NOA.
- In written form by mail or any other delivery service, enclosed in an envelope labeled ''Central Atlantic Wind Leasing EA'' and addressed to Chief, Office of Renewable Energy

Programs, Bureau of Ocean Energy Management, 45600 Woodland Road, Mailstop VAM–OREP, Sterling, VA 20166.

• Through the *regulations.gov* web portal: Navigate to *https://www.regulations.gov* and search for Docket No. BOEM–2024–0004. Click on the ''Comment'' button below the document link. Enter your information and comment, then click ''Submit Comment.''

For more information about submitting comments, please see ''*Information on Submitting Comments*'' under the **SUPPLEMENTARY INFORMATION** heading below.

FOR FURTHER INFORMATION CONTACT: Jessica Stromberg, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, VAM–OREP, Sterling, Virginia 20166, (703) 787–1730 or *jessica.stromberg@boem.gov*.

SUPPLEMENTARY INFORMATION:

Proposed Action: The draft EA analyzes the proposed action, which is issuing wind energy leases in the Central Atlantic WEAs, and the no action alternative. The lease sale itself would not authorize any activities on the OCS. Therefore, the EA considers the reasonably foreseeable environmental consequences of site characterization surveys (*i.e.,* biological, archeological, geological and geophysical surveys, and core samples) and site assessment activities (*i.e.,* installation of meteorological buoys), which are expected to take place following lease issuance. BOEM decided to prepare an EA for this proposed action in order to assist the agency's planning and decision-making (40 CFR 1501.5(b)).

Availability of the Draft EA: The draft EA and associated information are available on BOEM's website at: *https://www.boem.gov/renewable-energy/state-activities/central-atlantic*. If you require a digital copy on a flash drive or a paper copy, BOEM will provide one upon request, if supplies are available. You may request a flash drive or paper copy of the draft EA by contacting Lisa Landers at (703) 787–1520 or *lisa.landers@boem.gov*.

Cooperating Agencies: The following Federal agencies participated as cooperating agencies in the preparation of the draft EA: the Bureau of Safety and Environmental Enforcement, National Marine Fisheries Service, U.S. Army Corps of Engineers, and the Environmental Protection Agency. The Town of Ocean City, Maryland, also participated as a cooperating agency in the preparation of the draft EA.

Information on Submitting Comments: All comments from identified individuals, businesses, and organizations will be available for public viewing on *regulations.gov*. Note that BOEM will make available for public inspection all comments submitted by organizations and businesses, or by individuals identifying themselves as representatives of organizations or businesses.

a. Freedom of Information Act

BOEM will protect privileged or confidential information that you submit as required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to trade secrets and commercial or financial information that is privileged or confidential. If you wish to protect the confidentiality of such information, clearly label it and request that BOEM treat it as confidential. BOEM will not disclose such information if BOEM determines under 30 CFR 585.114(b) that it qualifies for exemption from disclosure under FOIA. Please label privileged or confidential information ''Contains Confidential Information'' and consider submitting such information as a separate attachment.

BOEM will not treat as confidential any aggregate summaries of information or any comments not containing privileged or confidential information. Information that is not labeled as privileged or confidential may be regarded by BOEM as suitable for public release.

b. Personally Identifiable Information

BOEM discourages anonymous comments. Please include your name and address as part of your comment. You should be aware that your entire comment, including your name, address, and any other personally identifiable information (PII) that you include, may be made publicly available.

For BOEM to consider withholding your PII from disclosure, you must identify any information contained in your comments that, if released, would constitute a clearly unwarranted invasion of your personal privacy. You must also briefly describe any possible harmful consequences of the disclosure of information, such as embarrassment, injury, or other harm. Even if BOEM withholds your information in the context of this notice, your comment is subject to FOIA. If your comment is requested under FOIA, BOEM will withhold your information only if it determines that one of FOIA's exemptions to disclosure applies. Such a determination will be made in accordance with the Department's FOIA regulations and applicable law.

c. Section 304 of the NHPA (54 U.S.C. 307103(a))

After consultation with the Secretary, BOEM is required to withhold the location, character, or ownership of historic resources if it determines that disclosure may, among other things, risk harm to the historic resources or impede the use of a traditional religious site by practitioners. Tribal entities should designate information that falls under section 304 of NHPA as confidential.

Authority: 42 U.S.C. 4231 *et seq.* (NEPA, as amended) and 40 CFR 1506.6.

Karen J. Baker,

Chief, Office of Renewable Energy Programs, Bureau of Ocean Energy Management.

[FR Doc. 2024–00513 Filed 1–11–24; 8:45 am]

BILLING CODE 4340–98–P

INTERNATIONAL TRADE COMMISSION

[Investigation. No. 337–TA–1385]

Certain Furniture Products Finished With Decorative Wood Grain Paper and Components Thereof; Notice of Institution of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 7, 2023 under section 337 of the Tariff Act of 1930, as amended, on behalf of Toppan Interamerica, Inc. of McDonough, Georgia. A supplement was filed on January 3, 2024. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain furniture products finished with decorative wood grain paper and components thereof by reason of infringement of one of U.S. Copyright Registration No. VA 2–142–287 (''the '287 copyright''), U.S. Copyright Registration No. VA 2–176–002 (''the '002 copyright''), U.S. Copyright Registration No. VA 2–142–295 (''the '295 copyright''), or U.S. Copyright Registration No. VA 2–142–292 (''the 292 copyright''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained

therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Katherine Hiner, Office of Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2023).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 8, 2024, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one of the '287 copyright, the '002 copyright, the '295 copyright, or the '292 copyright; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''furniture products and components thereof, constructed from engineered wood products and finished with a decorative wood grain paper'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Toppan Interamerica, Inc., 1131 Highway 155 South, McDonough, GA 30253.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Whalen LLC d/b/a Whalen Furniture, 1578 Air Wing Road, San Diego, CA 92154–7706.

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not be named as a party to this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: January 9, 2024.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2024–00532 Filed 1–11–24; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Stipulation and Order Modifying Consent Decree Under the Clean Air Act

On January 8, 2024, the Department of Justice lodged a proposed Stipulation and Order Modifying Consent Decree (''Stipulation'') with the United States District Court for the Eastern District of Louisiana in the lawsuit entitled *United States and the Louisiana Department of Environmental Quality* v. *The Dow Chemical Company, Union Carbide Corp. and Performance Materials, NA, Inc.,* Civil Action No. 2:21–cv–00114–MLCF–JVM.

The United States and Louisiana Department of Environmental Quality filed this lawsuit under the Clean Air Act and Louisiana Environmental Quality Act in January 2021. The complaint sought injunctive relief and civil penalties based on violations of the Clean Air Act's New Source Review requirements, New Source Performance Standards, National Emissions Standards for Hazardous Air Pollutants, ''Title V'' program requirements and operating permits, and related Texas and Louisiana state implementation plan requirements. The alleged violations involved flares used at petrochemical manufacturing plants owned and operated by the defendants, The Dow Chemical Company, Union Carbide Corp. and Performance Materials, NA, Inc., in Hahnville and Plaquemine, Louisiana, and Freeport and Orange, Texas. The Consent Decree, approved and entered by the Court in June 2021, required the defendants to perform injunctive relief, including (among other things) the installation and operation of Flare Gas Recovery System (''FGRS'') compressors at the Orange Facility covered by the Consent Decree, pay a $3,000,000 civil penalty, and perform three state-authorized Beneficial Environmental Projects in Louisiana.

The Stipulation lodged today changes the number of FGRS compressors at the Orange Facility to three from two; modifies the requirements for FGRS operation time to reflect the additional FGRS compressor (specifically, once the third compressor is operating, the Stipulation requires the Orange Facility to have two ''Compressors Available for Operation or in operation 95% of the time and one Compressor Available for Operation or in operation at all times,'' increased from ''one Compressor Available for Operation or in operation 98% of the time and two Compressors Available for Operation or in operation 90% of the time''); adds default molecular weights for nitrogen, natural gas, and methane; and corrects an incorrect paragraph cross reference in Appendix 1.2, Step 2, of the Consent Decree.

The publication of this notice opens a period for public comment on the proposed Stipulation. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to

United States and the Louisiana Department of Environmental Quality v. *The Dow Chemical Company, Union Carbide Corp. and Performance Materials, NA, Inc.,* Civil Action No. 2:21–cv–00114–MLCF–JVM, DOJ reference number 90–5–2–1–11114. All comments must be submitted no later than 30 days after the publication date of this notice. Comments may be submitted either by email or by first-class mail:

To submit comments:	Send them to:
By email	*pubcomment-ees.enrd@usdoj.gov.*
By first-class mail.	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $3.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Thomas Carroll,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2024–00487 Filed 1–11–24; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree under the Clean Air Act

On January 9, 2024, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Western District of New York in the lawsuit entitled *United States of America* v. *Allied Waste Niagara Falls Landfill, LLC,* Case No. 1:24–cv–36.

The United States filed this lawsuit to seek civil penalties and injunctive relief for violations of the Clean Air Act, 42 U.S.C. 7401 *et seq.* (''CAA''). The alleged violations stem from the failure by Allied Niagara Falls Landfill, LLC (''Allied'') to comply with federally-enforceable regulations applicable to municipal solid waste (''MSW'') landfills. Allied operates a MSW landfill in Niagara Falls, New York.

The Consent Decree provides for Allied to come into compliance with the Clean Air Act, 42 U.S.C. 7401 *et seq.,* and its municipal solid waste landfill regulations by installing and operating a gas collection and control system at its landfill and to pay a $671,000 civil penalty.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *Allied Waste Niagara Falls Landfill, LLC,* Civil Action No. 1:24–cv–36, D.J. Ref. No. 90–5–2–1–11610. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $39.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2024–00555 Filed 1–11–24; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Workers' Compensation Programs

Agency Information Collection Activities; Comment Request; Representative Payee Report, Representative Payee Report (Short Form), and Physician's/Medical Officer's Statement

AGENCY: Division of Coal Mine Workers' Compensation.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Representative Payee Report, Representative Payee Report (Short Form), and Physician's/Medical Officer's Statement.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by March 12, 2024.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Office of Workers' Compensation Programs, Room S3323, 200 Constitution Avenue NW, Washington, DC 20210; by email: *suggs.anjanette@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are

clearly understood, and the impact of collection requirements can be properly assessed.

Benefits due to a DOL Black Lung beneficiary are paid to a representative payee on behalf of the beneficiary when he or she is unable to manage the benefits due to incapability or incompetence or because the beneficiary is a minor. The Representative Payee Report (Form CM–623) and Representative Payee Report Short Form (Form CM–623S) are used to ensure that benefits paid to a representative payee are used for the beneficiary's well-being. The Physician's/Medical Officer's Statement (Form CM–787) is used to determine the beneficiary's capability to manage monthly black lung benefits. The Black Lung Benefits Act, 30 U.S.C. 922, authorizes this information collection. authorizes this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Written comments will receive consideration, and summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention 1240–0020.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL-Office of Workers' Compensation Programs.

Type of Review: Extension.

Title of Collection: Representative Payee Report, Representative Payee Report (Short Form), and Physician's/Medical Officer's Statement.

Form: Representative Payee Report (CM–623), Representative Payee Report (Short Form) (CM–623S) and Physician's/Medical Officer's Statement (CM–787).

OMB Control Number: 1240–0020.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 282.

Frequency: Occasionally.

Total Estimated Annual Responses: 282.

Estimated Average Time per Response: 10–90 minutes.

Estimated Total Annual Burden Hours: 153 hours.

Total Estimated Annual Other Cost Burden: $192.00.

Authority: 44 U.S.C. 3506(c)(2)(A).

Dated: January 8, 2024.

Anjanette Suggs,

Agency Clearance Officer.

[FR Doc. 2024–00490 Filed 1–11–24; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Office of the Workers' Compensation Programs

Agency Information Collection Activities; Comment Request; Certification of Medical Necessity

AGENCY: Division of Coal Mine Workers' Compensation.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Certification of Medical Necessity''. This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by March 12, 2024.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Office of Workers' Compensation Programs, Room S3323, 200 Constitution Avenue NW, Washington, DC 20210; by email: *suggs.anjanette@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

The Office of Workers' Compensation Programs administers the Federal Black Lung Compensation Program. The Black Lung Benefits Act (30 U.S.C. 901*et seq.*) and its implementing regulations necessitate this information collection. The regulations at 20 CFR 725.701 set out a miner's eligibility for medical services and supplies for the length of time required by the miner's pneumoconiosis and related disability. The regulations require prior approval before ordering medical equipment where the purchase price exceeds $300.00. 20 CFR 725.705. The regulations also provide for the ongoing supervision of the miner's medical care, including the necessity, character and sufficiency of care to be furnished; gives the Office of Workers' Compensation Programs authority to request medical reports; and indicates the right to refuse payment for failing to submit any report required. 20 CFR 725.706. To

implement the statute and these regulations, it was necessary to devise a form to collect the required information. The form is the CM–893, Certification of Medical Necessity, which is completed by the miner's physician and is used by the Division of Coal Mine Workers' Compensation to determine if the miner meets the standards to qualify for durable medical equipment and home nursing. OMB has currently approved this information collection for use through May 31, 2024.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Written comments will receive consideration, and summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention 1240–0024.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL-Office of Workers' Compensation Programs.

Type of Review: Extension.

Title of Collection: Certification of Medical Necessity.

Form: CM–893.

OMB Control Number: 1240–0024.

Affected Public: Individuals or households; Business or other for profit, and not for profit institutions.

Estimated Number of Respondents: 1,500.

Frequency: On occasion.

Total Estimated Annual Responses: 1,500.

Estimated Average Time per Response: 20–40 minutes.

Estimated Total Annual Burden Hours: 563 hours.

Total Estimated Annual Other Cost Burden: $0.0.

Authority: 44 U.S.C. 3506(c)(2)(A).

Dated: January 8, 2024.

Anjanette Suggs,

Agency Clearance Officer.

[FR Doc. 2024–00489 Filed 1–11–24; 8:45 am]

BILLING CODE 4510–CK–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Submission for OMB Review, Comment Request, Proposed Collection: Native American Library Services Basic Grant Program Notice of Funding Opportunity

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Submission for OMB Review, comments request, collection of information.

SUMMARY: The Institute of Museum and Library Services (IMLS) announces that the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. This Notice proposes the renewal of the clearance of the Native American Library Services Basic Grant Program, a discretionary grant program designed to assist Native American tribes in improving library services for their communities. A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before February 14, 2024.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this Notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Institute of Museum and Library Services'' under ''Currently Under Review;'' then check ''Only Show ICR for Public Comment'' checkbox. Once you have found this information collection request, select ''Comment,'' and enter or upload your comment and information. Alternatively, please mail your written comments to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, or call (202) 395–7316.

OMB is particularly interested in comments that help the agency to:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

FOR FURTHER INFORMATION CONTACT: Jennifer Himmelreich, Senior Program Officer, Office of Library Services, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington DC 20024–2135. Ms. Himmelreich can be reached by telephone at 202–653–4797, or by email at *jhimmelreich@imls.gov.* Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202–

207–7858 via 711 for TTY-Based Telecommunications Relay Service.

SUPPLEMENTARY INFORMATION: IMLS is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. To learn more, visit *www.imls.gov.*

Current Actions: The purpose of the Native American Library Services Basic Grants Program is to assist Native American tribes in improving library services for their communities. IMLS recognizes that information needs, and approaches to meeting them, are evolving at an unprecedented pace in all communities, and to operate within this environment effectively for the benefit of their users, libraries must be able to both strengthen existing services and move quickly to adopt new and emerging technologies.

The two goals for this program will be (1) to improve services for learning and accessing information in a variety of formats to support needs for education, workforce development, economic and business development, health information, critical thinking skills, and digital literacy skills; and (2) to enhance the skills of the current library workforce and leadership through training, continuing education, and opportunities for professional development.

This action is to renew the forms and instructions for the Notice of Funding Opportunities for the next three years.

The 60-Day Notice was published in the **Federal Register** on November 7, 2023 (88 FR 76862–76863). The agency has taken into consideration the one comment that was received under this notice.

Agency: Institute of Museum and Library Services.

Title: IMLS Native American Library Services Basic Grant Program Notice of Funding Opportunity.

OMB Control Number: 3137–0093.

Affected Public: Federally Recognized Indian Tribes.

Total Number of Respondents: 200.

Frequency of Response: Once per request.

Average Hours per Response: 10 hours.

Total Estimated Number of Annual Burden Hours: 2,000.

Total Annualized capital/startup costs: n/a.

Cost Burden: $62,280.

Total Annual Federal Costs: $32,646.

Dated: January 9, 2024.

Suzanne Mbollo,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2024–00590 Filed 1–11–24; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Establish an Information Collection System; Computer Science for All—Evaluation and Systematic Review of Grantee Documents

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: Under the Paperwork Reduction Act of 1995, and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public or other Federal agencies to comment on this proposed continuing information collection.

DATES: Written comments on this notice must be received by March 12, 2024, to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite E7400, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Comments: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Foundation, including whether the information will have practical utility; (b) the accuracy of the Foundation's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

SUPPLEMENTARY INFORMATION:

Title of Collection: Computer Science for All—Evaluation and Systematic Review of Grantee Documents.

OMB Number: 3145–NEW.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to establish an information collection for post-award output and outcome monitoring system.

Abstract: Computer Science for All Researcher Practitioner Partnership (RPP) grantees are required to submit Annual Reports and Project Outcome reports to NSF that summarize the outputs, outcomes, and impact of their funded work. NSF is required by Congress to demonstrate the long-term outcomes for the CSforAll RPP initiative, defined as those that occur at least 5 years since grantees received funding. the first year where these long-term outcomes can be documented for the first CSforAll RPP cohort, funded in 2017, was 2023. This multi-year evaluation is focused on documenting the long-term outcomes for the first three cohorts of the initiative—2017, 2018, and 2019. There are a total of 73 funded grants from the three cohorts. To effectively extract and analyze the needed information to document long-term outcomes for these 73 RPP grants, a systematic review of all grantee reports of outputs, outcomes, and impacts will be conducted, following these steps:

Develop a document review form. The researchers conducting the evaluation of these long-term outcomes for the three cohorts of grantees will develop and use a document review form that will include fields for recording information needed for this evaluation, guided by the required outputs, outcomes, and impacts that NSF must document in a report to Congress. The form will include all information that the researchers were able to glean from the grantees' reports and will highlight where information is missing about each grant's outputs and outcomes during the period of performance, and up to at least 5 years after the grant was funded. The review form will focus on the relevant outputs, outcomes, and impacts related to each of the three strands of the CSforAll RPPs initiative (preK–8, high school, and multi-grade pathways) to document the long-term outcomes for each of those strands.

Review all grantee documents using the review form. The document review form will be completed and compiled by trained researchers who conduct a primary and secondary review of all relevant grantee documents related to the funded RPP, including the grantees' reports to NSF, as well as any related publications and websites, to help ensure thoroughness, consistency, and accuracy. The researchers will

document all outputs, outcomes, and impacts they can find in their document reviews. These will be aligned with the list of required outputs, outcomes, and impacts that NSF must report to Congress (*e.g.,* number and demographics of teachers, number and demographics of students served by the grant).

Produce grantee profile memos for grantee verification. After the researchers complete the document review forms for each funded RPP grant to the best of their ability, the information will be summarized in a memo to be shared with each grantee for their review and to gather any missing information. PIs will be asked to provide any missing information, focused on known outputs, outcomes, and impacts up to at least 5 years after funding was received. After they have had time to review the form and gather the missing information, each PI will be invited to participate in 30–60 minute interview conducted via videoconferencing. The interview will be conducted by a member of the research team, with the purpose of confirming the outputs, outcomes, and impacts in the document review form, and following up with any remaining questions about the impact of the grant on preK–12 computer science education in the education systems that were served by the grant.

Finalize grantee-provided data and identify additional primary data collections. Any additional information provided by grantees will be added to the review document forms to finalize existing grantee data and to determine what additional data are needed to address research questions, the most appropriate method for collecting that information (*e.g.,* surveys, interviews, focus groups), and from whom (*e.g.,* district or school administration, teachers). Because this evaluation project involves providing NSF with insights about other relevant outcomes and impacts they may not have anticipated for this evaluation, the information collected from grantees' completion of the document review form and their interviews will be used to identify those additional outcomes and impacts.

Use of the Information

Much of the data needed for this collection will come from a review of the Annual Reports, Final Reports, Evaluation Reports, and Project Outcome Reports that grantees are required to submit to NSF. After a systematic review of all grantee documents for the 73 funded grants, necessary information will be extracted from the documents and reviewed by grantee PIs, following the steps outlined in the abstract.

ESTIMATE OF PUBLIC BURDEN

Collection title	Number of respondents	Annual number of responses/respondent	Annual hour burden
Verification of Document Review Form Information by RPP Grantees.	73 grantee PIs	2 (1 hour for document review and up to 1 hour for follow-up call).	146

Respondents

The respondents are the Principal Investigator and/or program evaluator of each grant. They will be asked to review their grantee-specific memo, determine whether their data are accurately represented, and provide any additional available information during a 30–60-minute call.

Estimates of Annualized Cost to Respondents for the Hour Burdens

The overall annualized cost to the respondents is estimated to be $8,085.48. The following table shows the annualized estimate of costs to PIs/designee respondents, who are generally university research faculty members. This estimated hourly rate is based on the Bureau of Labor Statistics' Occupational Employment and Wage Statistics from May 2022, for ''Education Administrators, Postsecondary.'' According to these estimates, the mean hourly wage for a postsecondary education administrator was $55.38.

Respondent type	Number of respondents	Burden hours per respondent	Average hourly rate	Estimated annual cost
Grantees/PIs	73	2	$55.38	$8,085.48
Total	73			8,085.48

Source: *https://www.bls.gov/oes/current/oes119033.htm.*

Estimated Number of Responses per Report

Data collection involves all 73 grantees for the funded CSforAll RPP grants in the 2017, 2018, and 2019 cohorts.

Dated: January 9, 2024.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2024–00593 Filed 1–11–24; 8:45 am]

BILLING CODE 7555–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–161 and CP2024–167]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* January 17, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2024–161 and CP2024–167; *Filing Title:* USPS Request to Add Priority Mail, USPS Ground Advantage, & Parcel Select Contract 3 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* January 8, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* January 17, 2024.

This Notice will be published in the **Federal Register**.

Jennie L. Jbara,

Alternate Certifying Officer.

[FR Doc. 2024–00587 Filed 1–11–24; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

1. Title and purpose of information collection: RUIA Investigations and Continuing Entitlement; OMB 3220–0025.

Under Section 1(k) of the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. 231), unemployment and sickness benefits are not payable for any day remuneration is payable or accrues to the claimant. Also, Section 4(a–1) of the RUIA provides that unemployment or sickness benefits are not payable for any day the claimant receives the same benefits under any law other than the RUIA. Under Railroad Retirement Board (RRB) regulation 20 CFR 322.4(a), a claimant's certification, or statement on an RRB-provided claim form, that he or she did not work on any day claimed and did not receive income such as vacation pay or pay for time lost, shall constitute sufficient evidence unless there is conflicting evidence. Further, under 20 CFR 322.4(b), when there is a question raised as to whether or not remuneration is payable or has accrued to a claimant with respect to a claimed day(s), an investigation shall be made with a view to obtaining information sufficient for a finding. The RRB utilizes the following three forms to obtain information from railroad employers, nonrailroad employers, and claimants, that is needed to determine whether a claimed day(s) of unemployment or sickness were improperly or fraudulently claimed: Form ID–5i, Request for Employment Information; Form ID–5R (SUP), Report of Employees Paid RUIA Benefits for Every Day in Month Reported as Month of Creditable Service; and Form UI–48, Statement Regarding Benefits Claimed for Days Worked. Completion is voluntary. One response is requested of each respondent.

To qualify for unemployment or sickness benefits payable under section 2 of the Railroad Unemployment Insurance Act (RUIA), a railroad employee must have certain qualifying earnings in the applicable base year. In addition, to qualify for *extended* or *accelerated* benefits under Section 2 of the RUIA, a railroad employee who has exhausted his or her rights to normal benefits must have at least 10 years of railroad service (under certain conditions, military service may be credited as months of railroad service). Accelerated benefits are unemployment or sickness benefits that are payable to a railroad employee before the regular July 1 beginning date of a benefit year if an employee has 10 or more years of service and is *not* qualified for benefits in the current benefit year.

During the RUIA claims review process, the RRB may determine that unemployment or sickness benefits cannot be awarded because RRB records show insufficient qualifying service and/or compensation. When this occurs, the RRB allows the claimant the opportunity to provide additional information if they believe that the RRB service and compensation records are incorrect.

Depending on the circumstances, the RRB provides the following forms to obtain information needed to determine if a claimant has sufficient service or compensation to qualify for unemployment or sickness benefits. Form UI–9, *Statement of Employment and Wages;* Form UI–44, *Claim for Credit for Military Service;* Form ID–4U, *Advising of Service/Earnings Requirements for Unemployment Benefits;* and Form ID–4X, *Advising of Service/Earnings Requirements for Sickness Benefits.* Completion of these forms is required to obtain or retain a benefit. One response is required of

each respondent. The RRB proposes no changes to Form UI–9, UI–44, ID–4U, ID–4X, and UI–48.

The RRB Proposes the Following Changes to Form ID–5i

- add a 30-day time sensitive response on page 1,
- page 2 modification to earnings sentence to include ''if still employed, include earnings up to the current employment date.'',
- remove auto update of RRB letterhead address, phone number and email address,
- update RRB address to headquarters address,
- update RRB phone number to Unemployment and Programs Support Division,
- update RRB fax number to Unemployment and Programs Support Division,
- update RRB email address to Unemployment and Programs Support Division, and
- update RRB office hours.

The RRB Proposes the Following Changes to ID–5R (SUP)

- change PRA/PA notice to update the officer title and
- update RRB zip code.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
UI–9	69	10	11
UI–44	10	5	1
UI–48	14	12	3
ID–4U	35	5	3
ID–4X	25	5	2
ID–5i	1,000 (Private sector)	15	250
	50 (state/local/etc.)		12
ID–5R (SUP)	400	10	67
Total	1,603		349

2. Title and purpose of information collection: Pension Plan Reports; OMB 3220–0089.

Under section 2(b) of the Railroad Retirement Act (RRA) (45 U.S.C. 231a), the Railroad Retirement Board (RRB) pays supplemental annuities to qualified RRB employee annuitants. A supplemental annuity, which is computed according to section 3(e) of the RRA, can be paid at age 60 if the employee has at least 30 years of creditable railroad service or at age 65 if the employee has 25–29 years of railroad service. In addition to 25 years of service, a ''current connection'' with the railroad industry is required. Eligibility is further limited to employees who had at least 1 month of rail service before October 1981 and were awarded regular annuities after June 1966. Further, if an employee's 65th birthday was prior to September 2, 1981, he or she must not have worked in rail service after certain closing dates (generally the last day of the month following the month in which age 65 is attained). Under section 2(h)(2) of the RRA, the amount of the supplemental annuity is reduced if the employee receives monthly pension payments, or a lump-sum pension payment from a private pension from a railroad employer to the extent the payments are based on contributions from that employer. The employee's own contribution to their pension account does not cause a reduction. A private railroad employer pension is defined in 20 CFR 216.42.

The RRB requires the following information from railroad employers to calculate supplemental annuities: (a) the current status of railroad employer pension plans and whether such plans cause reductions to the supplemental annuity; (b) whether the employee receives monthly payments from a private railroad employer pension, elected to receive a lump sum in lieu of monthly pension payments from such a plan, or was required to receive a lump sum from such a plan due to the plan's small benefit provision; and (c) the amount of the payments attributable to the railroad employer's contributions. The requirement that railroad employers furnish pension information to the RRB is contained in 20 CFR 209.2.

The RRB currently utilizes Form G–88p and G–88p (internet), *Employer's Supplemental Pension Report,* and Form G–88r, *Request for Information About New or Revised Employer Pension Plan,* to obtain the necessary information from railroad employers. One response is requested of each respondent. Completion is mandatory. The RRB proposes no changes to G–88P and G–88P (internet), and G–88R.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–88p	100	8	13
G–88p (Internet)	200	6	20
G–88R	10	8	1
Total	310		34

3. Title and purpose of information collection: Job Information Report, OMB 3220–0193.

The Railroad Retirement Board (RRB) occupational disability standards allow the RRB to request job information from railroad employers to determine an applicant's eligibility for an occupational disability.

To determine an occupational disability, the RRB must obtain the

employee's work history and establish if the employee is precluded from performing his or her regular railroad occupation. This is accomplished by comparing the restrictions caused by the impairment(s) against the employee's ability to perform his or her job duties.

To collect the information needed to determine the effect of a disability on an employee applicant's ability to work, the RRB utilizes Form G–251, *Vocational Report* (OMB 3220–0141) which is completed by the applicant.

Form G–251A, Railroad Job Information, requests railroad employers to provide information regarding whether the employee has been medically disqualified from their railroad occupation; a summary of the employee's duties; the machinery, tools and equipment used by the employee; the environmental conditions under which the employee performs their duties; all sensory requirements (vision, hearing, speech) needed to perform the employee's duties; the physical actions and amount of time (frequency) allotted for those actions that may be required by the employee to perform their duties during a typical work day; any permanent working accommodations an employer may have made due to the employee's disability; as well as any other relevant information they may choose to include. Completion is voluntary. The RRB proposes no changes to Form G–251A.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–251A	436	60	436

4. Title and purpose of information collection: Self-Employment/Corporate Officer Work and Earnings Monitoring; OMB 3220–0202.

Section 2 of the Railroad Retirement Act (RRA) (45 U.S.C. 231) provides for the payment of disability annuities to qualified employees. Section 2 also provides that if the Railroad Retirement Board (RRB) receives a report of an annuitant working for a railroad or earning more than prescribed dollar amounts from either nonrailroad employment or self-employment, the annuity is no longer payable, or can be reduced, for the months worked. The regulations related to the nonpayment or reduction of the annuity by reason of work are prescribed in 20 CFR 220.160–164.

Some activities claimed by the applicant as ''self-employment'' may actually be employment for someone else (*e.g.,* training officer, consultant, salesman). 20 CFR 216.22(c) states, for example, that an applicant is considered an employee, and not self-employed, when acting as a corporate officer, since the corporation is the applicant's employer. Whether the RRB classifies a particular activity as self-employment or as work for an employer depends upon the circumstances in each case. The circumstances are prescribed in 20 CFR 216.21–216–23.

Certain types of work may actually indicate an annuitant's recovery from disability. Regulations related to an annuitant's recovery from disability for work are prescribed in 20 CFR 220.17–220–20.

In addition, the RRB conducts continuing disability reviews (also known as a CDR), to determine whether the annuitant continues to meet the disability requirements of the law. Payment of disability benefits and/or a beneficiary's period of disability will end if medical evidence or other information shows that an annuitant is not disabled under the standards prescribed in Section 2 of the RRA. Continuing disability reviews are generally conducted if one or more of the following conditions are met: (1) the annuitant is scheduled for a routine periodic review, (2) the annuitant returns to work and successfully completes a trial work period, (3) substantial earnings are posted to the annuitant's wage record, or (4) information is received from the annuitant or a reliable source that the annuitant has recovered or returned to work. Provisions relating to when and how often the RRB conducts disability reviews are prescribed in 20 CFR 220.186.

To enhance program integrity activities, the RRB utilizes Form G–252, *Self-Employment/Corporate Officer Work and Earnings Monitoring.* Form G–252 obtains information from a disability annuitant who either claims to be self-employed or a corporate officer, or who the RRB determines to be self-employed or a corporate officer after a continuing disability review. The continuing disability review may be prompted by a report of work, return to railroad service, an allegation of a medical improvement or a routine disability review call-up. The information gathered is used to determine entitlement and/or continued entitlement to, and the amount of, the disability annuity, as prescribed in 20 CFR 220.176. Completion is required to retain benefits. One response is required of each respondent. The RRB proposes no changes to Form G–252.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–252	15	20	5
Total	15		5

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Kennisha Money at (312) 469–2591 or *Kennisha.Money@rrb.gov.* Comments regarding the information collection should be addressed to Brian Foster, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–1275 or emailed to *Brian.Foster@rrb.gov.* Written comments should be received within 60 days of this notice.

Brian Foster,

Clearance Officer.

[FR Doc. 2024–00514 Filed 1–11–24; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99296; File No. SR–NYSEAMER–2023–67]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend the NYSE American Equities Price List

January 8, 2024.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 29, 2023, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the NYSE American Equities Price List (the ''Price List'') with respect to the system processing fee for use of the Central Registration Depository (''CRD'' or ''CRD system'') collected by the Financial Industry Regulatory Authority, Inc. (''FINRA''). The Exchange proposes to implement the fee change on January 2, 2024. The Exchange proposes to implement the fee change on January 2, 2024. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to amend the Price List with respect to the system processing fee for use of CRD collected by FINRA.[4] The Exchange proposes to implement the fee change effective January 2, 2024.

FINRA collects and retains certain regulatory fees via CRD for the registration of associated persons of Exchange member organizations that are not FINRA members (''Non-FINRA Member Organizations'').[5] CRD fees are user-based, and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA Member Organization.

In 2020, FINRA amended certain fees assessed for use of the CRD system for implementation between 2022 and 2024.[6] The Exchange accordingly proposes to amend the Price List to mirror the system processing fee assessed by FINRA, which will be implemented concurrently with the amended FINRA fee as of January 2024.[7] Specifically, the Exchange proposes to amend the Price List to modify the system processing fee charged to Non-FINRA Member Organizations for each registered representative and principal from $45 to $70.[8]

The Exchange notes that the proposed change is not otherwise intended to address any other issues surrounding regulatory fees, and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[9] in general, and furthers the objectives of section 6(b)(4) [10] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges. The Exchange also believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[11] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed fee change is reasonable because the fee will be identical to that adopted by FINRA as of January 2024 for use of the CRD system for each of the member's registered representatives and principals for system processing. The costs of operating and improving the CRD system are similarly borne by FINRA when a Non-FINRA Member Organization uses the CRD system;

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

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

[3] 17 CFR 240.19b–4.

[4] CRD is the central licensing and registration system for the U.S. securities industry. The CRD system enables individuals and firms seeking registration with multiple states and self-regulatory organizations to do so by submitting a single form, fingerprint card, and a combined payment of fees to FINRA. Through the CRD system, FINRA maintains the qualification, employment, and disciplinary histories of registered associated persons of broker-dealers.

[5] The Exchange originally adopted fees for use of the CRD system in 2003 and amended those fees in 2013, 2022 and 2023. *See* Securities Exchange Act Release Nos. 48066 (June 19, 2003), 68 FR 38409 (June 27, 2003) (SR–Amex–2003–49); 68630 (January 11, 2013), 78 FR 6152 (January 29, 2013) (SR–NYSEMKT–2013–01); 93902 (January 5, 2022), 87 FR 1461 (January 11, 2022) (SR–NYSEAMER–2021–47); and 96711 (January 19, 2023), 88 FR 4872 (January 25, 2023) (SR–NYSEAMER–2023–06). While the Exchange lists these fees in its Price List, it does not collect or retain these fees.

[6] *See* Securities Exchange Act Release No. 90176 (October 14, 2020), 85 FR 66592 (October 20, 2020) (SR–FINRA–2020–032).

[7] The Exchange notes that it has only adopted the CRD system fees charged by FINRA to Non-FINRA Member Organizations when such fees are applicable. In this regard, certain FINRA CRD system fees and requirements are specific to FINRA members, but do not apply to NYSE-only member organizations. Non-FINRA Member Organizations have been charged CRD system fees since 2001. *See* note 4, *supra.* Member organizations that are also FINRA members are charged CRD system fees according to Section 4 of Schedule A to the FINRA By-Laws.

[8] *See* Section (4)(b)(7) of Schedule A to the FINRA By-laws.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78f(b)(5).

accordingly, the fees collected for such use should, as proposed by the Exchange, mirror the fees assessed to FINRA members. In addition, as FINRA noted in amending its fees, it believes that its proposed pricing structure is reasonable and correlates fees with the components that drive its regulatory costs to the extent feasible. The Exchange further believes that the change is reasonable because it will provide greater specificity regarding the CRD system fees that are applicable to Non-FINRA Member Organizations. All similarly situated member organizations are subject to the same fee structure, and every member organization must use the CRD system for registration and disclosure. Accordingly, the Exchange believes that the fees collected for such use should likewise increase in lockstep with the fees assessed to FINRA members, as proposed by the Exchange.

The Exchange further believes that the proposed fee change provides for the equitable allocation of reasonable fees and other charges, and does not unfairly discriminate between customers, issuers, brokers, and dealers. The fee applies equally to all individuals and firms required to report information the CRD system, and the proposed change will result in the same regulatory fees being charged to all member organizations required to report information to CRD and for services performed by FINRA regardless of whether such member organizations are FINRA members. Accordingly, the Exchange believes that the fee collected for such use should increase in lockstep with the fee adopted by FINRA as of January 2024, as proposed by the Exchange.

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

In accordance with section 6(b)(8) of the Act,[12] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that the proposed change will reflect a fee that will be assessed by FINRA as of January 2024 and will thus result in the same regulatory fee being charged to all member organizations required to report information to the CRD system and for services performed by FINRA, regardless of whether or not such member organizations are FINRA members.

[12] *See* 15 U.S.C. 78f(b)(8).

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

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

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

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)[13] of the Act and paragraph (f) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

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

Electronic Comments

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

• Send an email to *rule-comments@sec.gov*. Please include file number SR–NYSEAMER–2023–67 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–NYSEAMER–2023–67. 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–NYSEAMER–2023–67 and should be submitted on or before February 2, 2024.

[13] 15 U.S.C. 78s(b)(3)(A).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–00500 Filed 1–11–24; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99283; File No. SR–CboeBZX–2023–038]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of Amendment No. 2 to a Proposed Rule Change To List and Trade Shares of the Invesco Galaxy Bitcoin ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

January 8, 2024.

On June 30, 2023, Cboe BZX Exchange, Inc. (''BZX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Invesco Galaxy Bitcoin ETF (''Trust'') under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. On July 11, 2023, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal**

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

[2] 17 CFR 240.19b–4.

Register on July 19, 2023.[3] On August 31, 2023, pursuant to section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, as modified by Amendment No. 1.[5] On September 18, 2003, the Commission instituted proceedings to determine whether to disapprove the proposed rule change, as modified by Amendment No. 1.[6] On January 5, 2024, the Exchange filed Amendment No. 2 to the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment No. 2 amended and replaced the proposed rule change, as modified by Amendment No. 1, in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 2, from interested persons.

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

Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change to list and trade shares of the Invesco Galaxy Bitcoin ETF (the ''Trust''),[7] under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, 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

This Amendment No. 2 to SR–CboeBZX–2023–038 amends and replaces in its entirety the proposal as originally submitted on June 30, 2023, and as amended by Amendment No. 1 on July 11, 2023. The Exchange submits this Amendment No. 2 in order to clarify certain points and add additional details to the proposal.

The Exchange proposes to list and trade the Shares under BZX Rule 14.11(e)(4),[8] which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.[9] Invesco Capital Management LLC is the sponsor of the Trust (''Sponsor''). The Shares will be registered with the Commission by means of the Trust's registration statement on Form S–1 (the ''Registration Statement'').[10]

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[3] *See* Securities Exchange Act Release No. 97900 (July 13, 2023), 88 FR 46235. Comments on the proposed rule change are available at: *https://www.sec.gov/comments/sr-cboebzx-2023-038/srcboebzx2023038.htm.*

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

[5] *See* Securities Exchange Act Release No. 98266, 88 FR 61658 (Sept. 7, 2023).

[6] *See* Securities Exchange Act Release No. 98613, 88 FR 68849 (Oct. 4, 2023).

[7] The Trust was formed as a Delaware statutory trust on December 17, 2020 and is operated as a grantor trust for U.S. federal tax purposes. The Trust has no fixed termination date.

[8] The Commission approved BZX Rule 14.11(e)(4) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[9] Any of the statements or representations regarding the index composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, intraday indicative values, and, or the applicability of Exchange listing rules specified in this filing to list a series of Other Securities (collectively, ''Continued Listing Representations'') shall constitute continued listing requirements for the Shares listed on the Exchange.

[10] *See* Pre-Effective Amendment No. 4 to Form S–1 Registration Statement filed on December 29, 2023 (Registration No. 333–255175). The Registration Statement is not yet effective and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

As further discussed below, the Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts, including spot-based Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.[11] Prior orders from the Commission have pointed out that in every prior approval order for Commodity-Based Trust Shares,[12] there has been a derivatives market that represents the regulated market of significant size, generally a Commodity Futures Trading Commission (the ''CFTC'') regulated futures market.[13] Further to this point, the Commission's prior orders have noted that the spot commodities and currency markets for which it has previously approved spot exchange-traded products (''ETPs'') are generally unregulated and that the Commission relied on the underlying futures market as the regulated market of significant size that formed the basis for approving the series of Currency[14] and Commodity-Based Trust Shares, including gold, silver, platinum, palladium, copper, and other commodities and currencies. The Commission specifically noted in the Winklevoss Order that the First Gold Approval Order ''was based on an assumption that the currency market and the spot gold market were largely unregulated.''[15]

As such, the regulated market of significant size test does not require that the spot bitcoin market be regulated in order for the Commission to approve this proposal, and precedent makes clear that an underlying market for a spot commodity or currency being a regulated market would actually be an exception to the norm. These largely unregulated currency and commodity markets do not provide the same protections as the markets that are subject to the Commission's oversight, but the Commission has consistently looked to surveillance sharing agreements with the underlying futures market in order to determine whether such products were consistent with the Act. With this in mind, the Chicago Mercantile Exchange (''CME'') bitcoin futures (''Bitcoin Futures'') market is the proper market to consider in determining whether there is a related regulated market of significant size.

Further to this point, the Exchange notes that the Commission has approved proposals related to the listing and

[11] *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018). This proposal was subsequently disapproved by the Commission. *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the ''Winklevoss Order'').

[12] *See* Exchange Rule 14.11(f)(1).

[13] *See* streetTRACKS Gold Shares, Exchange Act Release No. 50603 (Oct. 28, 2004), 69 FR 64614, 64618–19 (Nov. 5, 2004) (SR–NYSE–2004–22) (the ''First Gold Approval Order''); iShares COMEX Gold Trust, Exchange Act Release No. 51058 (Jan. 19, 2005), 70 FR 3749, 3751, 3754–55 (Jan. 26, 2005) (SR–Amex–2004–38); iShares Silver Trust, Exchange Act Release No. 53521 (Mar. 20, 2006), 71 FR 14967, 14968, 14973–74 (Mar. 24, 2006) (SR–Amex–2005–072); ETFS Gold Trust, Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993, 22994–95, 22998, 23000 (May 15, 2009) (SR–NYSEArca–2009–40); ETFS Silver Trust, Exchange Act Release No. 59781 (Apr. 17, 2009), 74 FR 18771, 18772, 18775–77 (Apr. 24, 2009) (SR–NYSEArca–2009–28); ETFS Palladium Trust, Exchange Act Release No. 61220 (Dec. 22, 2009), 74 FR 68895, 68896 (Dec. 29, 2009) (SR–NYSEArca–2009–94) (notice of proposed rule change included NYSE Arca's representation that ''[t]he most significant palladium futures exchanges are the NYMEX and the Tokyo Commodity Exchange,'' that ''NYMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which NYMEX is a member, Exchange Act Release No. 60971 (Nov. 9, 2009), 74 FR 59283, 59285–86, 59291 (Nov. 17, 2009)); ETFS Platinum Trust, Exchange Act Release No. 61219 (Dec. 22, 2009), 74 FR 68886, 68887–88 (Dec. 29, 2009) (SR–NYSEArca–2009–95) (notice of proposed rule change included NYSE Arca's representation that ''[t]he most significant platinum futures exchanges are the NYMEX and the Tokyo Commodity Exchange,'' that ''NYMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which NYMEX is a member, Exchange Act Release No. 60970 (Nov. 9, 2009), 74 FR 59319, 59321, 59327 (Nov. 17, 2009)); Sprott Physical Gold Trust, Exchange Act Release No. 61496 (Feb. 4, 2010), 75 FR 6758, 6760 (Feb. 10, 2010) (SR–NYSEArca–2009–113) (notice of proposed rule change included NYSE Arca's representation that the COMEX is one of the ''major world gold markets,'' that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' and that NYMEX, of which COMEX is a division, is a member of the Intermarket Surveillance Group, Exchange Act Release No. 61236 (Dec. 23, 2009), 75 FR 170, 171, 174 (Jan. 4, 2010)); Sprott Physical Silver Trust, Exchange Act Release No. 63043 (Oct. 5, 2010), 75 FR 62615, 62616, 62619, 62621 (Oct. 12, 2010) (SR–NYSEArca–2010–84); ETFS Precious Metals Basket Trust, Exchange Act Release No. 62692 (Aug. 11, 2010), 75 FR 50789, 50790 (Aug. 17, 2010) (SR–NYSEArca–2010–56) (notice of proposed rule change included NYSE Arca's representation that ''the most significant gold, silver, platinum and palladium futures exchanges are the COMEX and the TOCOM'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 62402 (Jun. 29, 2010), 75 FR 39292, 39295, 39298 (July 8, 2010)); ETFS White Metals Basket Trust, Exchange Act Release No. 62875 (Sept. 9, 2010), 75 FR 56156, 56158 (Sept. 15, 2010) (SR–NYSEArca–2010–71) (notice of proposed rule change included NYSE Arca's representation that ''the most significant silver, platinum and palladium futures exchanges are the COMEX and the TOCOM'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 62620 (July 30, 2010), 75 FR 47655, 47657, 47660 (Aug. 6, 2010)); ETFS Asian Gold Trust, Exchange Act Release No. 63464 (Dec. 8, 2010), 75 FR 77926, 77928 (Dec. 14, 2010) (SR–NYSEArca–2010–95) (notice of proposed rule change included NYSE Arca's representation that ''the most significant gold futures exchanges are the COMEX and the Tokyo Commodity Exchange,'' that ''COMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 63267 (Nov. 8, 2010), 75 FR 69494, 69496, 69500–01 (Nov. 12, 2010)); Sprott Physical Platinum and Palladium Trust, Exchange Act Release No. 68430 (Dec. 13, 2012), 77 FR 75239, 75240–41 (Dec. 19, 2012) (SR–NYSEArca–2012–111) (notice of proposed rule change included NYSE Arca's representation that ''[f]utures on platinum and palladium are traded on two major exchanges: The New York Mercantile Exchange . . . and Tokyo Commodities Exchange'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 68101 (Oct. 24, 2012), 77 FR 65732, 65733, 65739 (Oct. 30, 2012)); APMEX Physical—1 oz. Gold Redeemable Trust, Exchange Act Release No. 66930 (May 7, 2012), 77 FR 27817, 27818 (May 11, 2012) (SR–NYSEArca–2012–18) (notice of proposed rule change included NYSE Arca's representation that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the ''major world gold markets,'' Exchange Act Release No. 66627 (Mar. 20, 2012), 77 FR 17539, 17542–43, 17547 (Mar. 26, 2012)); JPM XF Physical Copper Trust, Exchange Act Release No. 68440 (Dec. 14, 2012), 77 FR 75468, 75469–70, 75472, 75485–86 (Dec. 20, 2012) (SR–NYSEArca–2012–28); iShares Copper Trust, Exchange Act Release No. 68973 (Feb. 22, 2013), 78 FR 13726, 13727, 13729–30, 13739–40 (Feb. 28, 2013) (SR–NYSEArca–2012–66); First Trust Gold Trust, Exchange Act Release No. 70195 (Aug. 14, 2013), 78 FR 51239, 51240 (Aug. 20, 2013) (SR–NYSEArca–2013–61) (notice of proposed rule change included NYSE Arca's representation that FINRA, on behalf of the exchange, may obtain trading information regarding gold futures and options on gold futures from members of the Intermarket Surveillance Group, including COMEX, or from markets ''with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement,'' and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the ''major world gold markets,'' Exchange Act Release No. 69847 (June 25, 2013), 78 FR 39399, 39400, 39405 (July 1, 2013)); Merk Gold Trust, Exchange Act Release No. 71378 (Jan. 23, 2014), 79 FR 4786, 4786–87 (Jan. 29, 2014) (SR–NYSEArca–2013–137) (notice of proposed rule change included NYSE Arca's representation that ''COMEX is the largest gold futures and options exchange'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' including with respect to transactions occurring on COMEX pursuant to CME and NYMEX's membership, or from exchanges ''with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement,'' Exchange Act Release No. 71038 (Dec. 11, 2013), 78 FR 76367, 76369, 76374 (Dec. 17, 2013)); Long Dollar Gold Trust, Exchange Act Release No. 79518 (Dec. 9, 2016), 81 FR 90876, 90881, 90886, 90888 (Dec. 15, 2016) (SR–NYSEArca–2016–84).

[14] *See* Exchange Rule 14.11(e)(5).

[15] *See* Winklevoss Order at 37592.

trading of funds that would primarily hold CME Bitcoin Futures that are registered under the Securities Act of 1933.[16] In the Teucrium Approval, the Commission found the CME Bitcoin Futures market to be a regulated market of significant size as it relates to CME Bitcoin Futures, an odd tautological truth that is also inconsistent with prior disapproval orders for ETPs that would hold actual bitcoin instead of derivatives contracts (''Spot Bitcoin ETPs'') that use the exact same pricing methodology as the CME Bitcoin Futures. As further discussed below, both the Exchange and the Sponsor believe that this proposal and the included analysis are sufficient to establish that the CME Bitcoin Futures market represents a regulated market of significant size as it relates both to the CME Bitcoin Futures market and to the spot bitcoin market and that this proposal should be approved.

Finally, as discussed in greater detail below, by using professional custodians and other service providers, the Trust provides investors interested in exposure to bitcoin with important protections that are not always available to investors that invest directly in bitcoin, including protection against insolvency, cyber attacks, and other risks. If U.S. investors had access to vehicles such as the Trust for their bitcoin investments, instead of directing their bitcoin investments into loosely regulated offshore vehicles (such as loosely regulated centralized trading platforms that have since faced bankruptcy proceedings or other insolvencies), then countless investors would have protected their principal investments in bitcoin and thus benefited.

Background

Bitcoin is a digital asset based on the decentralized, open source protocol of the peer-to-peer computer network launched in 2009 that governs the creation, movement, and ownership of bitcoin and hosts the public ledger, or ''blockchain,'' on which all bitcoin transactions are recorded (the ''Bitcoin Network'' or ''Bitcoin''). The decentralized nature of the Bitcoin Network allows parties to transact directly with one another based on cryptographic proof instead of relying on a trusted third party. The protocol also lays out the rate of issuance of new bitcoin within the Bitcoin Network, a rate that is reduced by half approximately every four years with an eventual hard cap of 21 million. It's generally understood that the combination of these two features—a systemic hard cap of 21 million bitcoin and the ability to transact trustlessly with anyone connected to the Bitcoin Network—gives bitcoin its value. The first rule filing proposing to list an ETP to provide exposure to bitcoin in the U.S. was submitted by the Exchange on June 30, 2016.[17] At that time, blockchain technology, and digital assets that utilized it, were relatively new to the broader public. The market cap of all bitcoin in existence at that time was approximately $10 billion. No registered offering of digital asset securities or shares in an investment vehicle with exposure to bitcoin or any other cryptocurrency had yet been conducted, and the regulated infrastructure for conducting a digital asset securities offering had not begun to develop.[18] Similarly, regulated U.S. Bitcoin Futures contracts did not exist. The CFTC had determined that bitcoin is a commodity,[19] but had not engaged in significant enforcement actions in the space. The New York Department of Financial Services (''NYDFS'') adopted its final ''BitLicense'' regulatory framework in 2015, but had only approved four entities to engage in activities relating to virtual currencies (whether through granting a BitLicense or a limited-purpose trust charter) as of June 30, 2016.[20] While the first over-the-counter bitcoin fund launched in 2013, public trading was limited and the fund had only $60 million in assets.[21] There were very few, if any, traditional financial institutions engaged in the space, whether through investment or providing services to digital asset companies. In January 2018, the staff of the Commission noted in a letter to the Investment Company Institute (''ICI'') and Securities Industry and Financial Markets Association (''SIFMA'') that it was not aware, at that time, of a single custodian providing fund custodial services for digital assets.[22] Fast forward to today and the digital assets financial ecosystem, including bitcoin, has progressed significantly. The development of a regulated market for digital asset securities has significantly evolved, with market participants having conducted registered public offerings of both digital asset securities [23] and shares in investment vehicles holding Bitcoin Futures.[24] Additionally, licensed and regulated service providers have emerged to provide fund custodial services for digital assets, among other services, including the Custodian.[25] For example, in February 2023, the Commission proposed to amend Rule 206(4)–2 under the Advisers Act of 1940 (the ''custody rule'') to expand the scope beyond client funds and securities to include all crypto assets, among other assets; [26] in May 2021, the staff of the Commission released a statement permitting open-end mutual funds to invest in cash-settled Bitcoin Futures; in December 2020, the Commission adopted a conditional no-action position permitting certain special purpose broker-dealers to custody digital asset securities under Rule 15c3–3 under the Exchange Act (the ''Custody Statement''); [27] in September 2020, the

[16] *See* Exchange Act Release No. 94620 (April 6, 2022), 87 FR 21676 (April 12, 2022) (the ''Teucrium Approval'') and 94853 (May 5, 2022) (collectively, with the Teucrium Approval, the ''Bitcoin Futures Approvals'').

[17] *See* Winklevoss Order.

[18] Digital assets that are securities under U.S. law are referred to throughout this proposal as ''digital asset securities.'' All other digital assets, including bitcoin, are referred to interchangeably as ''cryptocurrencies'' or ''virtual currencies.'' The term ''digital assets'' refers to all digital assets, including both digital asset securities and cryptocurrencies, together.

[19] *See* ''In the Matter of Coinflip, Inc.'' (''Coinflip'') (CFTC Docket 15–29 (September 17, 2015)) (order instituting proceedings pursuant to sections 6(c) and 6(d) of the CEA, making findings and imposing remedial sanctions), in which the CFTC stated: ''Section 1a(9) of the CEA defines 'commodity' to include, among other things, 'all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.' 7 U.S.C. 1a(9). The definition of a 'commodity' is broad. *See, e.g., Board of Trade of City of Chicago* v. *SEC,* 677 F. 2d 1137, 1142 (7th Cir. 1982). bitcoin and other virtual currencies are encompassed in the definition and properly defined as commodities.''

[20] A list of virtual currency businesses that are entities regulated by the NYDFS is available on the NYDFS website. *See https://www.dfs.ny.gov/apps_and_licensing/virtual_currency_businesses/regulated_entities.*

[21] Data as of March 31, 2016 according to publicly available filings. *See* bitcoin Investment Trust Form S–1, dated May 27, 2016, available: *https://www.sec.gov/Archives/edgar/data/1588489/000095012316017801/filename1.htm.*

[22] *See* letter from Dalia Blass, Director, Division of Investment Management, U.S. Securities and Exchange Commission to Paul Schott Stevens, President & CEO, Investment Company Institute and Timothy W. Cameron, Asset Management Group—Head, Securities Industry and Financial Markets Association (January 18, 2018), *available at https://www.sec.gov/divisions/investment/noaction/2018/cryptocurrency-011818.htm.*

[23] *See* Prospectus supplement filed pursuant to Rule 424(b)(1) for INX Tokens (Registration No. 333–233363), *available at: https://www.sec.gov/Archives/edgar/data/1725882/000121390020023202/ea125858-424b1_inxlimited.htm.*

[24] *See* Prospectus filed by Stone Ridge Trust VI on behalf of NYDIG bitcoin Strategy Fund Registration, *available at: https://www.sec.gov/Archives/edgar/data/1764894/000119312519309942/d693146d497.htm.*

[25] The ''Custodian'' is Coinbase Trust Company, LLC.

[26] *See* Investment Advisers Act Release No. 6240 88 FR 14672 (March 9, 2023) (Safeguarding Advisory Client Assets).

[27] *See* Securities Exchange Act Release No. 90788, 86 FR 11627 (February 26, 2021) (File Number S7–25–20) (Custody of Digital Asset Securities by Special Purpose Broker-Dealers).

staff of the Commission released a no-action letter permitting certain broker-dealers to operate a non-custodial Alternative Trading System (''ATS'') for digital asset securities, subject to specified conditions; [28] in October 2019, the staff of the Commission granted temporary relief from the clearing agency registration requirement to an entity seeking to establish a securities clearance and settlement system based on distributed ledger technology,[29] and multiple transfer agents who provide services for digital asset securities registered with the Commission.[30]

Outside the Commission's purview, the regulatory landscape has changed significantly since 2016, and cryptocurrency markets have grown and evolved as well. The market for bitcoin is approximately 100 times larger, having at one point reached a market cap of over $1 trillion.[31] According to the CME Bitcoin Futures Report, from February 13, 2023 through March 27, 2023, CFTC regulated Bitcoin Futures represented between $750 million and $3.2 billion in notional trading volume on the CME Bitcoin Futures market on a daily basis.[32] Open interest was over $1.4 billion for the entirety of the period and at one point was over $2 billion. ETPs that primarily hold CME Bitcoin Futures have raised over $1 billion dollars in assets. The CFTC has exercised its regulatory jurisdiction in bringing a number of enforcement actions related to bitcoin and against trading platforms that offer cryptocurrency trading.[33] As of February 14, 2023 the NYDFS has granted no fewer than thirty-four BitLicenses,[34] including to established public payment companies like PayPal Holdings, Inc. and Square, Inc., and limited purpose trust charters to entities providing cryptocurrency custody services. In addition, the Treasury's Office of Foreign Assets Control (''OFAC'') has brought enforcement actions over apparent violations of the sanctions laws in connection with the provision of wallet management services for digital assets.[35]

In addition to the regulatory developments laid out above, more traditional financial market participants become more active in cryptocurrency: large insurance companies, asset managers, university endowments, pension funds, and even historically bitcoin skeptical fund managers have allocated to bitcoin. As noted in the Financial Stability Oversight Council (''FSOC'') Report on Digital Asset Financial Stability Risks and Regulation, ''[i]ndustry surveys suggest that the scale of these investments grew quickly during the boom in crypto-asset markets through late 2021. In June 2022, PwC estimated that the number of crypto-specialist hedge funds was more than 300 globally, with $4.1 billion in assets under management. In addition, in a survey PwC found that 38 percent of surveyed traditional hedge funds were currently investing in 'digital assets,' compared to 21 percent the year prior.'' [36] The largest over-the-counter bitcoin fund previously filed a Form 10 registration statement, which the staff of the Commission reviewed and which took effect automatically, and is now a reporting company.[37] Established companies like Tesla, Inc., MicroStrategy Incorporated, and Square, Inc., among others, have announced substantial investments in bitcoin in amounts as large as $1.5 billion (Tesla) and $425 million (MicroStrategy). The foregoing examples demonstrate that bitcoin has gained mainstream usage and recognition.

Despite these developments, access for U.S. retail investors to gain exposure to bitcoin via a transparent and U.S. regulated, U.S. exchange-traded vehicle remains limited. Instead current options include: (i) facing the counter-party risk, legal uncertainty, technical risk, and complexity associated with accessing spot bitcoin; (ii) over-the-counter bitcoin funds (''OTC Bitcoin Funds'') with high management fees and potentially volatile premiums and discounts; [38] (iii) purchasing shares of operating companies that they believe will provide proxy exposure to bitcoin with limited disclosure about the associated risks; [39] or (iv) purchasing

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[28] *See* letter from Elizabeth Baird, Deputy Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Kris Dailey, Vice President, Risk Oversight & Operational Regulation, Financial Industry Regulatory Authority (September 25, 2020), *available at: https://www.sec.gov/divisions/marketreg/mr-noaction/2020/finra-ats-role-in-settlement-of-digital-asset-security-trades-09252020.pdf.*

[29] *See* letter from Jeffrey S. Mooney, Associate Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Charles G. Cascarilla & Daniel M. Burstein, Paxos Trust Company, LLC (October 28, 2019), *available at: https://www.sec.gov/divisions/marketreg/mr-noaction/2019/paxos-trust-company-102819-17a.pdf.*

[30] *See, e.g.,* Form TA–1/A filed by Tokensoft Transfer Agent LLC (CIK: 0001794142) on January 8, 2021, *available at: https://www.sec.gov/Archives/edgar/data/1794142/000179414219000001/xslFTA1X01/primary_doc.xml.*

[31] As of December 1, 2021, the total market cap of all bitcoin in circulation was approximately $1.08 trillion.

[32] Data sourced from the CME Bitcoin Futures Report: 30 March, 2023, *available at: https://www.cmegroup.com/markets/cryptocurrencies/bitcoin/bitcoin.volume.htm.*

[33] The CFTC's annual report for Fiscal Year 2022 (which ended on September 30, 2022) noted that the CFTC completed the fiscal year with 18 enforcement filings related to digital assets. ''Digital asset actions included manipulation, a $1.7 billion fraudulent scheme, and a decentralized autonomous organization (DAO) failing to register as a SEF or FCM or to seek DCM designation.'' *See* CFTC FY 2022 Agency Financial Report, *available at: https://www.cftc.gov/media/7941/2022afr/download.* Additionally, the CFTC filed on March 27, 2023, a civil enforcement action against the owner/operators of the Binance centralized digital asset trading platform, which is one of the largest bitcoin derivative exchanges. *See* CFTC Release No. 8680–23 (March 27, 2023), *available at: https://www.cftc.gov/PressRoom/PressReleases/8680-23.*

[34] *See https://www.dfs.ny.gov/virtual_currency_businesses.*

[35] *See* U.S. Department of the Treasury Enforcement Release: ''OFAC Enters Into $98,830 Settlement with BitGo, Inc. for Apparent Violations of Multiple Sanctions Programs Related to Digital Currency Transactions'' (December 30, 2020) *available at: https://home.treasury.gov/system/files/126/20201230_bitgo.pdf. See also* U.S. Department of the Treasury Enforcement Release: ''Treasury Announces Two Enforcement Actions for over $24M and $29M Against Virtual Currency Exchange, Bittrex, Inc.'' (October 11, 2022) *available at: https://home.treasury.gov/news/press-releases/jy1006. See also* U.S. Department of Treasure Enforcement Release ''OFAC Settles with Virtual Currency Exchange Kraken for $362,158.70 Related to Apparent Violations of the Iranian Transactions and Sanctions Regulations'' (November 28, 2022) *available at: https://home.treasury.gov/system/files/126/20221128_kraken.pdf.*

[36] *See* the FSOC ''Report on Digital Asset Financial Stability Risks and Regulation 2022'' (October 3, 2022) (at footnote 26) at *https://home.treasury.gov/system/files/261/FSOC-Digital-Assets-Report-2022.pdf.*

[37] *See* Letter from Division of Corporation Finance, Office of Real Estate & Construction to Barry E. Silbert, Chief Executive Officer, Grayscale bitcoin Trust (January 31, 2020) *https://www.sec.gov/Archives/edgar/data/1588489/000000000020000953/filename1.pdf.*

[38] The premium and discount for OTC Bitcoin Funds is known to move rapidly. For example, over the period of 12/21/20 to 1/21/21, the premium for the largest OTC Bitcoin Fund went from 40.18% to 2.79%. While the price of bitcoin appreciated significantly during this period and NAV per share increased by 41.25%, the price per share increased by only 3.58%. This means that investors are buying shares of a fund that experiences significant volatility in its premium and discount outside of the fluctuations in price of the underlying asset. Even operating within the normal premium and discount range, it's possible for an investor to buy shares of an OTC Bitcoin Fund only to have those shares quickly lose 10% or more in dollar value excluding any movement of the price of bitcoin. That is to say—the price of bitcoin could have stayed exactly the same from market close on one day to market open the next, yet the value of the shares held by the investor decreased only because of the fluctuation of the premium. As more investment vehicles, including mutual funds and ETFs, seek to gain exposure to bitcoin, the easiest option for a buy and hold strategy for such vehicles is often an OTC Bitcoin Fund, meaning that even investors that do not directly buy OTC Bitcoin Funds can be disadvantaged by extreme premiums (or discounts) and premium volatility.

[39] A number of operating companies engaged in unrelated businesses—such as Tesla (a car manufacturer) and MicroStrategy (an enterprise software company)—have announced investments

Continued

Bitcoin Futures exchange-traded funds (''ETFs''), as defined below, which represent a sub-optimal structure for long-term investors that will cost them significant amounts of money every year compared to Spot Bitcoin ETPs, as further discussed below. Meanwhile, investors in many other countries, including Canada and Brazil, are able to use more traditional exchange listed and traded products (including ETFs holding physical bitcoin) to gain exposure to bitcoin. Similarly, investors in Switzerland and across Europe have access to Exchange Traded Products which trade on regulated exchanges and provide exposure to a broad array of spot crypto assets. U.S. investors, by contrast, are left with fewer and more risky means of getting bitcoin exposure, as described above.[40]

To this point, the lack of a Spot Bitcoin ETP exposes U.S. investor assets to significant risk because investors that would otherwise seek crypto asset exposure through a Spot Bitcoin ETP are forced to find alternative exposure through generally riskier means. For instance, many U.S. investors that held their digital assets in accounts at FTX,[41] Celsius Network LLC,[42] BlockFi Inc.[43] and Voyager Digital Holdings, Inc.[44] have become unsecured creditors in the insolvencies of those entities. If a Spot Bitcoin ETP was available, it is likely that at least a portion of the billions of dollars tied up in those proceedings would still reside in the brokerage accounts of U.S. investors, having instead been invested in a transparent, regulated, and well-understood structure—a Spot Bitcoin ETP. To this point, approval of a Spot Bitcoin ETP would represent a major win for the protection of U.S. investors in the crypto asset space. As further described below, the Trust, like all other series of Commodity-Based Trust Shares, is designed to protect investors against the risk of losses through fraud and insolvency that arise by holding digital assets, including bitcoin, on centralized platforms.

Additionally, investors in other countries, specifically Canada, generally pay lower fees than U.S. retail investors that invest in OTC Bitcoin Funds due to the fee pressure that results from increased competition among available bitcoin investment options. Without an approved and regulated Spot Bitcoin ETP in the U.S. as a viable alternative, U.S. investors could seek to purchase shares of non-U.S. bitcoin vehicles in order to get access to bitcoin exposure. Given the separate regulatory regime and the potential difficulties associated with any international litigation, such an arrangement would create more risk exposure for U.S. investors than they would otherwise have with a U.S. exchange listed ETP. In addition to the benefits to U.S. investors articulated throughout this proposal, approving this proposal (and others like it) would provide U.S. ETFs and mutual funds with a U.S.-listed and regulated product to provide such access rather than relying on either flawed products or products listed and primarily regulated in other countries.

Bitcoin Futures ETFs

The Exchange and Sponsor applaud the Commission for allowing the launch of ETFs registered under the Investment Company Act of 1940, as amended (the ''1940 Act'') and the Bitcoin Futures Approvals that provide exposure to bitcoin primarily through CME Bitcoin Futures (''Bitcoin Futures ETFs''). Allowing such products to list and trade is a productive first step in providing U.S. investors and traders with transparent, exchange-listed tools for expressing a view on bitcoin. The Bitcoin Futures Approvals, however, have created a logical inconsistency in the application of the standard the Commission applies when considering Bitcoin ETP proposals.

As discussed further below, the standard applicable to Bitcoin ETPs is whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size in the underlying asset. Previous disapproval orders have made clear that a market that constitutes a regulated market of significant size is generally a futures and/or options market based on the underlying reference asset rather than the spot commodity markets, which are often unregulated.[45] Leaving aside the analysis of that standard until later in this proposal,[46] the Exchange believes that the following rationale the Commission applied to a Bitcoin Futures ETF should result in the Commission approving this and other Spot Bitcoin ETP proposals:

> The CME ''comprehensively surveils futures market conditions and price movements on a real-time and ongoing basis in order to detect and prevent price distortions, including price distortions caused by manipulative efforts.'' Thus the CME's surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts, whether that attempt is made by directly trading on the CME bitcoin futures market or indirectly by trading outside of the CME bitcoin futures market. As such, when the CME shares its surveillance information with Arca, the information would assist in detecting and deterring fraudulent or manipulative misconduct related to the non-cash assets held by the proposed ETP.[47]

CME Bitcoin Futures pricing is based on pricing from spot bitcoin markets. The statement from the Teucrium Approval that ''CME's surveillance can reasonably be relied upon to capture the effects on the CME Bitcoin Futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME Bitcoin Futures contracts . . . indirectly by trading outside of the CME Bitcoin

as large as $5.3 billion in bitcoin. Without access to bitcoin exchange-traded products, retail investors seeking investment exposure to bitcoin may end up purchasing shares in these companies in order to gain the exposure to bitcoin that they seek. In fact, mainstream financial news networks have written a number of articles providing investors with guidance for obtaining bitcoin exposure through publicly traded companies (such as MicroStrategy, Tesla, and bitcoin mining companies, among others) instead of dealing with the complications associated with buying spot bitcoin in the absence of a bitcoin ETP. *See e.g.,* ''7 public companies with exposure to bitcoin'' (February 8, 2021) available at: *https://finance.yahoo.com/news/7-public-companies-with-exposure-to-bitcoin-154201525.html;* and ''Want to get in the crypto trade without holding bitcoin yourself? Here are some investing ideas'' (February 19, 2021) available at: *https://www.cnbc.com/2021/02/19/ways-to-invest-in-bitcoin-without-holding-the-cryptocurrency-yourself-.html.*

[40] The Exchange notes that the list of countries above is not exhaustive and that securities regulators in a number of additional countries have either approved or otherwise allowed the listing and trading of Spot Bitcoin ETPs.

[41] *See* FTX Trading Ltd., et al., Case No. 22–11068.

[42] *See* Celsius Network LLC, et al., Case No. 22–10964.

[43] *See* BlockFi Inc., Case No. 22–19361.

[44] *See* Voyager Digital Holdings, Inc., et al., Case No. 22–10943.

[45] *See* Winklevoss Order at 37593, specifically footnote 202, which includes the language from numerous approval orders for which the underlying futures markets formed the basis for approving series of ETPs that hold physical metals, including gold, silver, palladium, platinum, and precious metals more broadly; and 37600, specifically where the Commission provides that ''when the spot market is unregulated—the requirement of preventing fraudulent and manipulative acts may possibly be satisfied by showing that the ETP listing market has entered into a surveillance-sharing agreement with a regulated market of significant size in derivatives related to the underlying asset.'' As noted above, the Exchange believes that these citations are particularly helpful in making clear that the spot market for a spot commodity ETP need not be ''regulated'' in order for a spot commodity ETP to be approved by the Commission, and in fact that it's been the common historical practice of the Commission to rely on such derivatives markets as the regulated market of significant size because such spot commodities markets are largely unregulated.

[46] As further outlined below, both the Exchange and the Sponsor believe that the Bitcoin Futures market represents a regulated market of significant size and that this proposal and others like it should be approved on this basis.

[47] See Teucrium Approval at 21679.

Futures market,'' makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of CME Bitcoin Futures. This was further acknowledged in the ''Grayscale lawsuit'' [48] when Judge Rao stated ''. . . the Commission in the Teucrium order recognizes that the futures prices are influenced by the spot prices, and the Commission concludes in approving futures ETPs that any fraud on the spot market can be adequately addressed by the fact that the futures market is a regulated one . . .'' The Exchange agrees with the Commission on this point and notes that the pricing mechanism applicable to the Shares is similar to that of the CME Bitcoin Futures.

The structure of Bitcoin Futures ETFs provides negative outcomes for buy and hold investors as compared to a Spot Bitcoin ETP.[49] Specifically, the cost of rolling CME Bitcoin Futures contracts will cause the Bitcoin Futures ETFs to lag the performance of bitcoin itself and would cost U.S. investors significant amounts of money on an annual basis compared to Spot Bitcoin ETPs. Such rolling costs would not be required for Spot Bitcoin ETPs that hold bitcoin. Further, Bitcoin Futures ETFs could potentially hit CME position limits, which would force a Bitcoin Futures ETF to invest in non-futures assets for bitcoin exposure and cause potential investor confusion and lack of certainty about what such Bitcoin Futures ETFs are actually holding to try to get exposure to bitcoin, not to mention completely changing the risk profile associated with such an ETF. While Bitcoin Futures ETFs represent a useful trading tool, they are clearly a sub-optimal structure for U.S. investors that are looking for long-term exposure to bitcoin that will, based on the calculations above, unnecessarily cost U.S. investors significant amounts of money every year compared to Spot Bitcoin ETPs and the Exchange believes that any proposal to list and trade a Spot Bitcoin ETP should be reviewed by the Commission with this important investor protection context in mind.

Based on the foregoing, the Exchange and Sponsor believe that any objective review of the proposals to list Spot Bitcoin ETPs compared to the Bitcoin Futures ETFs and the Bitcoin Futures Approvals would lead to the conclusion that Spot Bitcoin ETPs should be available to U.S. investors and, as such, this proposal and other comparable proposals to list and trade Spot Bitcoin ETPs should be approved by the Commission. Stated simply, U.S. investors will continue to lose significant amounts of money from holding Bitcoin Futures ETFs as compared to Spot Bitcoin ETPs, losses which could be prevented by the Commission approving Spot Bitcoin ETPs. Additionally, any concerns related to preventing fraudulent and manipulative acts and practices related to Spot Bitcoin ETPs would apply equally to the spot markets underlying the futures contracts held by a Bitcoin Futures ETF. Both the Exchange and Sponsor believe that the CME Bitcoin Futures market is a regulated market of significant size and that such manipulation concerns are mitigated, as described extensively below. After allowing and approving the listing and trading of Bitcoin Futures ETFs that hold primarily CME Bitcoin Futures, however, the only consistent outcome would be approving Spot Bitcoin ETPs on the basis that the CME Bitcoin Futures market is a regulated market of significant size.

Given the current landscape, approving this proposal (and others like it) and allowing Spot Bitcoin ETPs to be listed and traded alongside Bitcoin Futures ETFs would establish a consistent regulatory approach, provide U.S. investors with choice in product structures for bitcoin exposure, and offer flexibility in the means of gaining exposure to bitcoin through transparent, regulated, U.S. exchange-listed vehicles.

Bitcoin Futures

CME began offering trading in Bitcoin Futures in 2017. Each contract represents five bitcoin and is based on the CME CF Bitcoin Reference Rate.[50] The contracts trade and settle like other cash-settled commodity futures contracts. Nearly every measurable metric related to Bitcoin Futures has generally trended up since launch, although certain notional volume calculations have decreased roughly in line with the decrease in the price of bitcoin. For example, there were 143,215 Bitcoin Futures contracts traded in April 2023 (approximately $20.7 billion) compared to 193,182 ($5 billion), 104,713 ($3.9 billion), 118,714 ($42.7 billion), and 111,964 ($23.2 billion) contracts traded in April 2019, April 2020, April 2021, and April 2022, respectively.[51]

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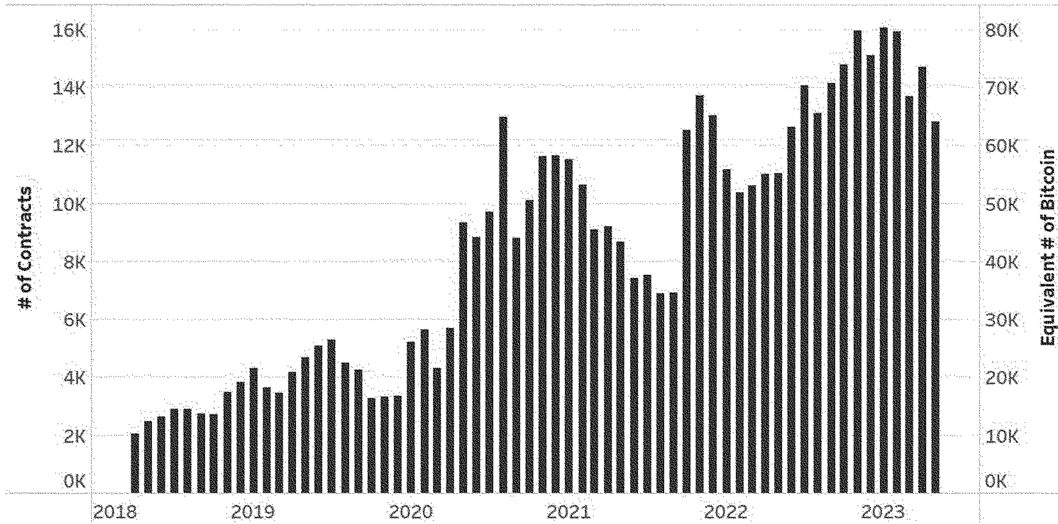
[50] The CME CF Bitcoin Reference Rate is based on a publicly available calculation methodology based on pricing sourced from several crypto trading platforms, including Bitstamp, Coinbase, Gemini, itBit, Kraken, and LMAX Digital.

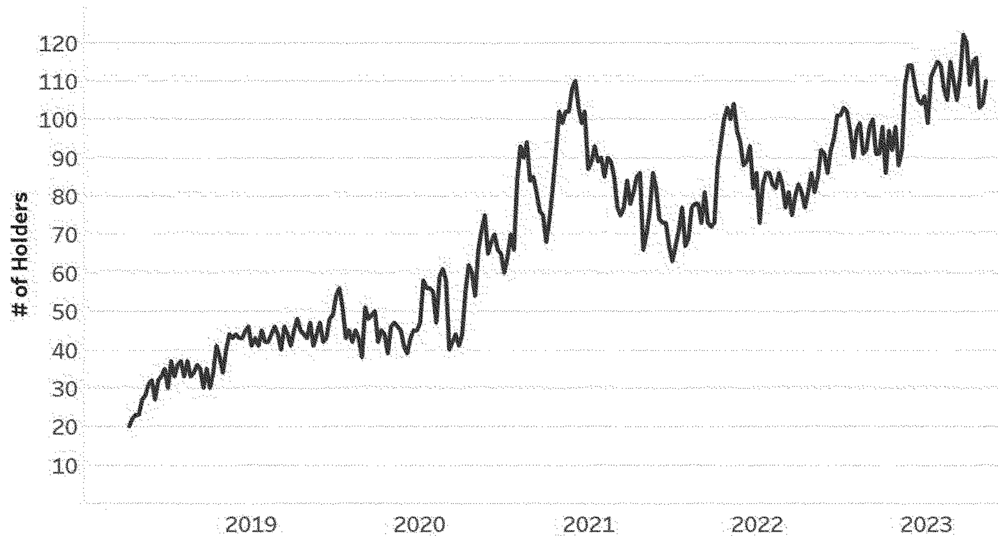
[51] Source: CME, Yahoo Finance 4/30/23.

[52] A large open interest holder in Bitcoin Futures is an entity that holds at least 25 contracts, which is the equivalent of 125 bitcoin. At a price of approximately $29,268.81 per bitcoin on 4/30/2023, more than 100 firms had outstanding positions of greater than $3.65 million in Bitcoin Futures.

[53] See Exchange Act Releases No. 94080 (January 27, 2022), 87 FR 5527 (April 12, 2022) (specifically ''Amendment No. 1 to the Proposed Rule Change

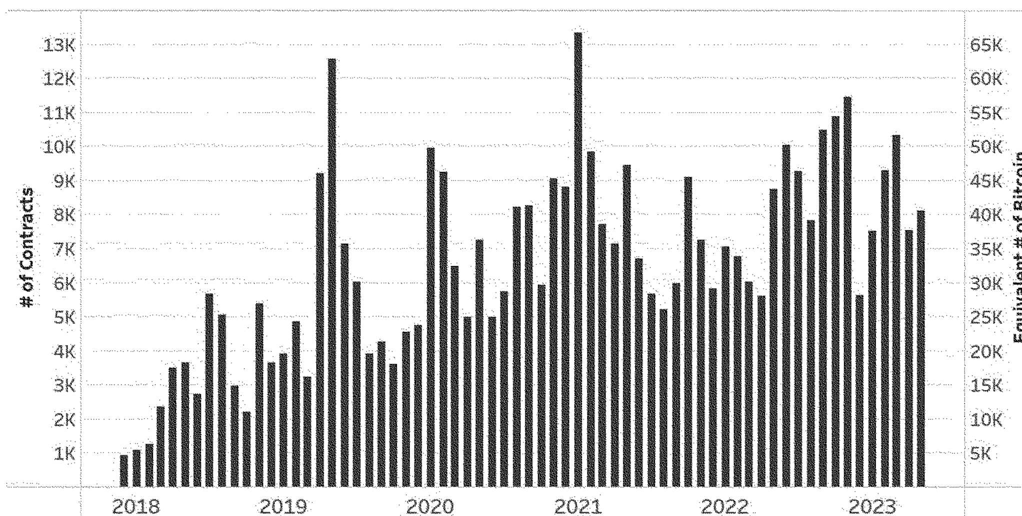


The number of large open interest holders [52] and unique accounts trading Bitcoin Futures have both increased, even in the face of heightened bitcoin price volatility.



[51] Source: CME, Yahoo Finance 4/30/23.

[52] A large open interest holder in Bitcoin Futures is an entity that holds at least 25 contracts, which is the equivalent of 125 bitcoin. At a price of approximately $29,268.81 per bitcoin on 4/30/2023, more than 100 firms had outstanding positions of greater than $3.65 million in Bitcoin Futures.



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The Sponsor further believes that publicly available research, including research done as part of rule filings proposing to list and trade shares of Spot Bitcoin ETPs, corroborates the overall trend outlined above and supports the thesis that the Bitcoin Futures pricing leads the spot market and, thus, a person attempting to manipulate the Shares would also have to trade on that market to manipulate the ETP. Specifically, the Sponsor believes that such research indicates that Bitcoin Futures lead the bitcoin spot market in price formation.[53]

Section 6(b)(5) and the Applicable Standards

The Commission has approved numerous series of Trust Issued Receipts,[54] including Commodity-Based Trust Shares,[55] to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; [56] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act and that this filing sufficiently demonstrates that the CME Bitcoin Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place [57] with a regulated

[53] See Exchange Act Releases No. 94080 (January 27, 2022), 87 FR 5527 (April 12, 2022) (specifically "Amendment No. 1 to the Proposed Rule Change To List and Trade Shares of the Wise Origin Bitcoin Trust Under BZX Rule 14.11(3)(4), Commodity-Based Trust Shares"); 94982 (May 25, 2022), 87 FR 33250 (June 1, 2022); 94844 (May 4, 2022), 87 FR 28043 (May 10, 2022); and 93445 (October 28, 2021), 86 FR 60695 (November 3, 2021). See also Hu, Y., Hou, Y. and Oxley, L. (2019). "What role do futures markets play in Bitcoin pricing? Causality, cointegration and price discovery from a time-varying perspective" (available at: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7481826/*). This academic research paper concludes that "There exist no episodes where the Bitcoin spot markets dominates the price discovery processes with regard to Bitcoin futures. This points to a conclusion that the price formation originates solely in the Bitcoin futures market. We can, therefore, conclude that the Bitcoin futures markets dominate the dynamic price discovery process based upon time-varying information share measures. Overall, price discovery seems to occur in the Bitcoin futures markets rather than the underlying spot market based upon a time-varying perspective."

[54] *See* Exchange Rule 14.11(f).

[55] Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

[56] As the Exchange has stated in a number of other public documents, it continues to believe that bitcoin is resistant to price manipulation and that "other means to prevent fraudulent and manipulative acts and practices" exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin. The fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging. To the extent that there are bitcoin trading platforms engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, such pricing does not normally impact prices on other trading platforms because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin trading platform or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

[57] As previously articulated by the Commission, "The standard requires such surveillance-sharing agreements since "they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur." The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance- sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or

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market of significant size. Both the Exchange and CME are members of the Intermarket Surveillance Group (''ISG'').[58] The only remaining issue to be addressed is whether the Bitcoin Futures market constitutes a market of significant size, which both the Exchange and the Sponsor believe that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[59]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying section 6(b)(5) of the act, specifically providing 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.[60]

(a) Manipulation of the ETP

According to the research and analysis presented above, the Bitcoin Futures market is the leading market for bitcoin price formation. Where Bitcoin Futures lead the price in the spot market such that a potential manipulator of the bitcoin spot market (beyond just the constituents of the Index[61]) would have to participate in the Bitcoin Futures market, it follows that a potential manipulator of the Shares would similarly have to transact in the Bitcoin Futures market because the Index is based on spot prices. As such, the Exchange believes that part (a) of the significant market test outlined above is satisfied and that common membership in ISG between the Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the Shares.

(b) Predominant Influence on Prices in Spot and Bitcoin Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices in the Bitcoin Futures market or spot market for a number of reasons, including the significant volume in the Bitcoin Futures market, the size of bitcoin's market cap, and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid.

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present.

(ii) Designed To Protect Investors and the Public Interest

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past several years, U.S. investor exposure to bitcoin through OTC Bitcoin Funds has grown into the tens of billions of dollars, including through Bitcoin Futures ETFs. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors through roll costs for Bitcoin Futures ETFs and premium/discount volatility and management fees for OTC Bitcoin Funds. The Exchange believes that the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, such concerns are now outweighed by investor protection concerns. As such, the Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to bitcoin in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks and costs associated with investing in Bitcoin Futures ETFs and operating companies that are imperfect proxies for bitcoin exposure; and (iv) providing an alternative to custodying spot bitcoin.

Invesco Galaxy Bitcoin ETF

Delaware Trust Company is the trustee (''Trustee''). The Bank of New York Mellon will be the administrator (''Administrator'') and transfer agent (''Transfer Agent''). As noted above, Coinbase Custody Trust Company, LLC, is the Custodian and will be responsible for custody of the Trust's bitcoin. The Bank of New York Mellon (the ''Cash Custodian'') will act as custodian of the Trust's cash and cash equivalents.[62]

According to the Registration Statement, each Share will represent a fractional undivided beneficial interest and ownership in the Trust. The Trust's assets will consist only of bitcoin, cash, and cash equivalents.

According to the Registration Statement, the Trust is neither an investment company registered under the Investment Company Act of 1940, as amended,[63] nor a commodity pool for purposes of the Commodity Exchange Act (''CEA''), and neither the Trust nor the Sponsor is subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the Shares.

When the Trust sells or redeems its Shares, it will do so in cash transactions in blocks of 5,000 Shares (a ''Creation Basket'') at the Trust's net asset value (''NAV''). Authorized participants will deliver, or facilitate the delivery of, cash to the Trust's account with the Cash Custodian (which will then be used to purchase bitcoin for the Trust) in exchange for Shares when they purchase Shares, and the Trust, through the Cash Custodian, will deliver cash to such authorized participants when they redeem Shares with the Trust. A third party will use cash to buy and deliver bitcoin to create Shares or withdraw and sell bitcoin for cash to redeem Shares, on behalf of the Trust. Authorized participants may then offer Shares to the public at prices that depend on various factors, including the supply and demand for Shares, the value of the Trust's assets, and market conditions at the time of a transaction. shareholders who buy or sell Shares during the day from their broker may do so at a

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practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.'' The Commission has historically held that joint membership in the Intermarket Surveillance Group (''ISG'') constitutes such a surveillance sharing agreement. *See* Securities Exchange Act Release No. 88284 (February 26, 2020), 85 FR 12595 (March 3, 2020) (SR–NYSEArca–2019–39) (the ''Wilshire Phoenix Disapproval'').

[58] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.*

[59] *See* Wilshire Phoenix Disapproval.

[60] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a 'cannot be manipulated' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.'' *Id.* at 37582.

[61] As further described below, the ''Index'' for the Fund is the Bloomberg Galaxy Bitcoin Index.

[62] Cash equivalents are short-term instruments with maturities of less than 3 months.

[63] 15 U.S.C. 80a–1.

premium or discount relative to the NAV of the Shares of the Trust.

Investment Objective

According to the Registration Statement and as further described below, the investment objective of the Trust is to reflect the performance as measured using Lukka Prime Bitcoin Reference Rate (the ''Index''), less the Trust's expenses and other liabilities. In seeking to achieve its investment objective, the Trust will hold only bitcoin, cash, and cash equivalents. The Trust will value its Shares daily based on the value of the Index as of 4:00 p.m. ET, which is calculated based on the fair market value price for bitcoin, reflecting the execution price of bitcoin on its principal market as determined by Lukka Inc., an independent third-party digital asset company (the ''Index Provider''). The Trust will process all creations and redemptions in cash transactions with authorized participants. The Trust is not actively managed.

The Index

As described in the Registration Statement, the Fund will use the Index to calculate the Trust's NAV. The Index is designed to provide an estimated fair market value for bitcoin. In determining the value of bitcoin, the Index Provider applies a five-step weighting process for identifying the principal trading platform for bitcoin and the last price on that trading platform. Currently, the Index includes the following trading platforms: Binance, Bitfinex, Bitflyer, Bitstamp, Coinbase Pro, Crypto.com, Gemini, HitBTC, Huobi, Kraken, KuCoin, OKEx and Poloniex. In identifying the principal trading platform for bitcoin, the Index Provider considers a variety of different criteria, including the trading platforms' oversight and governance frameworks, microstructure efficiency (*i.e.,* effective bid-ask spread), trading volume, data transparency and data integrity. A ''base exchange score'' (''BES'') that takes into account this criteria is assigned to each Index pricing source in order to select the most appropriate primary trading platform and then an executed trading platform price is determined at 4:00 p.m. ET., although the Index Provider performs this calculation every second each day.

Step 1: Assign each trading platform for bitcoin and U.S. Dollars a BES reflecting static trading platform characteristics such as oversight, microstructure and technology.

Step 2: Adjust the BES based on the relative monthly volume each trading platform services. This new score is the Volume Adjusted Score (''VAS'').

Step 3: Decay the adjusted score based on the time passed since last trade on trading platform, assessing the level of activity in the market by considering the frequency (volume) of trades. The decay factor reflects the time since the last trade on the trading platform. This is the final Decayed Volume Adjusted Score (''DVAS''), which reflects the freshness of data by tracking most recent trades.

Step 4: Rank the trading platforms by the DVAS score and designate the highest-ranking trading platform as the principal market for that point in time—the principal market is the trading platform with highest DVAS.

Step 5: An executed trading platform price is used to represent the fair market value at 4:00 p.m. ET.

Index data and the description of the Index are based on information made publicly available by the Index Provider on its website at *https://lukka.tech.*

Net Asset Value

The Trust's NAV is calculated by (1) taking the current market value of its bitcoin (calculated by the Index Provider) and any other assets; (2) subtracting any liabilities (including accrued by unpaid expenses); and (3) dividing that total by the total number of outstanding Shares. The Administrator calculates the NAV of the Trust on each day that the Exchange is open for regular trading, using the execution price of bitcoin on the principal market selected by the Index Provider as of 4:00 p.m. ET. However, NAVs are not officially struck until later in the day (often by 5:30 p.m. ET and almost always by 8:00 p.m. ET).

The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time.

In the event that the Index is unavailable or if the Sponsor or Administrator determines that the price provided by the Index does not reflect an accurate bitcoin price, the Sponsor's pricing team will evaluate the prices of other similar benchmarks in an effort to ensure that the Trust's NAV is determined based on consistent, accurate pricing that the Sponsor believes is reflective of the value of the Trust's bitcoin, and also a transparent index methodology and process. The pricing team will recommend the price to be used to the Sponsor's valuation committee who will then review the recommendation and approve it for use by the Trust if found appropriate.[64]

Availability of Information

In addition to the price transparency of the Index, the Trust will provide information regarding the Trust's bitcoin holdings as well as additional data regarding the Trust. The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price[65] in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The Trust will also disseminate its holdings on a daily basis on its website. The aforementioned information will be published as of the close of business available on the Sponsor's website at *www.invesco.com/etfs,* or any successor thereto.

The Intraday Indicative Value (''IIV'') will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the most recently reported price of bitcoin as reported by the Index Provider or another reporting service. The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV may differ from the NAV due to the differences in the time window of trades used to calculate each price. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours by one or more major market data vendors. In addition, the IIV will be available through the facilities of the consolidated tape association (CTA) and Consolidated Quotation System (CQS) high speed lines. In addition, the IIV will be available through on-line information services such as Bloomberg and Reuters.

The price of bitcoin will be made available by one or more major market

[64] Such alternative method will only be employed on an ad hoc basis. Any permanent change to the calculation of the NAV would require a proposed rule change under Rule 19b–4.

[65] As defined in Rule 11.23(a)(3), the term ''BZX Official Closing Price'' shall mean the price disseminated to the consolidated tape as the market center closing trade.

data vendors, updated at least every 15 seconds during Regular Trading Hours.

As noted above, the Index is designed to provide an estimated fair market value for bitcoin. Information about the Index and Index value, including key elements of how the Index is calculated, will be publicly available at *https://lukka.tech.*

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the trading platforms on which bitcoin are traded. Depth of book information is also available from bitcoin trading platforms. The normal trading hours for bitcoin trading 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. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA'').

The Bitcoin Custodian

The Custodian carefully considers the design of the physical, operational and cryptographic systems for secure storage of the Trust's private keys in an effort to lower the risk of loss or theft. The Custodian utilizes a variety of security measures to ensure that private keys necessary to transfer digital assets remain uncompromised and that the Trust maintains exclusive ownership of its assets. The operational procedures of the Custodian are reviewed by third-party advisors with specific expertise in physical security. The devices that store the keys will never be connected to the internet or any other public or private distributed network—this is colloquially known as ''cold storage.'' Only specific individuals are authorized to participate in the custody process, and no individual acting alone will be able to access or use any of the private keys. In addition, no combination of the executive officers of the Sponsor or the investment professionals managing the Trust, acting alone or together, will be able to access or use any of the private keys that hold the Trust's bitcoin.

Creation and Redemption of Shares

When the Trust sells or redeems its Shares, it will do so in cash transactions in blocks of 5,000 Shares that are based on the quantity of bitcoin attributable to each Share of the Trust (*e.g.,* a Creation Basket) at the Trust's NAV. According to the Registration Statement, on any business day, an authorized participant may place an order to create one or more Creation Baskets. Purchase orders must be placed by 4:00 p.m. Eastern Time, or the close of regular trading on the Exchange, whichever is earlier. The day on which an order is received is considered the purchase order date. The total deposit of cash required is an amount of cash sufficient to purchase such amount of bitcoin, the amount of which is equal to the combined NAV of the number of Shares included in the Creation Baskets being created determined as of 4:00 ET on the date the order to purchase is properly received. The Administrator determines the required deposit for a given day by multiplying the NAV per share by the number of Shares in each Creation Basket (5,000) and dividing the product by that day's bitcoin price as determined by the Index. The procedures by which an authorized participant can redeem one or more Creation Baskets mirror the procedures for the creation of Creation Baskets.

The authorized participants will deliver only cash to create shares and will receive only cash when redeeming shares. Further, authorized participants will not directly or indirectly purchase, hold, deliver, or receive bitcoin 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 bitcoin as part of the creation or redemption process.

The Trust will create shares by receiving bitcoin from a third party that is not the authorized participant and the Trust (through an execution agent that is acting in an agency capacity)—not the authorized participant—is responsible for selecting the third party to deliver the bitcoin. Further, the third party will not be acting as an agent of the authorized participant with respect to the delivery of the bitcoin to the Trust or acting at the direction of the authorized participant with respect to the delivery of the bitcoin to the Trust. The Trust will redeem shares by delivering bitcoin 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 bitcoin. Further, the third party will not be acting as an agent of the authorized participant with respect to the receipt of the bitcoin from the Trust or acting at the direction of the authorized participant with respect to the receipt of the bitcoin from the Trust.

A third party, that is unaffiliated with the Trust and the Sponsor, will use cash to buy and deliver bitcoin to create Shares or withdraw and sell bitcoin for cash to redeem Shares, on behalf of the Trust.

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

Rule 14.11(e)(4)—Commodity-Based Trust Shares

The Shares will be subject to BZX Rule 14.11(e)(4), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. The Exchange represents that, for initial and continued listing, the Trust must be in compliance with Rule 10A–3 under the Act. A minimum of 100,000 Shares will be outstanding at the commencement of listing on the Exchange. The Exchange will obtain a representation that the Trust's NAV will be calculated daily and the NAV and information about the assets of the Trust will be made available to all market participants at the same time. The Exchange notes that, as defined in Rule 14.11(e)(4)(C)(i), the Shares will be: (a) issued by a trust that holds (1) a specified commodity [66] deposited with the trust, or (2) a specified commodity and, in addition to such specified commodity, cash; (b) 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 (c) 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.

Upon termination of the Trust, the Shares will be removed from listing. The Trustee, Delaware Trust Company, is a trust company having substantial capital and surplus and the experience and facilities for handling corporate trust business, as required under Rule 14.11(e)(4)(E)(iv)(a) and that no change will be made to the trustee without prior notice to and approval of the Exchange. The Exchange also notes that, pursuant to Rule 14.11(e)(4)(F), neither the

[66] For purposes of Rule 14.11(e)(4), the term commodity takes on the definition of the term as provided in the Commodity Exchange Act. As noted above, the CFTC has opined that bitcoin is a commodity as defined in section 1a(9) of the Commodity Exchange Act. *See* Coinflip.

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 Trust in connection with issuance of Commodity-Based Trust Shares; 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. Finally, as required in Rule 14.11(e)(4)(G), the Exchange notes that any registered market maker (''Market Maker'') in the Shares must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule. In addition to the existing obligations under Exchange rules regarding the production of books and records (see, *e.g.,* Rule 4.2), the registered Market Maker in Commodity-Based Trust Shares 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 derivatives, as may be requested by the Exchange.

The Exchange is able to obtain information regarding trading in the Shares and the underlying bitcoin, Bitcoin Futures contracts, options on Bitcoin Futures, or any other bitcoin 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 organization 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 organizations of which such subsidiary or affiliate is a member.

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 BZX Rule 11.18. 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 bitcoin underlying the Shares; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(e)(4)(E)(ii), which sets forth circumstances under which trading in the Shares may be halted.

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 with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. BZX will allow trading in the Shares during all trading sessions on the Exchange. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a) the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01 where the price is greater than $1.00 per share or $0.0001 where the price is less than $1.00 per share. The Shares of the Trust will conform to the initial and continued listing criteria set forth in BZX Rule 14.11(e)(4).

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

The Exchange, or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and Bitcoin Futures 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 Bitcoin Futures from such markets and other entities.[67] The Exchange may obtain information regarding trading in the Shares and Bitcoin Futures via ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

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

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares 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.

[67] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.*

If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (i) the procedures for the creation and redemption of Baskets (and that the Shares are not individually redeemable); (ii) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (iii) how information regarding the IIV and the Trust's NAV are disseminated; (iv) the risks involved in trading the Shares outside of Regular Trading Hours [68] when an updated IIV will not be calculated or publicly disseminated; (v) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (vi) trading information. The Information Circular will also reference the fact that there is no regulated source of last sale information regarding bitcoin, that the Commission has no jurisdiction over the trading of bitcoin as a commodity, and that the CFTC has regulatory jurisdiction over the trading of Bitcoin Futures contracts and options on Bitcoin Futures contracts.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Shares. Members purchasing the Shares for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

2. Statutory Basis

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

The Commission has approved numerous series of Trust Issued Receipts, including Commodity-Based Trust Shares, to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; [71] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act and that this filing sufficiently demonstrates that the CME Bitcoin Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place [72] with a regulated market of significant size. Both the Exchange and CME are members of ISG. The only remaining issue to be addressed is whether the Bitcoin Futures market constitutes a market of significant size, which both the Exchange and the Sponsor believe that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[73]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying section 6(b)(5) of the act, specifically providing 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.[74]

[68] Regular Trading Hours is the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

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

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

[71] As the Exchange has stated in a number of other public documents, it continues to believe that bitcoin is resistant to price manipulation and that ''other means to prevent fraudulent and manipulative acts and practices'' exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin. The fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging. To the extent that there are bitcoin trading platforms engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, such pricing does not normally impact prices on other trading platform because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin trading platform or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

[72] As previously articulated by the Commission, ''The standard requires such surveillance-sharing agreements since ''they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.'' The Commission has historically held that joint membership in the ISG constitutes such a surveillance sharing agreement. *See* Wilshire Phoenix Disapproval).

[73] *Id.*

[74] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is

(a) Manipulation of the ETP

According to the research and analysis presented above, the Bitcoin Futures market is the leading market for bitcoin price formation. Where Bitcoin Futures lead the price in the spot market such that a potential manipulator of the bitcoin spot market (beyond just the constituents of the Index) would have to participate in the Bitcoin Futures market, it follows that a potential manipulator of the Shares would similarly have to transact in the Bitcoin Futures market because the Index is based on spot prices. As such, the Exchange believes that part (a) of the significant market test outlined above is satisfied and that common membership in ISG between the Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the Shares.

(b) Predominant Influence on Prices in Spot and Bitcoin Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices in the Bitcoin Futures market or spot market for a number of reasons, including the significant volume in the Bitcoin Futures market, the size of bitcoin's market cap, and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid.

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present.

(ii) Designed To Protect Investors and the Public Interest

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past several years, U.S. investor exposure to bitcoin through OTC Bitcoin Funds has grown into the tens of billions of dollars, including through Bitcoin Futures ETFs. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors through roll costs for Bitcoin Futures ETFs and premium/discount volatility and management fees for OTC Bitcoin Funds. The Exchange believes that the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, such concerns are now outweighed by investor protection concerns. As such, the Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to bitcoin in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks and costs associated with investing in Bitcoin Futures ETFs and operating companies that are imperfect proxies for bitcoin exposure; and (iv) providing an alternative to custodying spot bitcoin.

Commodity-Based Trust Shares

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in Exchange Rule 14.11(e)(4). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares 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 or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and listed bitcoin derivatives via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

Availability of Information

The Exchange also believes that the proposal promotes market transparency in that a large amount of information is currently available about bitcoin and will be available regarding the Trust and the Shares.

In addition to the price transparency of the Index, the Trust will provide information regarding the Trust's bitcoin holdings as well as additional data regarding the Trust. The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price [75] in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The Trust will also disseminate its holdings on a daily basis on its website. The aforementioned information will be published as of the close of business available on the Sponsor's website at *www.invesco.com/etfs,* or any successor thereto.

The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the most recently reported price of bitcoin as reported by the Index Provider or another reporting service. The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV may differ from the NAV due to the differences in the time window of trades used to calculate each price. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours by one or more major market data vendors. In addition, the IIV will be available through the facilities of the consolidated tape association (CTA) and Consolidated Quotation System (CQS)

not applying a 'cannot be manipulated' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.'' *Id.* at 37582.

[75] As defined in Rule 11.23(a)(3), the term ''BZX Official Closing Price'' shall mean the price disseminated to the consolidated tape as the market center closing trade.

high speed lines. In addition, the IIV will be available through on-line information services such as Bloomberg and Reuters.

The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours.

As noted above, the Index is designed to provide an estimated fair market value for bitcoin. Information about the Index and Index value, including key elements of how the Index is calculated, will be publicly available at *https://lukka.tech*.

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the trading platforms on which bitcoin are traded. Depth of book information is also available from bitcoin trading platforms. The normal trading hours for bitcoin trading 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. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA.

In sum, the Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act, that this filing sufficiently demonstrates that the CME Bitcoin Futures market represents a regulated market of significant size, and that on the whole the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by investor protection issues that would be resolved by approving this proposal.

The Exchange believes that the proposal is, in particular, designed to protect investors and the public interest. The investor protection issues for U.S. investors has grown significantly over the last several years, through roll costs for Bitcoin Futures ETFs and premium/discount volatility and management fees for OTC Bitcoin Funds. As discussed throughout, this growth investor protection concerns need to be reevaluated and rebalanced with the prevention of fraudulent and manipulative acts and practices concerns that previous disapproval orders have relied upon. Finally, the Exchange notes that in addition to all of the arguments herein which it believes sufficiently establish the CME Bitcoin Futures market as a regulated market of significant size, it is logically inconsistent to find that the CME Bitcoin Futures market is a significant market as it relates to the CME Bitcoin Futures market, but not a significant market as it relates to the bitcoin spot market for the numerous reasons laid out above.

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

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

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

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

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

III. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBZX–2023–038 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–CboeBZX–2023–038. 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–CboeBZX–2023–038 and should be submitted on or before February 2, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[76]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–00501 Filed 1–11–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99297; File No. SR–NASDAQ–2023–057]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add the User Specific Routing Option

January 8, 2024.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 26, 2023, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and

[76] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Nasdaq Rule 4758(a)(1)(A) regarding Nasdaq's routing options to add a user specific routing option that can be applied to the RFTY routing strategy, as well as to correct typographical errors in Equity 4, Rules 4703 and 4758.

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

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 purpose of the proposed rule change is to amend Equity 4, Rule 4758(a)(1)(A) to add a user specific routing option, as well as to correct several typographical errors in Nasdaq Rules 4703 and 4758.[3]

Specifically, the Exchange proposes to amend Rule 4758 by adding subsection (a)(1)(A)(xvii) to add a new routing option called ''User Specific''. The User Specific routing option can be applied to the RFTY [4] routing strategy, where the routing process will be based on the RFTY routing strategy, and allows for the User to elect to designate or exclude [5] one or more destinations in the Nasdaq Market Center's (the ''System'') routing table and elect the sequence in which destinations are accessed, including the option to not post to the book. The User may also elect the price and peg instructions with which to route on a per venue basis. The User may not elect to route the order to locking or crossing market centers once an order is on the book.

The routing destinations are listed on the System's routing table.[6] If the User Specific routing option is applied, the User may elect to route to additional destinations and may elect to not route to destinations that would otherwise be accessed by the strategy, subject to Reg NMS and trade through protections. The User may also elect the price and peg instructions with which to route on a per venue basis. The User may not elect to route the order to locking or crossing market centers once an order is on the book. When electing the User Specific routing option, Users will continue to use the RFTY routing strategy, but will provide a Nasdaq defined unique custom routing value on an order by order basis to denote that the User Specific option has been invoked and will be used based on the User's specifications.

The RFTY strategy is a is a routing option available for an order that qualifies as a Designated Retail Order,[7] under which orders check the System for available shares only if so instructed by the entering firm and are thereafter routed to destinations on the System routing table. If shares remain unexecuted after routing, they are posted to the book. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center. RTFY is designed to allow orders to participate in the opening, reopening and closing process of the primary listing market for a security. One example of the application of the User Specific routing option is a User electing to route to designated destinations with mid-point peg instructions to seek price improvement opportunities before cancelling back any remaining shares without posting to the book. A User may also elect the User Specific routing option to exclude one or more non-NMS destinations that the strategy would otherwise route to because they already access them using other means.

Although they are not currently offered on the Exchange, all customization options offered by Nasdaq's proposed rule change to add a User Specific routing option are not novel and already exist within the national market system and are non-controversial. The concept is similar to the routing option included in an EDGX Exchange, Inc. (''EDGX'') [8] filing (the ''EDGX Filing'') [9] that, in turn, was based on a BATS routing strategy.[10] The routing option added by the EDGX Filing (since renumbered as EDGX Rule 11.11(g)(10)) is the destination specific (''Destination Specific'') routing option.[11] As with Nasdaq's proposed User Specific routing option, the EDGX Destination Specific routing option is one in which an order checks the System for available shares and then is sent to an away trading center or centers specified by the user.[12]

Nasdaq's proposed User Specific routing option also incorporates EDGX's Destination Specified order instruction, set forth in EDGX Rule 11.6(n)(5),[13] in that both allow the user to select the destination to where the order will be routed. The only differences are that under EDGX's Destination Specific order instruction the order is first exposed to the EDGX Book before routing, and if the order is not executed in full after routing away, it will be processed by EDGX as described in EDGX Rule 11.10(a)(4),[14] unless the user has provided instructions that the order reside on the book of the relevant away trading center. Also, Nasdaq's proposed User Specific routing option permits the User not only to elect to route to additional destinations, but also allows a User to elect to not route to destinations that would otherwise be

[3] *See* Nasdaq Rule 4703 and Rule 4758.

[4] *See* Nasdaq Rule 4758(a)(1)(A)(v)b..

[5] While the destinations included in the proprietary System routing table are not disclosed, a User may elect to exclude a destination and the System routing table for the User Specific option will be amended, if necessary.

[6] *See* Equity 1, Section 1(a). The Nasdaq Market Center, or System, means the automated system for order execution and trade reporting owned and operated by The Nasdaq Stock Market LLC.

[7] A ''Designated Retail Order'' is an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 and that originates from a natural person and is submitted to Nasdaq by a member that designates it pursuant to this rule, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.

[8] The former EDGX Exchange, Inc. is now known as the Cboe EDGX Exchange, Inc.

[9] EDGX filed its proposal to amend certain of its rules to adopt or align system functionality with what was offered by BATS Exchange, Inc. and BATS Y Exchange, Inc. (collectively, ''BATS'') so as to provide a consistent technology offering amongst EDGX and its affiliates.

[10] *See e.g.,* Cboe BZX Exchange, Inc. Rule 11.13(b)(3)(E) (formerly, BATS Rule 11.13(a)(3)(E).

[11] *See* Securities Exchange Act Release No. 73468 (Oct. 29, 2014), 79 FR 65450 (Nov. 4, 2014) (SR–EDGX–2014–18).

[12] *See* EDGX Rule 11.11(g)(10) states that Destination Specific is ''a routing option under which an order checks the System for available shares and then is sent to an away trading center or centers specified by the User.''

[13] *See* EDGX Rule 11.6(n)(5).

[14] *See* EDGX Rule 11.10(a)(4).

accessed by the strategy, subject to Reg NMS and trade through protections.

Additionally, the Exchange proposes to correct two typographical errors in Rule 4703(a), one typographical error in Rule 4703(a)(7), and two typographical errors in Rule 4758(a)(1)(A)(v)b., in each instance the text mistakenly refers to ''RFTY'' as ''RTFY'' and this amendment will rectify these typographical errors.

Implementation Date

The Exchange will issue an Equities Trader Alert to provide notification of the change and intends to implement the proposed change in the fourth quarter of 2023.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[15] in general, and furthers the objectives of section 6(b)(5) of the Act,[16] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes the proposed rule change will satisfy the objectives of section 6(b)(5) of the Act, in particular, to perfect the mechanism of a free and open market through supporting fair and orderly markets that protects investors and the public interest. Specifically, the proposed rule change achieves this through providing market participants with a voluntary routing option that is applicable to the RFTY routing strategy that will provide them with additional control over the execution of their orders, as well as support price improvement, to the benefit of retail market participants.

Additionally, the Exchange believes that while the level of customization by the User for a routing option does not exist explicitly within any single routing choice on the Exchange, or the BATS' Destination Specific order type, the options embedded in the User Specific routing option are available throughout the national market system.

For example, it is consistent with section 6(b) of the Act,[17] in general, and furthers the objectives of section 6(b)(5) of the Act by providing retail market participants with a voluntary routing option that is similar in concept to one offered by EDGX that, in turn, was based on a BATS routing strategy, that benefits retail market participants through increased optionality and helps to support fair and orderly markets that protects investors and the public interest.

The Exchange notes that the level of customization by the User goes beyond the Destination Specific or other Exchange routing options, but the choices that the User may employ, and the outcomes of having greater control over the order handling of the orders are not novel. Although the optionality may not currently exist explicitly on the Exchange, it does exist within the national market system and is non-controversial and allows for a similar degree of optionality (*e.g.,* ability to opt in/opt out of routing an order, electing the price level to access) and is already available to broker/dealers and has proven to be non-disruptive. The Exchange believes that the proposed rule change thus serves 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 it benefits retail market participants through increased optionality and supporting price improvement.

The correction to two typographical errors in Rule 4703(a), one typographical error in Rule 4703(a)(7), and two typographical errors in Rule 4758(a)(1)(A)(v)b., in each instance the text mistakenly refers to ''RFTY'' as ''RTFY'', is consistent with section 6(b)(5) of the Act because the clarification will reduce potential confusion and removes 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.

For the foregoing reasons, the Exchange believes that the proposed rule change is consistent with 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 not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, while the level of customization by the User for a routing option does not exist explicitly within any single routing choice on the Exchange, or the BATS' Destination Specific order type, the options embedded in the User Specific routing option are available throughout the national market system. The proposed functionality is based on existing functionality available on competitor exchanges[18] and the additional allowance for customization by the User is non-controversial and consistent with section 6(b) of the Act.

Furthermore, the Exchange provides routing services in a highly competitive market in which participants may avail themselves of a wide variety of routing options offered by other exchanges, alternative trading systems, other broker-dealers, market participants' own proprietary routing systems, and service bureaus. In such an environment, system enhancements such as the changes proposed in this rule filing do not burden competition, because they can succeed in attracting order flow to the Exchange only if they offer investors higher quality and better value than services offered by others. Encouraging competitors to provide higher quality and better value is the essence of a well-functioning competitive marketplace.

For the foregoing reasons, the Exchange does not believe the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act[19] and Rule 19b–4(f)(6) thereunder.[20] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[21] and Rule 19b–4(f)(6)(iii) thereunder.[22]

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

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f(b).

[18] *See* EDGX Rules 11.6(n)(5) and11.11(g)(10) as described above that, in turn, was based on a BATS routing option (based on Cboe BZX Exchange, Inc. Rule 11.13(b)(3)(E) (formerly, BATS Rule 11.13(a)(3)(E)).

[19] 15 U.S.C. 78s(b)(3)(A)(iii).

[20] 17 CFR 240.19b–4(f)(6).

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief

A proposed rule change filed under Rule 19b–4(f)(6) [23] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[24] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that it wants to implement the RFTY during the first quarter of 2024 and granting the waiver would allow market participants and their customers to benefit more immediately from the increased order handling flexibility provided by the RFTY routing option. In addition, the Exchange stated that the proposed rule change presents no unique or novel issues that have not already been addressed by the Commission. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[25]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B) [26] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NASDAQ–2023–057 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–2023–057. 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–2023–057 and should be submitted on or before February 2, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–00504 Filed 1–11–24; 8:45 am]

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description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6)(iii).

[25] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78s(b)(2)(B).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99287; File No. SR–NASDAQ–2023–019]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 1 to a Proposed Rule Change To List and Trade Shares of the Valkyrie Bitcoin Fund Under Nasdaq Rule 5711(d), Commodity-Based Trust Shares

January 8, 2024.

On July 3, 2023, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the Valkyrie Bitcoin Fund under Nasdaq Rule 5711(d), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on July 21, 2023.[3] On August 31, 2023, pursuant to section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On September 28, 2023, the Commission instituted proceedings to determine whether to disapprove the proposed rule change.[6] On January 5, 2024, the Exchange filed Amendment No. 1 to the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment No. 1 amended and replaced the proposed rule change in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

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

The Exchange proposes to list and trade shares of the Valkyrie Bitcoin Fund (the ''Trust'') under Nasdaq Rule 5711(d) (''Commodity-Based Trust

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 97922 (July 17, 2023), 88 FR 47214. Comments on the proposed rule change are available at: *https://www.sec.gov/comments/sr-nasdaq-2023-019/srnasdaq2023019.htm.*

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

[5] *See* Securities Exchange Act Release No. 98262, 88 FR 61658 (Sept. 7, 2023).

[6] *See* Securities Exchange Act Release No. 98606, 88 FR 68894 (Oct. 4, 2023).

Shares''). The shares of the Trust are referred to herein as the ''Shares.'' This Amendment No. 1 supersedes the original filing in its entirety.

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

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 list and trade Shares of the Trust under Nasdaq Rule 5711(d), which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.[7]

Description of the Trust

The Shares will be issued by the Trust, a Delaware statutory trust. The Trust will operate pursuant to a trust agreement (the ''Trust Agreement'') between Valkyrie Digital Assets, LLC (the ''Sponsor'') and Delaware Trust Company, as the Trust's trustee (the ''Trustee''). The Shares will be registered with the Commission by means of the Trust's registrations statement on Form S–1 (the ''Registration Statement'').[8] Pursuant to the Trust Agreement, the Sponsor will enter into a custodian agreement (the ''Custodian Agreement'') with Coinbase Custody Trust Company, LLC (the ''Custodian'') to act as custodian for the Trust's bitcoins. The Custodian is not an affiliate of the Trust or the Sponsor. Pursuant to the Custodian Agreement, the Custodian will establish accounts that hold the bitcoins deposited with the Custodian on behalf of the Trust. U.S. Bancorp Fund Services, LLC will act as the transfer agent for the Trust (the ''Transfer Agent'') and as the administrator of the Trust (the ''Administrator'') to perform various administrative, accounting and recordkeeping functions on behalf of the Trust. One or more cash custodians (each, a ''Cash Custodian'') will act as custodian for the cash held by the Trust.

The investment objective of the Trust is for the Shares to reflect the performance of the value of a bitcoin as represented by the CME CF Bitcoin Reference Rate—New York Variant (the ''Index''), less the Trust's liabilities and expenses. The purpose of the Trust is to provide investors with a cost-effective and convenient way to invest in bitcoin in a manner that is more efficient and convenient than the purchase of a stand-alone bitcoin, while also mitigating some of the risk by reducing the volatility typically associated with the purchase of stand-alone bitcoin and without the uncertain and often complex requirements relating to acquiring and/or holding bitcoin.

The Trust will only hold bitcoin and cash, and will, from time to time, issue a block of 5,000 Shares (a ''Basket'') in exchange for deposits of cash to the Trust. The Trust intends to hold cash only to the extent necessary to pay Trust expenses, when receiving cash in connection the creation of Baskets, or when distributing cash in connection with redemptions of Baskets. The Shares of the Trust represent units of fractional undivided beneficial interest in, and ownership of, the Trust. The bitcoins held by the Custodian on behalf of the Trust will be transferred out of its custody only to be sold on an as-needed basis in connection with the redemption of Baskets, to pay additional trust expenses, or in the event the Trust terminates and liquidates its assets or as otherwise required by law or regulation.

Custody of the Trust's Bitcoins

The Custodian will custody all of the Trust's bitcoin, other than that which may be maintained in a trading account (the ''Trading Balance'') with Coinbase, Inc. (''Coinbase,'' which is an affiliate of the Custodian), in accounts that are required to be segregated from the assets held by the Custodian as principal and the assets of its other customers (the ''Vault Balance''). The Custodian will keep all of the private keys associated with the Trust's bitcoin held by the Custodian in the Vault Balance in ''cold storage'', which refers to a safeguarding method by which the private keys corresponding to the Trust's bitcoins are generated and stored in an offline manner using computers or devices that are not connected to the internet, which is intended to make them more resistant to hacking. By contrast, in hot storage, the private keys are held online, where they are more accessible, leading to more efficient transfers, though they are potentially more vulnerable to being hacked. While the Custodian will generally keep a substantial portion of the Trust's bitcoin in cold storage on an ongoing basis, from time to time, portions of the Trust's bitcoin will be held outside of cold storage temporarily in the Trading Balance maintained by Coinbase as part of trade facilitation in connection with creations and redemptions of Baskets or to sell bitcoins including to pay Trust expenses. The Trust's bitcoin held in the Vault Balance by the Custodian are held in segregated wallets and therefore are not commingled with the Custodian's or other customer assets.

All bitcoins exist and are stored on the decentralized transaction ledger of the Bitcoin network (the ''Blockchain''). The Blockchain records most transactions (including mining of new bitcoins) for all bitcoins in existence, and in doing so verifies the location of each bitcoin (or fraction thereof) in a particular digital wallet. Each digital wallet of the Custodian may be accessed using its corresponding private key. The Custodian's custodial operations will maintain custody of the private keys that have been deposited in cold storage at its various vaulting premises which are located in geographically dispersed locations across the world, including but not limited to the United States, Europe, including Switzerland and South America. The locations of the vaulting premises may change regularly and are kept confidential by the Custodian for security purposes.

The Custodian is the custodian of the Trust's private keys corresponding to the Trust's bitcoins in accordance with the terms and provisions of the Custodian Agreement and will utilize the certain security procedures such as algorithms, codes, passwords, encryption or telephone call-backs

[7] Nasdaq Rule 5711(d)(iv)(A) defines Commodity-Based Trust Shares as ''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.''

[8] *See* Amendment No. 5 to Registration Statement on Form S–1, dated December 29, 2023 filed with the Commission by the Sponsor on behalf of the Trust (File No. 333–252344). The descriptions of the Trust contained herein are based, in part, on information in the Registration Statement. The Registration Statement in not yet effective and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

(together, the ''Security Procedures'') in the administration and operation of the Trust and the safekeeping of its bitcoins and private keys. The Custodian will create a Vault Balance for the Trust assets in which private keys are placed in cold storage. The Custodian will segregate the private keys stored with it from any other assets it holds or holds for others. Further, multiple distinct private keys must sign any transaction in order to transfer the Trust's bitcoins from a multi-signature address to any other address on the bitcoin blockchain. Distinct private keys required for multi-signature address transfers reside in geographically dispersed vault locations, known as ''signing vaults.'' In addition to multiple signing vaults, the Custodian maintains multiple ''back-up vaults'' in which backup private keys are stored. In the event that one or more of the ''signing vaults'' is compromised, the back-up vaults would be activated and used as signing vaults to complete a transaction within 72 hours. As such, if any one signing vault is compromised, it would have no impact on the ability of the Trust to access its bitcoins, other than a possible delay in operations of 72 hours, while one or more of the ''backup vaults'' is transitioned to a signing vault. These Security Procedures ensure that there is no single point of failure in the protection of the Trust's assets.

Calculation of Net Asset Value

The Trust's net asset value (''NAV'') per Share is calculated by taking the current market value of its total assets, less any liabilities of the Trust (including accrued by unpaid expenses) and dividing that total by the total number of outstanding Shares. The bitcoin held by the Trust will typically be valued based on the price set by the Index (the ''Bitcoin Index Price''). The Sponsor holds full discretion to change either the index used for calculating NAV or the index provider subject to proper notification to shareholders (such notification will be made via a prospectus supplement to the Registration Statement and/or a current report filed with the SEC and will occur in advance of any such change). Shareholder approval is not required to effect such change. Any permanent change to the Index and/or calculation of the NAV will require a 19b–4 filing. The Administrator will calculate the NAV of the Trust once each Exchange trading day. The Exchange's Regular Market Session closes at 4:00 p.m. ET. The NAV for a normal trading day will be released after the end of the Regular Market Session. However, NAVs are not officially struck until later in the day (often by 5:30 p.m. Eastern Time and almost always by 8:00 p.m. Eastern Time). The pause between 4:00 p.m. Eastern Time and 5:30 p.m. Eastern Time provides an opportunity to detect, flag, investigate, and correct unusual pricing should it occur.

The Sponsor anticipates that the Bitcoin Index Price will be reflective of a reasonable valuation of the average spot price of bitcoin. However, in the event the Bitcoin Index Price is not available or determined by the Sponsor to not be reliable, the Sponsor would ''fair value'' the Trust's bitcoin holdings on a temporary basis. The Sponsor will monitor for significant events related to crypto assets that may impact the value of bitcoin and will determine in good faith, and in accordance with its valuation policies and procedures, whether to fair value the Trust's bitcoin on a given day (*e.g.,* if the Index is not available the Sponsor). In certain circumstances, the Sponsor will determine whether to fair value the Trust's bitcoin on a given day on whether certain pre-determined criteria have been met. For example, if the Index deviates by more than a pre-determined amount from an alternate benchmark available to the Sponsor, then the Sponsor may determine to utilize the alternate benchmark. The Trust and the Sponsor have licensed use of the Lukka Prime Reference Rate as such an alternative benchmark. The Sponsor may also fair value the Trust's bitcoin using observed market transactions from various platforms, including some or all of the Constituent Bitcoin Platforms (as defined below) included in the Index. The Sponsor may also fair value the Trust's bitcoin using a combination of inputs in certain situations (*e.g.,* using observed market transactions, OTC quotations from brokers, etc.).

The NAV for the Trust's Shares will be disseminated daily to all market participants at the same time. The Sponsor will publish the NAV and NAV per Share at *https://valkyrieinvest.com/BRRR* as soon as practicable after their determination and availability.

Intraday Indicative Value

In order to provide updated information relating to the Trust for use by shareholders and market professionals, an updated intraday indicative value (''IIV'') per Share updated every 15 seconds will be disseminated by one of more major market data vendors during the Exchange's Regular Market Session through the facilities of the relevant securities information processor and Consolidated Quotation System (CQS) high speed lines. In addition, the IIV will be available through on-line information services such as Bloomberg and Reuters.[9] The IIV will be calculated by a third-party financial data provider during the Exchange's Regular Market Session. The IIV will be calculated by using the prior day's closing NAV per Share of the Trust as a base and updating that value throughout the trading day to reflect changes in the most recently reported price level of the CME CF Bitcoin Real-Time Index (''BRTI''), as reported by CME Group, Inc., Bloomberg, L.P. or another reporting service. The BRTI is a real time index of the U.S. dollar price of one bitcoin, published once per second, 24 hours per day, 7 days per week, and 365 days per year. The BRTI is calculated once per second in real time based on the Relevant Order Books of all Constituent Bitcoin Platforms. A ''Relevant Order Book'' is the universe of the currently unmatched limit orders to buy or sell in the BTC/USD pair that is reported and disseminated by CF Benchmarks Ltd., as the BRTI. calculation agent.

Creation and Redemption of Shares

The Trust will issue Shares on an ongoing basis, but only in one or more Baskets. The creation and redemption of a Basket requires the delivery to the Trust, or the distribution by the Trust, of the cash value of the amount of bitcoin represented by each Basket being created or redeemed, which is calculated pursuant to the same procedures used to calculate the Trust's NAV (the ''Basket Amount''). The amount of bitcoin represented by each Basket is determined by dividing the number of bitcoins owned by the Trust at 4:00 p.m. ET, on the trade date of a creation or redemption order, as adjusted for the number of whole and fractional bitcoins constituting accrued but unpaid fees and expenses of the Trust, by the number of Shares outstanding at such time (the quotient so obtained calculated to one-hundred-millionth of one bitcoin) and multiplying such quotient by 5,000. The Basket Amount multiplied by the number of Baskets being created or redeemed is the ''Total Basket Amount.''

The only persons that may place orders to create or redeem Baskets are authorized participants (''Authorized Participants''). Each Authorized Participant must (i) be a registered broker-dealer or similar exempt

[9] Several major market data vendors display and/or make widely available IIVs taken from the relevant securities information processor or other data feeds. In addition, the indicative fund value will be available through on-line information services such as Bloomberg and Reuters.

financial institution and (ii) enter into a participant agreement with the Sponsor, the Administrator, and the marketing agent (the ''Marketing Agent''). Authorized Participants may act for their own accounts or as agents for broker-dealers, custodians and other securities market participants that wish to create or redeem Baskets. Shareholders who are not Authorized Participants will only be able to redeem their Shares through an Authorized Participant. The Authorized Participants will deliver only cash to create Shares and will receive only cash when redeeming Shares. Further, Authorized Participants will not directly or indirectly purchase, hold, deliver, or receive bitcoin 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 bitcoin as part of the creation or redemption process.

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

Creation Procedures

On any ''Business Day'' (defined as any day other than a day when the Exchange is closed for regular trading), an Authorized Participant may order one or more Baskets (each a ''Creation Basket'') from the Trust by placing a creation order with the Administrator. Creation orders may only be placed in exchange for cash. Creation orders must be placed no later than 12:59:59 p.m. Eastern Time on each Business Day. Authorized Participants may only create Baskets and cannot create any Shares in an amount less than a Basket.

Upon receiving instruction from the Administrator that a creation order has been accepted by the Transfer Agent, the Authorized Participant will on the same day send the U.S. Dollar value of the Total Basket Amount, which will be based on the NAV per Share multiplied by the number of Shares. The Authorized Participant will also be responsible for any difference in the price of bitcoin used to calculate the NAV per Share and the actual price at which the Trust purchases bitcoin in connection with such order, as well as any brokerage fees, transfer fees, network fees or other costs of the Trust in purchasing bitcoin in connection with the creation order. After the Administrator receives the Total Basket Amount, the Administrator will instruct the Transfer Agent to deliver the Creation Baskets to the Authorized Participant on the day following the creation order date.

Redemption Procedures

The procedures by which an Authorized Participant can redeem one or more Baskets (each, a ''Redemption Basket'') mirror the procedures for the creation of Creation Baskets. On any Business Day, an Authorized Participant may place a redemption order specifying the number of Redemption Baskets to be redeemed. Redemption orders may only be placed in exchange for cash. Redemption orders must be placed no later than 12:59:59 p.m. ET, on each Business Day. Authorized Participants may only redeem Redemption Baskets and cannot redeem any Shares in an amount less than a Basket.

To redeem Redemption Baskets, Authorized Participants will send the Administrator a redemption order. The Transfer Agent will accept or reject the redemption order on that same date. On the date following the redemption order date, the Administrator will send the Total Basket Amount to the Authorized Participant and the Transfer Agent will cancel the Shares once the Authorized Participant delivers the Redemption Baskets to the Transfer Agent. The amount of the redemption proceeds will be calculated in the same manner as the determination of the creation basket deposits discussed above.

With respect to the Authorized Participant involved with a creation or redemption order, the following conditions apply to such Authorized Participant and the Trust:

- The Trust will create Shares by receiving bitcoin 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 bitcoin. Further, the third party will not be acting as an agent of the Authorized Participant with respect to the delivery of the bitcoin to the Trust or acting at the direction of the Authorized Participant with respect to the delivery of the bitcoin to the Trust.
- The Trust will redeem Shares by delivering bitcoin 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 bitcoin. Further, the third party will not be acting as an agent of the Authorized Participant with respect to the receipt of the bitcoin from the Trust or acting at the direction of the Authorized Participant with respect to the receipt of the bitcoin from the Trust.
- The third party will be unaffiliated with the Trust and the Sponsor.

Overview of the Bitcoin Industry and Market [10]

Bitcoin

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

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

Bitcoin Network

Bitcoin was first described in a white paper released in 2008 and published under the pseudonym ''Satoshi Nakamoto.'' The protocol underlying Bitcoin was subsequently released in 2009 as open-source software and currently operates on a worldwide network of computers.

The first step in directly using the Bitcoin network for transactions is to download specialized software referred

[10] For the purpose of this section, Bitcoin with an upper case ''B'' is used to describe the system as a whole that is involved in maintaining the ledger of bitcoin ownership and facilitating the transfer of bitcoin among parties. When referring to the digital asset within the bitcoin network, bitcoin is written with a lower case ''b'' (except, at the beginning of sentences or paragraph sections).

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

The amount of bitcoin associated with each bitcoin address, as well as each bitcoin transaction to or from such address, is transparently reflected in the Blockchain and can be viewed by websites that operate as ''blockchain explorers.'' Copies of the Blockchain exist on thousands of computers on the Bitcoin network. A user's bitcoin wallet will either contain a copy of the blockchain or be able to connect with another computer that holds a copy of the blockchain. The innovative design of the Bitcoin network protocol allows each Bitcoin user to trust that their copy of the Blockchain will generally be updated consistent with each other user's copy.

Bitcoin Protocol

The Bitcoin protocol is open-source software, meaning any developer can review the underlying code and suggest changes. There is no official company or group that is responsible for making modifications to Bitcoin. There are, however, a number of individual developers that regularly contribute to a specific distribution of Bitcoin software known as the ''Bitcoin Core,'' which is maintained in an open-source repository on the website Github. There are many other compatible versions of Bitcoin software, but Bitcoin Core provides the de-facto standard for the Bitcoin protocol, also known as the ''reference software.'' The core developers for Bitcoin Core operate under a volunteer basis and without strict hierarchical administration.

Significant changes to the Bitcoin protocol are typically accomplished through a so-called ''Bitcoin Improvement Proposal'' or ''BIP.'' Such proposals are generally posted on websites, and the proposals explain technical requirements for the protocol change as well as reasons why the change should be accepted. Upon its inclusion in the most recent version of Bitcoin Core, a new BIP becomes part of the reference software's Bitcoin protocol. Several BIPs have been implemented since 2011 and have provided various new features and scaling improvements.

Because Bitcoin has no central authority, updating the reference software's Bitcoin protocol will not immediately change the Bitcoin network's operations. Instead, the implementation of a change is achieved by users and miners downloading and running updated versions of Bitcoin Core or other Bitcoin software that abides by the new Bitcoin protocol. Users and miners must accept any changes made to the Bitcoin source code by downloading a version of their Bitcoin software that incorporates the proposed modification of the Bitcoin network's source code. A modification of the Bitcoin network's source code is only effective with respect to the Bitcoin users and miners that download it. If an incompatible modification is accepted only by a percentage of users and miners, a division in the Bitcoin network will occur such that one network will run the pre-modification source code and the other network will run the modified source code. Such a division is known as a ''fork'' in the Bitcoin network.

Such a fork in the Bitcoin network occurred on August 1, 2017, when a group of developers and miners accepted certain changes to the Bitcoin network software intended to increase transaction capacity. Blocks mined on this network now diverge from blocks mined on the Bitcoin network, which has resulted in the creation of a new blockchain whose digital asset is referred to as ''bitcoin cash.'' Bitcoin and bitcoin cash now operate as separate, independent networks, and have distinct related assets (bitcoin and bitcoin cash). Additional forks have followed the Bitcoin Cash fork, including those for Bitcoin Gold and Bitcoin SegWit2X, in the months after the creation of Bitcoin Cash.

Bitcoin Transactions

A bitcoin transaction contains the sender's bitcoin address, the recipient's bitcoin address, the amount of bitcoin to be sent, a transaction fee and the sender's digital signature. Bitcoin transactions are secured by cryptography known as public-private key cryptography, represented by the bitcoin addresses and digital signature in a transaction's data file. Each Bitcoin network address, or wallet, is associated with a unique ''public key'' and ''private key'' pair, both of which are lengthy alphanumeric codes, derived together and possessing a unique relationship. The public key is visible to the public and analogous to the Bitcoin network address. The private key is a secret and may be used to digitally sign a transaction in a way that proves the transaction has been signed by the holder of the public-private key pair, without having to reveal the private key.

The Bitcoin network incorporates a system to prevent double spending of a single bitcoin. To prevent the possibility of double spending a single bitcoin, each validated transaction is recorded, time stamped and publicly displayed in a ''block'' in the Blockchain, which is publicly available. Any user may validate, through their bitcoin wallet or a blockchain explorer, that each transaction in the Bitcoin network was authorized by the holder of the applicable private key, and Bitcoin network mining software consistent with reference software requirements typically validates each such transaction before including it in the Blockchain.

Bitcoin Mining—Creation of New Bitcoins

The process by which bitcoins are created and bitcoin transactions are verified is called mining. To begin mining, a user, or ''miner,'' can download and run a mining client, which, like regular Bitcoin network software, turns the user's computer into a ''node'' on the Bitcoin network that validates blocks. Each time transactions are validated and bundled into new blocks added to the Blockchain, the Bitcoin network awards the miner solving such blocks with newly issued bitcoin and any transaction fees paid by bitcoin transaction senders. This reward system is the method by which new bitcoins enter into circulation to the public.

Mathematically Controlled Supply

The method for creating new bitcoin is mathematically controlled in a manner so that the supply of bitcoin grows at a limited rate pursuant to a pre-set schedule. The number of bitcoin awarded for solving a new block is automatically halved every 210,000 blocks. Thus, the current fixed reward for solving a new block is 6.25 bitcoin per block; the reward decreased from twenty-five (25) bitcoin in July 2016 and 12.5 in May 2020. It is estimated to halve again at the start of 2024. This deliberately controlled rate of bitcoin creation means that the number of bitcoin in existence will never exceed twenty-one (21) million and that bitcoin cannot be devalued through excessive production unless the Bitcoin network's

source code (and the underlying protocol for bitcoin issuance) is altered. As of January 1, 2023, approximately 19,250,000 bitcoin have been mined.

Bitcoin Value

The value of bitcoin is determined by the value that various market participants place on bitcoin through their transactions. The most common means of determining the value of a bitcoin is by surveying one or more bitcoin platforms where bitcoin is traded publicly and transparently (*e.g.,* Bitstamp, Coinbase, Kraken, itBit, Gemini and LMAX Digital). Additionally, in parallel to the open bitcoin platforms, informal ''over-the-counter'' or ''OTC markets'' for bitcoin trading also exist as a result of the peer-to-peer nature of the Bitcoin network, which allows direct transactions between any seller and buyer.

On each platform, bitcoin is traded with publicly disclosed valuations for each executed trade, measured by one or more fiat currencies such as the U.S. dollar or Euro. OTC markets do not typically disclose their trade data. Currently, there are many platforms operating worldwide, and each such platform represents a substantial percentage of bitcoin buying and selling activity.

The Index

As described in the Registration Statement, the Fund will typically use the Index to calculate the Trust's NAV for days on which the Trust does not trade bitcoin. The Index is not affiliated with the Sponsor and was created and is administered by CF Benchmarks Ltd. (the ''Benchmark Administrator''), an independent entity, to facilitate financial products based on bitcoin. The Index is designed based on the IOSCO Principals for Financial Benchmarks and serves as a once-a-day benchmark rate of the U.S. dollar price of bitcoin (USD/BTC), calculated as of 4:00 p.m. Eastern Time. The Index is based on materially the same methodology (except calculation time) [11] as the Benchmark Administrator's CME CF Bitcoin Reference Rate (the ''BRR''), which was first introduced on November 14, 2016 and is the rate on which bitcoin futures contracts (''Bitcoin Futures'') are cash-settled in U.S. dollars at the CME. The Index aggregates the trade flow of several bitcoin platforms, during an observation window between 3:00 p.m. and 4:00 p.m. Eastern Time into the U.S. dollar price of one bitcoin at 4:00 p.m. Eastern Time. The current constituent bitcoin platforms of the Index are Bitstamp, Coinbase, Gemini, itBit, Kraken and LMAX Digital (the ''Constituent Bitcoin Platforms'').

The Index is calculated based on the ''Relevant Transactions'' [12] of all of its Constituent Bitcoin Platforms, as follows:

• All Relevant Transactions are added to a joint list, recording the time of execution, trade price and size for each transaction.

• The list is partitioned by timestamp into 12 equally-sized time intervals of 5 (five) minute length.

• For each partition separately, the volume-weighted median trade price is calculated from the trade prices and sizes of all Relevant Transactions, *i.e.,* across all Constituent Bitcoin Platforms. A volume-weighted median differs from a standard median in that a weighting factor, in this case trade size, is factored into the calculation.

• The Index is then determined by the arithmetic mean of the volume-weighted medians of all partitions.

By employing the foregoing steps, the Index thereby seeks to ensure that transactions in bitcoin conducted at outlying prices do not have an undue effect on the value of a specific partition, large trades or clusters of trades transacted over a short period of time will not have an undue influence on the Index level, and the effect of large trades at prices that deviate from the prevailing price are mitigated from having an undue influence on the Index level. In addition, the Sponsor notes that an oversight function is implemented by the Benchmark Administrator in seeking to ensure that the Index is administered through codified policies for Index integrity.

The Sponsor believes the Index provides an accurate reference to the average spot price of bitcoin and the methodology employed in constructing the Index, specifically its use of medians in filtering out small trades, makes the Index more resistant to manipulation than other measurements that employ different methodologies. In addition, the Index included over $375 billion in bitcoin trades during the one-year period ended December 31, 2022. Finally, an oversight committee is responsible for regularly reviewing and overseeing the methodology, practice, standards and scope of the Index to ensure that it continues to accurately track the spot prices of bitcoin.

Background

The Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts, including spot-based Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.[13] Prior orders from the Commission have pointed out that in every prior approval order for Commodity-Based Trust Shares, there has been a derivatives market that represents the regulated market of significant size, generally a Commodity Futures Trading Commission regulated futures market.[14] Further to this point,

[11] The Index is calculated as of 4 p.m. Eastern Time, whereas the BRR is calculated as of 4 p.m. London Time.

[12] A ''Relevant Transaction'' is any cryptocurrency versus U.S. dollar spot trade that occurs during the observation window between 3:00 p.m. and 4:00 p.m. Eastern Time on a Constituent Bitcoin Platforms in the BTC/USD pair that is reported and disseminated by a Constituent Bitcoin Platforms through its publicly available application programming interface and observed by the Benchmark Administrator, CF Benchmarks Ltd.

[13] *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018). This proposal was subsequently disapproved by the Commission. *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the ''Winklevoss Order'').

[14] *See* streetTRACKS Gold Shares, Exchange Act Release No. 50603 (Oct. 28, 2004), 69 FR 64614, 64618–19 (Nov. 5, 2004) (SR–NYSE–2004–22) (the ''First Gold Approval Order''); iShares COMEX Gold Trust, Exchange Act Release No. 51058 (Jan. 19, 2005), 70 FR 3749, 3751, 3754–55 (Jan. 26, 2005) (SR–Amex–2004–38); iShares Silver Trust, Exchange Act Release No. 53521 (Mar. 20, 2006), 71 FR 14967, 14968, 14973–74 (Mar. 24, 2006) (SR–Amex–2005–072); ETFS Gold Trust, Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993, 22994–95, 22998, 23000 (May 15, 2009) (SR–NYSEArca–2009–40); ETFS Silver Trust, Exchange Act Release No. 59781 (Apr. 17, 2009), 74 FR 18771, 18772, 18775–77 (Apr. 24, 2009) (SR–NYSEArca–2009–28); ETFS Palladium Trust, Exchange Act Release No. 61220 (Dec. 22, 2009), 74 FR 68895, 68896 (Dec. 29, 2009) (SR–NYSEArca–2009–94) (notice of proposed rule change included NYSE Arca's representation that ''[t]he most significant palladium futures exchanges are the NYMEX and the Tokyo Commodity Exchange,'' that ''NYMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which NYMEX is a member, Exchange Act Release No. 60971 (Nov. 9, 2009), 74 FR 59283, 59285–86, 59291 (Nov. 17, 2009)); ETFS Platinum Trust, Exchange Act Release No. 61219 (Dec. 22, 2009), 74 FR 68886, 68887–88 (Dec. 29, 2009) (SR–NYSEArca–2009–95) (notice of proposed rule change included NYSE Arca's representation that ''[t]he most significant platinum futures exchanges are the NYMEX and the Tokyo Commodity Exchange,'' that ''NYMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which NYMEX is a member, Exchange Act Release No. 60970 (Nov. 9, 2009), 74 FR 59319, 59321, 59327 (Nov. 17, 2009)); Sprott Physical Gold Trust, Exchange Act Release No. 61496 (Feb. 4, 2010), 75 FR 6758, 6760 (Feb. 10, 2010) (SR–NYSEArca–2009–113) (notice of proposed rule change included NYSE Arca's representation that the COMEX is one of the ''major

the Commission's prior orders have noted that the spot commodities and currency markets for which it has previously approved spot ETPs are generally unregulated and that the Commission relied on the underlying futures market as the regulated market of significant size that formed the basis for approving the series of Currency and Commodity-Based Trust Shares, including gold, silver, platinum, palladium, copper, and other commodities and currencies. The Commission specifically noted in the Winklevoss Order that the First Gold Approval Order ''was based on an assumption that the currency market and the spot gold market were largely unregulated.'' [15]

As such, the regulated market of significant size test does not require that the spot bitcoin market be regulated in order for the Commission to approve this proposal, and precedent makes clear that an underlying market for a spot commodity or currency being a regulated market would actually be an exception to the norm. These largely unregulated currency and commodity markets do not provide the same protections as the markets that are subject to the Commission's oversight, but the Commission has consistently looked to surveillance sharing agreements with the underlying futures market in order to determine whether such products were consistent with the Act. With this in mind, the Bitcoin Futures market, as defined below, is the proper market to consider in determining whether there is a related regulated market of significant size.

Further to this point, the Exchange notes that the Commission has recently approved proposals related to the listing and trading of funds that would primarily hold Bitcoin Futures that are registered under the Securities Act of 1933 instead of the Investment Company Act of 1940, as amended (the ''1940 Act'').[16] In the Teucrium Approval, the Commission found the Bitcoin Futures market to be a regulated market of significant size as it relates to Bitcoin Futures, an odd tautological truth that is also inconsistent with prior disapproval orders for exchange traded products (''ETPs'') that would hold actual bitcoin instead of derivatives contracts (''Spot Bitcoin ETPs'') that use the exact same pricing methodology as the Bitcoin Futures. As further discussed below, both the Exchange and the Sponsor believe that this proposal and the included analysis are sufficient to establish that the Bitcoin Futures market represents a regulated market of significant size as it relates both to the Bitcoin Futures market and to the spot bitcoin market and that this proposal should be approved.

Bitcoin Futures

CME began offering trading in Bitcoin Futures in 2017. Each contract represents five bitcoin and is based on the CME CF Bitcoin Reference Rate.[17] The contracts trade and settle like other cash-settled commodity futures contracts. Nearly every measurable metric related to Bitcoin Futures has generally trended up since launch, although certain notional volume calculations have decreased roughly in line with the decrease in the price of bitcoin. For example, there were 276,542 Bitcoin Futures contracts traded in March 2023 compared to 165,567, 233,345, and 183,131 contracts traded in March 2020, March 2021, and March 2023, respectively.

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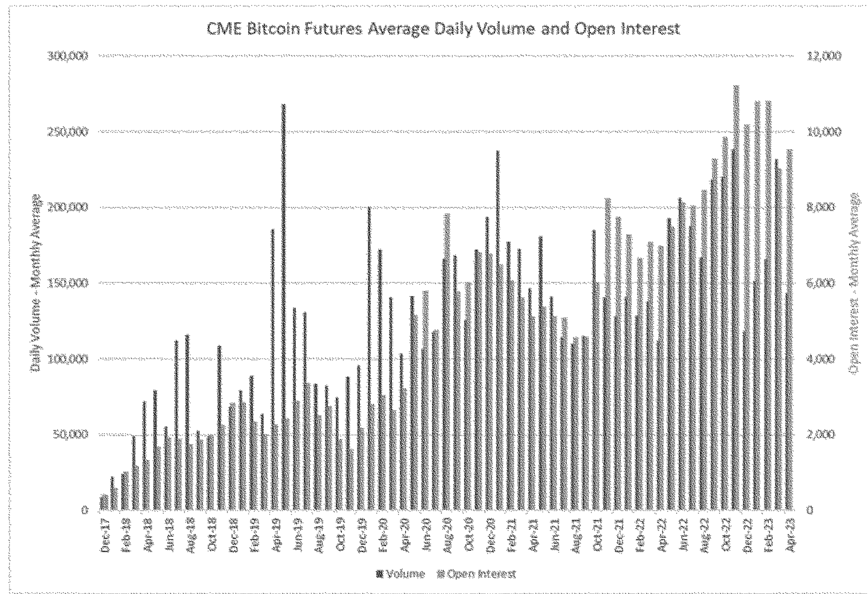
world gold markets,'' that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' and that NYMEX, of which COMEX is a division, is a member of the Intermarket Surveillance Group, Exchange Act Release No. 61236 (Dec. 23, 2009), 75 FR 170, 171, 174 (Jan. 4, 2010)); Sprott Physical Silver Trust, Exchange Act Release No. 63043 (Oct. 5, 2010), 75 FR 62615, 62616, 62619, 62621 (Oct. 12, 2010) (SR–NYSEArca–2010–84); ETFS Precious Metals Basket Trust, Exchange Act Release No. 62692 (Aug. 11, 2010), 75 FR 50789, 50790 (Aug. 17, 2010) (SR–NYSEArca–2010–56) (notice of proposed rule change included NYSE Arca's representation that ''the most significant gold, silver, platinum and palladium futures exchanges are the COMEX and the TOCOM'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 62402 (Jun. 29, 2010), 75 FR 39292, 39295, 39298 (July 8, 2010)); ETFS White Metals Basket Trust, Exchange Act Release No. 62875 (Sept. 9, 2010), 75 FR 56156, 56158 (Sept. 15, 2010) (SR–NYSEArca–2010–71) (notice of proposed rule change included NYSE Arca's representation that ''the most significant silver, platinum and palladium futures exchanges are the COMEX and the TOCOM'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 62620 (July 30, 2010), 75 FR 47655, 47657, 47660 (Aug. 6, 2010)); ETFS Asian Gold Trust, Exchange Act Release No. 63464 (Dec. 8, 2010), 75 FR 77926, 77928 (Dec. 14, 2010) (SR–NYSEArca–2010–95) (notice of proposed rule change included NYSE Arca's representation that ''the most significant gold futures exchanges are the COMEX and the Tokyo Commodity Exchange,'' that ''COMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 63267 (Nov. 8, 2010), 75 FR 69494, 69496, 69500–01 (Nov. 12, 2010)); Sprott Physical Platinum and Palladium Trust, Exchange Act Release No. 68430 (Dec. 13, 2012), 77 FR 75239, 75240–41 (Dec. 19, 2012) (SR–NYSEArca–2012–111) (notice of proposed rule change included NYSE Arca's representation that ''[f]utures on platinum and palladium are traded on two major exchanges: The New York Mercantile Exchange . . . and Tokyo Commodities Exchange'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 68101 (Oct. 24, 2012), 77 FR 65732, 65733, 65739 (Oct. 30, 2012)); APMEX Physical—1 oz. Gold Redeemable Trust, Exchange Act Release No. 66930 (May 7, 2012), 77 FR 27817, 27818 (May 11, 2012) (SR–NYSEArca–2012–18) (notice of proposed rule change included NYSE Arca's representation that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the ''major world gold markets,'' Exchange Act Release No. 66627 (Mar. 20, 2012), 77 FR 17539, 17542–43, 17547 (Mar. 26, 2012)); JPM XF Physical Copper Trust, Exchange Act Release No. 68440 (Dec. 14, 2012), 77 FR 75468, 75469–70, 75472, 75485–86 (Dec. 20, 2012) (SR–NYSEArca–2012–28); iShares Copper Trust, Exchange Act Release No. 68973 (Feb. 22, 2013), 78 FR 13726, 13727, 13729–30, 13739–40 (Feb. 28, 2013) (SR–NYSEArca–2012–66); First Trust Gold Trust, Exchange Act Release No. 70195 (Aug. 14, 2013), 78 FR 51239, 51240 (Aug. 20, 2013) (SR–NYSEArca–2013–61) (notice of proposed rule change included NYSE Arca's representation that FINRA, on behalf of the exchange, may obtain trading information regarding gold futures and options on gold futures from members of the Intermarket Surveillance Group, including COMEX, or from markets ''with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement,'' and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the ''major world gold markets,'' Exchange Act Release No. 69847 (June 25, 2013), 78 FR 39399, 39400, 39405 (July 1, 2013)); Merk Gold Trust, Exchange Act Release No. 71378 (Jan. 23, 2014), 79 FR 4786, 4786–87 (Jan. 29, 2014) (SR–NYSEArca–2013–137) (notice of proposed rule change included NYSE Arca's representation that ''COMEX is the largest gold futures and options exchange'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' including with respect to transactions occurring on COMEX pursuant to CME and NYMEX's membership, or from exchanges ''with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement,'' Exchange Act Release No. 71038 (Dec. 11, 2013), 78 FR 76367, 76369, 76374 (Dec. 17, 2013)); Long Dollar Gold Trust, Exchange Act Release No. 79518 (Dec. 9, 2016), 81 FR 90876, 90881, 90886, 90888 (Dec. 15, 2016) (SR–NYSEArca–2016–84).

[15] *See* Winklevoss Order at 37592.

[16] *See* Exchange Act Release No. 94620 (April 6, 2022), 87 FR 21676 (April 12, 2022) (the ''Teucrium Approval'') and 94853 (May 5, 2022) (collectively, with the Teucrium Approval, the ''Bitcoin Futures Approvals'').

[17] The CME CF Bitcoin Reference Rate is based on a publicly available calculation methodology based on pricing sourced from several crypto and trading platforms, including Bitstamp, Coinbase, Gemini, itBit, Kraken, and LMAX Digital.



Source: CME 4/20/23.

Large Open Interest Holders of CME Bitcoin Futures

The number of large open interest holders and *unique accounts trading Bitcoin Futures have* both increased, even in the face of heightened Bitcoin price volatility.

A large open interest holder in Bitcoin Futures is an entity that holds at least 25 contracts, which is the equivalent of 125 bitcoin.

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The Sponsor further believes that publicly available research, including research done as part of rule filings proposing to list and trade shares of Spot Bitcoin ETPs, corroborates the overall trend outlined above and supports the thesis that the Bitcoin Futures pricing leads the spot market and, thus, a person attempting to manipulate the Shares would also have to trade on that market to manipulate the ETP. Specifically, the Sponsor believes that such research indicates that bitcoin futures lead the bitcoin spot market in price formation.[18]

[18] *See* Exchange Act Releases No. 94080 (January 27, 2022), 87 FR 5527 (April 12, 2022) (specifically "Amendment No. 1 to the Proposed Rule Change To List and Trade Shares of the Wise Origin Bitcoin Trust Under BZX Rule 14.11(3)(4), Commodity-Based Trust Shares"); 94982 (May 25, 2022), 87 FR 33250 (June 1, 2022); 94844 (May 4, 2022), 87 FR 28043 (May 10, 2022); and 93445 (October 28, 2021), 86 FR 60695 (November 3, 2021). *See* also Hu, Y., Hou, Y. and Oxley, L. (2019). "What role do futures markets play in Bitcoin pricing? Causality, cointegration and price discovery from a time-varying perspective" (available at: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7481826/*). This academic research paper concludes that "There exist no episodes where the Bitcoin spot markets dominates the price discovery processes with regard to Bitcoin futures. This points to a conclusion that the price formation originates solely in the Bitcoin futures market. We can, therefore, conclude that the Bitcoin futures markets dominate

Preventing Fraudulent and Manipulative Practices

In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices;[19] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act and that this filing sufficiently demonstrates that the Bitcoin Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place[20] with a regulated market of significant size. Both the Exchange and CME are members of ISG.[21] The only remaining issue to be addressed is whether the Bitcoin Futures market constitutes a market of significant size, which both the Exchange and the Sponsor believe that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[22]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying section 6(b)(5) of the act, specifically providing 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.[23]

(A) Reasonable Likelihood That a Person Attempting To Manipulate the ETP Would Also Have To Trade on That Market To Manipulate the ETP

Bitcoin Futures represent a growing influence on pricing in the spot bitcoin market as has been laid out above and in other proposals to list and trade Spot Bitcoin ETPs. Pricing in Bitcoin Futures is based on pricing from spot bitcoin markets. As noted above, the statement from the Teucrium Approval that ''CME's surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts . . . indirectly by trading outside of the CME bitcoin futures market,'' makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of Bitcoin Futures. While the Commission makes clear in the Teucrium Approval that the analysis only applies to the Bitcoin Futures market as it relates to an ETP that invests in Bitcoin Futures as its only non-cash or cash equivalent holding, if CME's surveillance is sufficient to mitigate concerns related to trading in Bitcoin Futures for which the pricing is based directly on pricing from spot bitcoin markets, it's not clear how such a conclusion could apply only to ETPs based on Bitcoin Futures and not extend to Spot Bitcoin ETPs.

(B) Predominant Influence on Prices in Spot and Bitcoin Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices in the Bitcoin Futures market or spot market for a number of reasons, including the significant volume in the Bitcoin Futures market, the size of bitcoin's market cap, and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid. According to data from Skew, the cost to buy or sell $5 million worth of bitcoin averages roughly 48 basis points with a market impact of $139.08.[24] Stated another way, a market participant could enter a market buy or sell order for $5 million

the dynamic price discovery process based upon time-varying information share measures. Overall, price discovery seems to occur in the Bitcoin futures markets rather than the underlying spot market based upon a time-varying perspective.''

[19] The Exchange believes that bitcoin is resistant to price manipulation and that ''other means to prevent fraudulent and manipulative acts and practices'' exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin. The fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging. To the extent that there are bitcoin platforms engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, such pricing does not normally impact prices on other platforms because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin platform or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

[20] As previously articulated by the Commission, ''The standard requires such surveillance-sharing agreements since ''they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.'' The Commission has historically held that joint membership in the Intermarket Surveillance Group (''ISG'') constitutes such a surveillance sharing agreement. *See* Securities Exchange Act Release No. 88284 (February 26, 2020), 85 FR 12595 (March 3, 2020) (SR–NYSEArca–2019–39) (the ''Wilshire Phoenix Disapproval'').

[21] For a list of the current members and affiliate members of ISG, *see https://www.isgportal.com/.*

[22] *See* Wilshire Phoenix Disapproval.

[23] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a 'cannot be manipulated' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.'' *Id.* at 37582.

[24] These statistics are based on samples of bitcoin liquidity in USD (excluding stablecoins or Euro liquidity) based on executable quotes on Coinbase, FTX and Kraken during the one-year period ending May 2022.

of bitcoin and only move the market 0.48%. More strategic purchases or sales (such as using limit orders and executing through OTC bitcoin trade desks) would likely have less obvious impact on the market—which is consistent with MicroStrategy, Tesla, and Square being able to collectively purchase billions of dollars in bitcoin.

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

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

The Exchange is also proposing to take additional steps to those described above to supplement its ability to obtain information that would be helpful in detecting, investigating, and deterring fraud and market manipulation in the Commodity-Based Trust Shares.

As noted in the Surveillance section, 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). In addition to the Exchange's existing surveillance, a new pattern will be added to surveil for significant deviation in the Commodity-Based Trust Shares' price from the underlying asset's price. The Exchange will use the trade data from an external vendor that consolidates the real-time data from multiple bitcoin platforms.

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 Financial Industry Regulatory Authority (''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 will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange may obtain trading information regarding trading in the Shares from such markets and other entities.

Availability of Information

The Trust's website (*https://valkyrieinvest.com/BRRR*) will include, free of charge, quantitative information on a per Share basis updated on a daily basis, including (i) the current NAV per Share daily and the prior business day's NAV and the reported closing price; (ii) the mid-point of the bid-ask price [25] in relation to the NAV as of the time the NAV is calculated (''Bid-Ask Price'') and a calculation of the premium or discount of such price against such NAV; (iii) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid-Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters (or for the life of the Trust, if shorter); and (iv) copies of the Trust's prospectus in electronic format. In addition, on each business day the Trust's website will also provide free of charge: (i) the Trust's NAV and NAV per Share; (ii) information regarding the Trust's holdings; and (iii) information regarding the Index and the value of a bitcoin as calculated by the Index (which may also be found on the Index's website (*https://www.cfbenchmarks.com/data/indices/BRRNY*), or, if an alternative fair value methodology is used to value the Trust's bitcoin, such other pricing source(s) used in such calculation.

The Trust's website will provide an IIV per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Market Session (9:30 a.m. to 4:00 p.m. (Eastern Time)).[26] The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value throughout the trading day to reflect changes in the most recently reported price level of the BRTI, as reported by CME Group, Inc., Bloomberg, L.P. or another reporting service. The BRTI is calculated in real time once per second based on the Relevant Order Books of all Constituent Bitcoin Platforms. All aspects of the BRTI methodology are publicly available at the website of the Benchmark Administrator.

The IIV disseminated during the Exchange's Regular Market Session should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Market Session by one or more major market data vendors. In addition, the IIV will be available published on the Exchange's website and through on-line information services such as Bloomberg and Reuters.

The NAV for the Trust will be calculated by the Sponsor once a day and will be disseminated daily to all market participants at the same time. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the relevant securities information processor.

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters, as well as CF Benchmarks. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the platforms on which bitcoin are traded. Depth of book information is also available from bitcoin platforms. The normal trading hours for bitcoin 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. Market prices for the Shares will be available from a variety of sources, including brokerage firms, information websites and other information service providers.

Initial and Continued Listing

The Shares will be subject to Nasdaq Rule 5711(d)(vi), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. The Exchange will obtain a representation that the Trust's NAV will

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

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

be calculated daily and will be made available to all market participants at the same time. A minimum of 40,000 Commodity-Based Trust Shares will be required to be outstanding at the time of commencement of trading on the Exchange. The Sponsor expects there to be multiple creation units in circulation at launch of the Trust. Upon termination of the Trust, the Shares will be removed from listing. The Trustee, Delaware Trust Company, is a trust company having substantial capital and surplus and the experience and facilities for handling corporate trust business, as required under Nasdaq Rule 5711(d)(vi)(D) and no change will be made to the trustee without prior notice to and approval of the Exchange.

As required in Nasdaq Rule 5711(d)(viii), the Exchange notes that any registered market maker (''Market Maker'') in the Shares must file with the Exchange, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for trading the underlying commodity, related futures or options on futures, or any other related derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker in the Shares shall trade in the underlying commodity, related futures or options on futures, or any other related derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by Nasdaq Rule 5711(d). In addition to the existing obligations under Exchange rules regarding the production of books and records, the registered Market Maker in the Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or any limited partner, officer or approved person thereof, registered or non-registered employee affiliated with such entity for its or their own accounts in the underlying commodity, related futures or options on futures, or any other related derivatives, as may be requested by the Exchange.

The Exchange is able to obtain information regarding trading in the Shares and the underlying bitcoin, Bitcoin Futures contracts, options on Bitcoin Futures, or any other bitcoin 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 organization 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 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. (Eastern Time). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. The Shares of the Trust will conform to the initial and continued listing criteria set forth in Nasdaq Rule 5711(d).

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

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. 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). In addition to the Exchange's existing surveillance, a new pattern will be added to surveil for significant deviation in the Commodity-Based Trust Shares' price from the underlying asset's price. The Exchange will use the trade data from an external vendor that consolidates the real-time data from multiple bitcoin platforms.

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 with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. The Exchange also may obtain information regarding trading in the Shares and listed bitcoin derivatives via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange

has entered into a comprehensive surveillance sharing agreement.

Information Circular

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

The Information Circular will also reference the fact that there is no regulated source of last sale information regarding bitcoin, that the Commission has no jurisdiction over the trading of bitcoin as a commodity, and that the CFTC has regulatory jurisdiction over the trading of Bitcoin Futures contracts and options on Bitcoin Futures contracts.

Additionally, the Information Circular will disclose the trading hours of the Shares. The Information Circular will also disclose that information about the Shares will be publicly available on the Trust's website.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act [27] in general and section 6(b)(5) of the Act [28] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission has approved numerous series of Trust Issued Receipts,[29] including Commodity-Based Trust Shares,[30] to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act because this filing sufficiently demonstrates that the standard that has previously been articulated by the Commission applicable to Commodity-Based Trust Shares has been met as outlined below.

Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order for a proposal to list and trade a series of Commodity-Based Trust Shares to be deemed consistent with the Act, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place with a regulated market of significant size. Both the Exchange and CME are members of ISG.[31] As such, the only remaining issue to be addressed is whether the Bitcoin Futures market constitutes a market of significant size, which the Exchange believes that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[32]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying section 6(b)(5) of the act, specifically providing 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.[33]

(a) Reasonable Likelihood That a Person Attempting To Manipulate the ETP Would Also Have To Trade on That Market To Manipulate the ETP

Bitcoin Futures represent a growing influence on pricing in the spot bitcoin market as has been laid out above and in other proposals to list and trade Spot Bitcoin ETPs. Pricing in Bitcoin Futures is based on pricing from spot bitcoin markets. As noted above, the statement from the Teucrium Approval that ''CME's surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts . . . indirectly by trading outside of the CME bitcoin futures market,'' makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of Bitcoin Futures. While the Commission makes clear in the Teucrium Approval that the analysis only applies to the Bitcoin Futures market as it relates to an ETP that invests in Bitcoin Futures as its only non-cash or cash equivalent holding, if CME's surveillance is sufficient to mitigate concerns related to trading in Bitcoin Futures for which the pricing is based directly on pricing from spot bitcoin markets, it's not clear how such a conclusion could apply only to ETPs based on Bitcoin Futures and not extend to Spot Bitcoin ETPs.

(b) Predominant Influence on Prices in Spot and Bitcoin Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices in the Bitcoin Futures market or spot market for a number of reasons, including the significant volume in the Bitcoin Futures market, the size of bitcoin's market cap, and the significant liquidity available in the spot market. In

[27] 15 U.S.C. 78f.

[28] 15 U.S.C. 78f(b)(5).

[29] *See* Exchange Rule 5720.

[30] Commodity-Based Trust Shares, as described in Exchange Rule 5711(d), are a type of Trust Issued Receipt.

[31] For a list of the current members and affiliate members of ISG, *see https://www.isgportal.com/.*

[32] *See* Wilshire Phoenix Disapproval.

[33] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a ''cannot be manipulated'' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met. *Id.* at 37582.

addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid.

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

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

The Exchange is also proposing to take additional steps to those described above to supplement its ability to obtain information that would be helpful in detecting, investigating, and deterring fraud and market manipulation in the Commodity-Based Trust Shares.

As noted in the Surveillance section, 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). In addition to the Exchange's existing surveillance, a new pattern will be added to surveil for significant deviation in the Commodity-Based Trust Shares' price from the underlying asset's price. The Exchange will use the trade data from an external vendor that consolidates the real-time data from multiple bitcoin platforms.

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 will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange may obtain trading information regarding trading in the Shares from such markets and other entities.

Commodity-Based Trust Shares

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in Exchange Rule 5711(d). 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, including Commodity-Based Trust Shares.

Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares 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 or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 5800 and following. The Exchange may obtain information regarding trading in the Shares and listed bitcoin derivatives via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

Availability of Information

The Trust's website (*https://valkyrieinvest.com/BRRR*) will include, free of charge, quantitative information on a per Share basis updated on a daily basis, including (i) the current NAV per Share daily and the prior business day's NAV and the reported closing price; (ii) the mid-point of the bid-ask price [34] in relation to the NAV as of the time the NAV is calculated (''Bid-Ask Price'') and a calculation of the premium or discount of such price against such NAV; (iii) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid-Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters (or for the life of the Trust, if shorter); and (iv) copies of the Trust's prospectus in electronic format. In addition, on each business day the Trust's website will also provide free of charge: (i) the Trust's NAV and NAV per Share; (ii) information regarding the Trust's holdings; and (iii) information regarding the Index and the value of a bitcoin as calculated by the Index (which may also be found on the Index's website (*https://www.cfbenchmarks.com/data/indices/BRRNY*), or, if an alternative fair value methodology is used to value the Trust's bitcoin, such other pricing source(s) used in such calculation.

The Trust's website will provide an IIV per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Market Session (9:30 a.m. to 4:00 p.m. (Eastern Time)).[35] The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value throughout the trading day to reflect changes in the most recently reported price level of the BRTI, as reported by CME Group, Inc., Bloomberg, L.P. or another reporting service. The BRTI is calculated in real time once per second based on the Relevant Order Books of all Constituent Bitcoin Platforms. All aspects of the BRTI methodology are publicly available at the website of the Benchmark Administrator.

The IIV disseminated during the Exchange's Regular Market Session should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Market Session by one or more major market data vendors. In addition, the IIV will be available published on the Exchange's website and through on-line information services such as Bloomberg and Reuters.

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

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

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

the relevant securities information processor.

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters, as well as CF Benchmarks. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the platforms on which bitcoin are traded. Depth of book information is also available from bitcoin platforms. The normal trading hours for bitcoin 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. Market prices for the Shares will be available from a variety of sources, including brokerage firms, information websites and other information service providers.

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

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

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

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

No written comments were either solicited or received.

III. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NASDAQ–2023–019 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–2023–019. 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–2023–019 and should be submitted on or before February 2, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–00507 Filed 1–11–24; 8:45 am]

BILLING CODE 8011–01–P

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99282; File No. SR–NYSEAMER–2024–01]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend Certain Transaction Fees and Credits in the NYSE American Equities Price List and Fee Schedule

January 8, 2024.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act"),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on January 2, 2024, NYSE American LLC ("NYSE American" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend certain transaction fees and credits in the NYSE American Equities Price List and Fee Schedule ("Price List") pertaining to its optional monthly credits applicable to Electronic Designated Market Makers ("eDMM") in assigned securities. The Exchange proposes to implement the fee changes effective January 2, 2024. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

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

[3] 17 CFR 240.19b–4.

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

1. Purpose

The Exchange proposes to amend certain transaction fees and credits in the NYSE American Equities Price List and Fee Schedule (''Price List'') pertaining to its optional monthly credits applicable to Electronic Designated Market Makers (''eDMM'') in assigned securities.

The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders by offering further incentives for ETP Holders to send additional adding and removing liquidity to the Exchange.

The Exchange proposes to implement the fee changes effective January 2, 2024.

Competitive Environment

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [4]

While Regulation NMS has enhanced competition, it has also fostered a ''fragmented'' market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that ''such competition can lead to the fragmentation of order flow in that stock.'' [5] Indeed, cash equity trading is currently dispersed across 16 exchanges,[6] numerous alternative trading systems,[7] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 17% market share.[8] Therefore, no exchange possesses significant pricing power in the execution of cash equity order flow. More specifically, the Exchange currently has less than 1% market share of executed volume of cash equities trading.[9]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which the firm routes order flow. Accordingly, competitive forces compel the Exchange to use exchange transaction fees and credits because market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

Proposed Rule Change

Currently, the Exchange offers eDMMs an optional monthly credit per security (''Credit Per Security'') up to a maximum credit of $850 per month per assigned security, provided that eDMMs agree to a credit of $0.0020 per share for orders adding displayed liquidity instead of the otherwise-applicable credit of $0.0045 per share. Specifically, for eDMMs agreeing to a $0.0020 credit per share for orders adding displayed liquidity, the Exchange currently offers a Credit Per Security of $100 for an eDMM quoting at the National Best Bid or Offer (''NBBO'') for a minimum average of 25% of the time; a Credit Per Security of $350 for an eDMM quoting at the NBBO for a minimum average of 40% of the time; and a Credit Per Security of $850 for an eDMM quoting at the NBBO for a minimum average of 50% of the time.[10]

The Exchange proposes to add a new Credit Per Security level, offering a Credit Per Security of $1,000 for an eDMM quoting at the NBBO for a minimum average of 70% of the time.

The proposed change responds to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders by offering further incentives for eDMMs to increase quoting on, and send additional displayed liquidity to, the Exchange. The Exchange believes that offering Exchange eDMMs the option to receive a new higher monthly rebate across all eDMM securities would foster liquidity provision, increased quoting, and stability in the marketplace and lessen eDMM reliance on transaction fees, to the benefit of the marketplace and all market participants.

The Exchange does not propose any other changes to its rates to eDMMs on transactions in assigned securities.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[12] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities, is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Fee Change Is Reasonable

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [13]

The Exchange believes that the ever-shifting market share among the exchanges from month to month

[4] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (''Regulation NMS'').

[5] *See* Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

[6] *See* Cboe U.S. Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share.* See generally *https://www.sec.gov/fast-answers/divisionsmarket regmrexchangesshtml.html.*

[7] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[8] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[9] *See id.*

[10] *See* Securities Exchange Act Release No. 95106 (June 15, 2022), 87 FR 37364 (June 22, 2022) (SR–NYSEAMER–2022–24).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4) and (5).

[13] *See* Regulation NMS, *supra* note 4, 70 FR at 37499.

demonstrates that market participants can shift order flow, or discontinue to reduce use of certain categories of products, in response to fee changes. ETP Holders can choose from any one of the 16 currently operating registered exchanges, and numerous off-exchange venues, to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

Given this competitive environment, the proposal represents a reasonable attempt to attract additional order flow to the Exchange. Providing eDMMs with the option to receive a lower per share transaction credit for adding displayed liquidity in exchange for higher monthly rebates per assigned liquidity for higher quoting levels, up to a maximum credit of $1,000 per month across all eDMM assigned securities, is reasonable because it would foster liquidity provision, improved quoting, and stability in the marketplace and lessen eDMM reliance on transaction fees, to the benefit of the marketplace and all market participants. Moreover, the proposal is reasonable because it would balance the increased risks and heightened quoting and other obligations that eDMMs on the Exchange have and that other market participants do not. The Exchange believes that increasing the maximum Credit Per Security level to $1,000 (from $850) per month is reasonable and will provide a further incentive for eDMMs to quote and to quote at higher levels in a greater number of securities on the Exchange and will generally allow the Exchange and eDMMs to better compete for order flow, and thus enhance competition.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes its proposal equitably allocates its fees among its market participants by fostering liquidity provision and stability in the marketplace. The Exchange believes that it is equitable to offer eDMMs the option to receive a lower per-share transaction credit for adding displayed liquidity in exchange for monthly rebates per assigned security because it would balance the increased risks and heightened quoting and other obligations that eDMMs on the Exchange have and that other market participants do not have. As such, it is equitable to offer eDMMs the option to receive a flat per-security credit based on the eDMM's quoting in that symbol, coupled with a lower transaction fee.

The Exchange believes that increasing the maximum Credit Per Security level to $1,000 (from $850) per month is equitable because it would apply equally to all eDMM firms, each of whom would have the option to elect to participate (or not participate) on a monthly basis. Any eDMM wishing to receive the Credit Per Security would be required to meet the prescribed quoting requirements in order to qualify for the payments, as described above. All eDMMs would be eligible to elect to receive a Credit Per Security and could do so by notifying the Exchange and meeting the per symbol quoting requirements.

The Proposed Fee Change Is Not Unfairly Discriminatory

The Exchange believes it is not unfairly discriminatory to offer eDMMs the option to receive a flat per-security credit coupled with a lower transaction fee for orders that provide displayed liquidity in assigned securities as the proposed credits would be provided on an equal basis to all such participants. The proposed $1,000 maximum Credit Per Security level would apply equally to all eDMM firms, who would have the option to elect to participate on a monthly basis. Further, the Exchange believes the new proposed maximum credit would incentivize eDMMs that meet the proposed quoting requirement to send more orders to the Exchange to qualify for a higher Credit Per Security.

The proposal neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because the proposed thresholds would be applied to all similarly situated eDMMs, who would all be eligible for the same credit on an equal basis. Accordingly, no eDMM already operating on the Exchange would be disadvantaged by this allocation of fees.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

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

In accordance with Section 6(b)(8) of the Act,[14] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed fee change would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery, and transparency and enhancing order execution opportunities for market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small." [15]

Intramarket Competition. The Exchange believes the proposed change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is designed to attract additional orders to the Exchange. The Exchange believes that the proposed changes would incentivize market participants to direct their orders to the Exchange. Greater overall order flow, trading opportunities, and pricing transparency benefit all market participants on the Exchange by enhancing market quality and continuing to encourage ETP Holders to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange currently has less than 1% market share of executed volume of equities trading. In such an environment, the Exchange must continually adjust its fees and credits to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

[14] 15 U.S.C. 78f(b)(8).

[15] *See* Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

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

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

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [16] of the Act and subparagraph (f)(2) of Rule 19b–4 [17] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [18] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

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

• Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEAMER–2024–01 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–NYSEAMER–2024–01. 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–NYSEAMER–2024–01 and should be submitted on or before February 2, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–00497 Filed 1–11–24; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(2).

[18] 15 U.S.C. 78s(b)(2)(B).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99294; File No. SR–NYSEARCA–2023–44]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 to a Proposed Rule Change To List and Trade Shares of the Bitwise Bitcoin ETF Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares)

January 8, 2024.

On June 28, 2023, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the Bitwise Bitcoin ETF (f/k/a Bitwise Bitcoin ETP Trust) under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares). The proposed rule change was published for comment in the **Federal Register** on July 18, 2023.[3] On August 31, 2023, pursuant to section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On September 25, 2023, the Exchange filed Amendment No. 1, which amended and replaced the proposed rule change in its entirety. On September 28, 2023, the Commission noticed Amendment No. 1 and instituted proceedings to determine whether to disapprove the proposed rule change, as modified by Amendment No. 1.[6] On January 5, 2024, the Exchange filed Amendment No. 2 to the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment No. 2 amended and replaced the proposed rule change, as modified by Amendment No. 1, in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 2, from interested persons.

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

The Exchange proposes to list and trade shares of the Bitwise Bitcoin ETF under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares). This Amendment No. 2 to SR–NYSEArca–2023–44 replaces SR–NYSEArca–2023–44 as originally filed and supersedes such filing in its entirety. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of,

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 97884 (July 12, 2023), 88 FR 45947. Comments on the proposed rule change are available at: *https://www.sec.gov/comments/sr-nysearca-2023-44/srnysearca202344.htm.*

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

[5] *See* Securities Exchange Act Release No. 98268, 88 FR 61647 (Sept. 7, 2023).

[6] *See* Securities Exchange Act Release No. 98607, 88 FR 68862 (Oct. 4, 2023).

and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of the Bitwise Bitcoin ETF (the ''Trust''),[7] under NYSE Arca Rule 8.201–E, which governs the listing and trading of Commodity-Based Trust Shares.[8]

According to the Registration Statement, the Trust will not be registered as an investment company under the Investment Company Act of 1940,[9] and is not required to register thereunder. The Trust is not a commodity pool for purposes of the Commodity Exchange Act.[10]

The Exchange represents that the Shares satisfy the requirements of NYSE Arca Rule 8.201–E and thereby qualify for listing on the Exchange.[11]

Bitwise Bitcoin ETF

Operation of the Trust [12]

The Trust will issue the Shares which, according to the Registration Statement, represent units of undivided beneficial ownership of the Trust. The Trust is a Delaware statutory trust and will operate pursuant to a trust agreement (the ''Trust Agreement'') between Bitwise Investment Advisers, LLC (the ''Sponsor'' or ''Bitwise'') and Delaware Trust Company, as the Trust's trustee (the ''Trustee''). Coinbase Custody Trust Company, LLC will maintain custody of the Trust's bitcoin assets (the ''Bitcoin Custodian'').[13] Bank of New York Mellon will be the custodian for the Trust's cash holdings (in such role, the ''Cash Custodian''), the administrator of the Trust (in such role, the ''Administrator''), and the transfer agent for the Trust (in such role, the ''Transfer Agent'').

According to the Registration Statement, the investment objective of the Trust is to seek to provide exposure to the value of bitcoin held by the Trust, less the expenses of the Trust's operations. In seeking to achieve its investment objective, the Trust will hold bitcoin and establish its Net Asset Value (''NAV'') at the end of every business day by reference to the CME CF Bitcoin Reference Rate—New York Variant (''CME US Reference Rate'').[14]

The Trust's only assets will be bitcoin and cash.[15] The Trust does not seek to hold any non-bitcoin crypto assets and has expressly disclaimed ownership of any such assets in the event the Trust ever involuntarily comes into possession of such assets.[16] The Trust will not use derivatives that may subject the Trust to counterparty and credit risks. The Trust will process creations and redemptions in cash. The Trust's only recurring ordinary expense is expected to be the Sponsor's unitary management fee (the ''Sponsor Fee''), which will accrue daily and will be payable in bitcoin monthly in arrears. The Administrator will calculate the Sponsor Fee on a daily basis by applying an annualized rate to the Trust's total bitcoin holdings, and the amount of bitcoin payable in respect of each daily accrual shall be determined by reference to the CME US Reference Rate. Financial institutions authorized to create and redeem Shares (each, an ''Authorized Participant'') will deliver, or cause to be delivered, cash in exchange for Shares of the Trust, and the Trust will deliver cash to Authorized Participants when those Authorized Participants redeem Shares of the Trust.

Bitcoin, Bitcoin Market, Bitcoin Trading Platforms and Regulation of Bitcoin

The following sections, drawn from the Registration Statement, describe bitcoin, including the historical development of bitcoin and the Bitcoin network, how a person holds bitcoin, how to use bitcoin in transactions, the ''exchange'' market where bitcoin can be bought, held and sold, and the bitcoin ''over-the-counter'' (''OTC'') market.

Bitcoin

Bitcoin was first described in a white paper released in 2008 and published under the name ''Satoshi Nakamoto.'' The protocol underlying Bitcoin was

[7] The Trust is a Delaware statutory trust that was formerly known as the Bitwise Bitcoin ETP Trust. On October 14, 2021, the Trust filed with the Commission an initial registration statement (the ''Registration Statement'') on Form S–1 under the Securities Act of 1933 (15 U.S.C. 77a). On October 25, 2023, the Trust filed Amendment No. 1 with the Commission on Form S–1. On December 4, 2023, the Trust filed Amendment No. 2 with the Commission on Form S–1. On December 29, 2023, the Trust filed Amendment No. 3 with the Commission on Form S–1. The description of the operation of the Trust herein is based, in part, on the most recent Registration Statement. The Registration Statement is not yet effective and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

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

[9] 15 U.S.C. 80a–1.

[10] 17 U.S.C. 1.

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

[12] The description of the operation of the Trust, the Shares and the bitcoin market contained herein are based, in part, on the Registration Statement. *See* note 4, *supra.*

[13] When capitalized, references to ''Bitcoin'' are to the Bitcoin network or the Bitcoin protocol. When lowercase, references to ''bitcoin'' are to the digital asset native to the Bitcoin network, which asset is the underlying commodity held by the Trust.

[14] The CME US Reference Rate is a daily reference rate of the US Dollar price of one bitcoin, calculated at 4:00 p.m. E.T. The CME US Reference Rate utilizes the same methodology as the CME CF Bitcoin Reference Rate (the ''CME UK Reference Rate''), which is calculated at 4:00 p.m. London time and was designed by the CME Group and Crypto Facilities Ltd to facilitate the development of financial products, including the cash settlement of bitcoin futures traded on the Chicago Mercantile Exchange (''CME''). Andrew Paine and William J. Knottenbelt, ''Analysis of the CME CF Bitcoin Reference Rate and CME CF Bitcoin Real Time Index,'' Imperial College Centre for Cryptocurrency Research and Engineering, November 14, 2016, available at *https://www.cmegroup.com/trading/files/bitcoin-white-paper.pdf.*

[15] The Trust conducts creations and redemptions of its Shares for cash. Authorized Participants will deliver cash to the Cash Custodian pursuant to creation orders for Shares and the Cash Custodian will hold such cash until such time as it can be converted to bitcoin, which the Trust intends to do on the same business day in which such cash is received by the Cash Custodian. Additionally, the Trust will sell bitcoin in exchange for cash pursuant to redemption orders of its Shares. In connection with such sales, an approved Bitcoin Trading Counterparty (defined below) will send cash to the Cash Custodian. The Cash Custodian will hold such cash until it can be distributed to the redeeming Authorized Participant, which it intends to do on the same business in which it is received. In connection with the purchases and sales of bitcoin pursuant to its creation and redemption activity, it is possible that the Trust may retain de minimis amounts of cash as a result of rounding differences. The Trust may also initially hold small amounts of cash to initiate Trust operations in the immediate aftermath of its Registration Statement being declared effective. Lastly, the Trust may also sell bitcoin and temporarily hold cash as part of a liquidation of the Trust or to pay certain extraordinary expenses not assumed by the Sponsor. Under the Trust Agreement, the Sponsor has agreed to assume the normal operating expenses of the Trust, subject to certain limitations. For example, the Trust will bear any indemnification or litigation liabilities as extraordinary expenses. In any event, in the ongoing course of business, the amounts of cash retained by the Trust are not expected to constitute a material portion of the Trust's holdings.

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

subsequently released in 2009 as open source software and currently operates on a worldwide network of computers.

The Bitcoin network utilizes a digital asset known as ''bitcoin,'' which can be transferred among parties via the internet. Unlike other means of electronic payments such as credit card transactions, one of the advantages of bitcoin is that it can be transferred without the use of a central administrator or clearing agency. As a central party is not necessary to administer bitcoin transactions or maintain the bitcoin ledger, the term decentralized is often used in descriptions of bitcoin. Unless it is using a third party service provider, a party transacting in bitcoin is not afforded some of the protections that may be offered by intermediaries.

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

The amount of bitcoin associated with each bitcoin address, as well as each bitcoin transaction to or from such bitcoin address, is transparently reflected in the Bitcoin network's distributed ledger (''Blockchain'') and can be viewed by websites that operate as ''Blockchain explorers.'' Copies of the Blockchain exist on thousands of computers on the Bitcoin network throughout the internet. A user's bitcoin wallet will either contain a copy of the Blockchain or be able to connect with another computer that holds a copy of the Blockchain. The innovative design of the Bitcoin network protocol allows each Bitcoin user to trust that their copy of the Blockchain will generally be updated consistent with each other user's copy.

When a Bitcoin user wishes to transfer bitcoin to another user, the sender must first request a Bitcoin address from the recipient. The sender then uses his or her Bitcoin wallet software to create a proposed transaction that is confirmed and settles when included in the Blockchain. The transaction would reduce the amount of bitcoin allocated to the sender's address and increase the amount allocated to the recipient's address, in each case by the amount of bitcoin desired to be transferred. The transaction is completely digital in nature, similar to a file on a computer, and it can be sent to other computers participating in the Bitcoin network; however, the use of cryptographic verification is believed to prevent the ability to duplicate or counterfeit bitcoin.

Bitcoin Protocol

The Bitcoin protocol is built using open source software allowing for any developer to review the underlying code and suggest changes. There is no official company or group responsible for making modifications to Bitcoin. There are, however, a number of individual developers that regularly contribute to the reference software known as ''Bitcoin Core,'' a specific distribution of Bitcoin software that provides the *de-facto* standard for the Bitcoin protocol.

Significant changes to the Bitcoin protocol are typically accomplished through a so-called ''Bitcoin Improvement Proposal'' or BIP. Such proposals are posted on websites, and the proposals explain technical requirements for the protocol change as well as reasons why the change should be accepted by users. Because Bitcoin has no central authority, updating the reference software's Bitcoin protocol will not immediately change the Bitcoin network's operations. Instead, the implementation of a change is achieved by users (including transaction validators known as ''miners'') downloading and running the updated versions of Bitcoin Core or other Bitcoin software that abides by the new Bitcoin protocol. Users and miners must accept any changes made to the Bitcoin source code by downloading a version of their Bitcoin software that incorporates the proposed modification of the Bitcoin network's source code. A modification of the Bitcoin network's source code or protocol is only effective with respect to those Bitcoin users and miners who download it. If an incompatible modification is accepted by a less than overwhelming percentage of users and miners, a division in the Bitcoin network will occur such that one network will run the pre-modification source code and the other network will run the modified source code. Such a division is known as a ''fork'' in the Bitcoin network.

Bitcoin Transactions

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

The use of key pairs is a cornerstone of the Bitcoin network technology. This is because the use of a private key is the only mechanism by which a bitcoin transaction can be signed. If a private key is lost, the corresponding bitcoin is thereafter permanently non-transferable. Moreover, the theft of a private key provides the thief immediate and unfettered access to the corresponding bitcoin. Bitcoin users must therefore understand that in this regard, bitcoin is similar to cash: that is, the person or entity in control of the private key corresponding to a particular quantity of bitcoin has de facto control of the bitcoin.

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

To prevent the possibility of double-spending of bitcoin, each validated transaction is recorded, time stamped and publicly displayed in a ''block'' in the Blockchain, which is publicly available. Thus, the Bitcoin network provides confirmation against double-spending by memorializing every transaction in the Blockchain, which is

publicly accessible and downloaded in part or in whole by all users of the Bitcoin network software program. Any user may validate, through their Bitcoin wallet or a Blockchain explorer, that each transaction in the Bitcoin network was authorized by the holder of the applicable private key, and Bitcoin network mining software consistent with reference software requirements validates each such transaction before including it in the Blockchain. This cryptographic security ensures that bitcoin transactions may not be counterfeited, although it does not protect against the ''real world'' theft or coercion of use of a Bitcoin user's private key, including the hacking of a Bitcoin user's computer or a service provider's systems.

A Bitcoin transaction between two parties is recorded if included in a valid block added to the Blockchain, when that block is accepted as valid through consensus formation among Bitcoin network participants. A block is validated by confirming the cryptographic hash value included in the block's data and by the block's addition to the longest confirmed Blockchain on the Bitcoin network. For a transaction, inclusion in a block in the Blockchain constitutes a ''confirmation'' of validity. As each block contains a reference to the immediately preceding block, additional blocks appended to and incorporated into the Blockchain constitute additional confirmations of the transactions in such prior blocks, and a transaction included in a block for the first time is confirmed once against double-spending. This layered confirmation process makes changing historical blocks (and reversing transactions) exponentially more difficult the further back one goes in the Blockchain.

The process by which bitcoin are created and bitcoin transactions are verified is called ''mining.'' To begin mining, a user, or ''miner,'' can download and run a mining ''client,'' which, like regular Bitcoin network software programs, turns the user's computer into a ''node'' on the Bitcoin network, and in this case has the ability to validate transactions and add new blocks of transactions to the Blockchain.

Miners, through the use of the bitcoin software program, engage in a set of prescribed, complex mathematical calculations in order to verify transactions and compete for the right to add a block of verified transactions to the Blockchain and thereby confirm bitcoin transactions included in that block's data. The miner who successfully ''solves'' the complex mathematical calculations has the right to add a block of transactions to the Blockchain and is then rewarded by a grant of bitcoin, known as a ''coinbase,'' plus any transaction fees paid for the transactions included in such block. Bitcoin is created and allocated by the Bitcoin network protocol and distributed through mining, subject to a strict, well-known issuance schedule. The supply of bitcoin is programmatically limited to 21 million bitcoin in total. As of November 28, 2023, approximately 19,555,000 bitcoin had been mined.

Confirmed and validated bitcoin transactions are recorded in blocks added to the Blockchain. Each block contains the details of some or all of the most recent transactions that are not memorialized in prior blocks, as well as a record of the award of bitcoin to the miner who added the new block. Each unique block can only be solved and added to the Blockchain by one miner, therefore, all individual miners and mining pools on the Bitcoin network must engage in a competitive process of constantly increasing their computing power to improve their likelihood of solving for new blocks. As more miners join the Bitcoin network and its processing power increases, the Bitcoin network adjusts the complexity of a block-solving equation to maintain a predetermined pace of adding a new block to the Blockchain approximately every ten minutes.

The Bitcoin Market and Bitcoin Trading Platforms

In addition to using bitcoin to engage in transactions, investors may purchase and sell bitcoin to speculate as to the value of bitcoin in the bitcoin market, or as a long-term investment to diversify their portfolio. The value of bitcoin within the market is determined, in part, by (1) the supply of and demand for bitcoin in the bitcoin market, (2) market expectations for the expansion of investor interest in bitcoin and the adoption of bitcoin by users, (3) the number of merchants that accept bitcoin as a form of payment, and (4) the volume of private end-user-to-end-user transactions.

Although the value of bitcoin is determined by the value that two transacting market participants place on bitcoin through their transaction, the most common means of determining a reference value is by surveying one or more trading platforms where secondary markets for bitcoin exist. The most prominent bitcoin trading platforms are often referred to as ''exchanges,'' although they neither report trade information nor are they regulated in the same way as a national securities exchange. As such, there is some difference in the form, transparency and reliability of trading data from bitcoin trading platforms. Bitcoin data is available from these trading platforms with publicly disclosed valuations for each executed trade, measured against a fiat currency such as the US Dollar or Euro, or against another digital asset (for example, bitcoin trades against the US Dollar are reflected in the ''USD–BTC Pair'').

Currently, there are many bitcoin trading platforms operating worldwide and trading platforms represent a substantial percentage of bitcoin buying and selling activity, and, therefore, provide large data sets for the market valuation of bitcoin. A bitcoin trading platform provides investors with a way to purchase and sell bitcoin, similar to stock exchanges like the New York Stock Exchange or NASDAQ, which provide ways for investors to buy stocks and bonds in the so-called ''secondary market.'' Unlike stock exchanges, which are regulated to monitor securities trading activity, bitcoin trading platforms are largely regulated as money services businesses (or a foreign regulatory equivalent) and are required to monitor for and detect money-laundering and other illicit financing activities that may take place on their platform. Bitcoin trading platforms operate websites designed to permit investors to open accounts with the trading platform and then purchase and sell bitcoin.

As with conventional stock exchanges, an investor opening a trading account and wishing to transact at a bitcoin trading platform must deposit an accepted government-issued currency into their account, or a previously acquired digital asset. The process of establishing an account with a bitcoin trading platform and trading bitcoin is different from, and should not be confused with, the process of users sending bitcoin from one bitcoin address to another bitcoin address, such as to pay for goods and services. This latter process is an activity that occurs wholly within the confines of the Bitcoin network, while the former is an activity that occurs largely on private websites and databases owned by the trading platform.

In addition to the bitcoin trading platforms that provide spot markets for bitcoin, an OTC trading market has emerged for digital assets. The bitcoin OTC market demonstrates flexibility in terms of quotes, price, size, and other factors. The OTC market has no formal structure and no open-outcry meeting place, and typically involves bilateral agreements on a principal-to-principal

basis. Parties engaging in OTC transactions will agree upon a price—often via phone, email, or chat—and then one of the two parties will initiate the transaction. For example, a seller of bitcoin could initiate the transaction by sending the bitcoin to the buyer's bitcoin address. The buyer would then wire US Dollars to the seller's bank account. OTC trading tends to occur in large blocks of bitcoin. All risks and issues related to creditworthiness are between the parties directly involved in the transaction. OTC market participants include institutional entities, such as hedge funds, family offices, private wealth managers, high-net-worth individuals that trade bitcoin on a proprietary basis, and brokers that offer two-sided liquidity for bitcoin.

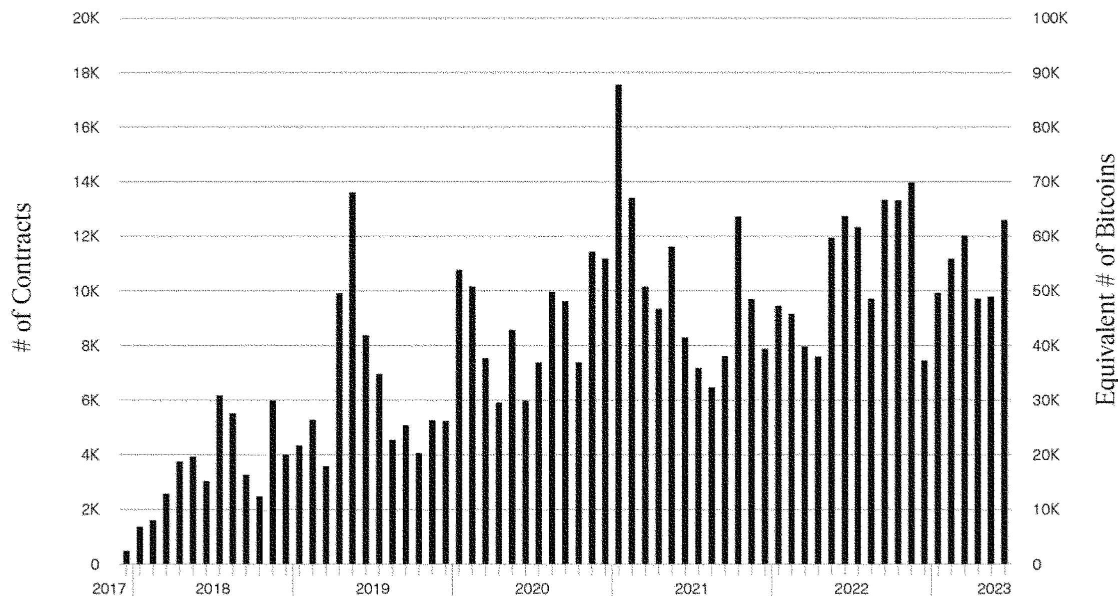
Beyond the spot bitcoin trading platforms and the OTC market, a number of unregulated bitcoin derivatives trading platforms exist that offer traders the ability to gain leveraged and/or short exposure to the price of bitcoin through perpetual futures, quarterly futures, and other derivative contracts.

Finally, the trading of regulated bitcoin futures contracts launched on the CME in December 2017.[17] A further discussion of the CME bitcoin futures market (''CME Market'') is included in the section entitled ''The CME Bitcoin Futures Market,'' below.

The CME Bitcoin Futures Market

The CME Group announced the planned launch of bitcoin futures on October 31, 2017. Trading began on December 17, 2017.[18] Each contract represents five bitcoin and is based on the CME CF Bitcoin Reference Rate. The contracts trade and settle like other cash settled commodity futures contracts.

Nearly every measurable metric related to bitcoin futures has trended up since launch. For example, there were 264,323 bitcoin futures contracts traded in June 2023 (approximately $39.8 billion) compared to 267,495 ($25.1 billion) contracts, 182,369 contracts ($31.7 billion), 131,419 contracts ($6.0 billion), and 167,362 contracts ($9.8 billion) traded in June 2022, June 2021, June 2020, and June 2019, respectively.[19]



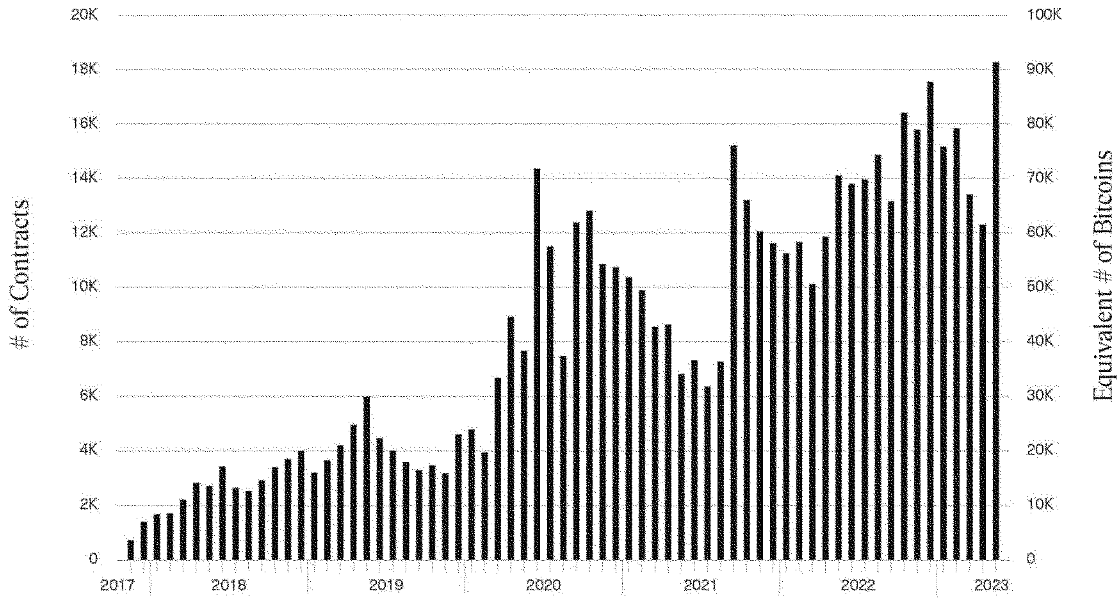
Open interest was 18,264 bitcoin futures contracts in June 2023 (approximately $2.8 billion) compared to 14,108 contracts ($1.3 billion), 6,817 contracts ($1.2 billion), 7,675 contracts ($0.4 billion), and 5,991 contracts ($0.4 billion) in June 2022, June 2021, June 2020, and June 2019, respectively.[20]

[17] *See* note 14, *infra.*

[18] *See* ''CME Group Announces Launch of Bitcoin Futures,'' October 31, 2017, available at *https://www.cmegroup.com/media-room/press-releases/2017/10/31/cme_group_announceslaunchofbitcoinfutures.html.* At the same time as the launch of the CME Market, the Cboe Futures Exchange, LLC announced and subsequently launched Cboe bitcoin futures. *See* ''CFE to Commence Trading in Cboe Bitcoin (USD) Futures Soon,'' December 01, 2017, available at *cdn.cboe.com/resources/release_notes/2017/Cboe-Bitcoin-USD-Futures-Launch-Notification.pdf.* Each future was cash settled, with the CME Market tracking the CME UK Reference Rate and the Cboe bitcoin futures tracking a bitcoin trading platform daily auction price. The Cboe Futures Exchange, LLC subsequently discontinued its bitcoin futures market effective June 2019. ''Cboe put the brakes on bitcoin futures,'' March 15, 2019, available at *https://www.reuters.com/article/us-cboe-bitcoin/cboe-puts-the-brakes-on-bitcoin-futures-idUSKCN1QW261.* The Trust uses the CME US Reference Rate to calculate its NAV.

[19] Data from CME Volume and Average Daily Volume Reports, available at *https://www.cmegroup.com/market-data/volume-open-interest.html#volumeTotals.*

[20] Data from CME Open Interest Reports, available at *https://www.cmegroup.com/market-data/volume-open-interest.html#openInterestTools.*



The number of large open interest holders[21] has increased as well, even in the face of heightened bitcoin price volatility, as demonstrated in the figure that follows.

[21] A large open interest holder in Bitcoin Futures is an entity that holds at least 25 contracts, which is the equivalent of 125 bitcoin. At a price of approximately $30,705.00 per bitcoin on 6/27/2023, more than 120 firms had outstanding positions of greater than $3.83 million in Bitcoin Futures. Data from The Block, available at *https://www.theblock.co/data/crypto-markets/cme-cots/large-open-interest-holders-of-cme-bitcoin-futures.*

[22] *See* Bitwise Order, 84 FR at 55410, n. 456 (''the Commission recognizes that the CFTC comprehensively regulates CME''). *See also* Winklevoss Order, 83 FR at 37594 & at note 202; GraniteShares Order 83 FR at 43929; and USBT Order, 85 FR at 12597.

[23] *See* Bitwise Order, 84 FR at 55410, n.456. A list of the current ISG members is available at *https://www.isgportal.org.*

The Commission has previously recognized that the CME bitcoin futures market qualifies as a regulated market[22] and that common membership between a listing exchange and a futures market such as the CME in the Intermarket Surveillance Group (''ISG'') functions as ''the equivalent of a comprehensive surveillance sharing agreement.''[23]

Valuation of the Trust's Bitcoin

The CME US Reference Rate, CME UK Reference Rate and CME Bitcoin Real Time Price

According to the Registration Statement, the CME US Reference Rate was designed to provide a daily, 4:00 p.m. Eastern Time (''E.T.'') reference rate of the U.S. dollar price of one bitcoin that may be used to develop financial products. The CME US Reference Rate uses materially the same methodology as the CME CF Bitcoin Reference Rate (the ''CME UK Reference Rate''), which was designed by the CME Group and CF Benchmarks Ltd. to facilitate the cash settlement of bitcoin futures traded on the CME Market. The only material difference between the CME US Reference Rate and CME UK Reference Rate is that the CME UK Reference Rate measures the U.S. dollar price of one bitcoin as of 4:00 p.m. London time and the CME US Reference Rate measures the U.S. dollar price of one bitcoin as of 4:00 p.m. E.T. Both the CME US Reference Rate and CME UK Reference Rate are calculated once per day based on the methodology set forth below and applying data from constituent trading platforms (the ''Constituent Platforms''). The CME US Reference Rate was introduced on February 28, 2022, and is based on materially the same methodology (except calculation time) as the CME UK Reference Rate, which was first introduced on November 14, 2016. Although the CME UK Reference Rate has a longer history and is used to settle bitcoin futures on the CME, the Trust determined to utilize the CME US Reference Rate to establish the NAV because the CME US Reference Rate is calculated as of the same time as the NAV and is based on the same methodology and data sources as the CME UK Reference Rate.

The CME Group and CF Benchmarks Ltd. also design and administer a continuous real-time bitcoin price index using data from the Constituent Platforms (the ''CME Bitcoin Real Time Price''), which is published by the CME Group.

The CME US Reference Rate, CME UK Reference Rate and CME Bitcoin Real Time Price are administered by CF Benchmarks Ltd., with the selection of Constituent Platforms performed by an oversight committee.[24] A trading platform is eligible to be selected as a Constituent Platform if it facilitates spot trading of bitcoin against the USD–BTC Pair and makes trade data and order data available through an Automatic Programming Interface with sufficient reliability, detail and timeliness. Additional initial and continuing eligibility requirements apply to the Constituent Platforms.

Each of the CME US Reference Rate, which has been calculated and published since February 2022, and CME UK Reference Rate, which has been calculated and published since November 2016, aggregates during a calculation window the trade flow of several spot bitcoin trading platforms into the U.S. dollar price of one bitcoin as of their respective calculation time. Specifically, the CME US Reference Rate is calculated based on the ''Relevant Transactions'' (as defined below) of each of its Constituent Platforms, which are currently Bitstamp, Coinbase, Gemini, itBit, Kraken and LMAX, as follows:

1. All Relevant Transactions are added to a joint list, recording the time of execution, trade price and size for each transaction.
2. The list is partitioned by timestamp into 12 equally-sized time intervals of five minute length.
3. For each partition separately, the volume-weighted median trade price is calculated from the trade prices and sizes of all Relevant Transactions across all Constituent Platforms. A volume-weighted median differs from a standard median in that a weighting factor, in this case trade size, is factored into the calculation.
4. The CME US Reference Rate or CME UK Reference Rate, as applicable, is then determined by the equally-weighted average of the volume-weighted medians of all partitions.

The CME Bitcoin Real Time Price uses similar data sources, but is calculated once per second based on the weighted mid-price-volume curve, which is a measure of the active bid and ask volume present on a Constituent Platform's order book.

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The CME US Reference Rate, CME UK Reference Rate, and CME Bitcoin Real Time Price do not include any bitcoin futures prices in their respective methodologies. A ''Relevant Transaction'' is any ''cryptocurrency versus legal tender spot trade that occurs during the TWAP [Time Weighted Average Price] Period'' on a Constituent Platform in the USD–BTC Pair that is reported and disseminated by Crypto Facilities Ltd., as calculation agent for the CME US Reference Rate, CME UK Reference Rate and CME Bitcoin Real Time Price.

Net Asset Value

Under normal circumstances, the Trust's only asset will be bitcoin and, under limited circumstances, cash. The Trust's NAV and NAV per Share will be determined by the Administrator once each Exchange trading day as of 4:00 p.m. E.T., or as soon thereafter as practicable. The Administrator will calculate the NAV by multiplying the number of bitcoin held by the Trust by the CME US Reference Rate for such day, adding any additional receivables and subtracting the accrued but unpaid liabilities of the Trust. The NAV per Share is calculated by dividing the NAV by the number of Shares then outstanding. The Administrator will determine the price of the Trust's bitcoin by reference to the CME US Reference Rate, which is published and calculated as set forth above.

Intraday Trust Value

One or more major market data vendors will provide an intraday trust value (''ITV'') updated every 15 seconds each trading day as calculated by the Exchange or a third party financial data provider during the Exchange's Core Trading Session (9:30 a.m. to 4:00 p.m., E.T.). The ITV will be calculated throughout the trading day by using the prior day's holdings at the close of business and the most recently reported price level of the CME Bitcoin Real Time Price as reported by Bloomberg, L.P. or another reporting service, or another price of bitcoin derived from updated bids and offers indicative of the spot price of bitcoin. The ITV will be

[22] *See* Bitwise Order, 84 FR at 55410, n. 456 (''the Commission recognizes that the CFTC comprehensively regulates CME''). *See also* Winklevoss Order, 83 FR at 37594 & at note 202; GraniteShares Order 83 FR at 43929; and USBT Order, 85 FR at 12597.

[23] *See* Bitwise Order, 84 FR at 55410, n.456. A list of the current ISG members is available at *https://www.isgportal.org.*

[24] This summary does not represent a complete description of the CME US Reference Rate, the CME UK Reference Rate and CME Bitcoin Real Time Price. Additional information on administration and methodologies, may be found at CF Benchmarks' website, available at *https://www.cfbenchmarks.com/data/indices/BRRNY, https://www.cfbenchmarks.com/indices/BRR,* and *https://www.cfbenchmarks.com/indices/BRTI.* The CME US Reference Rate, the CME UK Reference Rate and CME Bitcoin Real Time Price are registered benchmarks under the European Benchmarks Regulation.

widely disseminated by one or more major market data vendors during the NYSE Arca Core Trading Session.

Creation and Redemption of Shares

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

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

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

The Trust intends to utilize the Trust-Directed Trade Model for all purchases and sales of bitcoin and would only utilize the Agent Execution Model in the event that no Bitcoin Trading Counterparty is able to effectuate the Trust's purchase or sale of bitcoin. Under the Trust-Directed Trade Model, in connection with receipt of a purchase order or redemption order, the Sponsor, on behalf of the Trust, would be responsible for acquiring bitcoin from an approved Bitcoin Trading Counterparty in an amount equal to the Basket Amount. When seeking to purchase bitcoin on behalf of the Trust, the Sponsor will seek to purchase bitcoin at commercially reasonable price and terms from any of the approved Bitcoin Trading Counterparties.[25] Once agreed upon, the transaction will generally occur on an ''over-the-counter'' basis.

Whether utilizing the Trust-Directed Trade Model or the Agent Execution Model, the Authorized Participants will deliver only cash to create shares and will receive only cash when redeeming Shares. Further, Authorized Participants will not directly or indirectly purchase, hold, deliver, or receive bitcoin 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 bitcoin as part of the creation or redemption process. Additionally, under both the Trust-Directed Trade Model or the Agent Execution Model, the Trust will create Shares by receiving bitcoin from a third party that is not the Authorized Participant and is not affiliated with the Sponsor or the Trust, and the Trust—not the Authorized Participant—is responsible for selecting the third party to deliver the bitcoin. The third party will not be acting as an agent of the Authorized Participant with respect to the delivery of the bitcoin to the Trust or acting at the direction of the Authorized Participant with respect to the delivery of the bitcoin to the Trust. Additionally, the Trust will redeem Shares by delivering bitcoin to a third party that is not the Authorized Participant and is not affiliated with the Sponsor or the Trust, and the Trust—not the Authorized Participant—is responsible for selecting the third party to receive the bitcoin. Finally, the third party will not be acting as an agent of the Authorized Participant with respect to the receipt of the bitcoin from the Trust or acting at the direction of the Authorized Participant with respect to the receipt of the bitcoin from the Trust.

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

Under the Trust-Directed Trade Model and as set forth in the Registration Statement, on any business day, an Authorized Participant may create Shares by placing an order to purchase one or more Creation Units with the Transfer Agent through the Marketing Agent. Such orders are subject to approval by the Marketing Agent and the Transfer Agent. For purposes of processing creation and redemption orders, a ''business day'' means any day other than a day when the Exchange is closed for regular trading (''Business Day''). To be processed on the date submitted, creation orders must be placed before 4 p.m. E.T. or the close of regular trading on the Exchange, whichever is earlier, but may be required to be placed earlier at the discretion of the Sponsor. A purchase order will be effective on the date it is received by the Transfer Agent and approved by the Marketing Agent (''Purchase Order Date'').

Creation Units are processed in cash. By placing a purchase order, an Authorized Participant agrees to deposit, or cause to be deposited, an amount of cash equal to the quantity of bitcoin attributable to each Share of the Trust (net of accrued but unpaid expenses and liabilities) multiplied by the number of Shares (10,000) comprising a Creation Unit (the ''Basket Amount''). The Sponsor will cause to be published each Business Day, prior to the commencement of trading on the Exchange, the Basket Amount relating to a Creation Unit applicable for such Business Day. That amount is derived by multiplying the Basket Amount by the value of bitcoin ascribed by the CME US Reference Rate. However, the Authorized Participant is also responsible for any additional cash required to account for the price at which the Trust agrees to purchase the requisite amount of bitcoin from a bitcoin trading counterparty approved by the Sponsor (''Bitcoin Trading Counterparty'')[26] to the extent it is greater than the CME US Reference Rate price on each Purchase Order Date.

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

Following the acceptance of a purchase order, the Authorized Participant must wire the cash amount

[25] The Sponsor will maintain ownership and control of bitcoin in a manner consistent with good delivery requirements for spot commodity transactions.

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

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

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

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

Under the Trust-Directed Trade Model and according to the Registration Statement, the procedures by which an Authorized Participant can redeem one or more Creation Units mirror the procedures for the creation of Creation Units. On any Business Day, an Authorized Participant may place an order with the Transfer Agent through the Marketing Agent to redeem one or more Creation Units. To be processed on the date submitted, redemption orders must be placed before 4 p.m. E.T. or the close of regular trading on the Exchange, whichever is earlier, or earlier as determined by the Sponsor. A redemption order will be effective on the date it is received by the Transfer Agent and approved by the Marketing Agent (''Redemption Order Date''). The redemption procedures allow Authorized Participants to redeem Creation Units and do not entitle an individual shareholder to redeem any Shares in an amount less than a Creation Unit, or to redeem Creation Units other than through an Authorized Participant. In connection with receipt of a redemption order accepted by the Marketing Agent and Transfer Agent, the Sponsor, on behalf of the Trust, is responsible for selling the bitcoin to an approved Bitcoin Trading Counterparty in an amount equal to the Basket Amount.

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

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

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

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

Under the Agent Execution Model, Coinbase, Inc. (''Coinbase Inc.'' or the ''Prime Execution Agent,'' an affiliate of the Bitcoin Custodian), acting in an agency capacity, would conduct bitcoin purchases and sales on behalf of the Trust with third parties through its Coinbase Prime service pursuant to the Prime Execution Agent Agreement. To utilize the Agent Execution Model, the Trust may maintain some bitcoin or cash in a trading account (the ''Trading Balance'') with the Prime Execution Agent. The Prime Execution Agent Agreement provides that the Trust does not have an identifiable claim to any particular bitcoin (and cash); rather, the

Trust's Trading Balance represents an entitlement to a pro rata share of the bitcoin (and cash) the Prime Execution Agent holds on behalf of customers who hold similar entitlements against the Prime Execution Agent. In this way, the Trust's Trading Balance represents an omnibus claim on the Prime Execution Agent's bitcoins (and cash) held on behalf of the Prime Execution Agent's customers.

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

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

On the day following the Purchase Order Date (the ''Purchase Order Settlement Date''), the Trust would deliver Shares to the Authorized Participant in exchange for cash received from the Authorized Participant. Where applicable, the Trust would use the cash to repay the Trade Credits borrowed from the Trade Credit Lender. On the Purchase Order Settlement Date for a Purchase Order utilizing the Agent Execution Model, the bitcoin associated with the Purchase Order and purchased on the Purchase Order Date is swept from the Trust's Trading Balance with the Prime Execution Agent to the Trust Bitcoin Account with the Bitcoin Custodian pursuant to a regular end-of-day sweep process. Transfers of bitcoin into the Trust's Trading Balance are off-chain transactions and transfers from the Trust's Trading Balance to the Trust Bitcoin Account are ''on-chain'' transactions represented on the bitcoin blockchain. Any financing fee owed to the Trade Credit Lender is deemed part of trade execution costs and embedded in the trade price for each transaction.

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

For a redemption of Creation Units utilizing the Agent Execution Model, the Sponsor would instruct the Bitcoin Custodian to prepare to transfer the bitcoin associated with the redemption order from the Trust Bitcoin Account with the Bitcoin Custodian to the Trust's Trading Balance with the Prime Execution Agent. On the Redemption Order Settlement Date, the Trust would enter into a transaction to sell bitcoin through the Prime Execution Agent for cash, and the Prime Execution Agent credits the Trust's Trading Balance with the cash. On the same day, the Authorized Participant would deliver the necessary Shares to the Trust and the Trust delivers cash to the Authorized Participant.

Fee Accrual

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

Standard for Approval

Background

To date, the Commission has considered numerous proposed spot bitcoin ETPs,[27] including prior

[27] *See, e.g.,* Securities Exchange Act Release No. 80206 (Mar. 10, 2017), 82 FR 14076 (March 16, 2017) (SR–BatsBZX–2016–30) (Order Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, to BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, to List and Trade Shares Issued by the Winklevoss Bitcoin Trust); Securities Exchange Act Release No. 80319 (Mar. 28, 2017), 82 FR 16247 (April 3, 2017) (SR–NYSEArca–2016–101) (Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the SolidX Bitcoin Trust under NYSE Arca Equities Rule 8.201; Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (SR–BatsBZX–2016–30) (Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, to List and Trade Shares of the Winklevoss Bitcoin Trust) (''Winklevoss Order''); Securities Exchange Act Release No. 83904 (Aug. 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); Securities Exchange Act Release No. 83912 (Aug. 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); Securities Exchange Act Release No. 83913 (Aug. 22, 2018), 83 FR 43923 (August 28, 2018) (SR–CboeBZX–2018–001) (Order Disapproving a Proposed Rule Change to List and Trade the Shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF (''GraniteShares Order''); Securities Exchange Act Release No. 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) (''USBT Order''); Securities Exchange Act Release No. 93559 (Nov. 12, 2021), 86 FR 64539 (Nov. 18, 2021) (SR–CboeBZX–2021–019) (Order Disapproving a Proposed Rule Change To List and Trade Shares of the VanEck Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act) (''VanEck Order''); Securities Exchange Act Release No. 93700 (Dec. 1, 2021), 86 FR 69322 (Dec. 7, 2021) (SR–CboeBZX–2021–024) (Order Disapproving a Proposed Rule Change To List and Trade Shares of the WisdomTree Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares) (''WisdomTree Order''); Securities Exchange Act

proposals with respect to the Trust.[28] In each case, the Commission determined that the filing failed to demonstrate that the proposal was consistent with the requirements of section 6(b)(5) of the Act[29] and, in particular, the requirement that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices.

Specifically, although comprehensive surveillance-sharing agreements[30] are not the *exclusive* means by which a listing exchange can meet its obligations under section 6(b)(5) of the Act, the Commission has determined that, where a listing exchange cannot establish that other means to prevent fraudulent and manipulative acts and practices are sufficient, the listing exchange must enter into a surveillance-sharing agreement with a regulated market of significant size because ''[s]uch agreements provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.''[31]

In the Winklevoss Order, the Commission set forth both the importance and definition of a surveilled, regulated market of significant size, explaining that:

> [For all] commodity-trust ETPs approved to date for listing and trading, there has been in every case at least one significant, regulated market for trading futures on the underlying commodity—whether gold, silver, platinum, palladium, or copper—and the ETP listing exchange has entered into surveillance-sharing agreements with, or held Intermarket Surveillance Group membership in common with, that market.[32]

On an illustrative and not exclusive basis, the Commission further defined:

> [T]he terms 'significant market' and 'market of significant size' to include a market (or group of markets) as to which (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, so that a surveillance-sharing agreement would assist the ETP listing market in detecting and deterring misconduct, and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[33]

In support of the Sponsor's first attempt to satisfy the significant market test in 2019,[34] the Sponsor conducted and presented extensive research into the bitcoin market and published a 226-slide study of its findings.[35] The study

Release No. 93859 (Dec. 22, 2021), 86 FR 74156 (Dec. 29, 2021) (SR–NYSEArca–2021–31) (Order Disapproving a Proposed Rule Change To List and Trade Shares of the Valkyrie Bitcoin Fund Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares)) (''Valkyrie Order''); Securities Exchange Act Release No. 93860 (Dec. 22, 2021), 86 FR 74166 (Dec. 29, 2021) (SR–CboeBZX–2021–029) (Order Disapproving a Proposed Rule Change To List and Trade Shares of the Kryptoin Bitcoin ETF Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares) (''Kryptoin Order''); Securities Exchange Act Release No. 94006 (Jan. 20, 2022), 87 FR 3869 (Jan. 25, 2022) (SR–NYSEArca–2021–37) (Order Disapproving a Proposed Rule Change To List and Trade Shares of the First Trust SkyBridge Bitcoin ETF Trust Under NYSE Arca Rule 8.201–E) (''SkyBridge Order''); Securities Exchange Act Release No. 94080 (Jan. 27, 2022), 87 FR 5527 (Feb. 1, 2022) (SR–CboeBZX–2021–039) (Order Disapproving a Proposed Rule Change To List and Trade Shares of the Wise Origin Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares) (''Wise Origin Order''); Securities Exchange Act Release No. 94395 (Mar. 10, 2022), 87 FR 14932 (Mar. 16, 2022) (SR–NYSEArca–2021–57) (Order Disapproving a Proposed Rule Change To List and Trade Shares of the NYDIG Bitcoin ETF Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares)) (''NYDIG Order''); Securities Exchange Act Release No. 94396 (Mar. 10, 2022), 87 FR 14912 (Mar. 16, 2022) (SR–CboeBZX–2021–052) (Order Disapproving a Proposed Rule Change To List and Trade Shares of the Global X Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares) (''Global X Order''); Securities Exchange Act Release No. 94571 (Mar. 31, 2022), 87 FR 20014 (Apr. 6, 2022) (SR–CboeBZX–2021–051) (Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the ARK 21Shares Bitcoin ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares) (''ARK 21Shares Order''); Securities Exchange Act Release No. 94999 (May 27, 2022), 87 FR 33548 (June 2, 2022) (SR–NYSEArca–2021–67) (Order Disapproving a Proposed Rule Change To List and Trade Shares of the One River Carbon Neutral Bitcoin Trust Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares)) (''One River Order''); Securities Exchange Act Release No. 95180 (June 29, 2022), 87 FR 40299 (July 6, 2022) (SR–NYSEArca–2021–90) (Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of Grayscale Bitcoin Trust under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares)) (''Grayscale Order''); Securities Excnnage Act Release No. 96011 (Oct. 11, 2022), 87 FR 62466 (Oct. 14, 2022) (SR–CboeBZX–2022–006) (Order Disapproving a Proposed Rule Change To List and Trade Shares of the WisdomTree Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares) (''WisdomTree Order II''); Securities Exchange Act Release No. 96751 (Jan. 26, 2023), 88 FR 6328 (Jan. 31, 2023) (SR–CboeBZX–2021–031) (Order Disapproving a Proposed Rule Change To List and Trade Shares of the ARK 21Shares Bitcoin ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares) (''ARK 21Shares Order II''); Securities Exchange Act Release No. 97102 (Mar. 10, 2023), 88 FR 16055 (Mar. 15, 2023) (SR–CboeBZX–2022–035) (Order Disapproving a Proposed Rule Change To List and Trade Shares of the VanEck Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares)) (''VanEck Order II'').

[28] *See* Securities Exchange Act Release No. 87267 (Oct. 9, 2019), 84 FR 55382 (October 16, 2019) (SR–NYSEArca–2019–01) (Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the Bitwise Bitcoin ETF Trust Under NYSE Arca Rule 8.201–E) (''Bitwise Order'') (withdrawn on Jan. 13, 2020 while delegated action was under review by the Commission, *see* Release No. 90431 (Nov. 13, 2020), 85 FR 73819 (November 19, 2020)); Securities Exchange Act Release No. 95179 (June 29, 2022), 87 FR 40282 (July 6, 2022) (SR–NYSEArca–2021–89) (Order Disapproving a Proposed Rule Change To List and Trade Shares of the Bitwise Bitcoin ETP Trust Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares)) ((''Bitwise Order II'').

[29] 15 U.S.C. 78f(b)(5).

[30] The Commission has described a comprehensive surveillance sharing agreement as including an agreement under which a self-regulatory organization may expressly obtain information on (1) market trading activity, (2) clearing activity and (3) customer identity, and where existing rules, laws or practices would not impede access to such information. *See* Letter from Brandon Becker, Director, Division of Market Regulation, Commission, to Gerard D. O'Connell, Chairman, Intermarket Surveillance Group (June 3, 1994), available at *https://www.sec.gov/divisions/marketreg/mr-noaction/isg060394.htm* (''ISG Letter''). The Commission has emphasized the importance of surveillance sharing agreements, noting that ''[s]uch agreements provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' Securities Exchange Act Release No. 40761 (Dec. 8, 1998), 63 FR 70952, 70954, 70959 (Dec. 22, 1998) (File No. S7–13–98) (Amendment to Rule Filing Requirements for Self-Regulatory Organizations Regarding New Derivative Securities Products) (''NDSP Adopting Release'').

[31] *See* Winklevoss Order, 83 FR at 37580. In the Winklevoss Order as well as the Bitwise Order and USBT Order, the Commission determined that the proposing exchange had not established that bitcoin markets were uniquely resistant to fraud or manipulation, which unique resistance might provide protections such that the proposing exchange ''would not necessarily need to enter into a surveillance sharing agreement with a regulated significant market.'' *See* Winklevoss Order 83 FR at 37591; Bitwise Order 84 FR at 55386; and USBT Order 85 FR at 12597. In all instances, the Commission determined that, while the existing, regulated derivatives markets (including the CME bitcoin futures market) was a regulated market, the proposing exchanges had not demonstrated that the regulated derivatives markets had achieved significant size. *See* Winklevoss Order, 83 FR at 37601; Bitwise Order 84 FR at 55410; and USBT Order 85 FR at 12597. In short, the Commission determined that a proposing exchange had established neither that it had a surveillance sharing agreement with a group of underlying bitcoin trading platforms, nor that such bitcoin trading platforms constituted regulated markets of significant size with respect to bitcoin. *See* Winklevoss Order 83 FR 37590–37591; Bitwise Order 84 FR at 55407; and USBT Order 85 FR at 12615.

[32] *See* Winklevoss Order, 83 FR 37594.

[33] *Id.* The Commission further noted that ''[t]here could be other types of ''significant markets'' and ''markets of significant size,'' but this definition is an example that will provide guidance to market participants.'' *See id.* This two-prong definition of the term ''significant market'' will be referred to herein as the ''significant market test'' with ''first prong'' referring to the ''reasonable likelihood'' clause (a) and ''second prong'' referring to the ''predominant influence'' clause (b).

[34] *See* Securities Exchange Act Release No. 85093 (Feb. 11, 2019), 84 FR 4589 (Feb. 15, 2019)) (SR–NYSEArca–2019–01) (Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of Shares of the Bitwise Bitcoin ETF Trust Under NYSE Arca Rule 8.201–E).

[35] *See* Bitwise Asset Management, Presentation to the U.S. Securities and Exchange Commission, dated March 19, 2019, attached to Memorandum from the Division of Trading and Markets regarding a March 19, 2019 meeting with representatives of Bitwise Asset Management, Inc., NYSE Arca, Inc., and Vedder Price P.C., available at *https://www.sec.gov/comments/sr-nysearca-2019-01/srnysearca201901-5164833-183434.pdf.*

asserted that the relative size of the CME bitcoin futures market compared to real size of bitcoin spot markets demonstrated that the CME bitcoin futures market was a market of significant size.

The Commission disagreed, explaining that:

the evidence that the Sponsor presents regarding the relative size of the bitcoin futures market and the relationship in prices between the spot and futures markets does not . . . establish the interrelationship between the futures market and the proposed ETP, or directionality of that interrelationship, that would make the bitcoin futures market a ''market of significant size'' in the context of the proposed ETP.[36]

The Commission highlighted the central importance of knowing the directionality (''lead-lag'') of the interrelationship between the two venues when determining if a market qualifies as ''significant'':

[T]he lead-lag relationship between the bitcoin futures market and the spot market . . . . is central to understanding whether it is reasonably likely that a would-be manipulator of the ETP would need to trade on the bitcoin futures market to successfully manipulate prices on those spot platforms that feed into the proposed ETP's pricing mechanism. In particular, if the spot market leads the futures market, this would indicate that it would not be necessary to trade on the futures market to manipulate the proposed ETP, even if arbitrage worked efficiently, because the futures price would move to meet the spot price.[37]

In a subsequent filing to list and trade the United States Bitcoin and Treasury Investment (USBT), the Commission rejected a different sponsor's attempt to establish through statistical analysis that the CME bitcoin futures market led the bitcoin spot market from a price discovery perspective,[38] noting, among other things, that:

[T]he Sponsor has not provided sufficient details supporting this conclusion, and unquestioning reliance by the Commission on representations in the record is an insufficient basis for approving a proposed rule change in circumstances where, as here, the proponent's assertion would form such an integral role in the Commission's analysis and the assertion is subject to several challenges. For example, the [s]ponsor has not provided sufficient information explaining its underlying analysis, including detailed information on the analytic methodology used, the specific time period analyzed, or any information that would enable the Commission to evaluate whether the findings are statistically significant or time varying.[39]

In an effort to conduct comprehensive research demonstrating the lead-lag relationship between the CME bitcoin futures market and the spot market while providing sufficient information to the Commission on the data and methodology underlying its analysis, the Sponsor met with the Commission Staff 14 times between January 2020 and August 2021, including members from the divisions of Trading and Markets, Economic Risk and Analysis, and Corporate Finance, to discuss a comprehensive approach to conducting lead-lag analysis. As a result, in October 2021, the Exchange filed another rule proposal including a 107-page white paper from the Sponsor which presented the results of this research. The research explored the lead-lag relationship between the CME bitcoin futures market, bitcoin spot market, and unregulated bitcoin futures market, and evidenced that the CME bitcoin futures market led the spot market and unregulated bitcoin futures market (''Bitwise Prong One Paper'').[40] The Sponsor also submitted a 24-page white paper demonstrating that a new bitcoin ETP is unlikely to become the predominant influence on prices in the CME bitcoin futures market (''Bitwise Prong Two Paper'').[41]

The Bitwise Prong One Paper included a survey and validation of bitcoin data sources, a detailed review of existing academic literature on the topic of lead-lag relationships between bitcoin markets, and a rigorous statistical analysis using both Information Share (IS)/Component Share (CS) and Time-Shift Lead-Lag (TSLL) metrics comparing the CME bitcoin futures market against both spot bitcoin platforms and unregulated bitcoin futures platforms. The Bitwise Prong Two paper included an estimation of potential inflows into a spot bitcoin ETP and a statistical evaluation of the impact of historical inflows into other bitcoin investment products on the bitcoin market. In disapproving the Sponsor's proposal for a second time, the Commission noted:

[E]ven accepting at face value the results of Bitwise's statistical analysis of the relationship between the CME bitcoin futures market and the spot market, such results are only part of the ''mixed'' record on the topic of bitcoin price discovery.[42]

In light of the foregoing, the following discussion will demonstrate that the CME bitcoin futures market is a regulated market of significant size and meets both prongs of the significant market test. Given the stated limitations on what the Sponsor's analysis alone can demonstrate, the discussion focuses on resolving the ''mixed record'' in the broad academic literature before turning to the questions the Commission raised regarding the Sponsor's statistical analysis.

The Approval of Bitcoin Futures ETPs Registered Under the Securities Act of 1933 Demonstrates That the CME Bitcoin Futures Market Is a Regulated Market of Significant Size Related to Spot Bitcoin for the Purposes of Satisfying Section 6(b)(5) of the Act

In 2022, the Commission approved rule changes to list and trade shares of two CME bitcoin futures-based ETPs registered under the Securities Act of 1933 (the ''Bitcoin Futures ETPs'').[43] Unlike the CME bitcoin futures-based ETFs that began trading in 2021,[44] which are regulated under the Investment Company Act of 1940, the listing exchanges for the Bitcoin Futures ETPs had to satisfy the requirements of section 6(b)(5) by demonstrating that listing markets had in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to CME bitcoin futures contracts. In approving the applications, the Commission concluded that the CME's surveillances

[36] *See* Bitwise Order, 84 FR at 55410.

[37] *See id.* at 55411. *See also* USBT Order, 85 FR at 12612.

[38] *See* Securities Exchange Act Release No. 86195 (June 25, 2019), 84 FR 31373 (July 1, 2019) (SR–NYSEArca–2019–39) (Notice of Filing of Proposed Rule Change 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) (''USBT Proposal'').

[39] *See* USBT Order, 85 FR at 12612.

[40] *See* Matthew Hougan, Hong Kim and Satyajeet Pal, ''Price discovery in the modern bitcoin market: Examining lead-lag relationships between the bitcoin spot and bitcoin futures market,'' June 11, 2021, available at *https://static.bitwiseinvestments.com/Bitwise-Bitcoin-ETP-White-Paper-1.pdf.*

[41] *See* Matthew Hougan, Hong Kim and Satyajeet Pal, ''Is it likely that a US bitcoin ETP, if approved, will become the predominant influence on prices in the CME bitcoin futures market?,'' June 11, 2021, available at *https://static.bitwiseinvestments.com/Bitwise-Bitcoin-ETP-White-Paper-2.pdf.*

[42] *See* Bitwise Order II, 87 FR at 40288.

[43] *See* Securities Exchange Act Release No. 94620 (Apr. 6, 2022), 87 FR 21676 (Apr. 12, 2022) (SR–NYSEArca–2021–53) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the Teucrium Bitcoin Futures Fund Under NYSE Arca Rule 8.200–E, Commentary .02 (Trust Issued Receipts)) (''Teucrium Order''); Securities Exchange Act Release No. 94853 (May 5, 2022), 87 FR 28848 (May 11, 2022) (SR–NASDAQ–2021–066) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To List and Trade Shares of the Valkyrie XBTO Bitcoin Futures Fund Under Nasdaq Rule 5711(g)) (''Valkyrie XBTO Order'').

[44] The ProShares Bitcoin Strategy ETF (''BITO'') launched on October 18, 2021. The Valkyrie Bitcoin Strategy ETF (''BTF'') launched on October 21, 2021. The VanEck Bitcoin Strategy ETF (''XBTF'') launched on November 15, 2021.

could reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin.[45]

While the Commission rejected the view that this logic extended to spot bitcoin ETPs,[46] this view was recently rejected by the Court of Appeals for the D.C. Circuit. In *Grayscale Investments LLC* v. *Securities and Exchange Commission* (''*Grayscale*''), the Court observed:

> Grayscale's proposed bitcoin ETP and the approved bitcoin futures ETPs all track the bitcoin market price, *i.e.,* the spot market price . . . Grayscale presented uncontested evidence that there is a 99.9 percent correlation between bitcoin's spot market and CME futures contract prices . . . Because the spot and futures markets for bitcoin are highly related, it stands to reason that manipulation in either market will affect the price of bitcoin futures . . . To the extent that the price of bitcoin futures might be affected by trading in both the futures and spot markets, the Commission concluded fraud in either market could be detected by surveillance of the CME futures market.[47]

The same reasoning applies to the instant application. Bitcoin futures pricing is based on pricing from spot bitcoin markets. If CME's surveillances can capture the effects of trading on the relevant spot markets on the pricing of bitcoin futures, CME should equally be able to capture the effects of trading on the relevant spot markets on the pricing of spot bitcoin ETPs. The fact that bitcoin futures trade on the CME but spot bitcoin does not is a distinction without difference regarding the matter of whether surveillance of the CME futures market can be relied upon to detect manipulation occurring in the spot market. It follows that the CME bitcoin futures market is a regulated market of significant size related to spot bitcoin.

The Academic Record Demonstrates That the CME Bitcoin Futures Market Meets the First Prong of the Significant Market Test

The first prong in establishing whether the CME bitcoin futures market constitutes a ''market of significant size'' is the determination that there is a reasonable likelihood that a person attempting to manipulate the proposed ETP would have to trade on the CME bitcoin futures market to successfully manipulate the ETP. As detailed in the ''Background'' section above, the Commission explained in previous orders that the lead-lag relationship between the bitcoin futures market and the spot market is ''central'' to understanding this first prong and making this determination.

The Mixed Academic Record as Presented by the Commission

The Commission has repeatedly cited the ''mixed'' or ''inconclusive'' academic record regarding the lead-lag relationship between spot and futures markets as a core reason it believed that the first prong was not met in past disapproval orders. For instance, in the most recent spot bitcoin ETP disapproval order, the Commission provided a long list of disapproval orders where the Commission has commented on this matter:

> As the academic literature and listing exchanges' analyses pertaining to the pricing relationship between the CME bitcoin futures market and spot bitcoin market have developed, the Commission has critically reviewed those materials. See WisdomTree Order II, 87 FR at 62476–77; Grayscale Order, 87 FR at 40311–13; Bitwise Order, 87 FR at 40286–89; ARK 21Shares Order, 87 FR at 20024; Global X Order, 87 FR at 14920; Wise Origin Order, 87 FR at 5535–36, 5539–40; Kryptoin Order, 86 FR at 74176; WisdomTree Order, 86 FR at 69330–32; Previous VanEck Order, 86 FR at 64547–48; USBT Order, 85 FR at 12613.[48]

In order to address all of the Commission's critical questions regarding the mixed academic record, the Sponsor reviewed all eleven disapproval orders referenced above and summarized the critical questions the Commission has raised regarding the mixed academic record across these orders, as follows.

In the USBT Order, VanEck Order, WisdomTree Order, Kryptoin Order, Wise Origin Order, NYDIG Order, Global X Order, and ARK 21Shares Order, the Commission listed out nine academic studies that have evaluated the lead-lag relationship between the bitcoin futures market and the spot market, and provided one-line summaries of the key findings of each paper, as a means of illustrating the mixed nature of the academic record.[49] The text below is drawn from Global X Order, but is repeated in other Orders as well. The studies that found either that the spot market led the futures market or that the leadership was mixed are set forth in bold text. Both paragraph spacing and numbering have been added for clarity. The Commission's one-line summary of the key findings appears in parentheses.

1. **D. Baur & T. Dimpfl, Price discovery in bitcoin spot or futures?, 39 J. Futures Mkts. 803 (2019) (finding that the bitcoin spot market leads price discovery).**
2. **O. Entrop, B. Frijns & M. Seruset, The determinants of price discovery on bitcoin markets, 40 J. Futures Mkts. 816 (2020) (finding that price discovery measures vary significantly over time without one market being clearly dominant over the other).**
3. **J. Hung, H. Liu & J. Yang, Trading activity and price discovery in Bitcoin futures markets, 62 J. Empirical Finance 107 (2021) (finding that the bitcoin spot market dominates price discovery).**
4. B. Kapar & J. Olmo, An analysis of price discovery between Bitcoin futures and spot markets, 174 Econ. Letters 62 (2019) (finding that bitcoin futures dominate price discovery).
5. E. Akyildirim, S. Corbet, P. Katsiampa, N. Kellard & A. Sensoy, The development of Bitcoin futures: Exploring the interactions between cryptocurrency derivatives, 34 Fin. Res. Letters 101234 (2020) (finding that bitcoin futures dominate price discovery).
6. A. Fassas, S. Papadamou, & A. Koulis, Price discovery in bitcoin futures, 52 Res. Int'l Bus. Fin. 101116 (2020) (finding that bitcoin futures play a more important role in price discovery).
7. S. Aleti & B. Mizrach, Bitcoin spot and futures market microstructure, 41 J. Futures Mkts. 194 (2021) (finding that relatively more price discovery occurs on the CME as compared to four spot exchanges).
8. J. Wu, K. Xu, X. Zheng & J. Chen, Fractional cointegration in bitcoin spot and futures markets, 41 J. Futures Mkts. 1478 (2021) (finding that CME bitcoin futures dominate price discovery).
9. **C. Alexander & D. Heck, Price discovery in Bitcoin: The impact of unregulated markets, 50 J. Financial Stability 100776 (2020) (finding that, in a multi-dimensional setting, including the main price leaders within futures, perpetuals, and spot markets, CME bitcoin futures have a very minor effect on price discovery; and that faster speed of adjustment and information absorption occurs on the unregulated spot and derivatives platforms than on CME bitcoin futures).**

The Commission has also repeatedly raised doubts about the methodology of two studies finding that the futures market leads the spot market, Kapar and Olmo (2019)[50] and Hu et al. (2020),[51] writing in the USBT Order:

[45] *See Grayscale Investments, LLC* v. *SEC,* No. 22–1142 (D.C. Cir. Aug. 29, 2023), at 10–11.

[46] *See, e.g.,* Bitwise Order II, 87 FR at 40289.

[47] *See Grayscale Investments, LLC* v. *SEC,* No. 22–1142 (D.C. Cir. Aug. 29, 2023), at 9–10.

[48] *See* VanEck Order II, 88 FR at 16065.

[49] *See* USBT Order, 85 FR 12613; VanEck Order, 86 FR at 64547–48; WisdomTree Order, 86 FR at 69330–32; Kryptoin Order, 86 FR at 74176; Wise Origin Order, 87 FR at 5535–36; NYDIG Order, 87 FR 14939; Global X Order, 87 FR at 14920; ARK 21Shares Order, 87 FR at 20024.

[50] B. Kapar & J. Olmo (2019), ''An analysis of price discovery between Bitcoin futures and spot markets,'' Economics Letters, Elsevier, vol. 174(C), pages 62–64. (''Kapar and Olmo 2019'').

[51] Y. Hu, Y. Hou & L. Oxley (2020), ''What role do futures markets play in Bitcoin pricing? Causality, cointegration and price discovery from a time-varying perspective,'' 72 Int'l Rev. of Fin. Analysis 101569 (''Hu et al. 2020'').

The Commission notes that two other papers cited by the Sponsor utilize daily spot market prices, as opposed to intraday prices. See Kapar & Olmo; Hu et al. In seeking to draw conclusions regarding which market leads price discovery, studies based on daily price data may not be able to distinguish which market incorporates new information faster, because the time gap between two consecutive observations in the data samples could be longer than the typical information processing time in such markets. The Sponsor has not provided evidence to support the assertion that daily price data is sufficiently able to capture information flows in the bitcoin market.[52]

Furthermore, regarding Hu et al. (2020), the Commission also noted that the analysis included time varying results:

> [F]or a period of time spanning over 20% of the study, prices in the bitcoin spot market led futures market prices. Such time inconsistency in the direction of price discovery could suggest that the market has not yet found its natural equilibrium. Moreover, this period spanned the end of the study period and the record does not include evidence to explain why this would not indicate a shift towards prices in the spot market leading the futures market that would be expected to persist into the future.[53]

Lastly, in Bitwise Order II, the Commission raised the question as to whether classic price discovery metrics like IS/CS could be trusted at all if, as the Sponsor claimed, referencing Robertson and Zhang (2022) and Buccheri et al. (2021), these metrics could produce biased results when the price data used has a high level of sparsity:

> [Bitwise does not] discuss these 10 IS/CS studies in light of Bitwise's acknowledgment that ''classic'' price discovery metrics like IS/CS could be misspecified, with potentially biased results, when price data have a high level of sparsity.[54]

The following section aims to comprehensively address all of the above critical questions raised by the Commission.

The Sponsor's Response to the Questions Raised by the Commission Regarding the ''Mixed'' Academic Record

The Sponsor's prior research (Bitwise Prong One Paper) included a detailed literature review wherein the Sponsor examined 10 academic studies exploring the lead-lag relationship between bitcoin futures and spot markets, writing about each study in detail, and will be referred to as ''prior literature review'' in this proposal.

[52] *See* USBT Order, 85 FR at 12613.

[53] *See id.*

[54] *See* Bitwise Order II, 87 FR at 40288.

Baur and Dimpfl (2019) [55]

As the Sponsor detailed in the prior literature review, Baur and Dimpfl (2019) has a severe methodological flaw that led the CME bitcoin futures market's contribution to price discovery to appear artificially low: The authors conduct their price discovery analysis on a per-lifetime-of-each-contract basis, rather than a standard rolling-front-month-contract basis.

An independent study, Alexander and Heck (2019), explored this issue extensively. The paper begins by using a standard rolling-front-month-contract approach to compare the futures market with the spot market, and concludes that there is a ''greater contribution to price discovery from the futures market than the spot market.'' [56]

The paper specifically notes that this finding contradicts the findings in Baur and Dimpfl (2019), and the authors set about resolving this discrepancy by repeating their original study using Baur and Dimpfl (2019)'s per-lifetime-of-each-contract approach. The authors show that this methodological change reverses their original finding and shows the spot market leading price discovery. The authors conclude by explaining why the per-lifetime-of-each-contract approach is flawed and should not be relied on:

> This apparently leading role of the spot market [using the per-lifetime-of-each-contract approach] is not surprising since, during the first few months after the introduction of a contract, there is always another contract with a nearer maturity where almost all trading activity occurs. So any finding that the spot market dominates the price discovery process is merely an artifact of very low trading volumes when the contract is first issued.[57]

As regards the first prong, the question is not whether each individual futures contract leads the spot market, but rather, whether the futures market as a whole leads the spot market. Given this, the rolling-front-month-contract approach, which focuses attention on the contract that attracts the bulk of trading activity at any given time, is the correct approach.

Entrop et al. (2020) [58]

Entrop et al. (2020) evaluates price discovery in the bitcoin market by comparing the CME futures market and Bitstamp, a spot market, from December 2017 to March 2019. The paper finds that the CME futures market led price discovery for the majority of the time period studied.

Despite the fact that the paper finds generally in favor of the futures market leading, the Commission calls out Entrop et al. (2020) in multiple disapproval orders, noting for instance in the USBT Order the paper ''finding that price discovery measures vary significantly over time without one market being clearly dominant over the other.'' [59] The Commission's point draws on the fact that, for the last five months of the 16 month study, the spot market led the futures market in IS/CS measures, and that, for the last two months of the study, it did so in a statistically significant way. The authors of the paper note the significant time variation in market leadership as well.

As with Baur and Dimpfl (2019), this finding is driven by a methodological choice in the study design that introduces an artificial bias against the CME bitcoin futures market: Whereas the vast majority of studies evaluating price discovery in the bitcoin market use actual transaction prices to conduct their analysis, Entrop et al. (2020) uses ''midquotes'' (or midpoint of the bid-ask spread) in each market. As explored further below, the bias introduced by this methodological decision is exaggerated specifically in the period where leadership swings to the spot market.

The authors justify their non-standard choice to use midquotes instead of transaction prices by pointing to four academic studies, itemizing three specific advantages:

> First, quotes can be updated in the absence of transactions. Second, midquotes mitigate the problem of infrequent trading, which is normally observed in transaction prices. Third, midquotes are not affected by the bid-ask bounce.[60]

These theoretical advantages, however, must be considered in light of the specific microstructure of the bitcoin markets, and specifically, the sizable difference in ''tick size'' (or the minimum price change) in the CME bitcoin market compared to the spot market. For CME bitcoin futures contracts, the tick size per contract is $25.00,[61] which equates to $5.00 per bitcoin, while for spot platforms like

[55] D. Baur & T. Dimpfl (2019), ''Price discovery in bitcoin spot or futures?,'' Journal of Futures Markets, 39(7): 803–817 (''Baur and Dimpfl 2019'').

[56] C. Alexander & D. Heck (2019), Price Discovery, High-Frequency Trading and Jumps in Bitcoin Markets (''Alexander and Heck 2019'').

[57] *See* Alexander and Heck 2019.

[58] *See* O. Entrop, B. Frijns & M. Seruset (2020), ''The Determinants of Price Discovery on Bitcoin Markets,'' 40 J. Futures Mkts. 816 (''Entrop et al. 2020'').

[59] *See* USBT Order, 85 FR at 12613.

[60] *See* Entrop et al. 2020.

[61] *See* CME bitcoin futures contract specs, available at *https://www.cmegroup.com/markets/cryptocurrencies/bitcoin/bitcoin.contractSpecs.html.*

Bitstamp (the spot platform used in this study), the tick size is typically $0.01.[62]

In a low volatility environment, where the price of bitcoin may trade within a single $5.00 range for a period of time, the midquote on a spot market can update on a tick-by-tick basis as the market price of bitcoin moves up or down within the range. Meanwhile, the midquote on the CME bitcoin futures market will not change at all.

Importantly, this does not mean the CME bitcoin futures market has forfeited price discovery or that it cannot transmit information to other markets. Transactions may occur on the CME bitcoin futures market at either the ask or the bid even as the midquote remains static, depending on whether traders believe the market is likely to rise or fall. By electing to ignore these transactions, Entrop et al. (2020) renders it significantly harder for the CME bitcoin futures market to demonstrate price leadership during low volatility environments. One cannot measure what the eye refuses to see.

There is strong reason to believe that the methodological choice to use midquotes biased the time varying results of this study. The last two months of the study (February and March 2019), where the study showed the spot market leading the futures market in a statistically significant manner, occurred during the depth of the bitcoin bear market. During this period, bitcoin's price hovered below the $4,000 mark, rendering the $5 tick size particularly large on a percentage basis, and bitcoin's price volatility was exceptionally low, as observed in Table 3 of the study. The impact is clear: Midquotes were sampled at a 1 minute interval in the study, and amongst the 22,788 and 29,962 CME midquotes sampled for the months of February and March 2019, 80.82% and 84.76% of the data points represented zero change, as observed in Table 4. This was by far the highest ratio of zero change samples in the study. By comparison, in the first two months of the study, only 8.66% and 12.32% of the midquotes sampled at 1 minute intervals from the CME represented zero change.

The Sponsor believes that the results of the last two months, where the percentage of sampled midquotes representing zero change were so high, cannot be relied upon to draw the conclusion that price discovery leadership changed from the futures market to the spot market during that time, and that the academic record should reflect Entrop et al. (2020)'s overall finding that the futures market leads the spot market.

Hung et al. (2021)[63]

Hung et al. (2021) does not focus on price discovery between the bitcoin futures market and the spot market. In fact, the word ''spot'' does not appear in the paper's abstract. Instead, the paper is primarily focused on investigating the relative contributions of different types of traders (*e.g.,* hedgers, retailers, etc.) on price discovery in the bitcoin futures markets, both CME and CBOE, using the Commitments of Traders (COT) data from the CFTC. Its secondary focus is on analyzing price discovery competition between the CME and CBOE bitcoin futures markets, as a way of exploring CBOE's decision to suspend further listings of their bitcoin futures contracts in 2019.

The ancillary nature of the spot vs. futures investigation is worth noting because it may explain why the mathematical oddities in the results of that investigation went unexplored by the authors.

Those results are presented in Table 4 of the paper. The authors use modified information share (MIS), a variant of classic IS, to evaluate price leadership between a single spot platform (Bitstamp) and both the CME and CBOE futures exchanges, for the period between April 10, 2018 and April 30, 2019. The authors divide this period into 56 weeks, and independently calculate the MIS for each week, before presenting it on an average, minimum, and maximum basis. The results show that the spot market led the CME futures market over this time period with an average MIS value of 0.654.

The table, however, also shows a minimum spot market MIS value amongst the 56 data points of 0.000 (a finding that the CME futures market *completely* led the spot market for at least one entire week) and a maximum value of 0.999 (a finding that the spot market *completely* led the CME futures market for at least one entire week).

These maximum and minimum values are extremely unlikely. Price discovery analyses such as MIS are statistical analyses where even a slight bit of randomness in an otherwise clearly lagging price series would still produce some contribution to price discovery. A 0.000 and 0.999 result is an unexplained mathematical oddity hard to comprehend, and even more so as results come at both ends of the spectrum. Amongst all the price discovery academic literature the Sponsor has reviewed—as well as all the papers cited by the Commission—there are no other examples where a full week's worth of data between two time series has resulted in such extreme values. The unprecedented results are both so statistically improbable and so out-of-line with results from other papers that the most likely explanation is that some amount of data errors existed in the price data that went into the analysis.

Unfortunately, the study's spot data provider (*bitcoincharts.com*) is no longer accessible, and so, it is not possible to check the data. In addition, the paper does not provide any charts or visualizations that would permit the Sponsor to visually inspect price discovery trends over time and attempt to infer some other explanation for these highly unusual results.

Given the anomalous and statistically unlikely nature of the results, the Sponsor believes that the paper's ancillary findings about price discovery between spot and futures markets cannot be relied upon and should be dismissed.

Alexander and Heck (2020)[64]

Alexander and Heck (2020) stands alone from all other academic papers cited by the Commission in its review of the academic literature by using a ''multidimensional'' approach to evaluate the source of price discovery leadership in the bitcoin market. That is, rather than using the classic ''pairwise'' approach to IS/CS price discovery analysis—comparing Exchange A against Exchange B, and then comparing Exchange A against Exchange C, and so on—Alexander and Heck (2020) uses a statistical technique that attempts to compare multiple exchanges simultaneously.

The Commission commented on the findings of Alexander and Heck (2020) in Bitwise Order II, noting that:

> [Alexander & Heck] finds that CME bitcoin futures ''have a very minor effect on price discovery,'' and that ''a faster speed of adjustment and information absorption [occurs] on the unregulated spot and derivatives [platforms] than on CME bitcoin futures.'' Specifically, Alexander & Heck's multidimensional analysis—which simultaneously includes unregulated futures,

[62] *See* Bitstamp tick sizes before changes made in 2022, available at *https://blog.bitstamp.net/post/changes-to-tick-sizes/.*

[63] This paper was published after the Sponsor completed the academic literature review in the Bitwise Prong One Paper, and therefore was not captured or analyzed in that white paper. *See* J. Hung, H. Liu & J. Yang, ''Trading activity and price discovery in Bitcoin futures markets,'' 62 J. Empirical Finance 107 (2021) (''Hung et al. 2021'').

[64] *See* C. Alexander & D. Heck (2020), ''Price Discovery in Bitcoin: The Impact of Unregulated Markets,'' Journal of Financial Stability, Volume 50, October 2020, Article Number 100776 (''Alexander and Heck 2020'').

regulated futures, perpetual futures, and spot markets—finds that CME bitcoin futures have never accounted for more than 9% of price discovery (and unregulated markets collectively account for more than 91% of price discovery), and have always contributed the least to price discovery among all venues considered, except during July 2019.[65]

Expanding beyond the specific finding, the Commission used commentary from this paper to question in general the validity of pairwise, two-dimensional analysis—the type of analysis employed by every other paper the Commission references, as well as the Sponsor's own statistical IS and CS analysis.

Quoting a critique from the paper and adding its own color, the Commission notes:

> [From Alexander and Heck (2020):] ''omitting substantial information flows from other markets can produce misleading results. . . . [I]n a two-dimensional model one or other of the instruments must necessarily be identified as price leader.'' In other words, a two-dimensional model might erroneously attribute information share or component share of omitted platforms to one of the two platforms included in the pairwise estimate, because the two shares must necessarily sum up to 100%.[66]

The Sponsor disagrees. To the contrary, the Sponsor believes that the multidimensional study design employed by Alexander and Heck introduces a strong bias against the CME bitcoin futures market that renders the results invalid.

The core issue with multidimensional price discovery analysis, and possibly the reason Alexander and Heck (2020) is the only study to employ it in this context that the Sponsor is aware of, is that when comparing price discovery amongst different category of markets (as in here, regulated futures, unregulated futures, and spot), the question of which markets appear to contribute more to price discovery can be biased by the number of constituent markets from each category.

The reason for this bias is that IS/CS price discovery measures are based on the computation of an implicit ''common price'' that is derived from the collection of inputted price series. The statistical measures track the shares of contribution made to changes in the common price by each price series. In a multidimensional context, as more alike markets are added, those markets can artificially appear to contribute more to changes in the common price because the common price itself changes with the addition of more markets. For example, if market A objectively leads both market B and and market C, but market B and market C have very similar price series, a multidimensional analysis amongst all three markets can erroneously conclude that market A's movements contributed less to changes in the common price than market B and C, simply because the latter two markets were similar.

Looking at Alexander and Heck (2020) with this understanding, the Sponsor notes that the paper's final analysis compares eight markets in its multidimensional format, and that these eight markets fit into three broad categories: Regulated futures (CME), unregulated futures (Huobi futures, OKEx futures, OKEx perpetuals, and Bitmex perpetuals), and spot (Coinbase, Bitfinex, Bitstamp).[67]

Given these inputs, it is unsurprising—and perhaps even predetermined—that the results of the multidimensional analysis showed that the unregulated futures markets (with four markets included in the analysis) were found to dominate price discovery, with the three spot markets following, and the one regulated futures market coming in last.

The Sponsor's conclusion that the results of Alexander and Heck (2020) are driven by study design, rather than accurately reflecting the true source of price discovery in the markets, is supported by a paper published by the same authors in the prior year. Alexander and Heck (2019) uses a classic, pairwise, two-dimensional price discovery analysis to compare the CME futures market and the bitcoin spot market (represented by a reconstructed version of Bitcoin Reference Rate which includes transactions from Coinbase and Bitstamp). The study finds that the CME futures market led the spot market.

The two studies generally focus on different time periods, but they overlap for one quarter: Q2 2019. Notably, in the 2019 paper, Alexander and Heck call out the significant leadership demonstrated by the CME market during Q2 2019. Specifically, they note that the Generalized Information Share (GIS) attributed to the CME grew from 56% for the period from December 2017 to March 2019, to 65% when Q2 2019 was added to the analysis. The authors do not provide a discrete GIS value for Q2 2019, but the rise in overall GIS after including the quarter indicates that the GIS for Q2 2019 was likely above 75%.

By comparison, in Alexander and Heck (2020), CME's GIS ranged from 3.23% to 5.83% in Q2 2019, while the combined GIS of the three included spot markets (Coinbase, Bitfinex, Bitstamp) ranged from 41.60% to 50.20%, (the remainder was attributed to unregulated futures markets).[68]

How could the results be so different? CME dominated price discovery in Q2 2019 when compared on a pairwise basis with spot markets, but spot markets had a much larger share of price discovery than the CME when analyzed on a multidimensional basis. The most likely explanation is that the multidimensional analytical approach created a bias in the ''common price'' by adding three spot markets into the mix compared to just one regulated futures market.

Lastly, Alexander and Heck's critique (and the Commission's concern) that two-dimensional analysis omits information flows from other markets and thereby may generate spurious results is misleading. It is, of course, axiomatically true in isolation that omitting a market from consideration could lead to spurious results. But as long as the two-dimensional analysis includes all potential leading markets, an exhaustive pairwise analysis will ultimately find the market that is leading overall. Put differently, if you can show that Market A leads Market B and also that Market A leads Market C, you can feel confident that Market A leads both Markets B and C. Unfortunately, the same cannot be said for multidimensional analysis, where, as demonstrated by comparing the 2019 and 2020 papers, adding additional ''like markets'' can influence the ''common price'' and create spurious results.

The Sponsor believes that the traditional, pairwise approach to price discovery analysis—the dominant approach in the academic literature—is the correct approach for exploring the lead-lag relationship between the bitcoin futures market and the spot market, and the multidimensional approach is mis-specified.

[65] *See* Bitwise Order II, 87 FR at 40289.

[66] *See id.* at 40289.

[67] In the paper, Alexander and Heck disaggregate unregulated futures and perpetuals into separate market categories. The Sponsor has grouped them here because the two markets are extremely similar: Both offer derivative exposure to bitcoin and are characterized by their offshore and highly leveraged nature (unregulated derivatives markets often offer traders 10–100X leverage, while regulated futures markets limit leverage to roughly 2–3X). In addition, because all three unregulated derivatives platforms (Huobi, OKEx, Bitmex) have both instruments (futures and perpetuals), it is reasonable to assume that the two instruments likely share a similar base of traders who can easily arbitrage across positions in the two instrument types using shared margin, keeping prices closely aligned.

[68] Huobi futures and OKEx perpetuals did not exist in Q2 2019, so the multidimensional analysis starts with just 6 markets: 3 spot markets, 2 unregulated futures markets, and 1 regulated futures market.

Kapar and Olmo (2019)

Kalpar and Olmo (2019) finds that the CME futures market dominates price discovery when compared to the spot market. The Commission, however, raises a concern about this study's choice to use a daily price sampling period rather than a more frequent sampling period, and questions the validity of the results. This concern also applies to Hu et al. (2020). The Commission writes in the USBT Order:

> [S]tudies based on daily price data may not be able to distinguish which market incorporates new information faster, because the time gap between two consecutive observations in the data samples could be longer than the typical information processing time in such markets.[69]

The Sponsor believes that the requirement that the ''the time gap between two consecutive observations'' be shorter than the ''information processing time'' of the market in question is not supported by the academic literature and is, in fact, directly in contrast to the standard used in all nine academic studies listed by the Commission, as well as all studies that the Sponsor is aware of.

In the Bitwise Prong One Paper, the Sponsor conducted a comprehensive study of bitcoin spot markets and the CME bitcoin futures market using time-shift lead-lag (TSLL) analysis, wherein you shift one time series against another to find the amount of shift that creates the highest correlation between the two series. Using this well-established technique, the Sponsor estimated that the average ''lead-lag time'' between the CME bitcoin futures market and Coinbase, a spot market, from April 2019 to September 2020, was 2.94 seconds. This can be considered as the time it took, on average, for information to travel between the CME and Coinbase.

If it takes only 2.94 seconds on average for information to travel between the CME and Coinbase, is all price discovery analysis that uses sampling intervals longer than 2.94 seconds unequipped to explore which market leads?

For the nine studies noted by the Commission as constituting the ''Mixed Academic Record,'' the sampling intervals were (in the order in which the papers were cited) 15 minutes, 1 minute, 15 minutes, 1 day, between 1 and 60 minutes, 60 minutes, 5 minutes, 1 minute, and 1 minute. This is a wide range of values, ranging from 1 minute to 1 day, but all of them are at least 20X longer than the average lead-lag time that the Sponsor found between the CME futures market and Coinbase.

The record is similar in the broader, non-crypto-related price discovery literature, where minutely, hourly, or daily analyses are common.

Academics still find daily analysis useful, even in markets with fast information processing time, for a reason: Even if the sampling period is longer than the information processing time, at each sampling point, there will still likely be a gap between two markets' prices, and analyzing statistically whether market A's prices move to meet market B's prices or vice versa and which market's price as a result contributes more to the ''common price'' is still useful in determining which market leads price discovery.

The Sponsor believes that price leadership at a daily interval still illustrates which market bends to meet the other market, and should not be removed from the academic record under consideration.

Hu et al. (2020)

Hu et al (2020) strongly supports the notion that the futures market leads the spot market. Indeed, the abstract of the paper finds that:

> . . . futures prices Granger cause spot prices and that futures prices dominate the price discovery process.

In Bitwise Order II, however, the Commission wrote that the:

> Hu, Hou & Oxley paper found inconclusive evidence that futures prices lead spot bitcoin prices—in particular, that the months at the end of the paper's sample period showed, using Granger causality methodology, that the spot market was the leading market—and that the record did not include evidence to explain why this would not indicate a shift towards prices in the spot market leading the futures market that would be expected to persist into the future.[70]

The Sponsor believes this is a misreading of the results of the paper.

The primary objective of Hu et al. (2020) is to explore the time-varying nature of the lead-lag relationship between the bitcoin futures market and spot market. In order to do that, the authors use a time-varying version of the Granger causality test developed in Shi et al. (2018).[71] The time-varying Granger causality test has two main variants: the rolling window approach and the recursive evolving approach.

Hu et al. (2020) references that the authors of Shi et al. (2018) explicitly note that the recursive evolving approach is the more accurate approach:

> Simulation experiments compare the efficacy of the proposed test with two other commonly used tests, the forward recursive and the rolling window tests. The results indicate that the recursive evolving approach offers the best finite sample performance, followed by the rolling window algorithm.[72]

Under the lesser of the two approaches—the rolling window algorithm—it is true that CME futures prices are not found to Granger cause spot prices for the last five months of the study. However, under the recursive evolving approach, CME futures prices *are* found to Granger cause spot prices for the entire study period, and do so with increasing strength towards the end of the study, as shown in Figure 6 of the study.

How do you resolve the conflict? The authors reference Shi et al. (2018)'s perspective that ''the recursive evolving window algorithm provides the most reliable results,'' and therefore choose to interpret the results based on this method. Indeed, they write conclusively about this topic to avoid any doubt, saying:

> More importantly, given the duration of the Granger-causal episodes and the magnitude of the test statistics in Fig. 5 and Fig. 6, it was found that the strength of Granger causality from the futures prices to spot prices is stronger than vice-versa. From this we conclude that Granger causality runs from the futures market to the spot market. This result further suggests that the CME Bitcoin futures market leads the spot since the former embeds the new information faster than the latter.[73]

The authors' conclusion—based on a deep understanding of the analytical methods used—is that the CME futures prices Granger caused spot prices for the entire period of the study and that the CME futures market conclusively leads the spot market even when examined using time-varying analytical approaches, and the Sponsor finds no reason to question the conclusivity of the study.

Robertson and Zhang (2022)[74] and Buccheri et al. (2021)[75]

In Bitwise Order II, the Commission raised questions regarding a statement the Sponsor made in a February 25,

[69] *See* USBT Order, 85 FR at 12613.

[70] *See* Bitwise Order II, 87 FR at 40288.

[71] S. Shi, P. C. Phillips, & S. Hurn (2018), ''Change Detection and the Causal Impact of the Yield Curve,'' Journal of Time Series Analysis, 39(6), 966–987 (''Shi et al. 2018'').

[72] *See id.* at 1.

[73] *See* Hu et al. 2020 at 9.

[74] K. Robertson & J. Zhang (2022), Suitable Price Discovery Measurement of Bitcoin Spot and Futures Markets (''Robertson and Zhang 2022'').

[75] G. Buccheri, G. Bormetti, F. Corsi & F. Lillo (2021), ''Comment on: Price Discovery in High Resolution,'' Journal of Financial Econometrics, Volume 19, Issue 3, Summer 2021, Pages 439–451, (''Buccheri et al. 2021'').

2022 Comment Letter,[76] discussing two academic papers:

Robertson and Zhang (2022) and Buccheri et al. (2021)

The Sponsor's letter noted that the papers raised questions about the accuracy of traditional price discovery metrics like IS and CS, writing:

> [Robertson and Zhang] note that classic price discovery metrics like Information Share (IS) and Component Share (CS) ''face difficulties based on the model assumptions of VECM [the Vector Error Correction Model] when the prices under consideration are asynchronous and/or infrequent.'' Citing Buccheri et al. (2019), they note that ''when prices have a high level of sparsity, the VECM is clearly misspecified and the estimates are potentially biased.'' [77]

Given the Sponsor's acknowledgement that classic price discovery metrics like IS/CS could be biased by sparsity in price data, the Commission deemed it odd that the Sponsor still drew conclusions from the academic literature without further explanation:

> [Bitwise does not] discuss these 10 IS/CS studies in light of Bitwise's acknowledgment that ''classic'' price discovery metrics like IS/CS could be misspecified, with potentially biased results, when price data have a high level of sparsity.[78]

Furthermore, the Commission suggested that the Sponsor was implicitly casting doubt on the results of its own IS/CS analysis as well:

> Bitwise's acknowledgement of the [Robertson and Zhang (2022) paper]'s finding that ''there is a high level of sparsity in bitcoin data'' suggests that, by its own admission, Bitwise's IS/CS approach is misspecified and its estimates potentially biased.[79]

The Sponsor would like to clear up this misunderstanding.

It is indeed true that the CME bitcoin futures market has a high level of sparsity in its transaction data compared to that of spot markets, because CME bitcoin futures contracts have much higher tick sizes ($5 vs. $0.01 per bitcoin on Coinbase) and minimum trade sizes (5 bitcoin vs. 0.00000001 bitcoin on Coinbase).[80] Robertson and Zhang (2022) includes a table in the Appendix of their study where the authors quantify this sparsity concretely: For Q1 2021, the average seconds between trades (rounded) was 25 seconds for CME and 1 second for Coinbase.

It is also true that, if one price series of a two-dimensional price discovery analysis has a high degree of sparsity compared to the other price series, the results can be potentially biased. Robertson and Zhang (2022) demonstrates this incredibly clearly through a simulation analysis constructed as below (copied directly from the paper):

> [W]e compare the Coinbase USD market to an artificially modified version of itself using IS and CS every day from Q1 2019 through Q1 2021. The artificial modifications come in two forms: (1) the market's trade times are advanced by 3 seconds to represent a leading market and then (2) a percentage (in 10% increments starting at 10% and ending at 90%) of random trade values is removed to represent leading markets with varying levels of sparsity.[81]

The results of the simulation analysis is that the artificially-leading Coinbase price series is found to lead close to 100% (as expected) when only 10% of the trade values are removed. Then as the percentage of trade values randomly removed increases towards 90%, the price leadership of the artificially-leading Coinbase price series trends down, approaching 0%. With only about 40% of the trade values removed, the leadership actually flips directions, with IS and CS values dropping below 50%. In other words, introducing sparsity into a price series can cause it to appear as if it is lagging the other price series using IS and CS, even when the price series is objectively leading originally. This is the ''potential bias'' we acknowledged and agreed with the authors of the study on.

It is important to note, however, that this bias *only runs one way:* Against the market with higher data sparsity. As such, the acknowledgement of this statistical bias *does not mean* results cannot be relied on in a situation where the market with higher data sparsity is found to lead price discovery. Quite the contrary.

In all studies comparing the CME bitcoin futures market and spot markets, the CME futures market has a higher degree of sparsity. As a result, in each of these studies, the IS/CS values for the CME bitcoin futures market are biased downwards compared to that of spot markets. This means we can rely on IS/CS results showing the CME futures market leading spot markets, as those results only understate the strength of the CME futures market's price leadership.

Section Summary

The Sponsor does not believe that the academic literature is mixed. Instead, it finds a high degree of consensus amongst well-designed studies showing that the CME futures market leads the spot market. This finding is all-the-more impressive given the high degree of sparsity in the CME bitcoin futures market, which introduces a significant bias against it in traditional price discovery analysis.

As such, the Sponsor believes the academic record clearly demonstrates that the CME bitcoin futures market leads the spot market, and therefore meets the first prong of the significant market test.

The Sponsor's Comprehensive Research Demonstrates That the CME Bitcoin Futures Market Meets Both Prongs of the Significant Market Test

As detailed in the ''Background'' section, following the first Bitwise disapproval Order, the Sponsor, in an effort to conduct comprehensive research demonstrating both prongs of the significant market test while providing sufficient information to the Commission on the data and methodology underlying its analysis, met with the Commission Staff 14 times between January 2020 and August 2021, including with staff from the Divisions of Trading and Markets, Economic Risk and Analysis, and Corporate Finance, and produced two white papers, one addressing each prong.

The 107-page Bitwise Prong One Paper included a survey and validation of bitcoin data sources, a detailed review of existing academic literature on the topic of lead-lag relationships between bitcoin markets, and a rigorous statistical analysis using both Information Share (IS)/Component Share (CS) and Time-Shift Lead-Lag (TSLL) metrics comparing the CME bitcoin futures market against both spot bitcoin platforms and unregulated bitcoin futures platforms. The 24-page Bitwise Prong Two paper included an analysis of potential inflows into a spot bitcoin ETP and a statistical evaluation of the impact of historical inflows into other bitcoin investment products on the bitcoin market.

Both the Bitwise Prong One Paper and the Bitwise Prong Two Paper were included in full as exhibits in the rule proposal disapproved in Bitwise Order II, and their analyses formed the core arguments around why the Sponsor and the Exchange believed the CME bitcoin

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[76] The sponsor submitted a comment letter that discusses Robertson and Zhang 2022. *See* Letter from Katherine Dowling, Matt Hougan, and Paul Fusaro, Bitwise, dated Feb. 25, 2022 (''Bitwise Letter I'').

[77] *See* Bitwise Letter I, at 3.

[78] *See* Bitwise Order II, 87 FR at 40288.

[79] *See id.*

[80] *See* CME bitcoin futures contract specs, available at *https://www.cmegroup.com/markets/cryptocurrencies/bitcoin/bitcoin.contractSpecs.html; see also* Coinbase market specs, available at *https://exchange.coinbase.com/markets.*

[81] *See* Robertson and Zhang 2022, at 14.

futures market had met both prongs of the significant market test. The Commission disagreed with the Sponsor's analyses and listed out five specific disagreements regarding the first prong analysis and three specific disagreements regarding the second prong analysis.

The following sections will comprehensively address all eight disagreements the Commission raised regarding the Sponsor's prior analyses in Bitwise Order II.

The Sponsor's Response to the Disagreements Raised by the Commission Regarding the Sponsor's Prior Analysis of the First Prong of the Significant Market Test

Disagreement 1: The Sponsor's acknowledgement of the concerns raised in Robertson and Zhang (2022) and Buccheri et al. (2021) casts doubt on its own IS/CS results.

The first disagreement raised by the Commission regarding the Sponsor's prior analysis of the first prong focuses on the Sponsor's acknowledgement of certain academic concerns surrounding IS/CS price discovery analysis.

According to the Commission:

> Bitwise's first comment letter acknowledges that ''classic'' price discovery metrics like IS and CS ''face difficulties based on the model assumptions of VECM [the Vector Error Correction Model] when the prices under consideration are asynchronous and/or infrequent,[82] citing an academic study by Buccheri et al.[83] that investigates the difficulties to identifying price discovery with VECM models due to the high sparsity of data in markets that record trades at the sub-millisecond level. Bitwise also acknowledges that, ''when prices have a high level of sparsity, the VECM is clearly misspecified and the estimates are potentially biased.'' [82]

The Commission suggests that this means ''by its own admission, Bitwise's IS/CS approach is misspecified and its estimates potentially biased.'' [83]

The Sponsor disagrees. As detailed earlier in this proposal, in the section under the sub-head ''*Robertson and Zhang (2022)*[84] *and Buccheri et al. (2021),*'' [85] the bias that sparsity introduces into IS/CS statistics runs in a single direction, punishing the market with the higher level of sparsity. In each and every pairwise investigation in the Sponsor's analysis, the CME bitcoin futures market is the market with the higher level of sparsity. Therefore, the IS/CS price discovery ascribed to the CME bitcoin futures market in each investigation should be considered the lower bound of actual contribution, and that the actual contribution of the CME to price discovery is likely higher than stated.

The fact that IS/CS statistics are biased against markets with higher levels of sparsity does not weaken the Sponsor's argument that the CME bitcoin futures market led other markets from a price discovery perspective. It actually strengthens it.

Disagreement 2: The Sponsor performed its IS, CS and TSLL analysis on a daily basis before the monthly or full-sample averaging was applied and did not adequately explain why daily was the appropriate frequency to calculate intermediate values instead of different frequencies such as intraday.

The second disagreement the Commission raised focused on the Sponsor's use of daily results as intermediate values. Specifically, in its analysis, the Sponsor performed IS, CS and TSLL analysis on a per day basis, and then averaged the daily results both by month and across the full-sample period.

The Commission observed:

> However, neither the Exchange nor Bitwise explains why Bitwise chose a *daily* basis to compute its IS, CS, and TSLL estimates; provides any information about how variable the daily estimates are, before the monthly and/or full-sample averaging was applied; or provides any information on the robustness of the estimates—that is, whether these daily estimates or the statistical significance of the monthly and/or full-sample averages of such daily estimates are sensitive to different choices that Bitwise could have made for the analysis (*e.g.,* to compute intraday estimates).[86]

Price discovery metrics are not ''point in time'' metrics, but rather, calculations that require statistical analysis over a reasonable period of time. This is why all ten studies in the prior literature review, as well as all subsequent studies noted by the Commission, have evaluated price discovery on either a daily or a generalized ''full study period'' basis. The Sponsor elected to use the more-frequent daily basis to better capture and display potential time-dependent changes in leadership, as the Commission previously raised questions around this topic. To be clear, evaluating price discovery on an intraday basis would have been completely out-of-consensus compared to all academic studies reviewed by both the Sponsor and the Commission, and it is not clear what conclusions could have been drawn by such analysis since price discovery analysis of time periods that are too short can lead to spurious results.

Additionally, the Sponsor disagrees with the statement that it has not provided ''any information on the robustness of the estimates.'' The Sponsor included statistical significance tests and visual 95% confidence intervals on its monthly results specifically to highlight the robustness of the underlying daily estimates. The Sponsor also provided detailed guidance on its data inputs and methodology—and relied only on publicly available statistical tools—so that any observer with additional questions about the study could easily replicate the results, adjust them to their own specifications, or drill down on any specific potential analytical angle.

Disagreement 3: The Sponsor has not explained why it is reasonably likely that a would-be manipulator would have to trade on the CME to successfully manipulate the proposed ETP when the spot markets still account for 32–47% of price discovery.

The Commission observed:

> [T]he pairwise IS/CS full-sample average results for CME compared to each of the 10 spot platforms ranged between 52.97% (the CS result versus itBit) to 68.03% (the CS result versus Bitstamp). Even accepting these results and their statistical significance at face value, these results suggest that spot bitcoin markets still account for approximately 32%–47% of price discovery. Yet neither Bitwise nor the Exchange has explained why, notwithstanding this amount of price discovery occurring on spot platforms, it is reasonably likely that a would-be manipulator would nonetheless have to trade on the CME bitcoin futures market to successfully manipulate the proposed ETP.[87]

The response to this query lies in the words of the Commission itself. Through multiple disapproval orders, the Commission has highlighted the importance of the ''lead-lag relationship'' between the CME bitcoin futures market and the spot market in satisfying the first prong of the significant market test. For instance, in the Grayscale Order, the Commission wrote:

> The Commission considers the lead/lag relationship between the CME bitcoin futures market and the spot bitcoin market to be central to understanding whether it is reasonably likely that a would-be manipulator of a spot bitcoin ETP would need to trade on the CME bitcoin futures

[82] *See* Bitwise Order II, 87 FR at 40288.

[83] *Id.*

[84] *See* Robertson and Zhang 2022.

[85] Giuseppe Buccheri et al. (2021), ''Comment on: Price Discovery in High Resolution,'' Journal of Financial Econometrics, Volume 19, Issue 3, Summer 2021, pp. 439–451 (''Buccheri et al. 2021'').

[86] *See* Bitwise Order II, 87 FR at 40288 (emphasis in original).

[87] *See* Bitwise Order II, 87 FR at 40289.

market to successfully manipulate the proposed ETP.[88]

The Commission has also clarified exactly why this lead/lag relationship is so important, writing for instance in the Bitwise Order:

> [I]f the spot market leads the futures market, this would indicate that it would not be necessary to trade on the futures market to manipulate the proposed ETP, even if arbitrage worked efficiently, because the futures price would move to meet the spot price.[89]

The Commission has carried this language through more than a dozen disapproval orders and across multiple years, emphasizing the ''central'' importance of the ''lead-lag relationship'' in understanding whether it is reasonably likely that a would-be manipulator would have to trade on the CME bitcoin futures market to successfully manipulate the proposed ETP.

The Commission further clarified that the significant market test does not require the CME market to lead bitcoin spot markets 100% of the time, noting in the Grayscale Order:

> A lead/lag statistical result that CME bitcoin futures prices ''lead'' spot prices does *not* mean that CME bitcoin futures prices ''always'' move before spot prices—which would be [an] ''obvious'' and exploitable arbitrage opportunity. . .[90]

The Commission is now turning back to the Sponsor to ask why the standard of ''leads'' having more than 50% of price discovery, is sufficient to satisfy the first prong. The Sponsor's answer can only be that 50% is the uniform academic standard across every price discovery paper the Sponsor has reviewed, as well as all academic papers the Commission has referenced, for the standard the Commission has set.

If the Commission believes that the standard for satisfying the first prong should be higher than ''leads'' (such as, ''overwhelmingly leads'' or ''nearly always leads''), then the Commission should state that. Until then, the analysis will assume that determining whether the CME futures market ''leads'' or ''lags'' the spot market is ''central'' to understanding the first prong and that the Sponsor's IS/CS analysis that applies the academic consensus methodologies in making such determination is valid.

Disagreement 4: The Sponsor's TSLL results show that the extent to which the CME bitcoin futures market ''leads'' the 10 spot markets has decreased since 2019. The Sponsor has not explained the implication of the CME's decreasing lead time over the identified spot markets, nor why the CME's ''lead'' time against the spot markets would not be expected to continue to decrease until it lags spot.

The Commission writes:

> [T]aking Bitwise's TSLL results at face value, as Bitwise acknowledges, the extent to which the CME bitcoin futures market ''leads'' the 10 unregulated spot platforms has decreased since 2019 to the end of Bitwise's sample period in September 2020. This general trend is also observed in the [Robertson and Zhang (2022)] TSLL analysis, which uses a longer sample period (to Q1 2021) and finds that the CME's average ''lead'' time has ''steadily decreased'' among all evaluated markets to about one second in Q4 2020 and Q1 2021. The record, however, does not explain the implication of the CME's decreasing lead over the identified spot platforms, nor why the CME's ''lead'' time against spot platforms would not be expected to continue to decrease throughout 2021 and 2022 until it ''lags'' spot platforms.[91]

The Sponsor believes that this disagreement reflects a simple misinterpretation of the TSLL analysis.

TSLL analysis is designed to show whether prices on one market lead or lag prices on another market. It achieves this goal by shifting prices forward and backward and finding the shift that produces the highest level of correlation. In this view, a longer lead time is not indicative of a stronger relationship; it is simply indicative of different times it takes for information to travel.

A shorter lead time suggests that there is a faster transmission of information from one market to another. The correct way to interpret the shortening lead time between the CME bitcoin futures market and the spot market is that the rate at which information passes from the CME futures market to the spot market is accelerating.

There is no indication in the results, however, that the *direction* of information flow is changing; indeed, as the lead times decrease, the confidence intervals also tighten to indicate that the lead times are still statistically significantly above 0. For example, for December 2017 (the first month of the study), CME's lead time against Coinbase is 26.16 seconds with a 95% confidence interval of 12.72–39.59 seconds. For September 2020 (the last month of the study), CME's lead time against Coinbase is 2.11 seconds with a 95% confidence interval of 1.77–2.46 seconds.

In the Sponsor's view, the tightening of the lead time between the two markets should only be seen as a sign of market maturation, since information processing time is accelerating, and should if anything strengthens the view that it is reasonably likely that a would-be manipulator would have to trade on the CME bitcoin futures market to manipulate the proposed ETP.

Disagreement 5: The Sponsor's statistical results are all based on pairwise, two-dimensional analysis and the Sponsor has not explained why its results hold in light of the findings and critiques raised in Alexander and Heck (2020).

The Commission stated:

> [A]ll of Bitwise's statistical results—IS, CS, and TSLL—are based on pairwise, two-dimensional analysis . . . At least one multidimensional approach to price discovery (Alexander & Heck 2020) finds that CME bitcoin futures ''have a very minor effect on price discovery,'' and that ''a faster speed of adjustment and information absorption [occurs] on the unregulated spot and derivatives [platforms] than on CME bitcoin futures.''. . . While Bitwise acknowledges the Alexander & Heck 2020 paper . . . Bitwise neither critiques the multidimensional Alexander & Heck 2020 approach; nor attempts to apply the approach to Bitwise's own data; nor discusses the robustness of Bitwise's two-dimensional methodology in response to the critique in Alexander & Heck 2020 that: ''omitting substantial information flows from other markets can produce misleading results. . . . [I]n a two-dimensional model one or other of the instruments must necessarily be identified as price leader.'' [92]

This criticism was addressed in a prior section of this proposal, under the sub-heading ''*Alexander and Heck (2020)*''.

Multidimensional analysis is rare in the literature, particularly when comparing amongst different types of markets, because it introduces bias into the assessment of the common price based on the numbers of markets used from each different type of market, or from similar market types.

An exhaustive pairwise analysis can be relied upon to find the market that is leading overall as long as all potential leading markets are included in the analysis. The same cannot be said for multidimensional analysis due to the aforementioned bias. Given these circumstances, the Sponsor believes that the traditional, pairwise, two-dimensional approach to price discovery analysis is the correct approach for exploring the lead-lag relationship between the CME bitcoin futures market and the spot market.

[88] *See* Grayscale Order, 87 FR at 40313.

[89] *See* Bitwise Order, 84 FR at 55411.

[90] *See id.* at 40313.

[91] *See* Bitwise Order II, 87 FR at 40289.

[92] *See* Bitwise Order II, 87 FR at 40289.

Section Summary

No single statistical study can answer every question, consider every variable, or use every statistical approach to a given problem.

The Sponsor designed its study—developed over a series of 14 meetings with the Staff—to supplement the broader academic literature investigating price discovery in the bitcoin market. It attempted to be as comprehensive as possible, using all available data and examining all available major trading platforms, including those in spot, regulated futures, and unregulated futures. It used high-quality data providers, conducting a thorough analysis of data providers to find the most accurate data set before beginning its analysis. In an effort to be easily replicable, it detailed its full methodology and used publicly available statistical tools to conduct its analysis. It made these choices in an effort to provide sufficient information to the Commission on the data and methodology underlying its analysis and bring confidence to its results.

The data show convincingly that the CME is the leading source of price discovery, whether evaluated using IS, CS or TSLL, and despite the headwind that the sparsity bias raises against its IS and CS results.

The Sponsor's Response to the Disagreements Raised by the Commission Regarding the Sponsor's Prior Analysis of the Second Prong of the Significant Market Test

Disagreement 1: The Sponsor provides conflicting claims with respect to the demand for a spot bitcoin ETP, which undermines the credibility of Sponsor's estimates for the likely size of such an ETP and the rapidity of inflows into it.

The Commission observed:

On the one hand, Bitwise downplays potential investor demand, stating that ''[w]hile there is interest in a bitcoin ETP,'' the bitcoin market is ''incredibly and increasingly crowded'' with options for investors, noting that investors today can buy bitcoin on crypto trading apps, finance apps, through over-the-counter trusts, via bitcoin futures ETFs, and ''in many other ways.''. . . . On the other hand . . . Bitwise also highlights that, unlike GBTC, the proposed ETP would allow for daily creations and redemptions; can be expected to ''closely track the value of [b]itcoin, and not periodically trade at substantial premiums to and discounts from the value of [b]itcoin''; and would be ''professionally managed, SEC-regulated, highly-liquid, fully transparent, and listed on the NYSE Arca''; and that ''at least some segment'' of retail and other investors would benefit from such characteristics and would be ''affirmatively disadvantaged'' by not having access to it . . . If, as Bitwise claims, U.S. investors have been and are ever-increasingly investing in bitcoin, and the proposed ETP ''would add material protections'' that are not currently available through GBTC or otherwise for some segment of investors, and would, unlike GBTC, be available to trade immediately on a national securities exchange with daily creations and redemptions, it is not clear that Bitwise's use of the GBTC historical record of $4.7 billion in inflows is a likely, let alone ''aggressive,'' estimate for first-year inflows into a new spot bitcoin ETP.[93]

It is true that the Sponsor details both the headwinds (increasingly crowded competition with other avenues of accessing bitcoin exposure) and tailwinds (unique investor protections afforded) that a new spot bitcoin ETP will face in raising assets. However, the two claims do not contradict each other. The bitcoin investment market is, in fact, crowded, and a spot bitcoin ETP would be attractive in certain ways. The Sponsor's decision to present both sides of the argument should not undermine the credibility of the Sponsor's estimates, but rather add confidence to those estimates by demonstrating the Sponsor's balanced perspective.

Furthermore, the Commission, other than suggesting minor conflicts amongst claims the Sponsor has made, has not disagreed with the crux of the Sponsor's argument in estimating first-year flows by relying on the close approximation historical examples.

For example, SPDR Gold Shares ETF (GLD) was the fastest growing new commodity-trust ETP ever in history with $3.01 billion in first-year flows. The spot bitcoin ETP will also be a new commodity-trust ETP, occupying the same category. The global above-ground gold market cap was roughly $2.1 trillion when GLD debuted in 2004.[94] By comparison, the global bitcoin market cap was $592 billion as of June 30, 2023.[95] If the new spot bitcoin ETP is assumed to be as successful as GLD, the most successful commodity-trust ETP ever, in terms relative to the market caps of the underlying commodities, the new ETP would gather approximately $849 million in first-year flows. The Sponsor's estimate of $4.7 billion in first-year flows for the new spot bitcoin ETP is over five times the $849 million figure.

[93] *See* Bitwise Order II, 87 FR at 40291.

[94] Gold market capitalization as of 2004 is calculated by taking the World Gold Council's estimate of above-ground gold stocks in 2004 multiplied by the price of gold as reported by Macrotrends in November 2004.

[95] Bitcoin market capitalization as of June 30, 2023 was $592 billion according to *Blockchain.com.*

While there could be meaningful latent demand built up for a spot bitcoin ETP given its unique investor protections, the Sponsor continues to believe that its estimate of $4.7 billion in first-year flows, which is assuming that the new ETP will be over five times as successful as GLD, the most successful commodity-trust ETP in history, is a safe estimate and the actual first-year flows is unlikely to exceed that value.

Additionally, the Sponsor's analysis should provide comfort that, even if first-year flows exceed $4.7 billion, it is unlikely that trading in the new ETP will have a ''predominant influence'' on prices in the CME bitcoin futures market. The Sponsor's second prong analysis includes a correlation study where GBTC's $4.7 billion maximum single year flow in 2020 was found to have had a negligible correlation to changes in the spot bitcoin price. While we do not have any bitcoin investment vehicle with a higher single year flow to run historical correlation analysis on, the fact that GBTC's $4.7 billion inflow had almost no correlation to bitcoin prices suggests that there is likely a safe margin of error where a higher first-year flow figure would still not be the predominant influence on prices in the CME bitcoin futures market.

This last point is further reinforced by the fact that the CME bitcoin futures market's trading volume grew around six fold between 2020 (when the correlation analysis was done) and 2023. As noted in ''The CME Bitcoin Futures Market'' section in this proposal, the CME bitcoin futures contracts traded approximately $39.8 billion in June 2023 compared to $6.0 billion in June 2020. Assuming a relationship between trading volume growth and the amount of flows a market could withstand without its prices being dominated by the influence of such flows, the proposed spot bitcoin ETP could have much more than $4.7 billion in first-year flows—perhaps even six times as much ($28 billion, assuming a linear relationship)—without becoming the predominant influence on prices in the CME bitcoin futures market.

Disagreement 2a: The Sponsor's study examined the correlation of inflows into GBTC, BTCE and BTCC compared to spot bitcoin prices, instead of CME bitcoin futures prices. Given that the Sponsor identifies the CME bitcoin futures market as the relevant regulated market of significant size, the use of spot bitcoin prices for its correlation analysis could render the analysis immaterial.

The Sponsor disagrees that the use of spot prices instead of futures prices could render the correlation analysis immaterial.

In the *Grayscale* Court's analysis of the second prong, the Court observed that ''[b]ecause Grayscale owns no futures contracts, trading in Grayscale can affect the futures market only through the spot market.'' [96] In other words, when thinking about the potential predominant influence trading in a new spot bitcoin ETP could have on prices in the CME futures market it is erroneous to consider the relationship between the new ETP and the CME futures market in isolation, ignoring the existence of the spot market.

Inflows into a new spot bitcoin ETP will result in purchases of the underlying asset, spot bitcoin. Market participants might attempt to predict the daily inflows into the new ETP and speculate on the CME futures market ahead of time but ultimately they are speculating on how much the inflows could impact the bitcoin market as a whole, and inflows would have to influence both futures and spot markets together to impact prices. In short, given the tight correlation and arbitrage relationship between the bitcoin futures price and spot price,[97] trading in the new spot bitcoin ETP is unlikely to become a predominant influence on prices in the CME futures market without also becoming a predominant influence on prices in the spot market. Therefore, a correlation analysis of the historical impact of inflows to bitcoin prices should be valid when run on either spot prices and futures prices.

Beyond the argument above around the theoretical validity of using spot prices in the correlation analysis in the context of the second prong, there is also the broader economic reality that, given the high correlation between spot prices and futures prices, the results of the correlation analysis would have been nearly identical. Indeed, the Sponsor ran the same correlation analysis this time between daily/weekly inflows into GBTC in 2020 and daily/weekly price changes in the CME bitcoin futures market and the correlation values were 0.1075/0.0771 compared to 0.1087/0.0811 in the original analysis when changes in spot prices were used instead.

[96] *See Grayscale Investments, LLC* v. *SEC,* No. 22–1142 (D.C. Cir. Aug. 29, 2023), at 17–18.

[97] As demonstrated in a Comment Letter from Professor Robert E. Whaley of Vanderbilt University, and presented and relied upon as evidence in *Grayscale,* the CME bitcoin futures market and the spot bitcoin market share a 99.9% correlation.

Disagreement 2b: The Sponsor's correlation analysis does not control for any other factors that may have been affecting spot bitcoin prices during the daily or weekly aggregation periods. Thus, the results do not isolate the statistical relationship between spot bitcoin prices and the factor of interest (i.e., flows into GBTC, BTCE, or BTCC).

The Sponsor believes that this argument is not relevant to the question at hand. The goal of the second prong analysis is to demonstrate that trading in the new ETP will not become the predominant influence on prices in the CME bitcoin futures market *as compared to other influences.* If other factors are perfectly controlled, then the results of the analysis would be moot; any amount of isolated buying or selling in relation to the new ETP would perfectly move bitcoin prices up or down because it is the only influence that was not controlled for in the analysis. As the goal of the correlation analysis is to demonstrate that inflows into the ETP do not overwhelm other factors, presence of other factors is not only valid but necessary.

Disagreement 3: The Sponsor has not explained its analysis on why the second prong would be met when its own estimates still indicate that the new ETP would have 36.5% of the daily trading volume and first-year AUM greater than the all the open interest in the CME bitcoin futures market.

According to the Commission:

> Bitwise's analysis regarding the potential effects of trading in the Shares on CME bitcoin futures prices is vague and conclusory. Bitwise states that it 'believes' that it is unlikely that trading in a new bitcoin ETP will become the predominant influence on prices in the CME bitcoin futures market 'if such trading activity is substantially smaller than the trading activity on the CME bitcoin futures market.'. . .
>
> However, an alternative calculation using Bitwise's statistics is that a single bitcoin ETP's average daily trading volume could be approximately 36.5% ($143 million divided by $392 million)—more than one-third—of the size of CME bitcoin futures' average daily trading volume. On top of that, assuming, as Bitwise does, potentially $4.7 billion in first-year inflows, such a spot bitcoin ETP could have AUM that exceeds the value of all open interest in CME bitcoin futures contracts. Bitwise has not directly addressed why, given this relative size of estimated daily trading in the Shares compared with daily trading in CME bitcoin futures contracts, and the relative size of the Trust's estimated AUM itself compared with all open interest in CME bitcoin futures contracts, it is nonetheless unlikely that trading in the proposed ETP would be the predominant influence on prices in the CME bitcoin futures market.[98]

[98] *See* Bitwise Order II, 87 FR at 40291.

Any analysis related to the second prong is forced to make guesses as to what conditions would make predominant influence ''likely'' or ''unlikely.'' The Sponsor's *logic* that predominant influence is unlikely ''if [the new ETP's] trading activity is substantially smaller than the trading activity on the CME bitcoin futures market'' is fundamentally sound and concrete since markets with deeper liquidity can absorb cross-market trades with less price movement.

The actual disagreement, therefore, then is likely less about the logic and more about the threshold at which the logic produces an affirmative interpretation that predominant influence is unlikely. The Sponsor argued that if daily trading in the new ETP is 36.5% of the trading in the CME futures market it is unlikely to become the predominant influence. The Commission questioned if that is sufficient.

Fortunately, the CME bitcoin futures market has matured further since 2020 (the year which our daily trading volume estimates were based upon). Again, as noted in ''The CME Bitcoin Futures Market'' section in this proposal, the CME bitcoin futures contracts traded approximately $39.8 billion in June 2023 compared to $6.0 billion in June 2020, over a six-fold growth in trading volume. The Sponsor's $142 million daily trading volume estimate of the new ETP was based on the Sponsor's $4.7 billion first-year inflow estimate multiplied by the higher of GLD and GBTC's average ADV/AUM ratio (3.04%), so that estimate remains the same assuming the same first-year inflows to the new ETP. Applying the over six-fold growth in the CME futures market's trading activity to our past estimates, it would mean that the trading activity in the new ETP now would be approximately only 6% of the trading activity in the CME bitcoin futures market. This development should provide a higher degree of confidence that trading in the new ETP is unlikely to be the predominant influence of prices in the CME bitcoin futures market.

With regards to the Commission's concern around the fact that the AUM of the new ETP, based on our $4.7 billion first-year flow estimate, could exceed all open interest in the CME bitcoin futures market, the Sponsor does not find comparing those two figures relevant to the question at hand. The second prong asks whether *trading* in the new ETP would be unlikely to be the predominant influence on prices, not *assets.* One could interpret ''trading'' as trading activity in the

secondary market or inflows in the secondary market, both of which the Sponsor has analyzed, but AUM is not directly relevant; it is only relevant to the extent that AUM can influence the amount of ''trading'' that occurs in the ETP, which the Sponsor's analysis captures.

Additionally, AUM is an asset related figure and open interest is a trading related figure. Comparing the two literally and concluding that a market with a higher asset related figure is likely to become the predominant influence on prices on a market with a lower trading related figure is a bit like comparing apples to oranges.

Section Summary

The Sponsor's prior estimates of first-year flows in a new spot bitcoin ETP and prior correlation analysis studying the relationship between inflows into GBTC, BTCE, and BTCC and spot bitcoin prices are still valid. Furthermore, in light of the massive growth of trading activity in the CME bitcoin futures market, the Sponsor's analysis that trading in the new spot bitcoin ETP is unlikely to be the predominant influence on prices in the CME bitcoin futures market is even stronger than before.

Availability of Information Regarding the Shares and Bitcoin

The NAV per Share will be disseminated daily to all market participants at the same time. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The ITV will be calculated every 15 seconds throughout the core trading session each trading day.

The Sponsor will cause information about the Shares to be posted to the Trust's website (*https://www.bitwiseinvestments.com/*): (1) the NAV and NAV per Share for each Exchange trading day, posted at end of day; (2) the daily holdings of the Trust, before 9:30 a.m. E.T. on each Exchange trading day; (3) the Trust's effective prospectus, in a form available for download; and (4) the Shares' ticker and CUSIP information, along with additional quantitative information updated on a daily basis for the Trust. For example, the Trust's website will include (1) the prior Business Day's trading volume, the prior Business Day's reported NAV and closing price, and a calculation of the premium and discount of the closing price or mid-point of the bid/ask spread at the time of NAV calculation (''Bid/Ask Price'') against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters. The Trust's website will be publicly available prior to the public offering of Shares and accessible at no charge.

Investors may obtain on a 24-hour basis bitcoin pricing information based on the CME US Reference Rate, CME UK Reference Rate and CME Bitcoin Real Time Price, bitcoin spot market prices and bitcoin futures price from various financial information service providers. Current bitcoin spot market prices are also available with bid/ask spreads from bitcoin trading platforms, including the Constituent Platforms of the CME US Reference Rate.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services.

Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Trust.[99] Trading in Shares of the Trust will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

The Exchange may halt trading during the day in which an interruption to the dissemination of the ITV or the CME US Reference Rate occurs.[100] If the interruption to the dissemination of the ITV or the CME US Reference Rate persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Trading Rules

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

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.201–E. The trading of the Shares will be subject to NYSE Arca Rule 8.201–E(g), which sets forth certain restrictions on Equity Trading Permit (''ETP'') Holders acting as registered Market Makers in Commodity-Based Trust Shares to facilitate surveillance.[101] The Exchange represents that, for initial and continued listing, the Trust will be in compliance with Rule 10A–3 under the Act,[102] as provided by NYSE Arca Rule 5.3–E. A minimum of 100,000 Shares of the Trust will be outstanding at the commencement of trading on the Exchange.

Surveillance

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

[99] *See* NYSE Arca Rule 7.12–E.

[100] A limit up/limit down condition in the futures market would not be considered an interruption requiring the Trust to be halted.

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

[102] 17 CFR 240.10A–3. *See* note 8, *supra.*

applicable federal securities laws.[103] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The Exchange further represents that it may obtain information regarding trading in the Shares and the CME Market from the CME and other markets and other entities that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[104] The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and the CME Market with the CME and other markets and 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, the CME Market, and the underlying commodity, as applicable, from such markets and other entities.

Also, pursuant to NYSE Arca Rule 8.201–E(g), the Exchange is able to obtain information regarding Market Makers' accounts for trading in the Shares and the underlying bitcoin, bitcoin futures contracts, options on bitcoin futures, or any other bitcoin derivatives through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades through ETP Holders which they effect on any relevant market.

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

All statements and representations made in this filing regarding (1) the description of the index, portfolio or referenced asset, (2) limitations on index or portfolio holdings or reference assets, or (3) the applicability of Exchange listing rules specified in this rule filing will constitute continued listing requirements for listing the Shares on the Exchange.

The Sponsor has represented to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the continued listing requirements, and, pursuant to its obligations under section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 9.2–E(a).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an ''Information Bulletin'' of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) the procedures for creations of Shares in Creation Units; (2) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) information regarding how the value of the ITV and the CME US Reference Rate is disseminated; (4) the possibility that trading spreads and the resulting premium or discount on the Shares may widen during the Opening and Late Trading Sessions, when an updated ITV will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction and (6) trading information.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses as described in the annual report. The Information Bulletin will disclose that information about the Shares of the Trust is publicly available on the Trust's website. The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding bitcoin, that the Commission has no jurisdiction over the trading of bitcoin as a commodity, and that the CFTC has regulatory jurisdiction over the trading of bitcoin futures contracts and options on bitcoin futures contracts.

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

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5)[105] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.201–E. Further, the Exchange has demonstrated that the proposed rule change satisfies section 6(b)(5) of the Act by showing that the CME Market is a regulated market of significant size that shares surveillance with the Exchange.

As discussed above, both existing academic literature and the Sponsor's own studies show that the CME Market leads price discovery relative to the bitcoin spot market. As a result, and given that the Sponsor has demonstrated that it is unlikely that trading in the Shares will become the predominant influence upon prices in the CME Market, the CME Market represents a regulated market of significant size related to spot bitcoin, and that there is a reasonable likelihood that a person attempting to manipulate the Shares would also have to trade on that market to successfully manipulate the Shares.

The Exchange has in place surveillance procedures that are adequate to properly monitor Exchange trading in the Shares in all trading sessions and to deter and detect attempted manipulation of the Shares or other violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and bitcoin futures with the CME and other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange is also able to obtain information regarding trading in the Shares and bitcoin futures or the underlying bitcoin through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market.

[103] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[104] For a list of current ISG members, *see https://isgportal.org/.* The Exchange notes that not all components of the Trust may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[105] 15 U.S.C. 78f(b)(5).

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The Trust's website will also include a form of the prospectus for the Trust that may be downloaded. The website will include the Shares' ticker and CUSIP information, along with additional quantitative information updated on a daily basis for the Trust. The Trust's website will include (1) daily trading volume, the prior Business Day's reported NAV and closing price, and a calculation of the premium and discount of the closing price or mid-point of the Bid/Ask Price against the NAV; and (ii) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters. The Trust's website will be publicly available prior to the public offering of Shares and accessible at no charge.

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

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of a new type of exchange-traded product based on the price of bitcoin that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of a new type of Commodity-Based Trust Share based on the price of bitcoin 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 solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEARCA–2023–44 on the subject line.

Paper Comments

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

All submissions should refer to file number SR–NYSEARCA–2023–44. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEARCA–2023–44 and should be submitted on or before February 2, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[106]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–00510 Filed 1–11–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99295; File No. SR–NASDAQ–2023–016]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 1 to a Proposed Rule Change To List and Trade Shares of the iShares Bitcoin Trust Under Nasdaq Rule 5711(d)

January 8, 2024.

On June 29, 2023, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the iShares Bitcoin Trust under Nasdaq Rule 5711(d), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on July 19, 2023.[3] On August 31, 2023, pursuant to section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On September 28, 2023, the Commission instituted proceedings to determine whether to disapprove the proposed rule change.[6] On January 5, 2024, the Exchange filed Amendment No. 1 to the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment No. 1 amended and replaced the proposed rule change in its entirety. The Commission is

[106] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 97905 (July 13, 2023), 88 FR 46342. Comments on the proposed rule change are available at: *https://www.sec.gov/comments/sr-nasdaq-2023-016/srnasdaq2023016.htm.*

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

[5] *See* Securities Exchange Act Release No. 98267, 88 FR 61652 (Sept. 7, 2023).

[6] *See* Securities Exchange Act Release No. 98610, 88 FR 68768 (Oct. 4, 2023).

publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

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

The Exchange proposes to list and trade shares of the iShares Bitcoin Trust (the ''Trust'') under Nasdaq Rule 5711(d) (''Commodity-Based Trust Shares''). The shares of the Trust are referred to herein as the ''Shares.'' This Amendment No. 1 supersedes the original filing in its entirety.

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

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 list and trade the Shares under Nasdaq Rule 5711(d),[7] which governs the listing and trading of Commodity-Based Trust Shares on the Exchange. iShares Delaware Trust Sponsor LLC, a Delaware limited liability company and an indirect subsidiary of BlackRock, Inc. (''BlackRock''), is the sponsor of the Trust (the ''Sponsor''). The Shares will be registered with the SEC by means of the Trust's registration statement on Form S–1 (the ''Registration Statement'').[8]

Description of the Trust

The Shares will be issued by the Trust, a Delaware statutory trust. The Trust will operate pursuant to a trust agreement (the ''Trust Agreement'') between the Sponsor, BlackRock Fund Advisors (the ''Trustee'') as the trustee of the Trust and Wilmington Trust, National Association, as Delaware trustee (the ''Delaware Trustee''). The Trust issues Shares representing fractional undivided beneficial interests in its net assets. The assets of the Trust will consist only of bitcoin, held by a custodian on behalf of the Trust except under limited circumstances when transferred through the Trust's prime broker temporarily (described below), and cash. Coinbase Custody Trust Company, LLC (the ''Bitcoin Custodian'') is the custodian for the Trust's bitcoin holdings, and maintains a custody account for the Trust (''Custody Account); Coinbase, Inc. (the ''Prime Execution Agent''), an affiliate of the Bitcoin Custodian, is the prime broker for the Trust and maintains a trading account for the Trust (''Trading Account); and Bank of New York Mellon is the custodian for the Trust's cash holdings (the ''Cash Custodian'' and together with the Bitcoin Custodian, the ''Custodians'') and the administrator of the Trust (the ''Trust Administrator''). Under the Trust Agreement, the Trustee may delegate all or a portion of its duties to any agent, and has delegated the bulk of the day-to-day responsibilities to the Trust Administrator and certain other administrative and record-keeping functions to its affiliates and other agents. The Trust is not an investment company registered under the Investment Company Act of 1940, as amended (the ''1940 Act'').

The investment objective of the Trust is to reflect generally the performance of the price of bitcoin. The Trust seeks to reflect such performance before payment of the Trust's expenses and liabilities. The Shares are intended to constitute a simple means of making an investment similar to an investment in bitcoin through the public securities market rather than by acquiring, holding and trading bitcoin directly 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 bitcoin, while at the same time having an intrinsic value that reflects, at any given time, the investment exposure to the bitcoin owned by the Trust at such time, less the Trust's expenses and liabilities. Although the Shares are not the exact equivalent of a direct investment in bitcoin, they provide investors with an alternative method of achieving investment exposure to bitcoin through the public securities market, which may be more familiar to them.

Custody of the Trust's Bitcoin and Creation and Redemption

An investment in the Shares is backed by bitcoin held by the Bitcoin Custodian on behalf of the Trust. All of the Trust's bitcoin will be held in the Custody Account, other than the Trust's bitcoin which is temporarily maintained in the Trading Account under limited circumstances, *i.e.,* in connection with creation and redemption Basket[9] activity or sales of bitcoin 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 Custody Account includes all of the Trust's bitcoin held at the Bitcoin Custodian, but does not include the Trust's bitcoin temporarily maintained at the Prime Execution Agent in the Trading Account from time to time. The Bitcoin Custodian will keep all of the private keys associated with the Trust's bitcoin held in the Custody Account in ''cold storage''.[10] The hardware, software, systems, and procedures of the Bitcoin Custodian may not be available or cost-effective for many investors to access directly.

The Trust's bitcoin holdings and cash holdings from time to time may temporarily be maintained in the Trading Account held with the Prime Execution Agent, an affiliate of the Bitcoin Custodian. Coinbase Inc. serves as the Trust's Prime Execution Agent pursuant to the Trust's agreement with the Prime Execution Agent (''Prime Execution Agent Agreement''). In this capacity, the Prime Execution Agent facilitates the buying and selling of bitcoin by the Trust in response to cash creations and redemptions between the Trust and registered broker-dealers that are Depositary Trust Company (''DTC'') participants that enter into an

[7] The Commission approved Nasdaq Rule 5711 in Securities Exchange Act Release No. 66648 (March 23, 2012), 77 FR 19428 (March 30, 2012) (SR–NASDAQ–2012–013).

[8] *See* Amendment No. 4 to Registration Statement on Form S–1, dated December 22, 2023 filed with the Commission by the Sponsor on behalf of the Trust. The descriptions of the Trust contained herein are based, in part, on information in the Registration Statement. The Registration Statement in not yet effective and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

[9] The Trust issues and redeems Shares only in blocks of 40,000 or integral multiples thereof. A block of 40,000 Shares is called a ''Basket.'' These transactions take place in exchange for bitcoin.

[10] The term ''cold storage'' refers to a safeguarding method by which the private keys corresponding to the Trust's bitcoins are generated and stored in an offline manner, subject to layers of procedures designed to enhance security. Private keys are generated by the Bitcoin Custodian in offline computers that are not connected to the internet so that they are more resistant to being hacked.

authorized participant agreement with the Sponsor and the Trustee (''Authorized Participants''), and the sale of bitcoin 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 bitcoin.

The Authorized Participants will deliver only cash to create shares and will receive only cash when redeeming shares. Further, Authorized Participants will not directly or indirectly purchase, hold, deliver, or receive bitcoin 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 bitcoin as part of the creation or redemption process.

The Trust will create shares by receiving bitcoin 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 bitcoin. Further, the third party will not be acting as an agent of the Authorized Participant with respect to the delivery of the bitcoin to the Trust or acting at the direction of the Authorized Participant with respect to the delivery of the bitcoin to the Trust. The Trust will redeem shares by delivering bitcoin 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 bitcoin. Further, the third party will not be acting as an agent of the Authorized Participant with respect to the receipt of the bitcoin from the Trust or acting at the direction of the Authorized Participant with respect to the receipt of the bitcoin 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 will submit orders to create or redeem Baskets of Shares exclusively in exchange for cash. The Trust will engage in bitcoin transactions to convert cash into bitcoin (in association with creation orders) and bitcoin into cash (in association with redemption orders). The Trust will conduct its bitcoin purchase and sale transactions by, in its sole discretion, choosing to trade directly with designated third parties (each, a ''Bitcoin Trading Counterparty''), who are not registered broker-dealers pursuant to written agreements between each such Bitcoin Trading Counterparty and the Trust, or choosing to trade through the Prime Execution Agent acting in an agency capacity with third parties through its Coinbase Prime service [11] pursuant to the Prime Execution Agent Agreement. Bitcoin Trading Counterparties settle trades with the Trust using their own accounts at the Prime Execution Agent when trading with the Trust.

For a creation of a Basket of Shares, the Authorized Participant will be required to submit the creation order by an early order cutoff (''Creation Early Cutoff Time''). The Creation Early Cutoff Time will initially be 6:00 p.m. ET on the business day prior to trade date.

On the date of the Creation Early Cutoff Time for a creation order, the Trust will choose, in its sole discretion, to enter into a transaction with a Bitcoin Trading Counterparty or the Prime Execution Agent to buy bitcoin in exchange for the cash proceeds from such creation order. On settlement date for a creation, the Trust delivers Shares to the Authorized Participant in exchange for cash received from the Authorized Participant. Also, on or around the settlement date, the Bitcoin Trading Counterparty or Prime Execution Agent, as applicable, deposits the required bitcoin pursuant to its trade with the Trust into the Trust's Trading Account in exchange for cash. In the event the Trust has not been able to successfully execute and complete settlement of a bitcoin transaction by the settlement date of the creation order, the Authorized Participant will be given the option to (1) cancel the creation order, or (2) accept that the Trust will continue to attempt to complete the execution, which will delay the settlement date of the creation order. With respect to a creation order, as between the Trust and the Authorized Participant, the Authorized Participant is responsible for the dollar cost of the difference between the bitcoin price utilized in calculating NAV per Share on trade date and the price at which the Trust acquires the bitcoin to the extent the price realized in buying the bitcoin is higher than the bitcoin price utilized in the NAV. To the extent the price realized in buying the bitcoin is lower than the price utilized in the NAV, the Authorized Participant shall get to keep the dollar impact of any such difference.

Because the Trust's Trading Account may not be funded with cash on trade date for the purchase of bitcoin associated with a cash creation order, the Trust may borrow trade credits (''Trade Credits'') in the form of cash from Coinbase Credit, Inc. (the ''Trade Credit Lender''), an affiliate of the Prime Execution Agent, under the trade financing agreement (''Trade Financing Agreement'') or may require the Authorized Participant to deliver the required cash for the creation order on trade date. The extension of Trade Credits on trade date allows the Trust to purchase bitcoin through the Prime Execution Agent on trade date, with such bitcoin 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 settlement date for a creation order, the bitcoin purchased is swept from the Trust's Trading Account to the Trust's Custody Account pursuant to a regular end-of-day sweep process.

For a redemption of a Basket of Shares, the Authorized Participant will be required to submit a redemption order by an early order cutoff (the ''Redemption Early Cutoff Time''). The Redemption Early Cutoff Time will initially be 6:00 p.m. ET on the business day prior to trade date. On the date of the Redemption Early Cutoff Time for a redemption order, the Trust may choose, in its sole discretion, to enter into a transaction with a Bitcoin Trading Counterparty or the Prime Execution Agent, to sell bitcoin in exchange for cash. After the Redemption Early Cutoff Time, the Trust instructs the Bitcoin Custodian to prepare to move the associated bitcoin from the Trust's Custody Account to the Trust's Trading Account. On settlement date for a redemption order, the Authorized Participant delivers the necessary Shares to the Trust, and on or around settlement date, a Bitcoin Trading Counterparty or Prime Execution Agent, as applicable, delivers the cash associated with the Trust's sale of bitcoin to the Trust in exchange for the Trust's bitcoin, and the Trust delivers cash to the Authorized Participant. In the event the Trust has not been able to successfully execute and complete settlement of a bitcoin transaction by the settlement date, the Authorized Participant will be given the option to (1) cancel the redemption order, or (2) accept that the Trust will continue to attempt to complete the execution,

[11] The Coinbase Prime service is an execution service pursuant to which Coinbase will execute bitcoin orders for the Trust by accessing liquidity from sources such as bitcoin trading platforms, which can include Coinbase's own platform, and other liquidity providers. Trades can be executed according to an algorithm or on the basis of firm quotes sought by requests-for-quote (''RFQ'') for a two-way price sent to liquidity providers. Algorithmic trades can be self-directed or executed by Coinbase's high touch execution desk, Coinbase Execution Services.

which will delay the settlement date. With respect to a redemption order, between the Trust and the Authorized Participant, the Authorized Participant will be responsible for the dollar cost of the difference between the bitcoin price utilized in calculating the NAV per Share on trade date and the price realized in selling the bitcoin to raise the cash needed for the cash redemption order to the extent the price realized in selling the bitcoin is lower than the bitcoin price utilized in the NAV. To the extent the price realized in selling the bitcoin is higher than the price utilized in the NAV, the Authorized Participant will get to keep the dollar impact of any such difference.

The Trust may use financing in connection with a redemption order when bitcoin remains in the Trust's Custody Account at the point of intended execution of a sale of bitcoin. In those circumstances, the Trust may borrow Trade Credits in the form of bitcoin from the Trade Credit Lender, which allows the Trust to sell bitcoin through the Prime Execution Agent on trade date, and the cash proceeds are deposited in the Trust's Trading Account. On 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 was used, the Trust will use the bitcoin moved from the Trust's Custody Account to the Trading Account to repay the Trade Credits borrowed from the Trade Credit Lender.

Net Asset Value

The net asset value (''NAV'') of the Trust is used by the Trust in its day-to-day operations to measure the net value of the Trust's assets. The NAV of the Trust will be equal to the total assets of the Trust, which will consist of bitcoin and cash, less total liabilities of the Trust, each determined by the Trustee pursuant to policies established from time to time by the Trustee or its affiliates as described herein. The Sponsor has the exclusive authority to determine the Trust's NAV, which it has delegated to the Trustee under the Trust Agreement. The Trustee has delegated to the Trust Administrator the responsibility to calculate the NAV and the NAV per Share for the Trust, based on a pricing source selected by the Trustee. In determining the Trust's NAV per Share, the Trust Administrator will value the bitcoin held by the Trust based on the index price, unless the Sponsor in its sole discretion determines that the index is unreliable. The CME CF Bitcoin Reference Rate—New York Variant for the Bitcoin—U.S. Dollar trading pair (the ''CF Benchmarks Index'') shall constitute the index (the ''Index''), unless the CF Benchmarks Index is not available or the Sponsor in its sole discretion determines that the CF Benchmarks Index is unreliable and therefore determines not to use the CF Benchmarks Index as the Index. If the CF Benchmarks Index is not available or the Sponsor determines, in its sole discretion, that the CF Benchmarks Index is unreliable, (together a ''Fair Value Event'') the Trust's holdings may be fair valued on a temporary basis in accordance with the fair value policies approved by the Trustee. If the CF Benchmarks Index is not used as the Index price, 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 SEC 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 Trustee deems relevant at the time of the determination, and may be based on analytical values determined by the Sponsor or Trustee using third-party valuation models.

Fair value policies approved by the Trustee 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''.[12] In the instance of a Fair Value Event and pursuant the Sponsor's fair valuation policies and procedures Volume Weighted Average Prices (''VWAP'') or Volume Weighted Median Prices (''VWMP'') from another index administrator (''Secondary Index'') would be utilized. If a Secondary Index is not available or the Sponsor 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 would be utilized.

In the event the principal market price is not available or the Sponsor in its sole discretion determines the principal market valuation is unreliable the Sponsor will use its best judgment to determine a good faith estimate of fair value. The Trustee identifies and determines the Trust's principal market (or in the absence of a principal market, the most advantageous market) for bitcoin consistent with the application of fair value measurement framework in FASB ASC 820–10.[13] 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.

Net Asset Value Calculation and Index

On each Business Day (as defined below), as soon as practicable after 4:00 p.m. ET, the Trust Administrator evaluates the bitcoin held by the Trust as reflected by the CF Benchmarks Index and determines NAV per Share. For purposes of making these calculations, a Business Day means any day other than a day when Nasdaq is closed for regular trading (''Business Day'').

The CF Benchmarks Index employed by the Trust is calculated on each Business Day by aggregating the notional value of bitcoin trading activity across major bitcoin spot platforms. The CF Benchmarks Index is designed based on the IOSCO Principles for Financial Benchmarks. The administrator of the CF Benchmarks Index is CF Benchmarks Ltd. (the ''Index Administrator''). The CF Benchmarks Index serves as a once-a-day benchmark rate of the U.S. dollar price of bitcoin (USD/BTC), calculated as of 4:00 p.m. ET. The CF Benchmarks Index aggregates the trade flow of several bitcoin platforms, during an observation window between 3:00 p.m. and 4:00 p.m. ET into the U.S. dollar price of one bitcoin at 4:00 p.m. ET. Specifically, the CF Benchmarks Index is calculated based on the Relevant Transactions of all of its constituent bitcoin platforms, which are currently Bitstamp, Coinbase, itBit, Kraken, Gemini, and LMAX (the ''Constituent Platforms''), and which may change from time to time.

If the CF Benchmarks Index is not available or the Sponsor determines, in its sole discretion, that the CF Benchmarks Index is unreliable and so should not be used, the Trust's holdings

[12] A ''Relevant Transaction'' is any cryptocurrency 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 ''Constituent Platform'' in the BTC/USD pair that is reported and disseminated by a Constituent Platform through its publicly available application programming interface and observed by the ''Index Administrator'', as such terms are defined below.

[13] *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.

may be fair valued in accordance with the policy approved by the Trustee.

The Trust is intended to provide a way for Shareholders to obtain exposure to bitcoin by investing in the Shares rather than by acquiring, holding and trading bitcoin directly on a peer-to-peer or other basis or via a digital asset platform. An investment in Shares of the Trust is not the same as an investment directly in bitcoin on a peer-to-peer or other basis or via a digital asset platform.

Intraday Indicative Value

In order to provide updated information relating to the Trust for use by Shareholders, the Trust intends to publish an intraday indicative value per Share (''IIV'') using the CME CF Bitcoin Real Time Index (''BRTI''). One or more major market data vendors will provide an IIV updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's regular market session of 9:30 a.m. to 4:00 p.m. ET (the ''Regular Market Session''). The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during the Exchange's Regular Market Session to reflect changes in the value of the Trust's NAV per Share during the trading day.

The IIV is disseminated during the Exchange's 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 Exchange's Regular Market Session by one or more major market data vendors. In addition, the IIV will be available through online information services. All aspects of the Index Methodology are publicly available at the website of Index Provider, CF Benchmarks (*https://www.cfbenchmarks.com*).

Creation and Redemption of Shares

The Trust issues and redeems Baskets [14] on a continuous basis. Baskets are only issued or redeemed in exchange for an amount of cash determined by the Trustee on each day that Nasdaq is open for regular trading. No Shares are issued unless the Cash Custodian has allocated to the Trust's account the corresponding amount of cash. The amount of cash necessary for the creation of a Basket, or to be received upon redemption of a Basket, will decrease over the life of the Trust, due to the payment or accrual of fees and other expenses or liabilities payable by the Trust. Baskets may be created or redeemed only by Authorized Participants, who pay BlackRock Investments, LLC (''BRIL''), an affiliate of the Trustee and a wholly owned subsidiary of BlackRock, Inc., that has been retained by the Trust to perform certain order processing, Authorized Participant communications, and related services in connection with the issuance and redemption of Baskets, a transaction fee for each order to create or redeem Baskets.

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

Overview of the Bitcoin Industry

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

The Bitcoin network is commonly understood to be decentralized and does not require governmental authorities or financial institution intermediaries to create, transmit or determine the value of bitcoin. Rather, bitcoin is created and allocated by the Bitcoin network protocol through a ''mining'' process. The value of bitcoin is determined by the supply of and demand for bitcoin-on-bitcoin platforms or in private end-user-to-end-user transactions.

New bitcoins are created and rewarded to the miners of a block in the Bitcoin blockchain for verifying transactions. The Bitcoin blockchain is a shared database that includes all blocks that have been solved by miners and it is updated to include new blocks as they are solved. Each bitcoin transaction is broadcast to the Bitcoin network and, when included in a block, recorded in the Bitcoin blockchain. As each new block records outstanding bitcoin transactions, and outstanding transactions are settled and validated through such recording, the Bitcoin blockchain represents a complete, transparent and unbroken history of all transactions of the Bitcoin network.

History of Bitcoin

The Bitcoin network was initially contemplated in a whitepaper that also described bitcoin and the operating software to govern the Bitcoin network. The whitepaper was purportedly authored by Satoshi Nakamoto. However, no individual with that name has been reliably identified as bitcoin's creator, and the general consensus is that the name is likely a pseudonym for the actual inventor or inventors. The first bitcoins were created in 2009 after Nakamoto released the Bitcoin network source code (the software and protocol that created and launched the Bitcoin network). The Bitcoin network has been under active development since that time by a loose group of software developers who have come to be known as core developers.

Overview of Bitcoin Network Operations

In order to own, transfer or use bitcoin directly on the Bitcoin network (as opposed to through an intermediary, such as an exchange), a person generally must have internet access to connect to the Bitcoin network. Bitcoin transactions may be made directly between end-users without the need for a third-party intermediary. To prevent the possibility of double-spending bitcoin, a user must notify the Bitcoin network of the transaction by broadcasting the transaction data to its network peers. The Bitcoin network provides confirmation against double-spending by memorializing every transaction in the Bitcoin blockchain, which is publicly accessible and transparent. This memorialization and verification against double-spending is accomplished through the Bitcoin network mining process, which adds ''blocks'' of data, including recent transaction information, to the Bitcoin blockchain.

Overview of Bitcoin Transfers

Prior to engaging in bitcoin transactions directly on the Bitcoin network, a user generally must first install on its computer or mobile device

[14] Baskets will be offered continuously at NAV per Share for 40,000 Shares. Therefore, a Basket of Shares would be valued at NAV per Share multiplied by the Basket size and the bitcoin required to be delivered in exchange for a creation of a Basket would equal the dollar value of the NAV per Share multiplied by the Basket size for such creations. The Trust may change the number of Shares in a Basket. Only Authorized Participants may purchase or redeem Baskets. Shares will be offered to the public from time to time at varying prices that will reflect the price of bitcoin and the trading price of the Shares on Nasdaq at the time of the offer.

a Bitcoin network software program that will allow the user to generate a private and public key pair associated with a bitcoin address commonly referred to as a ''wallet.'' The Bitcoin network software program and the bitcoin address also enable the user to connect to the Bitcoin network and transfer bitcoin to, and receive bitcoin from, other users.

Each Bitcoin network address, or wallet, is associated with a unique ''public key'' and ''private key'' pair. To receive bitcoin, the bitcoin recipient must provide its public key to the party initiating the transfer. This activity is analogous to a recipient for a transaction in U.S. dollars providing a routing address in wire instructions to the payor so that cash may be wired to the recipient's account. The payor approves the transfer to the address provided by the recipient by ''signing'' a transaction that consists of the recipient's public key with the private key of the address from where the payor is transferring the bitcoin. The recipient, however, does not make public or provide to the sender its related private key.

Neither the recipient nor the sender reveals their private keys in a transaction because the private key authorizes transfer of the funds in that address to other users. Therefore, if a user loses his or her private key, the user may permanently lose access to the bitcoin contained in the associated address. Likewise, bitcoin is irretrievably lost if the private key associated with them is deleted and no backup has been made. When sending bitcoin, a user's Bitcoin network software program must validate the transaction with the associated private key. The resulting digitally validated transaction is sent by the user's Bitcoin network software program to the Bitcoin network to allow transaction confirmation.

Some bitcoin transactions are conducted ''off-blockchain'' and are therefore not recorded in the Bitcoin blockchain. Some ''off-blockchain transactions'' involve the transfer of control over, or ownership of, a specific digital wallet holding bitcoin or the reallocation of ownership of certain bitcoin in a digital wallet containing assets owned by multiple persons, such as a digital wallet maintained by a digital assets platform. In contrast to on-blockchain transactions, which are publicly recorded on the Bitcoin blockchain, information and data regarding off-blockchain transactions are generally not publicly available. Therefore, off-blockchain transactions are not truly bitcoin transactions in that they do not involve the transfer of transaction data on the Bitcoin network and do not reflect a movement of bitcoin between addresses recorded in the Bitcoin blockchain. For these reasons, off-blockchain transactions are subject to risks as any such transfer of bitcoin ownership is not protected by the protocol behind the Bitcoin network or recorded in, and validated through, the blockchain mechanism.

Summary of a Bitcoin Transaction

In a bitcoin transaction directly on the Bitcoin network between two parties (as opposed to through an intermediary, such as a custodian), the following circumstances must initially be in place: (i) the party seeking to send bitcoin must have a Bitcoin network public key, and the Bitcoin network must recognize that public key as having sufficient bitcoin for the transaction; (ii) the receiving party must have a Bitcoin network public key; and (iii) the spending party must have internet access with which to send its spending transaction.

The receiving party must provide the spending party with its public key and allow the Bitcoin blockchain to record the sending of bitcoin to that public key. After the provision of a recipient's Bitcoin network public key, the spending party must enter the address into its Bitcoin network software program along with the number of bitcoin to be sent. The number of bitcoin to be sent will typically be agreed upon between the two parties based on a set number of bitcoin or an agreed upon conversion of the value of fiat currency to bitcoin. Since every computation on the Bitcoin network requires the payment of bitcoin, including verification and memorialization of bitcoin transfers, there is a transaction fee involved with the transfer, which is based on computation complexity and not on the value of the transfer and is paid by the payor with a fractional number of bitcoin.

After the entry of the Bitcoin network address, the number of bitcoin to be sent and the transaction fees, if any, to be paid, will be transmitted by the spending party. The transmission of the spending transaction results in the creation of a data packet by the spending party's Bitcoin network software program, which is transmitted onto the decentralized Bitcoin network, resulting in the distribution of the information among the software programs of users across the Bitcoin network for eventual inclusion in the Bitcoin blockchain.

As discussed in greater detail below, Bitcoin network miners record transactions when they solve for and add blocks of information to the Bitcoin blockchain. When a miner solves for a block, it creates that block, which includes data relating to (i) the solution to the block, (ii) a reference to the prior block in the Bitcoin blockchain to which the new block is being added and (iii) transactions that have occurred but have not yet been added to the Bitcoin blockchain. The miner becomes aware of outstanding, unrecorded transactions through the data packet transmission and distribution discussed above.

Upon the addition of a block included in the Bitcoin blockchain, the Bitcoin network software program of both the spending party and the receiving party will show confirmation of the transaction on the Bitcoin blockchain and reflect an adjustment to the bitcoin balance in each party's Bitcoin network public key, completing the bitcoin transaction. Once a transaction is confirmed on the Bitcoin blockchain, it is irreversible.

Creation of a New Bitcoin

New bitcoins are created through the mining process. The process by which bitcoin is ''mined'' results in new blocks being added to the Bitcoin blockchain and new bitcoin tokens being issued to the miners. Computers on the Bitcoin network engage in a set of prescribed complex mathematical calculations in order to add a block to the Bitcoin blockchain and thereby confirm bitcoin transactions included in that block's data. The Bitcoin network is designed in such a way that the reward for adding new blocks to the Bitcoin blockchain decreases over time. In the future, once new bitcoin tokens are no longer awarded for adding a new block, miners will only have transaction fees to incentivize them, and as a result, it is expected that miners will need to be better compensated with higher transaction fees to ensure that there is adequate incentive for them to continue mining.

Limits on Bitcoin Supply

Under the source code that governs the Bitcoin network, the supply of new bitcoin is mathematically controlled so that the number of bitcoin grows at a limited rate pursuant to a pre-set schedule. The number of bitcoin awarded for solving a new block is automatically halved after every 210,000 blocks are added to the Bitcoin blockchain, approximately every 4 years. Currently, the fixed reward for solving a new block is 6.25 bitcoin per block and this is expected to decrease by half to become 3.125 bitcoin in approximately early 2024. This

deliberately controlled rate of bitcoin creation means that the number of bitcoin in existence will increase at a controlled rate until the number of bitcoin in existence reaches the pre-determined 21 million bitcoin. However, the 21 million supply cap could be changed in a hard fork. A hard fork could change the source code to the Bitcoin network, including the 21 million bitcoin supply cap.

Background

The Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts, including spot based Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.[15] Prior orders from the Commission have pointed out that in every prior approval order for Commodity-Based Trust Shares, there has been a derivatives market that represents the regulated market of significant size, generally a Commodity Futures Trading Commission (''CFTC'') regulated futures market.[16] Further to this point, the Commission's prior orders have noted that the spot commodities and currency markets for which it has previously approved spot exchange traded products (''ETPs'') are generally unregulated and that the Commission relied on the underlying futures market as the regulated market of significant size that formed the basis for approving the series of currency and Commodity-Based Trust Shares, including gold, silver, platinum, palladium, copper, and other commodities and currencies. The Commission specifically noted in the Winklevoss Order that the First Gold Approval Order ''was based on an assumption that the currency market and the spot gold market were largely unregulated.''[17]

As such, the regulated market of significant size test does not require that the spot bitcoin market be regulated in order for the Commission to approve this proposal, and precedent makes clear that an underlying market for a spot commodity or currency being a regulated market would actually be an exception to the norm. These largely unregulated currency and commodity markets do not provide the same protections as the markets that are subject to the Commission's oversight, but the Commission has consistently looked to surveillance sharing agreements with the underlying futures

[15] *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018). This proposal was subsequently disapproved by the Commission. *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the ''Winklevoss Order'').

[16] *See* streetTRACKS Gold Shares, Exchange Act Release No. 50603 (Oct. 28, 2004), 69 FR 64614, 64618–19 (Nov. 5, 2004) (SR–NYSE–2004–22) (the ''First Gold Approval Order''); iShares COMEX Gold Trust, Exchange Act Release No. 51058 (Jan. 19, 2005), 70 FR 3749, 3751, 3754–55 (Jan. 26, 2005) (SR–Amex–2004–38); iShares Silver Trust, Exchange Act Release No. 53521 (Mar. 20, 2006), 71 FR 14967, 14968, 14973–74 (Mar. 24, 2006) (SR–Amex–2005–072); ETFS Gold Trust, Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993, 22994–95, 22998, 23000 (May 15, 2009) (SR–NYSEArca–2009–40); ETFS Silver Trust, Exchange Act Release No. 59781 (Apr. 17, 2009), 74 FR 18771, 18772, 18775–77 (Apr. 24, 2009) (SR–NYSEArca–2009–28); ETFS Palladium Trust, Exchange Act Release No. 61220 (Dec. 22, 2009), 74 FR 68895, 68896 (Dec. 29, 2009) (SR–NYSEArca–2009–94) (notice of proposed rule change included NYSE Arca's representation that ''[t]he most significant palladium futures exchanges are the NYMEX and the Tokyo Commodity Exchange,'' that ''NYMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which NYMEX is a member, Exchange Act Release No. 60971 (Nov. 9, 2009), 74 FR 59283, 59285–86, 59291 (Nov. 17, 2009)); ETFS Platinum Trust, Exchange Act Release No. 61219 (Dec. 22, 2009), 74 FR 68886, 68887–88 (Dec. 29, 2009) (SR–NYSEArca–2009–95) (notice of proposed rule change included NYSE Arca's representation that ''[t]he most significant platinum futures exchanges are the NYMEX and the Tokyo Commodity Exchange,'' that ''NYMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which NYMEX is a member, Exchange Act Release No. 60970 (Nov. 9, 2009), 74 FR 59319, 59321, 59327 (Nov. 17, 2009)); Sprott Physical Gold Trust, Exchange Act Release No. 61496 (Feb. 4, 2010), 75 FR 6758, 6760 (Feb. 10, 2010) (SR–NYSEArca–2009–113) (notice of proposed rule change included NYSE Arca's representation that the COMEX is one of the ''major world gold markets,'' that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' and that NYMEX, of which COMEX is a division, is a member of the Intermarket Surveillance Group, Exchange Act Release No. 61236 (Dec. 23, 2009), 75 FR 170, 171, 174 (Jan. 4, 2010)); Sprott Physical Silver Trust, Exchange Act Release No. 63043 (Oct. 5, 2010), 75 FR 62615, 62616, 62619, 62621 (Oct. 12, 2010) (SR–NYSEArca–2010–84); ETFS Precious Metals Basket Trust, Exchange Act Release No. 62692 (Aug. 11, 2010), 75 FR 50789, 50790 (Aug. 17, 2010) (SR–NYSEArca–2010–56) (notice of proposed rule change included NYSE Arca's representation that ''the most significant gold, silver, platinum and palladium futures exchanges are the COMEX and the TOCOM'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 62402 (Jun. 29, 2010), 75 FR 39292, 39295, 39298 (July 8, 2010)); ETFS White Metals Basket Trust, Exchange Act Release No. 62875 (Sept. 9, 2010), 75 FR 56156, 56158 (Sept. 15, 2010) (SR–NYSEArca-2010–71) (notice of proposed rule change included NYSE Arca's representation that ''the most significant silver, platinum and palladium futures exchanges are the COMEX and the TOCOM'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 62620 (July 30, 2010), 75 FR 47655, 47657, 47660 (Aug. 6, 2010)); ETFS Asian Gold Trust, Exchange Act Release No. 63464 (Dec. 8, 2010), 75 FR 77926, 77928 (Dec. 14, 2010) (SR–NYSEArca–2010–95) (notice of proposed rule change included NYSE Arca's representation that ''the most significant gold futures exchanges are the COMEX and the Tokyo Commodity Exchange,'' that ''COMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 63267 (Nov. 8, 2010), 75 FR 69494, 69496, 69500–01 (Nov. 12, 2010)); Sprott Physical Platinum and Palladium Trust, Exchange Act Release No. 68430 (Dec. 13, 2012), 77 FR 75239, 75240–41 (Dec. 19, 2012) (SR–NYSEArca–2012–111) (notice of proposed rule change included NYSE Arca's representation that ''[f]utures on platinum and palladium are traded on two major exchanges: The New York Mercantile Exchange . . . and Tokyo Commodities Exchange'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 68101 (Oct. 24, 2012), 77 FR 65732, 65733, 65739 (Oct. 30, 2012)); APMEX Physical—1 oz. Gold Redeemable Trust, Exchange Act Release No. 66930 (May 7, 2012), 77 FR 27817, 27818 (May 11, 2012) (SR–NYSEArca–2012–18) (notice of proposed rule change included NYSE Arca's representation that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the ''major world gold markets,'' Exchange Act Release No. 66627 (Mar. 20, 2012), 77 FR 17539, 17542–43, 17547 (Mar. 26, 2012)); JPM XF Physical Copper Trust, Exchange Act Release No. 68440 (Dec. 14, 2012), 77 FR 75468, 75469–70, 75472, 75485–86 (Dec. 20, 2012) (SR–NYSEArca–2012–28); iShares Copper Trust, Exchange Act Release No. 68973 (Feb. 22, 2013), 78 FR 13726, 13727, 13729–30, 13739–40 (Feb. 28, 2013) (SR–NYSEArca–2012–66); First Trust Gold Trust, Exchange Act Release No. 70195 (Aug. 14, 2013), 78 FR 51239, 51240 (Aug. 20, 2013) (SR–NYSEArca–2013–61) (notice of proposed rule change included NYSE Arca's representation that FINRA, on behalf of the exchange, may obtain trading information regarding gold futures and options on gold futures from members of the Intermarket Surveillance Group, including COMEX, or from markets ''with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement,'' and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the ''major world gold markets,'' Exchange Act Release No. 69847 (June 25, 2013), 78 FR 39399, 39400, 39405 (July 1, 2013)); Merk Gold Trust, Exchange Act Release No. 71378 (Jan. 23, 2014), 79 FR 4786, 4786–87 (Jan. 29, 2014) (SR–NYSEArca–2013–137) (notice of proposed rule change included NYSE Arca's representation that ''COMEX is the largest gold futures and options exchange'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' including with respect to transactions occurring on COMEX pursuant to CME and NYMEX's membership, or from exchanges ''with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement,'' Exchange Act Release No. 71038 (Dec. 11, 2013), 78 FR 76367, 76369, 76374 (Dec. 17, 2013)); Long Dollar Gold Trust, Exchange Act Release No. 79518 (Dec. 9, 2016), 81 FR 90876, 90881, 90886, 90888 (Dec. 15, 2016) (SR–NYSEArca-2016–84).

[17] *See* Winklevoss Order at 37592.

market in order to determine whether such products were consistent with the Act. With this in mind, the CME bitcoin futures (''Bitcoin Futures'') market, as described below, is the proper market to consider in determining whether there is a related regulated market of significant size.

Further to this point, the Exchange notes that the Commission has recently approved proposals related to the listing and trading of funds that would primarily hold Bitcoin Futures that are registered under the Securities Act of 1933 instead of the 1940 Act.[18] In the Teucrium Approval, the Commission found the Bitcoin Futures market to be a regulated market of significant size as it relates to Bitcoin Futures, an odd tautological truth that is also inconsistent with prior disapproval orders for ETPs that would hold actual bitcoin instead of derivatives contracts (''Spot Bitcoin ETPs'') that use the exact same pricing methodology as the Bitcoin Futures. As further discussed below, both the Exchange and the Sponsor believe that this proposal and the included analysis are sufficient to establish that the Bitcoin Futures market represents a regulated market of significant size as it relates both to the Bitcoin Futures market and to the spot bitcoin market and that this proposal should be approved.

Bitcoin Futures ETFs

The Exchange and Sponsor applaud the Commission for allowing the launch of exchange-traded funds (''ETFs'') registered under the 1940 Act and the recent Bitcoin Futures Approvals that provide exposure to bitcoin primarily through Bitcoin Futures (''Bitcoin Futures ETFs''). Allowing such products to list and trade is a productive first step in providing U.S. investors and traders with transparent, exchange listed tools for expressing a view on bitcoin. The Bitcoin Futures Approvals, however, have created a logical inconsistency in the application of the standard the Commission applies when considering bitcoin ETP proposals.

As discussed further below, the standard applicable to bitcoin ETPs is whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size in the underlying asset. Previous disapproval orders have made clear that a market that constitutes a regulated market of significant size is generally a futures and/or options market based on the underlying reference asset rather than the spot commodity markets, which are often unregulated.[19] Leaving aside the analysis of that standard until later in this proposal,[20] the Exchange believes that the below rationale that the Commission applied to a Bitcoin Futures ETF should result in the Commission approving this and other Spot Bitcoin ETP proposals:

> The CME ''comprehensively surveils futures market conditions and price movements on a real time and ongoing basis in order to detect and prevent price distortions, including price distortions caused by manipulative efforts.'' Thus, the CME's surveillance can reasonably be relied upon to capture the effects on the Bitcoin Futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of Bitcoin Futures contracts, whether that attempt is made by directly trading on the Bitcoin Futures market or indirectly by trading outside of the Bitcoin Futures market. As such, when the CME shares its surveillance information with Arca, the information would assist in detecting and deterring fraudulent or manipulative misconduct related to the non cash assets held by the proposed ETP.[21]

Bitcoin Futures pricing is based on pricing from spot bitcoin markets. The statement from the Teucrium Approval that ''CME's surveillance can reasonably be relied upon to capture the effects on the Bitcoin Futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of Bitcoin Futures contracts . . . indirectly by trading outside of the Bitcoin Futures market,'' makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of Bitcoin Futures. If CME is able to detect such attempts at manipulation in the complex and interconnected spot bitcoin market, how would such an ability to detect attempted manipulation and the utility in sharing that information with the listing exchange apply only to Bitcoin Futures ETFs and not Spot Bitcoin ETPs? Stated a different way, given that there is significant trading volume on numerous bitcoin platforms that are not part of the CME CF Bitcoin Reference Rate and that arbitrage opportunities across bitcoin platforms means that such trading volume will influence spot bitcoin prices across the market and, despite this, the Commission still believes that CME can detect attempted manipulation of the Bitcoin Futures through ''trading outside of the Bitcoin Futures market,'' it is clear that such ability would apply equally to both Bitcoin Futures ETFs and Spot Bitcoin ETPs. To take it a step further, such an ability would also seem to be a strong indication that the Bitcoin Futures market represents a regulated market of significant size. To be clear, the Exchange agrees with the Commission on this point (and the implications of their conclusions) and notes that the pricing mechanism applicable to the Shares is similar to the CME CF Bitcoin Reference Rate, as further discussed below.

In addition, the structure of Bitcoin Futures ETFs provides negative outcomes for buy and hold investors as compared to a Spot Bitcoin ETP.[22] Specifically, the cost of rolling Bitcoin Futures contracts will cause the Bitcoin Futures ETFs to typically lag the performance of bitcoin itself and, at over a billion dollars in assets under management, would cost U.S. investors significant amounts of money on an annual basis compared to Spot Bitcoin ETPs. Such rolling costs would not be required for Spot Bitcoin ETPs that hold bitcoin. While Bitcoin Futures ETFs represent a useful trading tool, they are clearly a sub-optimal structure for U.S. investors that are looking for long-term exposure to bitcoin that will, based on the calculations above, unnecessarily cost U.S. investors significant amounts of money every year compared to Spot Bitcoin ETPs and the Exchange believes

[18] *See* Exchange Act Release No. 94620 (April 6, 2022), 87 FR 21676 (April 12, 2022) (the ''Teucrium Approval'') and 94853 (May 5, 2022) (collectively, with the Teucrium Approval, the ''Bitcoin Futures Approvals'').

[19] *See* Winklevoss Order at 37593, specifically footnote 202, which includes the language from numerous approval orders for which the underlying futures markets formed the basis for approving series of ETPs that hold physical metals, including gold, silver, palladium, platinum, and precious metals more broadly; and 37600, specifically where the Commission provides that ''when the spot market is unregulated—the requirement of preventing fraudulent and manipulative acts may possibly be satisfied by showing that the ETP listing market has entered into a surveillance-sharing agreement with a regulated market of significant size in derivatives related to the underlying asset.'' As noted above, the Exchange believes that these citations are particularly helpful in making clear that the spot market for a spot commodity ETP need not be ''regulated'' in order for a spot commodity ETP to be approved by the Commission, and in fact that it's been the common historical practice of the Commission to rely on such derivatives markets as the regulated market of significant size because such spot commodities markets are largely unregulated.

[20] As further outlined below, both the Exchange and the Sponsor believe that the Bitcoin Futures market represents a regulated market of significant size and that this proposal and others like it should be approved on this basis.

[21] *See* Teucrium Approval at 21679.

[22] *See e.g.,* ''Bitcoin ETF's Success Could Come at Fundholders' Expense,'' Wall Street Journal (October 24, 2021), available at: *https://www.wsj.com/articles/bitcoin-etfs-success-could-come-at-fundholders-expense-11635080580*; ''Physical Bitcoin ETF Prospects Accelerate,'' *ETF.com* (October 25, 2021), available at: *https://www.etf.com/sections/blog/physical-bitcoin-etf-prospects-shine.*

that any proposal to list and trade a Spot Bitcoin ETP should be reviewed by the Commission with this important investor protection context in mind.

Based on the foregoing, the Exchange and Sponsor believe that any objective review of the proposals to list Spot Bitcoin ETPs compared to the Bitcoin Futures ETFs and the Bitcoin Futures Approvals would lead to the conclusion that Spot Bitcoin ETPs should be available to U.S. investors and, as such, this proposal and other comparable proposals to list and trade Spot Bitcoin ETPs should be approved by the Commission. Stated simply, U.S. investors will continue to lose significant amounts of money from holding Bitcoin Futures ETFs as compared to Spot Bitcoin ETPs, losses which could be prevented by the Commission approving Spot Bitcoin ETPs. Additionally, any concerns related to preventing fraudulent and manipulative acts and practices related to Spot Bitcoin ETPs would apply equally to the spot markets underlying the futures contracts held by a Bitcoin Futures ETF. While the 1940 Act does offer certain investor protections, those protections do not relate to mitigating potential manipulation of the holdings of an ETF in a way that warrants distinction between Bitcoin Futures ETFs and Spot Bitcoin ETPs and the SEC has granted approval for a Bitcoin Futures ETP that is not regulated by the 1940 Act.[23] To be clear, both the Exchange and Sponsor believe that the Bitcoin Futures market is a regulated market of significant size and that such manipulation concerns are mitigated as described throughout this proposal. After issuing the Bitcoin Futures Approvals which conclude the Bitcoin Futures market is a regulated market of significant size as it relates to Bitcoin Futures, the only consistent outcome would be approving Spot Bitcoin ETPs on the basis that the Bitcoin Futures market is also a regulated market of significant size as it relates to the bitcoin spot market. Including in the analysis the significant and preventable losses to U.S. investors that comes with Bitcoin Futures ETFs, disapproving Spot Bitcoin ETPs seems even more arbitrary and capricious. Given the current landscape, approving this proposal (and others like it) and allowing Spot Bitcoin ETPs to be listed and traded alongside Bitcoin Futures ETFs would establish a consistent regulatory approach, provide U.S. investors with choice in product structures for bitcoin exposure, and offer flexibility in the means of gaining exposure to bitcoin through transparent, regulated, U.S. exchange listed vehicles.

Spot and Proxy Exposure to Bitcoin

Exposure to bitcoin through an ETP also presents certain advantages for retail investors compared to buying spot bitcoin directly. The most notable advantage from the Sponsor's perspective is the elimination of the need for an individual retail investor to either manage their own private keys or to hold bitcoin through a cryptocurrency platform that lacks sufficient protections. Typically, retail platforms hold most, if not all, retail investors' bitcoin in ''hot'' (internet connected) storage and do not make any commitments to indemnify retail investors or to observe any particular cybersecurity standard. Meanwhile, a retail investor holding spot bitcoin directly in a self-hosted wallet may suffer from inexperience in private key management (*e.g.,* insufficient password protection, lost key, etc.), which point of failure could cause them to lose some or all of their bitcoin holdings. Thus, with respect to custody of the Trust's bitcoin assets, the Trust presents advantages from an investment protection standpoint for retail investors compared to owning spot bitcoin directly or via a digital asset platform.

Finally, some publicly traded companies with mostly unrelated businesses—such as Tesla (a car manufacturer) and MicroStrategy (an enterprise software company)—have announced significant investments in bitcoin. Without access to bitcoin exchange traded products, retail investors seeking investment exposure to bitcoin may end up purchasing shares in these companies in order to gain the exposure to bitcoin that they seek.[24] In fact, mainstream financial news networks have written a number of articles providing investors with guidance for obtaining bitcoin exposure through publicly traded companies (such as MicroStrategy, Tesla, and bitcoin mining companies, among others) instead of dealing with the complications associated with buying spot bitcoin in the absence of a bitcoin ETP.[25] Such public companies, however, are imperfect bitcoin proxies and provide investors with partial bitcoin exposure paired with a host of additional risks associated with whichever operating company they decide to purchase. Additionally, the disclosures provided by the aforementioned public companies with respect to risks relating to their bitcoin holdings are generally substantially smaller than the registration statement of a bitcoin ETP, including the Registration Statement, typically amounting to a few sentences of narrative description and a handful of risk factors.[26] In other words, investors seeking bitcoin exposure through publicly traded companies are gaining only partial exposure to bitcoin and are not fully benefitting from the risk disclosures and associated investor protections that come from the securities registration process.

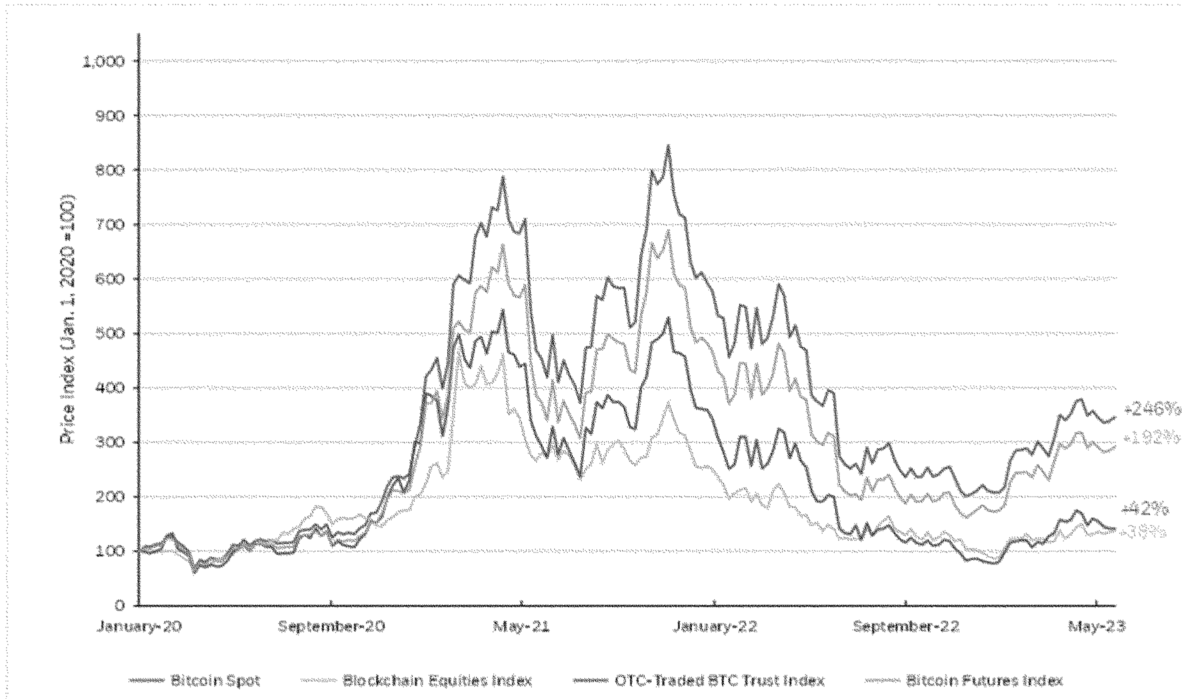
[23] *See* Teucrium Approval.

[24] In August 2017, the Commission's Office of Investor Education and Advocacy warned investors about situations where companies were publicly announcing events relating to digital coins or tokens in an effort to affect the price of the company's publicly traded common stock. *See https://www.sec.gov/oiea/investor-alerts-and-bulletins/ia_icorelatedclaims.*

[25] *See e.g.,* ''7 public companies with exposure to bitcoin'' (February 8, 2021) available at: *https://finance.yahoo.com/news/7-public-companies-with-exposure-to-bitcoin-154201525.html;* and ''Want to get in the crypto trade without holding bitcoin yourself? Here are some investing ideas'' (February 19, 2021) available at: *https://www.cnbc.com/2021/02/19/ways-to-invest-in-bitcoin-without-holding-the-cryptocurrency-yourself-.html.*

[26] *See, e.g.,* Tesla 10–K for the year ended December 31, 2020, which mentions bitcoin just nine times: *https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/000156459021004599/tsla-10k_20201231.htm.*

Analysis of Historical Price Index Returns of Spot Bitcoin vs. Common Alternative Exposure Vehicle

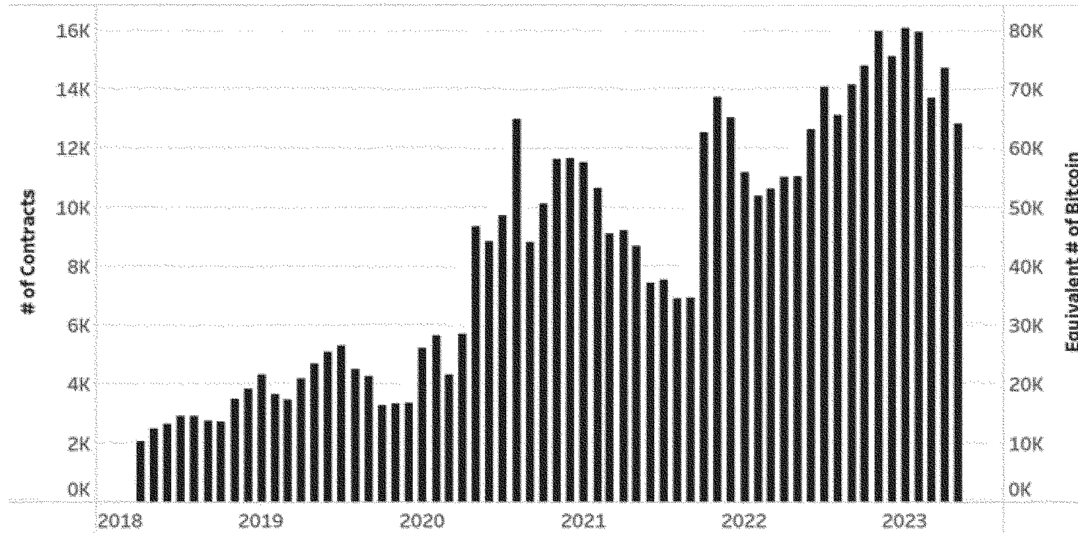


Source: Bitcoin Spot sourced from WSJ.com; Blockchain Equities Index is based on S&P Kensho Global Cryptocurrency & Blockchain Equity Index (Total Return) sourced from S&P Dow Jones; Bitcoin Futures Index is based on the S&P CME Bitcoin Futures Index (Total Return) sourced from S&P Dow Jones; OTC Traded BTC Trust Index is represented by the Grayscale Bitcoin Trust sourced form WSJ.com. Based on weekly data.

Bitcoin Futures

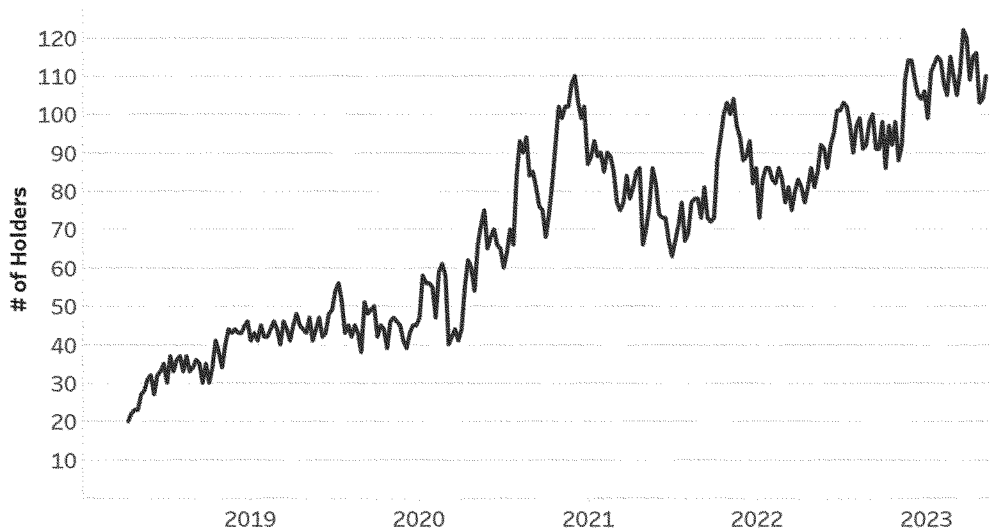
CME began offering trading in Bitcoin Futures in 2017. Each contract represents five bitcoin and is based on the CME CF Bitcoin Reference Rate.[27] The contracts trade and settle like other cash settled commodity futures contracts. Nearly every measurable metric related to Bitcoin Futures has generally trended up since launch, although certain notional volume calculations have decreased roughly in line with the decrease in the price of bitcoin. For example, there were 143,215 Bitcoin Futures contracts traded in April 2023 (approximately $20.7 billion) compared to 193,182 ($5 billion), 104,713 ($3.9 billion), 118,714 ($42.7 billion), and 111,964 ($23.2 billion) contracts traded in April 2019, April 2020, April 2021, and April 2022, respectively.

[27] The CME CF Bitcoin Reference Rate is based on a publicly available calculation methodology based on pricing sourced from several crypto platforms and trading platforms, including Bitstamp, Coinbase, Gemini, itBit, Kraken, and LMAX Digital.

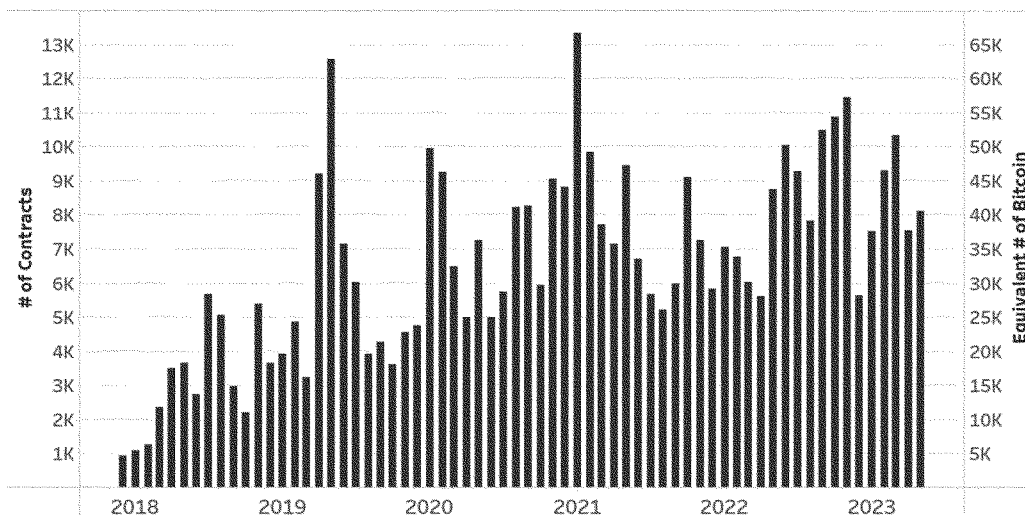


Source: CME, Yahoo Finance 4/30/23.

The number of large open interest holders[28] and unique accounts trading Bitcoin Futures have both increased, even in the face of heightened bitcoin price volatility.



[28] A large open interest holder in Bitcoin Futures is an entity that holds at least 25 contracts, which is the equivalent of 125 bitcoin. At a price of approximately $29,268.81 per bitcoin on 4/30/2023, more than 100 firms had outstanding positions of greater than $3.65 million in Bitcoin Futures.



Preventing Fraudulent and Manipulative Practices

In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices;[29] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act and that this filing sufficiently demonstrates that the Bitcoin Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance sharing agreement in place[30] with a regulated market of significant size. Both the Exchange and CME are members of ISG.[31] The only remaining issue to be addressed is whether the Bitcoin Futures market constitutes a market of significant size, which both the Exchange and the Sponsor believe that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[32]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying section 6(b)(5) of the act, specifically providing 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.[33]

[29] The Exchange believes that bitcoin is resistant to price manipulation and that ''other means to prevent fraudulent and manipulative acts and practices'' exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin. The fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging. To the extent that there are bitcoin platforms engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, such pricing does not normally impact prices on other exchange because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin platform or Over-the-Counter platform (''OTC platform''). As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

[30] As previously articulated by the Commission, ''The standard requires such surveillance-sharing agreements since ''they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.'' The Commission has historically held that joint membership in the Intermarket Surveillance Group (''ISG'') constitutes such a surveillance sharing agreement. *See* Securities Exchange Act Release No. 88284 (February 26, 2020), 85 FR 12595 (March 3, 2020) (SR–NYSEArca–2019–39) (the ''Wilshire Phoenix Disapproval'').

[31] For a list of the current members and affiliate members of ISG, *see https://www.isgportal.com/*.

[32] *See* Wilshire Phoenix Disapproval.

[33] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a 'cannot be manipulated' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the

(A) Reasonable Likelihood That a Person Attempting To Manipulate the ETP Would Also Have To Trade on That Market To Manipulate the ETP

Bitcoin Futures represent a growing influence on pricing in the spot bitcoin market as has been laid out above and in other proposals to list and trade Spot Bitcoin ETPs. Pricing in Bitcoin Futures is based on pricing from spot bitcoin markets. As noted above, the statement from the Teucrium Approval that ''CME's surveillance can reasonably be relied upon to capture the effects on the Bitcoin Futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of Bitcoin Futures contracts . . . indirectly by trading outside of the Bitcoin Futures market,'' makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of Bitcoin Futures. While the Commission makes clear in the Teucrium Approval that the analysis only applies to the Bitcoin Futures market as it relates to an ETP that invests in Bitcoin Futures as its only non-cash or cash equivalent holding, if CME's surveillance is sufficient to mitigate concerns related to trading in Bitcoin Futures for which the pricing is based directly on pricing from spot bitcoin markets, it's not clear how such a conclusion could apply only to ETPs based on Bitcoin Futures and not extend to Spot Bitcoin ETPs.

As such, the Exchange believes that part (a) of the significant market test outlined above is satisfied and that common membership in ISG between the Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the Shares.

(B) Predominant Influence on Prices in Spot and Bitcoin Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices in the Bitcoin Futures market or spot market for a number of reasons, including the significant volume in the Bitcoin Futures market, the size of bitcoin's market cap, and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid. According to data from Kaiko, the average daily adjusted volume for spot bitcoin across USD denominated trading pairs from January 1, 2023, to May 31, 2023, was $6.0 billion. According to data from Kaiko, the aggregate 2% bitcoin market depth on the bid and ask side for USD denominated trading pairs has been on average 6,875 BTC (approximately $167.2 million), for the period between January 1, 2023, and May 31, 2023. More strategic purchases or sales (such as using limit orders and executing through OTC bitcoin trade desks) would likely have less obvious impact on the market—which is consistent with MicroStrategy, Tesla, and Square being able to collectively purchase billions of dollars in bitcoin.

As such, the combination of the Bitcoin Futures price discovery and the overall size of the bitcoin market will help prevent the Shares from becoming the predominant force on pricing in either the bitcoin spot or Bitcoin Futures markets, satisfying part (b) of the test outlined above.

(C) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

The Exchange is also proposing to take additional steps to those described above to supplement its ability to obtain information that would be helpful in detecting, investigating, and deterring fraud and market manipulation in the Commodity-Based Trust Shares.

As noted in the Surveillance section, 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). In addition to the Exchange's existing surveillance, a new pattern will be added to surveil for significant deviation in the Commodity-Based Trust Shares' price from the underlying asset's price. The Exchange will use the trade data from an external vendor that consolidates the real-time data from multiple bitcoin platforms.

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 Financial Industry Regulatory Authority (''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 will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange may obtain trading information regarding trading in the Shares from such markets and other entities.

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 Trust 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 Trust 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.

Also, an estimated value that reflects an estimated IIV will be disseminated. For more information on the IIV, including the calculation methodology, see ''Intraday Indicative Value'' above. The IIV disseminated during the Exchange's 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 Exchange's 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 bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters, as well as CF Benchmarks. Information relating to trading,

requirements of the Exchange Act have been met.'' *Id.* at 37582.

including price and volume information, in bitcoin is available from major market data vendors and from the platforms on which bitcoin are traded. Depth of book information is also available from bitcoin platforms. The normal trading hours for bitcoin 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 Nasdaq Rule 5711(d)(vi), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. The Exchange will obtain a representation that the Trust's NAV per Share will be calculated daily and will be made available to all market participants at the same time. A minimum of 80,000 Commodity-Based Trust Shares, or the equivalent of two 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 Delaware Trustee, will be a trust company having substantial capital and surplus and the experience and facilities for handling corporate trust business, as required under Nasdaq Rule 5711(d)(vi)(D) and no change will be made to the Delaware Trustee without prior notice to and approval of the Exchange.

As required in Nasdaq Rule 5711(d)(viii), the Exchange notes that any registered market maker (''Market Maker'') in the Shares must file with the Exchange, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for trading the underlying commodity, related futures or options on futures, or any other related derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker in the Shares shall trade in the underlying commodity, related futures or options on futures, or any other related derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by Nasdaq Rule 5711(d). In addition to the existing obligations under Exchange rules regarding the production of books and records, the registered Market Maker in the Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or any limited partner, officer or approved person thereof, registered or non-registered employee affiliated with such entity for its or their own accounts in the underlying commodity, related futures or options on futures, or any other related derivatives, as may be requested by the Exchange.

The Exchange is able to obtain information regarding trading in the Shares and the underlying bitcoin, Bitcoin Futures contracts, options on Bitcoin Futures, or any other bitcoin 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 organization 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 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 5711(d).

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 bitcoin 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). In addition to the Exchange's existing surveillance, a new pattern will be added to surveil for significant deviation in the Commodity-Based Trust Shares' price from the underlying asset's price. The Exchange will use the trade data from an external vendor that consolidates the real-time data from multiple bitcoin platforms.

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 with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. The Exchange also may obtain information regarding trading in the Shares and listed bitcoin derivatives via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

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 is disseminated; (4) the risks involved in trading the Shares during the pre-market and post-market sessions when an updated IIV will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information. The Information Circular will also discuss any exemptive, no action and interpretive relief granted by the Commission from any rules under the Act.

The Information Circular will also reference the fact that there is no regulated source of last sale information regarding bitcoin, that the Commission has no jurisdiction over the trading of bitcoin as a commodity, and that the CFTC has regulatory jurisdiction over the trading of Bitcoin Futures contracts and options on Bitcoin Futures contracts.

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 Exchange believes that the proposal is consistent with section 6(b) of the Act [34] in general and section 6(b)(5) of the Act [35] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission has approved numerous series of Trust Issued Receipts,[36] including Commodity-Based Trust Shares,[37] to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act because this filing sufficiently demonstrates that the standard that has previously been articulated by the Commission applicable to Commodity-Based Trust Shares has been met as outlined below.

Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order for a proposal to list and trade a series of Commodity-Based Trust Shares to be deemed consistent with the Act, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place with a regulated market of significant size. Both the Exchange and CME are members of ISG.[38] As such, the only remaining issue to be addressed is whether the Bitcoin Futures market constitutes a market of significant size, which the Exchange believes that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[39]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying section 6(b)(5) of the act, specifically providing 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.[40]

(A) Reasonable Likelihood That a Person Attempting To Manipulate the ETP Would Also Have To Trade on That Market To Manipulate the ETP

Bitcoin Futures represent a growing influence on pricing in the spot bitcoin market as has been laid out above and in other proposals to list and trade Spot Bitcoin ETPs. Pricing in Bitcoin Futures is based on pricing from spot bitcoin markets. As noted above, the statement from the Teucrium Approval that ''CME's surveillance can reasonably be relied upon to capture the effects on the Bitcoin Futures market caused by a person attempting to manipulate the

[34] 15 U.S.C. 78f.

[35] 15 U.S.C. 78f(b)(5).

[36] *See* Exchange Rule 5720.

[37] Commodity-Based Trust Shares, as described in Exchange Rule 5711(d), are a type of Trust Issued Receipt.

[38] For a list of the current members and affiliate members of ISG, *see https://www.isgportal.com/.*

[39] *See* Wilshire Phoenix Disapproval.

[40] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it is not applying a ''cannot be manipulated'' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met. *Id.* at 37582.

proposed futures ETP by manipulating the price of Bitcoin Futures contracts . . . indirectly by trading outside of the Bitcoin Futures market,'' makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of Bitcoin Futures. While the Commission makes clear in the Teucrium Approval that the analysis only applies to the Bitcoin Futures market as it relates to an ETP that invests in Bitcoin Futures as its only non-cash or cash equivalent holding, if CME's surveillance is sufficient to mitigate concerns related to trading in Bitcoin Futures for which the pricing is based directly on pricing from spot bitcoin markets, it's not clear how such a conclusion could apply only to ETPs based on Bitcoin Futures and not extend to Spot Bitcoin ETPs.

As such, the Exchange believes that part (a) of the significant market test outlined above is satisfied and that common membership in ISG between the Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the Shares.

(B) Predominant Influence on Prices in Spot and Bitcoin Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices in the Bitcoin Futures market or spot market for a number of reasons, including the significant volume in the Bitcoin Futures market, the size of bitcoin's market cap, and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid. According to data from Messari, the average daily adjusted real volume for spot bitcoin from January 1, 2023, to May 12, 2023 was $8.5 billion. According to data from Kaiko, the aggregate 1% bitcoin market depth on the bid and ask side has been on average 5,373 bitcoin (approximately $161 million), for the period between April 26, 2023 and May 12, 2023. More strategic purchases or sales (such as using limit orders and executing through OTC bitcoin trade desks) would likely have less obvious impact on the market—which is consistent with MicroStrategy, Tesla, and Square being able to collectively purchase billions of dollars in bitcoin.

As such, the combination of the Bitcoin Futures price discovery and the overall size of the bitcoin market will help prevent the Shares from becoming the predominant force on pricing in either the bitcoin spot or Bitcoin Futures markets, satisfying part (b) of the test outlined above.

(C) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

The Exchange is also proposing to take additional steps to those described above to supplement its ability to obtain information that would be helpful in detecting, investigating, and deterring fraud and market manipulation in the Commodity-Based Trust Shares.

As noted in the Surveillance section, 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). In addition to the Exchange's existing surveillance, a new pattern will be added to surveil for significant deviation in the Commodity-Based Trust Shares' price from the underlying asset's price. The Exchange will use the trade data from an external vendor that consolidates the real-time data from multiple bitcoin platforms.

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 will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange may obtain trading information regarding trading in the Shares from such markets and other entities.

The Exchange also believes that reviewing this proposal through the lens of the Bitcoin Futures Approvals would also lead the Commission to approving this proposal. Previous disapproval orders have made clear that a market that constitutes a regulated market of significant size is generally a future and/or options market based on the underlying reference asset rather than the spot commodity markets, which are often unregulated.[41] The Exchange believes that the following excerpt from the Teucrium Approval is particular informative:

The CME ''comprehensively surveils futures market conditions and price movements on a real-time and ongoing basis in order to detect and prevent price distortions, including price distortions caused by manipulative efforts.'' Thus, the CME's surveillance can reasonably be relied upon to capture the effects on the Bitcoin Futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of Bitcoin Futures contracts, whether that attempt is made by directly trading on the CME Bitcoin futures market or indirectly by trading outside of the Bitcoin Futures market. As such, when the CME shares its surveillance information with Arca, the information would assist in detecting and deterring fraudulent or manipulative misconduct related to the non-cash assets held by the proposed ETP.[42]

Bitcoin Futures pricing is based on pricing from spot bitcoin markets. The statement from the Teucrium Approval that ''CME's surveillance can reasonably be relied upon to capture the effects on the Bitcoin Futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of Bitcoin Futures contracts. . .indirectly by trading outside of the Bitcoin Futures market,'' makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of Bitcoin Futures. If CME is able to detect

[41] *See* Winklevoss Order at 37593, specifically footnote 202, which includes the language from numerous approval orders for which the underlying futures markets formed the basis for approving series of ETPs that hold physical metals, including gold, silver, palladium, platinum, and precious metals more broadly; and 37600, specifically where the Commission provides that ''when the spot market is unregulated—the requirement of preventing fraudulent and manipulative acts may possibly be satisfied by showing that the ETP listing market has entered into a surveillance-sharing agreement with a regulated market of significant size in derivatives related to the underlying asset.'' As noted above, the Exchange believes that these citations are particularly helpful in making clear that the spot market for a spot commodity ETP need not be ''regulated'' in order for a spot commodity ETP to be approved by the Commission, and in fact that it's been the common historical practice of the Commission to rely on such derivatives markets as the regulated market of significant size because such spot commodities markets are largely unregulated.

[42] *See* Teucrium Approval at 21679.

such attempts at manipulation in the complex and interconnected spot bitcoin market, how would such an ability to detect attempted manipulation and the utility in sharing that information with the listing exchange apply only to Bitcoin Futures ETFs and not Spot Bitcoin ETPs? Stated a different way, given that there is significant trading volume on numerous bitcoin platforms that are not part of the CME CF Bitcoin Reference Rate and that arbitrage opportunities across bitcoin platforms means that such trading volume will influence spot bitcoin prices across the market and, despite this, the Commission still believes that CME can detect attempted manipulation of the Bitcoin Futures through ''trading outside of the Bitcoin Futures market,'' it is clear that such ability would apply equally to both Bitcoin Futures ETFs and Spot Bitcoin ETPs. To take it a step further, such an ability would also seem to be a strong indication that the Bitcoin Futures market represents a regulated market of significant size. To be clear, the Exchange agrees with the Commission on this point (and the implications of their conclusions) and notes that the pricing mechanism applicable to the Shares is similar to the CME CF Bitcoin Reference Rate.

Commodity-Based Trust Shares

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5711(d). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures 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, including Commodity-Based Trust Shares.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares 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 or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series. The Exchange may obtain information regarding trading in the Shares and listed bitcoin derivatives via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

Availability of Information

The Exchange also believes that the proposal promotes market transparency in that a large amount of information is currently available about bitcoin and will be available regarding the Trust and the Shares. In addition to the price transparency of the CF Benchmarks Index, the Trust will provide information regarding the Trust's bitcoin holdings as well as additional data regarding the Trust.

The website for the Trust (*https://www.iShares.com*), 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 Trust Administrator will also disseminate the Trust's holdings on a daily basis on the Trust's website. Information about the CF Benchmarks Index, including key elements of how the CF Benchmarks Index is calculated, is publicly available at *https://www.cfbenchmarks.com/.* The NAV per Share for the Trust will be calculated by the Trust 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.

Also, an estimated value that reflects an estimated IIV will be disseminated. For more information on IIV, including the calculation methodology, see ''Intraday Indicative Value x 02EE; above. One or more major market data vendors will provide an IIV per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Market Session (9:30 a.m. to 4:00 p.m. ET). The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during the Exchange's Regular Market Session to reflect changes in the value of the Trust's NAV per Share during the trading day.

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters, as well as CF Benchmarks. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the platforms on which bitcoin are traded. Depth of book information is also available from bitcoin platforms. The normal trading hours for bitcoin platforms are 24 hours per day, 365 days per year.

In sum, the Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act, that this filing sufficiently demonstrates that the Bitcoin Futures market represents a regulated market of significant size, and that on the whole the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by investor protection issues that would be resolved by approving this proposal.

The Exchange believes that the proposal is, in particular, designed to protect investors and the public interest. Premium and discount volatility, high fees, rolling costs, insufficient disclosures, and technical hurdles are putting U.S. investor money at risk on a daily basis that could potentially be eliminated through access to a Spot Bitcoin ETP. As such, the Exchange believes that this proposal acts to limit the risk to U.S. investors that are increasingly seeking exposure to bitcoin by providing direct, 1-for-1 exposure to bitcoin in a regulated, transparent, exchange-traded vehicle, specifically by: (i) reducing premium volatility; (ii) reducing management fees through meaningful competition; (iii) providing an alternative to Bitcoin Futures ETFs which will eliminate roll cost; (iv) reducing risks associated with investing in operating companies that are imperfect proxies for bitcoin exposure; and (v) providing an alternative to custodying spot bitcoin. Finally, the Exchange notes that in addition to all of the arguments herein which it believes sufficiently establishes the Bitcoin Futures market as a regulated market of significant size, it is logically

inconsistent to find that the Bitcoin Futures market is a significant market as it relates to the Bitcoin Futures market, but not a significant market as it relates to the bitcoin spot market for the numerous reasons laid out above.

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

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

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

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

No written comments were either solicited or received.

III. Solicitation of Comments

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

Electronic Comments

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

• Send an email to *rule-comments@sec.gov.* Please include file number SR–NASDAQ–2023–016 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–2023–016. 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–2023–016 and should be submitted on or before February 2, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–00508 Filed 1–11–24; 8:45 am]

BILLING CODE 8011–01–P

[43] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99290; File No. SR–CboeBZX–2023–044]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of Amendment No. 3 to a Proposed Rule Change To List and Trade Shares of the Fidelity Wise Origin Bitcoin Fund Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

January 8, 2024.

On June 30, 2023, Cboe BZX Exchange, Inc. (''BZX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Fidelity Wise Origin Bitcoin Fund (f/k/a Wise Origin Bitcoin Trust) under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. On July 11, 2023, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. On July 13, 2023, the Exchange filed Amendment No. 2 to the proposed rule change, which amended and replaced the proposed rule change, as modified by Amendment No. 1, in its entirety. The proposed rule change, as modified by Amendment No. 2, was published for comment in the **Federal Register** on July 19, 2023.[3] On August 31, 2023, pursuant to section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, as modified by Amendment No. 2.[5] On September 28 2023, the Commission instituted proceedings to determine whether to disapprove the proposed rule change, as modified by Amendment No. 2.[6] On January 5, 2024, the Exchange filed Amendment No. 3 to the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment No. 3 amended and replaced the proposed rule change, as modified by Amendment No. 2, in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 3, from interested persons.

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

[2] 17 CFR 240.19b–4.

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

Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change to list and trade shares of the Fidelity Wise Origin Bitcoin Fund (the ''Trust''),[7] under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[3] *See* Securities Exchange Act Release No. 97899 (July 13, 2023), 88 FR 46249. Comments on the proposed rule change are available at: *https://www.sec.gov/comments/sr-cboebzx-2023-044/srcboebzx2023044.htm.*

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

[5] *See* Securities Exchange Act Release No. 98263, 88 FR 61642 (Sept. 7, 2023).

[6] *See* Securities Exchange Act Release No. 98639, 88 FR 68888 (Oct. 4, 2023).

[7] The Trust was formed as a Delaware statutory trust on March 17, 2021, and is operated as a grantor trust for U.S. federal tax purposes. The Trust has no fixed termination date.

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

This Amendment No. 3 to SR–CboeBZX–2023–044 amends and replaces in its entirety the proposal as originally submitted on June 30, 2023 and as amended by Amendment No. 1 on July 11, 2023 and Amendment No. 2 on July 13, 2023. The Exchange submits this Amendment No. 3 in order to clarify certain points and add additional details to the proposal.

The Exchange proposes to list and trade the Shares under BZX Rule 14.11(e)(4),[8] which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.[9] FD Funds Management LLC is the sponsor of the Trust (''Sponsor''). The Shares will be registered with the Commission by means of the Trust's registration statement on Form S–1 (the ''Registration Statement'').[10] Fidelity Digital Assets Services, LLC (''FDAS''), a regulated custodian licensed by the New York Department of Financial Services, will be responsible for custody of the Trust's bitcoin (the ''Custodian''). The Trust is not permitted or required to register under the Investment Company Act of 1940, as amended (the ''1940 Act''), and therefore is not subject to regulation under the 1940 Act.[11] Further, the Registration Statement states that the Trust will not hold or trade in commodity interests regulated by the Commodity Exchange Act of 1936, as amended (the ''CEA''), and therefore is not a commodity pool for purposes of the CEA.[12] The Exchange represents that the Shares satisfy the requirements of BZX Rule 14.11(e)(4) and thereby qualify for listing on the Exchange.

As further discussed below, the Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts,[13] including spot-based Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.[14] Prior orders from the Commission have pointed out that in every prior approval order for Commodity-Based Trust Shares, there has been a derivatives market that represents the regulated market of significant size, generally a Commodity Futures Trading Commission (the ''CFTC'') regulated futures market.[15]

[8] The Commission approved BZX Rule 14.11(e)(4) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[9] Any of the statements or representations regarding the index composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, and intraday indicative values, or the applicability of Exchange listing rules specified in this filing to list a series of Other Securities (collectively, ''Continued Listing Representations'') shall constitute continued listing requirements for the Shares listed on the Exchange.

[10] *See* draft Amendment No. 3 to the Registration Statement on Form S–1, dated December 29, 2023, submitted to the Commission by the Sponsor on behalf of the Trust. The descriptions of the Trust, the Shares, and the Index (as defined below) contained herein are based, in part, on information in the Registration Statement. The Registration Statement is not yet effective, and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

[11] *See* above.

[12] *See* above.

[13] *See* Exchange Rule 14.11(f)(1).

[14] *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018). This proposal was subsequently disapproved by the Commission. *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the ''Winklevoss Order'').

[15] *See* streetTRACKS Gold Shares, Exchange Act Release No. 50603 (Oct. 28, 2004), 69 FR 64614, 64618–19 (Nov. 5, 2004) (SR–NYSE–2004–22) (the ''First Gold Approval Order''); iShares COMEX Gold Trust, Exchange Act Release No. 51058 (Jan. 19, 2005), 70 FR 3749, 3751, 3754–55 (Jan. 26, 2005) (SR–Amex–2004–38); iShares Silver Trust, Exchange Act Release No. 53521 (Mar. 20, 2006), 71 FR 14967, 14968, 14973–74 (Mar. 24, 2006) (SR–Amex–2005–072); ETFS Gold Trust, Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993, 22994–95, 22998, 23000 (May 15, 2009) (SR–NYSEArca–2009–40); ETFS Silver Trust, Exchange Act Release No. 59781 (Apr. 17, 2009), 74 FR 18771, 18772, 18775–77 (Apr. 24, 2009) (SR–NYSEArca–2009–28); ETFS Palladium Trust, Exchange Act Release No. 61220 (Dec. 22, 2009), 74 FR 68895, 68896 (Dec. 29, 2009) (SR–NYSEArca–2009–94) (notice of proposed rule change included NYSE Arca's representation that ''[t]he most significant palladium futures exchanges are the NYMEX and the Tokyo Commodity Exchange,'' that ''NYMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which NYMEX is a member, Exchange Act Release No. 60971 (Nov. 9, 2009), 74 FR 59283, 59285–86, 59291 (Nov. 17, 2009)); ETFS Platinum Trust, Exchange Act Release No. 61219 (Dec. 22, 2009), 74 FR 68886, 68887–88 (Dec. 29, 2009) (SR–NYSEArca–2009–95) (notice of proposed rule change included NYSE Arca's representation that ''[t]he most significant platinum futures exchanges are the NYMEX and the Tokyo Commodity Exchange,'' that ''NYMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which NYMEX is a member, Exchange Act Release No. 60970 (Nov. 9, 2009), 74 FR 59319, 59321, 59327 (Nov. 17, 2009)); Sprott Physical Gold Trust, Exchange Act Release No. 61496 (Feb. 4, 2010), 75 FR 6758, 6760 (Feb. 10, 2010) (SR–NYSEArca–2009–113) (notice of proposed rule change included NYSE Arca's representation that the COMEX is one of the ''major world gold markets,'' that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' and that NYMEX, of which COMEX is a division, is a member of the Intermarket Surveillance Group, Exchange Act Release No. 61236 (Dec. 23, 2009), 75 FR 170, 171, 174 (Jan. 4, 2010)); Sprott Physical Silver Trust, Exchange Act Release No. 63043 (Oct. 5, 2010), 75 FR 62615, 62616, 62619, 62621 (Oct. 12, 2010) (SR–NYSEArca–2010–84); ETFS Precious Metals Basket Trust, Exchange Act Release No. 62692 (Aug. 11, 2010), 75 FR 50789, 50790 (Aug. 17, 2010) (SR–NYSEArca–2010–56) (notice of proposed rule change included NYSE Arca's representation that ''the most significant gold, silver, platinum and palladium futures exchanges are the COMEX and the TOCOM'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 62402 (Jun. 29, 2010), 75 FR 39292, 39295, 39298 (July 8, 2010)); ETFS White Metals Basket Trust, Exchange Act Release No. 62875 (Sept. 9, 2010), 75 FR 56156, 56158 (Sept. 15, 2010) (SR–NYSEArca–2010–71) (notice of proposed rule change included NYSE Arca's representation that ''the most significant silver, platinum and palladium futures exchanges are the COMEX and the TOCOM'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 62620 (July 30, 2010), 75 FR 47655, 47657, 47660 (Aug. 6, 2010)); ETFS Asian Gold Trust, Exchange Act Release No. 63464 (Dec. 8, 2010), 75 FR 77926, 77928 (Dec. 14, 2010) (SR–NYSEArca–2010–95) (notice of proposed rule change included NYSE Arca's representation that ''the most significant gold futures exchanges are the COMEX and the Tokyo Commodity Exchange,'' that ''COMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 63267 (Nov. 8, 2010), 75 FR 69494, 69496, 69500–01 (Nov. 12, 2010)); Sprott Physical Platinum and Palladium Trust, Exchange Act Release No. 68430 (Dec. 13, 2012), 77 FR 75239, 75240–41 (Dec. 19, 2012) (SR–NYSEArca–2012–111) (notice of proposed rule change included NYSE Arca's representation that ''[f]utures on platinum and palladium are traded on two major exchanges: The New York Mercantile Exchange . . . and Tokyo Commodities Exchange'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 68101 (Oct. 24, 2012), 77 FR 65732, 65733, 65739 (Oct. 30, 2012)); APMEX Physical—1 oz. Gold Redeemable Trust, Exchange Act Release No. 66930 (May 7, 2012), 77 FR 27817, 27818 (May 11, 2012) (SR–NYSEArca–2012–18) (notice of proposed rule change included NYSE Arca's representation that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, and that gold futures are traded on COMEX and the Tokyo

Continued

Further to this point, the Commission's prior orders have noted that the spot commodities and currency markets for which it has previously approved spot exchange-traded products ("ETPs") are generally unregulated and that the Commission relied on the underlying futures market as the regulated market of significant size that formed the basis for approving the series of Currency [16] and Commodity-Based Trust Shares, including gold, silver, platinum, palladium, copper, and other commodities and currencies. The Commission specifically noted in the Winklevoss Order that the First Gold Approval Order "was based on an assumption that the currency market and the spot gold market were largely unregulated." [17]

As such, the regulated market of significant size test does not require that the spot bitcoin market be regulated in order for the Commission to approve this proposal, and precedent makes clear that an underlying market for a spot commodity or currency being a regulated market would actually be an exception to the norm. These largely unregulated currency and commodity markets do not provide the same protections as the markets that are subject to the Commission's oversight, but the Commission has consistently looked to surveillance sharing agreements with the underlying futures market in order to determine whether such products were consistent with the Act. With this in mind, the Chicago Mercantile Exchange ("CME") bitcoin futures ("Bitcoin Futures") market is the proper market to consider in determining whether there is a related regulated market of significant size.

Further to this point, the Exchange notes that the Commission has approved proposals related to the listing and trading of funds that would primarily hold CME Bitcoin Futures that are registered under the Securities Act of 1933.[18] In the Teucrium Approval, the Commission found the CME Bitcoin Futures market to be a regulated market of significant size as it relates to CME Bitcoin Futures, an odd tautological truth that is also inconsistent with prior disapproval orders for ETPs that would hold actual bitcoin instead of derivatives contracts ("Spot Bitcoin ETPs") that use the exact same pricing methodology as the CME Bitcoin Futures. As further discussed below, both the Exchange and the Sponsor believe that this proposal and the included analysis are sufficient to establish that the CME Bitcoin Futures market represents a regulated market of significant size as it relates both to the CME Bitcoin Futures market and to the spot bitcoin market and that this proposal should be approved.

Finally, as discussed in greater detail below, by using professional custodians and other service providers, the Trust provides investors interested in exposure to bitcoin with important protections that are not always available to investors that invest directly in bitcoin, including protection against insolvency of non-qualified custodians, cyber-attacks, and other risks. If U.S. investors had access to vehicles such as the Trust for their bitcoin investments, instead of directing their bitcoin investments into loosely regulated offshore platforms (such as loosely regulated centralized exchanges that have since faced bankruptcy proceedings or other insolvencies), then countless investors could have protected their principal investments in bitcoin and thus benefited.

Background

Bitcoin is a digital asset based on the decentralized, open-source protocol of the peer-to-peer computer network launched in 2009 that governs the creation, movement, and ownership of bitcoin and hosts the public ledger, or "blockchain," on which all bitcoin transactions are recorded (the "Bitcoin Network" or "Bitcoin"). The decentralized nature of the Bitcoin Network allows parties to transact directly with one another based on cryptographic proof instead of relying on a trusted third party. The protocol also lays out the rate of issuance of new bitcoin within the Bitcoin Network, a rate that is reduced by half approximately every four years with an eventual hard cap of 21 million. It's generally understood that the combination of these two features—a systemic hard cap of 21 million bitcoin and the ability to transact trustlessly with anyone connected to the Bitcoin Network—gives bitcoin its value.

The first rule filing proposing to list an ETP to provide exposure to bitcoin in the U.S. was submitted by the Exchange on June 30, 2016.[19] At that time, blockchain technology, and digital assets that utilized it, were relatively new to the broader public. The market cap of all bitcoin in existence at that time was approximately $10 billion. No registered offering of digital asset securities or shares in an investment vehicle with exposure to bitcoin or any other cryptocurrency had yet been conducted, and the regulated infrastructure for conducting a digital asset securities offering had not begun to develop.[20] Similarly, regulated U.S. Bitcoin Futures contracts did not exist. The CFTC had determined that bitcoin is a commodity,[21] but had not engaged

Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the "major world gold markets," Exchange Act Release No. 66627 (Mar. 20, 2012), 77 FR 17539, 17542–43, 17547 (Mar. 26, 2012)); JPM XF Physical Copper Trust, Exchange Act Release No. 68440 (Dec. 14, 2012), 77 FR 75468, 75469–70, 75472, 75485–86 (Dec. 20, 2012) (SR–NYSEArca–2012–28); iShares Copper Trust, Exchange Act Release No. 68973 (Feb. 22, 2013), 78 FR 13726, 13727, 13729–30, 13739–40 (Feb. 28, 2013) (SR–NYSEArca–2012–66); First Trust Gold Trust, Exchange Act Release No. 70195 (Aug. 14, 2013), 78 FR 51239, 51240 (Aug. 20, 2013) (SR–NYSEArca–2013–61) (notice of proposed rule change included NYSE Arca's representation that FINRA, on behalf of the exchange, may obtain trading information regarding gold futures and options on gold futures from members of the Intermarket Surveillance Group, including COMEX, or from markets "with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement," and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the "major world gold markets," Exchange Act Release No. 69847 (June 25, 2013), 78 FR 39399, 39400, 39405 (July 1, 2013)); Merk Gold Trust, Exchange Act Release No. 71378 (Jan. 23, 2014), 79 FR 4786, 4786–87 (Jan. 29, 2014) (SR–NYSEArca–2013–137) (notice of proposed rule change included NYSE Arca's representation that "COMEX is the largest gold futures and options exchange" and that NYSE Arca "may obtain trading information via the Intermarket Surveillance Group," including with respect to transactions occurring on COMEX pursuant to CME and NYMEX's membership, or from exchanges "with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement," Exchange Act Release No. 71038 (Dec. 11, 2013), 78 FR 76367, 76369, 76374 (Dec. 17, 2013)); Long Dollar Gold Trust, Exchange Act Release No. 79518 (Dec. 9, 2016), 81 FR 90876, 90881, 90886, 90888 (Dec. 15, 2016) (SR–NYSEArca–2016–84).

[16] *See* Exchange Rule 14.11(e)(5).

[17] *See* Winklevoss Order at 37592.

[18] *See* Exchange Act Release No. 94620 (April 6, 2022), 87 FR 21676 (April 12, 2022) (the "Teucrium Approval") and 94853 (May 5, 2022) (collectively, with the Teucrium Approval, the "Bitcoin Futures Approvals").

[19] *See* Winklevoss Order.

[20] Digital assets that are securities under U.S. law are referred to throughout this proposal as "digital asset securities." All other digital assets, including bitcoin, are referred to interchangeably as "cryptocurrencies" or "virtual currencies." The term "digital assets" refers to all digital assets, including both digital asset securities and cryptocurrencies, together.

[21] *See* "In the Matter of Coinflip, Inc." ("Coinflip") (CFTC Docket 15–29 (September 17, 2015)) (order instituting proceedings pursuant to sections 6(c) and 6(d) of the CEA, making findings and imposing remedial sanctions), in which the CFTC stated: "Section 1a(9) of the CEA defines 'commodity' to include, among other things, 'all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.' 7 U.S.C. 1a(9). The definition of a 'commodity' is broad. *See, e.g., Board of Trade of City of Chicago* v. *SEC*, 677 F. 2d 1137, 1142 (7th Cir. 1982). Bitcoin and other virtual currencies are encompassed in the definition and properly defined as commodities."

in significant enforcement actions in the space. The New York Department of Financial Services (''NYDFS'') adopted its final ''BitLicense'' regulatory framework in 2015, but had only approved four entities to engage in activities relating to virtual currencies (whether through granting a BitLicense or a limited-purpose trust charter) as of June 30, 2016.[22] While the first over-the-counter bitcoin fund launched in 2013, public trading was limited and the fund had only $60 million in assets.[23] There were very few, if any, traditional financial institutions engaged in the space, whether through investment or providing services to digital asset companies. In January 2018, the staff of the Commission noted in a letter to the Investment Company Institute (''ICI'') and Securities Industry and Financial Markets Association (''SIFMA'') that it was not aware, at that time, of a single custodian providing fund custodial services for digital assets.[24]

Fast forward to today and the digital assets financial ecosystem, including bitcoin, has progressed significantly. The development of a regulated market for digital asset securities has significantly evolved, with market participants having conducted registered public offerings of both digital asset securities [25] and shares in investment vehicles holding Bitcoin Futures, including Bitcoin Futures exchange-traded funds (''ETFs'') (as defined below). Additionally, licensed and regulated service providers have emerged to provide fund custodial services for digital assets, among other services. For example, in May 2021, the staff of the Commission released a statement permitting open-end mutual funds to invest in cash-settled Bitcoin Futures; in December 2020, the Commission adopted a conditional no-action position permitting certain special purpose broker-dealers to custody digital asset securities under Rule 15c3–3 under the Exchange Act (the ''Custody Statement''); [26] in September 2020, the staff of the Commission released a no-action letter permitting certain broker-dealers to operate a non-custodial Alternative Trading System (''ATS'') for digital asset securities, subject to specified conditions; [27] in October 2019, the staff of the Commission granted temporary relief from the clearing agency registration requirement to an entity seeking to establish a securities clearance and settlement system based on distributed ledger technology,[28] and multiple transfer agents who provide services for digital asset securities registered with the Commission.[29]

Outside the Commission's purview, the regulatory landscape has changed significantly since 2016, and cryptocurrency markets have grown and evolved as well. The market for bitcoin is approximately 100 times larger, having at one point reached a market cap of over $1 trillion.[30] According to the CME Bitcoin Futures report, from February 13, 2023 through March 27, 2023, CFTC regulated Bitcoin Futures represented between $750 million and $3.2 billion in notional trading volume on Bitcoin Futures on a daily basis and notional volume was never below $670 million.[31] Open interest was over $1.4 billion for the entirety of the period and at one point was over $2 billion. ETPs that primarily hold CME Bitcoin Futures have raised over $1 billion dollars in assets. The CFTC has exercised its regulatory jurisdiction in bringing a number of enforcement actions related to bitcoin and against trading platforms that offer cryptocurrency trading.[32] As of February 14, 2023 the NYDFS has granted no fewer than thirty-four BitLicenses,[33] including to established public payment companies like PayPal Holdings, Inc. and Square, Inc., and limited purpose trust charters to entities providing cryptocurrency custody services. In addition, the Treasury's Office of Foreign Assets Control (''OFAC'') has brought enforcement actions over apparent violations of the sanctions laws in connection with the provision of wallet management services for digital assets.[34]

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[22] A list of virtual currency businesses that are entities regulated by the NYDFS is available on the NYDFS website. *See https://www.dfs.ny.gov/apps_and_licensing/virtual_currency_businesses/regulated_entities.*

[23] Data as of March 31, 2016 according to publicly available filings. *See* Bitcoin Investment Trust Form S–1, dated May 27, 2016, available: *https://www.sec.gov/Archives/edgar/data/1588489/000095012316017801/filename1.htm.*

[24] *See* letter from Dalia Blass, Director, Division of Investment Management, U.S. Securities and Exchange Commission to Paul Schott Stevens, President & CEO, Investment Company Institute and Timothy W. Cameron, Asset Management Group—Head, Securities Industry and Financial Markets Association (January 18, 2018), *available at https://www.sec.gov/divisions/investment/noaction/2018/cryptocurrency-011818.htm.*

[25] *See* Prospectus supplement filed pursuant to Rule 424(b)(1) for INX Tokens (Registration No. 333–233363), *available at: https://www.sec.gov/Archives/edgar/data/1725882/000121390020023202/ea125858-424b1_inxlimited.htm.*

[26] *See* Securities Exchange Act Release No. 90788, 86 FR 11627 (February 26, 2021) (File Number S7–25–20) (Custody of Digital Asset Securities by Special Purpose Broker-Dealers).

[27] *See* letter from Elizabeth Baird, Deputy Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Kris Dailey, Vice President, Risk Oversight & Operational Regulation, Financial Industry Regulatory Authority (September 25, 2020), *available at: https://www.sec.gov/divisions/marketreg/mr-noaction/2020/finra-ats-role-in-settlement-of-digital-asset-security-trades-09252020.pdf.*

[28] *See* letter from Jeffrey S. Mooney, Associate Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Charles G. Cascarilla & Daniel M. Burstein, Paxos Trust Company, LLC (October 28, 2019), available at: *https://www.sec.gov/divisions/marketreg/mr-noaction/2019/paxos-trust-company-102819-17a.pdf.*

[29] *See, e.g.,* Form TA–1/A filed by Tokensoft Transfer Agent LLC (CIK: 0001794142) on January 8, 2021, *available at: https://www.sec.gov/Archives/edgar/data/1794142/000179414219000001/xslFTA1X01/primary_doc.xml.*

[30] As of December 1, 2021, the total market cap of all bitcoin in circulation was approximately $1.08 trillion.

[31] Data sourced from the CME Bitcoin Futures Report: 19 Nov 2021, *available at: https://www.cmegroup.com/ftp/bitcoinfutures/Bitcoin_Futures_Liquidity_Report.pdf.*

[32] The CFTC's annual report for Fiscal Year 2020 (which ended on September 30, 2020) noted that the CFTC ''continued to aggressively prosecute misconduct involving digital assets that fit within the CEA's definition of commodity'' and ''brought a record setting seven cases involving digital assets.'' *See* CFTC FY2020 Division of Enforcement Annual Report, *available at: https://www.cftc.gov/media/5321/DOE_FY2020_AnnualReport_120120/download.* Additionally, the CFTC filed on October 1, 2020, a civil enforcement action against the owner/operators of the BitMEX trading platform, which was one of the largest bitcoin derivative exchanges. *See* CFTC Release No. 8270–20 (October 1, 2020) *available at: https://www.cftc.gov/PressRoom/PressReleases/8270-20.*

[33] *See https://www.dfs.ny.gov/virtual_currency_businesses.*

[34] *See* U.S. Department of the Treasury Enforcement Release: ''OFAC Enters Into $98,830 Settlement with BitGo, Inc. for Apparent Violations of Multiple Sanctions Programs Related to Digital Currency Transactions'' (December 30, 2020) *available at: https://home.treasury.gov/system/files/126/20201230_bitgo.pdf. See also* U.S. Department of the Treasury Enforcement Release: ''Treasury Announces Two Enforcement Actions for over $24M and $29M Against Virtual Currency Exchange, Bittrex, Inc.'' (October 11, 2022) *available at: https://home.treasury.gov/news/press-releases/jy1006. See also* U.S. Department of Treasure Enforcement Release ''OFAC Settles with Virtual Currency Exchange Kraken for $362,158.70 Related to Apparent Violations of the Iranian Transactions and Sanctions Regulations'' (November 28, 2022) *available at: https://home.treasury.gov/system/files/126/20221128_kraken.pdf.*

In addition to the regulatory developments laid out above, more traditional financial market participants have become more active in cryptocurrency: large insurance companies, asset managers, university endowments, pension funds, and even historically bitcoin skeptical fund managers [35] have allocated to bitcoin. In June 2022, PwC estimated that the number of crypto-specialist hedge funds was more than 300 globally, with $4.1 billion in assets under management. In addition, in a survey PwC found that 38 percent of surveyed traditional hedge funds were currently investing in 'digital assets,' compared to 21 percent the year prior.'' [36] The largest over-the-counter bitcoin fund previously filed a Form 10 registration statement, which the staff of the Commission reviewed and which took effect automatically, and is now a reporting company.[37] Established companies like Tesla, Inc., MicroStrategy Incorporated, and Square, Inc., among others, have made substantial investments in bitcoin. The foregoing examples demonstrate that bitcoin has gained mainstream usage and recognition.

Despite these developments, access for U.S. retail investors to gain exposure to bitcoin via a transparent and U.S. regulated, U.S. exchange-traded vehicle remains limited. Instead current options include: (i) facing the counter-party risk, legal uncertainty, technical risk, and complexity associated with accessing spot bitcoin; (ii) over-the-counter bitcoin funds (''OTC Bitcoin Funds'') with high management fees and potentially volatile premiums and discounts; [38] (iii) purchasing shares of operating companies that they believe will provide proxy exposure to bitcoin with limited disclosure about the associated risks; [39] or (iv) purchasing Bitcoin Futures ETFs, as defined below, which represent a sub-optimal structure for long-term investors that will cost them significant amounts of money every year compared to Spot Bitcoin ETPs, as further discussed below. Meanwhile, investors in many other countries, including Canada and Brazil, are able to use more traditional exchange listed and traded products (including ETFs holding physical bitcoin) to gain exposure to bitcoin. Similarly, investors in Switzerland and across Europe have access to ETPs which trade on regulated exchanges and provide exposure to a broad array of spot crypto assets. U.S. investors, by contrast, are left with fewer and more risky means of getting bitcoin exposure, as described above.[40]

To this point, the lack of a Spot Bitcoin ETP exposes U.S. investor assets to significant risk because investors that would otherwise seek crypto asset exposure through a Spot Bitcoin ETP are forced to find alternative exposure through generally riskier means. For instance, many U.S. investors that held their digital assets in accounts at FTX, [41] Celsius Network LLC,[42] BlockFi Inc.[43] and Voyager Digital Holdings, Inc.[44] have become unsecured creditors in the insolvencies of those entities. If a Spot Bitcoin ETP was available, it is likely that at least a portion of the billions of dollars tied up in those proceedings would still reside in the brokerage accounts of U.S. investors, having instead been invested in a transparent, regulated, and well-understood structure—a Spot Bitcoin ETP. To this point, approval of a Spot Bitcoin ETP would represent a major win for the protection of U.S. investors in the cryptoasset space. As further described below, the Trust, like all other series of Commodity-Based Trust Shares, is designed to protect investors against the risk of losses through fraud and insolvency that arise by holding digital assets, including bitcoin, on centralized platforms.

Additionally, investors in other countries, specifically Canada, generally pay lower fees than U.S. retail investors that invest in OTC Bitcoin Funds due to the fee pressure that results from increased competition among available bitcoin investment options. Without an approved and regulated Spot Bitcoin ETP in the U.S. as a viable alternative, U.S. investors could seek to purchase shares of non-U.S. bitcoin vehicles in order to get access to bitcoin exposure. Given the separate regulatory regime and the potential difficulties associated with any international litigation, such an arrangement would create more risk exposure for U.S. investors than they would otherwise have with a U.S. exchange listed ETP. Further to this

[35] *See e.g.,* ''Bridgewater: Our Thoughts on Bitcoin'' (January 28, 2021) *available at: https://www.bridgewater.com/research-and-insights/our-thoughts-on-bitcoin* and ''Paul Tudor Jones says he likes bitcoin even more now, rally still in the 'first inning''' (October 22, 2020) *available at: https://www.cnbc.com/2020/10/22/-paul-tudor-jones-says-he-likes-bitcoin-even-more-now-rally-still-in-the-first-inning.html.*

[36] *See* the FSOC ''Report on Digital Asset Financial Stability Risks and Regulation 2022'' (October 3, 2022) (at footnote 26) at *https://home.treasury.gov/system/files/261/FSOC-Digital-Assets-Report-2022.pdf.*

[37] *See* Letter from Division of Corporation Finance, Office of Real Estate & Construction to Barry E. Silbert, Chief Executive Officer, Grayscale Bitcoin Trust (January 31, 2020) *https://www.sec.gov/Archives/edgar/data/1588489/000000000020000953/filename1.pdf.*

[38] The largest OTC Bitcoin Fund has an AUM of $23 billion. The premium and discount for OTC Bitcoin Funds is known to move rapidly. For example, over the period of 12/21/20 to 1/21/20, the premium for the largest OTC Bitcoin Fund went from 40.18% to 2.79%. While the price of bitcoin appreciated significantly during this period and NAV per share increased by 41.25%, the price per share increased by only 3.58%. This means that investors are buying shares of a fund that experiences significant volatility in its premium and discount outside of the fluctuations in price of the underlying asset. Even operating within the normal premium and discount range, it's possible for an investor to buy shares of an OTC Bitcoin Fund only to have those shares quickly lose 10% or more in dollar value excluding any movement of the price of bitcoin. That is to say—the price of bitcoin could have stayed exactly the same from market close on one day to market open the next, yet the value of the shares held by the investor decreased only because of the fluctuation of the premium. As more investment vehicles, including mutual funds and ETFs, seek to gain exposure to bitcoin, the easiest option for a buy and hold strategy for such vehicles is often an OTC Bitcoin Fund, meaning that even investors that do not directly buy OTC Bitcoin Funds can be disadvantaged by extreme premiums (or discounts) and premium volatility.

[39] A number of operating companies engaged in unrelated businesses—such as Tesla (a car manufacturer) and MicroStrategy (an enterprise software company)—have announced investments as large as $5.3 billion in bitcoin. Without access to bitcoin exchange-traded products, retail investors seeking investment exposure to bitcoin may end up purchasing shares in these companies in order to gain the exposure to bitcoin that they seek. In fact, mainstream financial news networks have written a number of articles providing investors with guidance for obtaining bitcoin exposure through publicly traded companies (such as MicroStrategy, Tesla, and bitcoin mining companies, among others) instead of dealing with the complications associated with buying spot bitcoin in the absence of a bitcoin ETP. See *e.g.,* ''7 public companies with exposure to bitcoin'' (February 8, 2021) available at: *https://finance.yahoo.com/news/7-public-companies-with-exposure-to-bitcoin-154201525.html;* and ''Want to get in the crypto trade without holding bitcoin yourself? Here are some investing ideas'' (February 19, 2021) available at: *https://www.cnbc.com/2021/02/19/ways-to-invest-in-bitcoin-without-holding-the-cryptocurrency-yourself-.html.* Such operating companies, however, are imperfect bitcoin proxies and provide investors with partial bitcoin exposure paired with a host of additional risks associated with whichever operating company they decide to purchase. Additionally, the disclosures provided by such operating companies with respect to risks relating to their bitcoin holdings are generally substantially smaller than the registration statement of a bitcoin ETP, including the Registration Statement, typically amounting to a few sentences of narrative description and a handful of risk factors. In other words, investors seeking bitcoin exposure through publicly traded companies are gaining only partial exposure to bitcoin and are not fully benefitting from the risk disclosures and associated investor protections that come from the securities registration process.

[40] The Exchange notes that the list of countries above is not exhaustive and that securities regulators in a number of additional countries have either approved or otherwise allowed the listing and trading of Spot Bitcoin ETPs.

[41] See FTX Trading Ltd., et al., Case No. 22–11068.

[42] See Celsius Network LLC, et al., Case No. 22–10964.

[43] See BlockFi Inc., Case No. 22–19361.

[44] See Voyager Digital Holdings, Inc., et al., Case No. 22–10943.

point, the lack of a U.S.-listed Spot Bitcoin ETP is not preventing U.S. funds from gaining exposure to bitcoin—several U.S. ETFs are using Canadian bitcoin ETPs to gain exposure to spot bitcoin. In addition to the benefits to U.S. investors articulated throughout this proposal, approving this proposal (and others like it) would provide U.S. ETFs and mutual funds with a U.S.-listed and regulated product to provide such access rather than relying on either flawed products or products listed and primarily regulated in other countries.

Bitcoin Futures ETFs

The Exchange and Sponsor applaud the Commission for allowing the launch of ETFs registered under the 1940 Act and the Bitcoin Futures Approvals that provide exposure to bitcoin primarily through CME Bitcoin Futures (''Bitcoin Futures ETFs''). Allowing such products to list and trade is a productive first step in providing U.S. investors and traders with transparent, exchange-listed tools for expressing a view on bitcoin. The Bitcoin Futures Approvals, however, have created a logical inconsistency in the application of the standard the Commission applies when considering bitcoin ETP proposals.

As discussed further below, the standard applicable to bitcoin ETPs is whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size in the underlying asset. Previous disapproval orders have made clear that a market that constitutes a regulated market of significant size is generally a futures and/or options market based on the underlying reference asset rather than the spot commodity markets, which are often unregulated.[45] Leaving aside the analysis of that standard until later in this proposal,[46] the Exchange believes that the following rationale the Commission applied to a Bitcoin Futures ETF should result in the Commission approving this and other Spot Bitcoin ETP proposals:

> The CME ''comprehensively surveils futures market conditions and price movements on a real-time and ongoing basis in order to detect and prevent price distortions, including price distortions caused by manipulative efforts.'' Thus, the CME's surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts, whether that attempt is made by directly trading on the CME bitcoin futures market or indirectly by trading outside of the CME bitcoin futures market. As such, when the CME shares its surveillance information with Arca, the information would assist in detecting and deterring fraudulent or manipulative misconduct related to the non-cash assets held by the proposed ETP.[47]

CME Bitcoin Futures pricing is based on pricing from spot bitcoin markets. The statement from the Teucrium Approval that ''CME's surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts . . . indirectly by trading outside of the CME bitcoin futures market,'' makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of Bitcoin Futures. If CME is able to detect such attempts at manipulation in the complex and interconnected spot bitcoin market, how would such an ability to detect attempted manipulation and the utility in sharing that information with the listing exchange apply only to Bitcoin Futures ETFs and not Spot Bitcoin ETPs? Stated a different way, given that there is significant trading volume on numerous bitcoin trading platforms that are not part of the CME CF Bitcoin Reference Rate and that arbitrage opportunities across bitcoin trading platforms means that such trading volume will influence spot bitcoin prices across the market and, despite this, the Commission still believes that CME can detect attempted manipulation of the Bitcoin Futures through ''trading outside of the CME bitcoin futures market,'' it is clear that such ability would apply equally to both Bitcoin Futures ETFs and Spot Bitcoin ETPs. To take it a step further, such an ability would also seem to be a strong indication that the CME Bitcoin Futures market represents a regulated market of significant size. The Exchange agrees with the Commission on this point and notes that the pricing mechanism applicable to the Shares is similar to that of the CME CF Bitcoin Futures.

The structure of Bitcoin Futures ETFs provides negative outcomes for buy and hold investors as compared to a Spot Bitcoin ETP.[48] Specifically, the cost of rolling CME Bitcoin Futures contracts will cause the Bitcoin Futures ETFs to lag the performance of bitcoin itself and, at over a billion dollars in assets under management, would cost U.S. investors significant amounts of money on an annual basis compared to Spot Bitcoin ETPs. Such rolling costs would not be required for Spot Bitcoin ETPs that hold bitcoin. Further, Bitcoin Futures ETFs could potentially hit CME position limits, which would force a Bitcoin Futures ETF to invest in non-futures assets for bitcoin exposure and cause potential investor confusion and lack of certainty about what such Bitcoin Futures ETFs are actually holding to try to get exposure to bitcoin, not to mention completely changing the risk profile associated with such an ETF. While Bitcoin Futures ETFs represent a useful trading tool, they are clearly a sub-optimal structure for U.S. investors that are looking for long-term exposure to bitcoin that will, based on the calculations above, unnecessarily cost U.S. investors significant amounts of money every year compared to Spot Bitcoin ETPs and the Exchange believes that any proposal to list and trade a Spot Bitcoin ETP should be reviewed by the Commission with this important investor protection context in mind.

Based on the foregoing, the Exchange and Sponsor believe that any objective review of the proposals to list Spot Bitcoin ETPs compared to the Bitcoin Futures ETFs and the Bitcoin Futures Approvals would lead to the conclusion that Spot Bitcoin ETPs should be available to U.S. investors and, as such, this proposal and other comparable proposals to list and trade Spot Bitcoin

[45] *See* Winklevoss Order at 37593, specifically footnote 202, which includes the language from numerous approval orders for which the underlying futures markets formed the basis for approving series of ETPs that hold physical metals, including gold, silver, palladium, platinum, and precious metals more broadly; and 37600, specifically where the Commission provides that ''when the spot market is unregulated—the requirement of preventing fraudulent and manipulative acts may possibly be satisfied by showing that the ETP listing market has entered into a surveillance-sharing agreement with a regulated market of significant size in derivatives related to the underlying asset.'' As noted above, the Exchange believes that these citations are particularly helpful in making clear that the spot market for a spot commodity ETP need not be ''regulated'' in order for a spot commodity ETP to be approved by the Commission, and in fact that it's been the common historical practice of the Commission to rely on such derivatives markets as the regulated market of significant size because such spot commodities markets are largely unregulated.

[46] As further outlined below, both the Exchange and the Sponsor believe that the Bitcoin Futures market represents a regulated market of significant size and that this proposal and others like it should be approved on this basis.

[47] *See* Teucrium Approval at 21679.

[48] *See e.g.,* ''Bitcoin ETF's Success Could Come at Fundholders' Expense,'' Wall Street Journal (October 24, 2021), available at: *https://www.wsj.com/articles/bitcoin-etfs-success-could-come-at-fundholders-expense-11635080580;* ''Physical Bitcoin ETF Prospects Accelerate,'' ETF.com (October 25, 2021), available at: *https://www.etf.com/sections/blog/physical-bitcoin-etf-prospects-shine?nopaging=1&__cf_chl_jschl_tk__=pmd_JsK.fjXz9eAQW9zol0qpzhXDrrlpIVdoCloLXbLjl44-1635476946-0-gqNtZGzNApCjcnBszQql.*

ETPs should be approved by the Commission. Stated simply, U.S. investors will continue to lose significant amounts of money from holding Bitcoin Futures ETFs as compared to Spot Bitcoin ETPs, losses which could be prevented by the Commission approving Spot Bitcoin ETPs. Additionally, any concerns related to preventing fraudulent and manipulative acts and practices related to Spot Bitcoin ETPs would apply equally to the spot markets underlying the futures contracts held by a Bitcoin Futures ETF. While the 1940 Act does offer certain investor protections, those protections do not relate to mitigating potential manipulation of the holdings of an ETF in a way that warrants distinction between Bitcoin Futures ETFs and Spot Bitcoin ETPs. To be clear, both the Exchange and Sponsor believe that the Bitcoin Futures market is a regulated market of significant size and that such manipulation concerns are mitigated as described throughout this proposal. After issuing the Bitcoin Futures Approvals which conclude the CME Bitcoin Futures market is a regulated market of significant size as it relates to Bitcoin Futures, the only consistent outcome would be approving Spot Bitcoin ETPs on the basis that the CME Bitcoin Futures market is also a regulated market of significant size as it relates to the bitcoin spot market. Given the current landscape, approving this proposal (and others like it) and allowing Spot Bitcoin ETPs to be listed and traded alongside Bitcoin Futures ETFs would establish a consistent regulatory approach, provide U.S. investors with choice in product structures for bitcoin exposure, and offer flexibility in the means of gaining exposure to bitcoin through transparent, regulated, U.S. exchange-listed vehicles.

Spot and Proxy Exposure to Bitcoin

Exposure to bitcoin through an ETP also presents certain advantages for retail investors compared to buying spot bitcoin directly. The most notable advantage from the Sponsor's perspective is the elimination of the need for an individual retail investor to either manage their own private keys or to hold bitcoin through a cryptocurrency trading platform that lacks sufficient protections. Typically, retail exchanges hold most, if not all, retail investors' bitcoin in ''hot'' (internet-connected) storage and do not make any commitments to indemnify retail investors or to observe any particular cybersecurity standard. Meanwhile, a retail investor holding spot bitcoin directly in a self-hosted wallet may suffer from inexperience in private key management (*e.g.,* insufficient password protection, lost key, etc.), which could cause them to lose some or all of their bitcoin holdings. Thus, with respect to custody of the Trust's bitcoin assets, the Trust presents advantages from an investment protection standpoint for retail investors compared to owning spot bitcoin directly.

Finally, as described in the Background section above, a number of operating companies largely engaged in unrelated businesses—such as Tesla (a car manufacturer) and MicroStrategy (an enterprise software company)—have announced significant investments in bitcoin. Without access to bitcoin ETPs, retail investors seeking investment exposure to bitcoin may end up purchasing shares in these companies in order to gain the exposure to bitcoin that they seek.[49] In fact, mainstream financial news networks have written a number of articles providing investors with guidance for obtaining bitcoin exposure through publicly traded companies (such as MicroStrategy, Tesla, and bitcoin mining companies, among others) instead of dealing with the complications associated with buying spot bitcoin in the absence of a bitcoin ETP.[50] Such operating companies, however, are imperfect bitcoin proxies and provide investors with partial bitcoin exposure paired with a host of additional risks associated with whichever operating company they decide to purchase. Additionally, the disclosures provided by the aforementioned operating companies with respect to risks relating to their bitcoin holdings are generally substantially smaller than the registration statement of a bitcoin ETP, including the Registration Statement, typically amounting to a few sentences of narrative description and a handful of risk factors.[51] In other words, investors seeking bitcoin exposure through publicly traded companies are gaining only partial exposure to bitcoin and are not fully benefitting from the risk disclosures and associated investor protections that come from the securities registration process.

Bitcoin Futures

CME began offering trading in Bitcoin Futures in 2017. Each contract represents five bitcoin and is based on the CME CF Bitcoin Reference Rate.[52] The contracts trade and settle like other cash-settled commodity futures contracts. Nearly every measurable metric related to Bitcoin Futures has generally trended up since launch, although certain notional volume calculations have decreased roughly in line with the decrease in the price of bitcoin. For example, there were 143,215 Bitcoin Futures contracts traded in April 2023 (approximately $20.07 billion) compared to 193,182 ($5 billion), 104,713 ($3.9 billion) 118714 ($42.7b billion), and 111,964 ($23.2b billion) contracts traded in April 2019, April 2020, and April 2021, and April 2022, respectively.[53]

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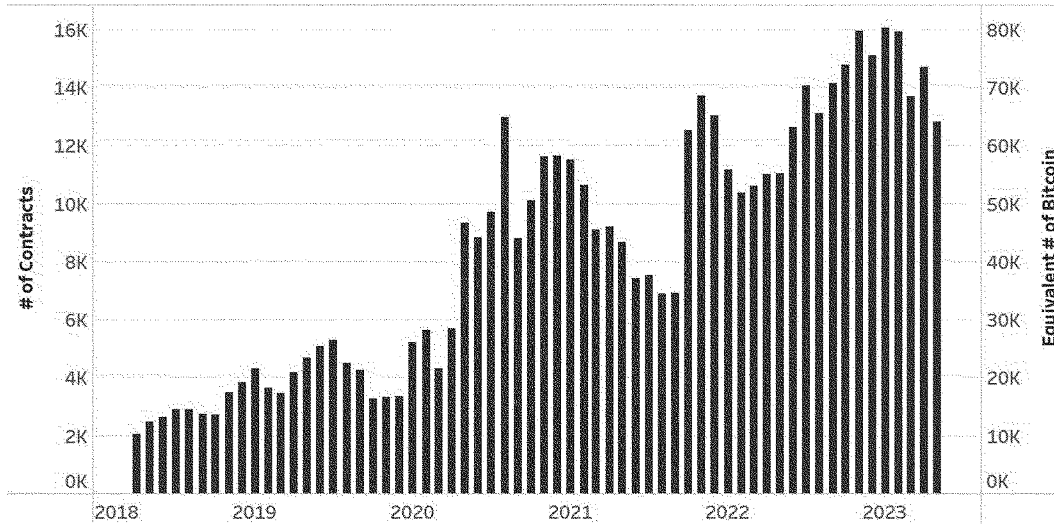
[49] In August 2017, the Commission's Office of Investor Education and Advocacy warned investors about situations where companies were publicly announcing events relating to digital coins or tokens in an effort to affect the price of the company's publicly traded common stock. *See https://www.sec.gov/oiea/investor-alerts-and-bulletins/ia_icorelatedclaims.*

[50] *See e.g.,* ''7 public companies with exposure to bitcoin'' (February 8, 2021) available at: *https://finance.yahoo.com/news/7-public-companies-with-exposure-to-bitcoin-154201525.html;* and ''Want to get in the crypto trade without holding bitcoin yourself? Here are some investing ideas'' (February 19, 2021) available at: *https://www.cnbc.com/2021/02/19/ways-to-invest-in-bitcoin-without-holding-the-cryptocurrency-yourself-.html.*

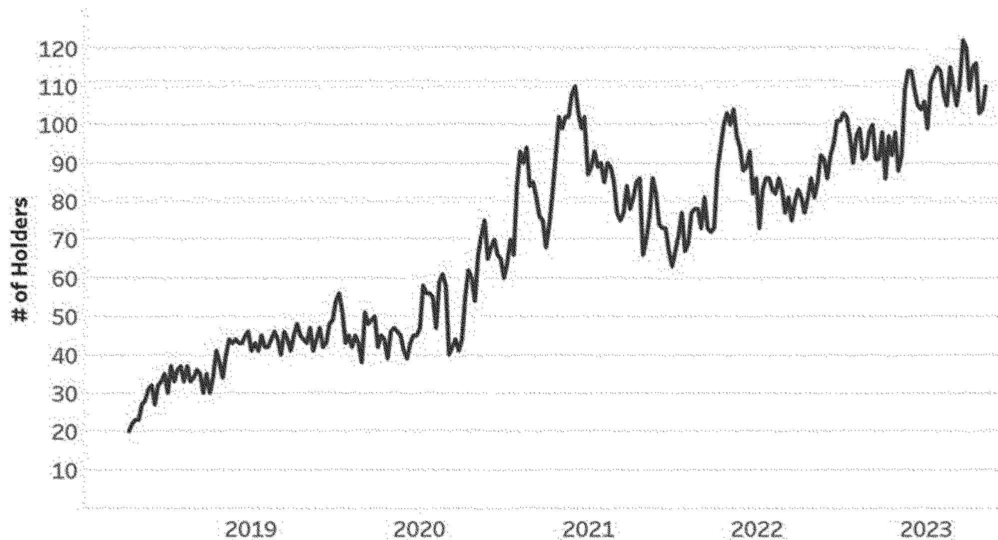
[51] *See, e.g.,* Tesla 10–K for the year ended December 31, 2020, which mentions bitcoin just nine times: *https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/000156459021004599/tsla-10k_20201231.htm.*

[52] The CME CF Bitcoin Reference Rate is based on a publicly available calculation methodology based on pricing sourced from several crypto trading platforms, including Bitstamp, Coinbase, Gemini, itBit, Kraken, and LMAX Digital.

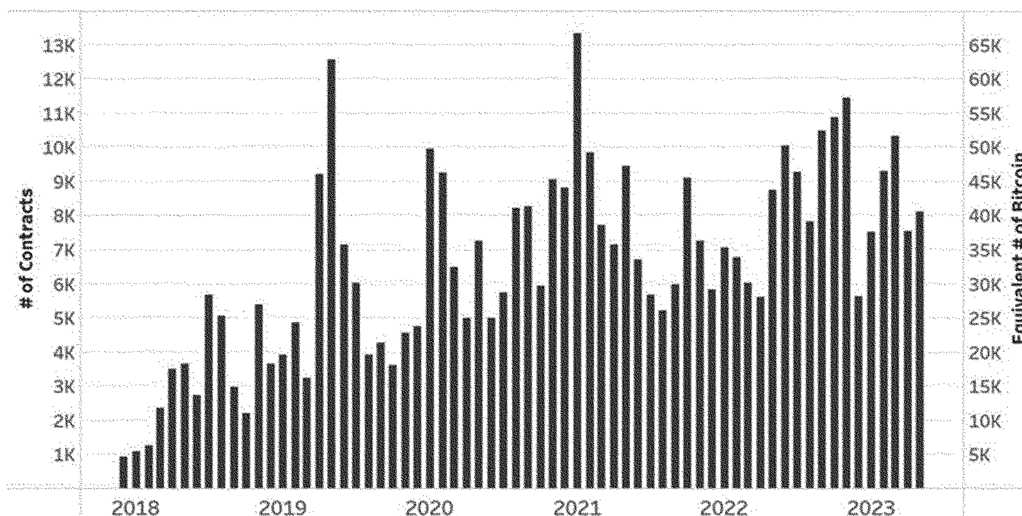
[53] Source: CME, Yahoo Finance 4/30/23.



The number of large open interest holders[54] and unique accounts trading Bitcoin Futures have both increased, even in the face of heightened bitcoin price volatility.



[54] A large open interest holder in Bitcoin Futures is an entity that holds at least 25 contracts, which is the equivalent of 125 bitcoin. At a price of approximately $29,268.81 per bitcoin on 4/30/2023, more than 100 firms had outstanding positions of greater than $3.65 million in Bitcoin Futures.



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The Sponsor further believes that publicly available research, including research done as part of rule filings proposing to list and trade shares of Spot Bitcoin ETPs, corroborates the overall trend outlined above and supports the thesis that the Bitcoin Futures pricing leads the spot market and, thus, a person attempting to manipulate the Shares would also have to trade on that market to manipulate the ETP. Specifically, the Sponsor believes that such research indicates that Bitcoin Futures lead the bitcoin spot market in price formation.[55]

Section 6(b)(5) and the Applicable Standards

The Commission has approved numerous series of Trust Issued Receipts,[56] including Commodity-Based Trust Shares,[57] to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; [58] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act and that this filing sufficiently demonstrates that the CME Bitcoin Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place [59] with a regulated

[55] *See* Exchange Act Releases No. 94080 (January 27, 2022), 87 FR 5527 (April 12, 2022) (specifically ''Amendment No. 1 to the Proposed Rule Change To List and Trade Shares of the Wise Origin Bitcoin Trust Under BZX Rule 14.11(3)(4), Commodity-Based Trust Shares''); 94982 (May 25, 2022), 87 FR 33250 (June 1, 2022); 94844 (May 4, 2022), 87 FR 28043 (May 10, 2022); and 93445 (October 28, 2021), 86 FR 60695 (November 3, 2021). See also Hu, Y., Hou, Y. and Oxley, L. (2019). ''What role do futures markets play in Bitcoin pricing? Causality, cointegration and price discovery from a time-varying perspective'' (available at: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7481826/*). This academic research paper concludes that ''There exist no episodes where the Bitcoin spot markets dominates the price discovery processes with regard to Bitcoin futures. This points to a conclusion that the price formation originates solely in the Bitcoin futures market. We can, therefore, conclude that the Bitcoin futures markets dominate the dynamic price discovery process based upon time-varying information share measures. Overall, price discovery seems to occur in the Bitcoin futures markets rather than the underlying spot market based upon a time-varying perspective.''

[56] *See* Exchange Rule 14.11(f).

[57] Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

[58] As the Exchange has stated in a number of other public documents, it continues to believe that bitcoin is resistant to price manipulation and that ''other means to prevent fraudulent and manipulative acts and practices'' exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin. The fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging. To the extent that there are bitcoin trading platforms engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, such pricing does not normally impact prices on other trading platforms because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin trading platform or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

[59] As previously articulated by the Commission, ''The standard requires such surveillance-sharing agreements since ''they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement

market of significant size. Specifically, the Commission has previously stated that:

. . . when the spot market is unregulated—the requirement of preventing fraudulent and manipulative acts may possibly be satisfied by showing that the ETP listing market has entered into a surveillance-sharing agreement with a regulated market of significant size in derivatives related to the underlying asset. That is because, where a market of significant size exists with respect to derivatives on the asset underlying the commodity-trust ETP, the Commission believes that there is a reasonable likelihood that a person attempting to manipulate the ETP by manipulating the underlying spot market would also have to trade in the derivatives market in order to succeed, since arbitrage between the derivative and spot markets would tend to counter an attempt to manipulate the spot market alone.[60]

The Commission has provided illustrative guidance in interpreting the terms ''significant market'' and ''market of significant size'' to include ''a market (or group of markets) as to which (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, so a surveillance-sharing agreement would assist the ETP listing market in detecting and deterring misconduct, and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.''[61]

The Commission has stated in a prior disapproval order that ''the lead-lag relationship between the Bitcoin Futures market and the spot market . . . is central to understanding whether it is reasonably likely that a would-be manipulator of the ETP would need to trade on the Bitcoin Futures market to successfully manipulate prices on those spot platforms that feed into the proposed ETP's pricing mechanism.''[62] The Commission further noted that ''in particular, if the spot market leads the futures market, this would indicate that it would not be necessary to trade on the futures market to manipulate the proposed ETP, even if arbitrage worked efficiently, because the futures price would move to meet the spot price.''[63]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying section 6(b)(5) of the act, specifically providing 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.[64]

The Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act and that the Sponsor's analysis demonstrates that the Exchange can meet such requirements in that the CME Bitcoin Futures Market (i) is a regulated market; (ii) has a comprehensive surveillance-sharing agreement with the Exchange; and (iii) satisfies the Commission's ''significant market'' definition.

1. The CME Bitcoin Futures Market Is a Regulated Market and ISG Member

The CME is regulated by the CFTC and is a member of the Intermarket Surveillance Group (''ISG''), which was established to provide a framework for sharing information and coordinating regulatory efforts among exchanges trading securities and related products and to address potential intermarket manipulations and trading abuses. The Commission has previously stated that membership by a regulated futures exchange in ISG is sufficient to meet the surveillance-sharing requirement.[65] Both the Exchange and CME are members of the Intermarket Surveillance Group (the ''ISG'').[66]

2. The CME Bitcoin Futures Market Is a Market of Significant Size

Based on the Commission's prior guidance, Sponsor conducted a detailed price discovery study through its lead-lag analysis of bitcoin spot and futures trading across markets located globally. As discussed below, Sponsor's analysis concludes that the CME Bitcoin Futures market is consistently the leading market for price discovery across USD bitcoin markets located globally, including bitcoin spot markets and offshore, unregulated Bitcoin Futures markets. Thus, Sponsor's analysis supports the conclusion that there is a reasonable likelihood that a person attempting to manipulate the Shares would also have to trade on the CME Bitcoin Futures market to manipulate the Trust. Sponsor also conducted an additional lead-lag analysis including data from a recently launched Bitcoin Futures-based ETF to evaluate the likelihood of whether trading in the Trust could become the predominant influence on prices in the CME Bitcoin Futures market and concluded that it is unlikely that trading in the Trust would be the predominant influence on prices in the CME Bitcoin Futures market.

Sponsor's analysis on price discovery in the bitcoin spot and futures markets is described below.

Data Description and Sources

Sponsor obtained tick level trade data for bitcoin spot prices and futures prices used in its analysis from Coin Metrics for the period spanning from January 1, 2019, to March 31, 2021. Table 1 summarizes the dataset by trading platform, market type, and quote currency.

Sponsor aggregated the tick level trades to the one second floor level using a volume weighted average price (VWAP) approach. Compared to the daily/minute level granularity of timestamps, Sponsor believes the second level can capture more intra-day price dynamics and is more useful here to investigate price discovery, as both arbitrage and manipulative activities can occur within a matter of seconds. To preprocess the tick level trade data to second level granularity, two typical methods are often used. One is to use the last observed trade price within a second, and the other is to use VWAP within a second. Since multiple trades can occur with simultaneous timestamps but with different transaction prices, a VWAP can represent the price information from each trade instead of randomly selecting the last price. It is worth mentioning that although the price time series' have second level resolution (timestamped to seconds), this does not mean that the price time series' values are evenly spaced at each second since a market may not have trades within every second. Given this non-synchronous nature of trading and the potential model issues arising from utilizing data

from obtaining this information from, or producing it to, the other party.'' The Commission has historically held that joint membership in the Intermarket Surveillance Group (''ISG'') constitutes such a surveillance sharing agreement. *See* Securities Exchange Act Release No. 88284 (February 26, 2020), 85 FR 12595 (March 3, 2020) (SR–NYSEArca–2019–39) (the ''Wilshire Phoenix Disapproval'').

[60] Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To List and Trade Shares of the Winklevoss Bitcoin trust, 83 FR 37579, 37600 (Aug 1, 2018).

[61] *Id.*

[62] Self-Regulatory Organizations; NYSE Arca, Inc.; Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the Bitwise Bitcoin ETF Trust Under NYSE Arca Rule 8.201–E, 84 FR 55382, 55411 (Oct 16, 2019).

[63] *Id.*

[64] See Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a 'cannot be manipulated' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.'' *Id.* at 37582.

[65] *See* Winklevoss Order at 37594.

[66] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.*

with numerous imputed values, Sponsor's analysis leverages a method that eliminates the need for imputation for the timestamps without trades. This approach allows the model inputs of price time series from different markets to stay non-synchronous without further data processing.

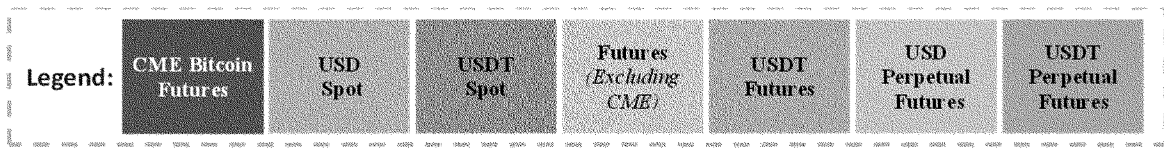
In order to exclude any impacts caused by exchange rate movements, Sponsor limited the dataset to BTC–USD and BTC–USDT trades. Markets with an average correlation lower than 0.1 to other bitcoin markets, in any given quarter, were removed from the analysis. For futures markets, Sponsor included both ordinary futures and perpetuals. Contract frequencies were validated and recorded via respective trading platform websites, and, for CME data, the sponsor compared data from the trading platform directly with data provided by Coin Metrics to verify accuracy.

Within the ordinary futures market, one exchange, quote and contract lifespan combination can often have same-day trading on contracts with different expiration dates. To remove price gaps in this market, Sponsor constructed a continuous time-series of prices by choosing the contract with the highest volume per day within an exchange, quote, and contract lifespan combination. For each combination, successive contracts are backwards adjusted using the price difference between the two contracts at the time of rollover.

TABLE 1—SUMMARY OF INSTRUMENTS

Exchange	Spot		Ordinary Futures*		Perpetual Futures	
	USD	USDT	USD	USDT	USD	USDT
Binance		✓	✓	✓	✓	✓
Binance.US	✓					
Bitfinex	✓	✓				✓
bitFlyer	✓					
BitMEX			✓		✓	
Bitstamp	✓					
Bittrex	✓					
Bybit					✓	✓
CEX.IO	✓					
CME			✓			
Coinbase	✓					
Deribit			✓		✓	
FTX	✓		✓		✓	
Gemini	✓					
HitBTC		✓				
Huobi		✓	✓		✓	✓
itBit	✓					
Kraken	✓	✓	✓		✓	
LBank		✓				
Liquid	✓					
OKEx		✓	✓	✓	✓	✓
ZB.COM		✓				

* One trading platform with the same market type and quote currency can have multiple ordinary futures contracts with different expiration cycles/lifespans.



Research Design

Price discovery between spot and futures markets plays an important role in financial research due to its association with market maturity. In theory, the futures market is expected to lead price discovery in established asset classes due to its inherent features, such as lower transaction fees, built-in leverage, unconstrained short-selling, and greater transparency. Since Bitcoin Futures contracts began trading on regulated exchanges in December 2017, several academic and market research papers have studied spot-futures price discovery in bitcoin markets. Sponsor started its research by reviewing the existing literature. Table 2 summarizes the metrics, data ranges, frequency levels, and conclusions for thirteen papers.

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Table 2: Previous bitcoin spot/futures price discovery research

Author	Article Name (Year)	Journal	Metrics	Data Range	Frequency Level	Conclusion
Corbet, et al.	Bitcoin Futures - What use are they? (2018)	Economics Letters	Information Share, Component Share, Information Leadership Share (Yan) Information Leadership Share (Putnins)	09/26/2017 - 02/22/2018	Minute	finding that the bitcoin spot market leads price discovery
Kapar and Olmo	An analysis of price discovery between Bitcoin futures and spot markets (2018)	Economics Letters	Information Share, Component Share	12/12/2017 - 05/16/2018	Daily	finding that the bitcoin futures market leads price discovery
Baur and Dimpfl	Price Discovery in Bitcoin Spot or Futures? (2019)	Journal of Futures Markets	Information Share, Component Share	12/10/2017 - 10/18/2018	15-Minute	finding that the bitcoin spot market leads price discovery
Hu, et al.	What role do futures markets play in Bitcoin pricing? Causality, cointegration and price discovery from a time-varying perspective (2019)	International Review of Financial Analysis	Time-varying version of Information Share and Generalized information Share	12/18/2017 - 06/16/2019	Daily	finding that the bitcoin futures market leads price discovery
Alexander and Heck	Price discovery, high-frequency trading and jumps in bitcoin markets (2019)	Available at SSRN: https://ssrn.com/abstract=3383147	Generalized Information Share, Component Share	12/18/2017 - 06/30/2019	30-Minute	finding that the bitcoin futures market leads price discovery
Fassas, et al.	Price Discovery in Bitcoin Futures (2020)	Research in International Business and Finance	Common Factor Weight, Information Share, Component Share, Information Leadership Share (Putnins)	01/01/2018 - 12/31/2018	Hourly	finding that bitcoin futures play a more important role in price discovery
Entrop, et al.	The determinants of price discovery on bitcoin markets (2020)	Journal of Futures Markets	Information Share, Component Share	12/17/2017 - 03/31/2019	Minute	finding that price discovery measures vary significantly over time without one market being clearly dominant over the other
Akyildirim, et al.	The development of Bitcoin futures: Exploring the interactions between	Finance Research Letters	Information Share, Component Share, Information Leadership Share (Yan)	12/18/2017 - 02/26/2018	Minute	finding that futures dominate price discovery relative to spot market, and CBOE futures are found to be the

	cryptocurrency derivatives (2020)		Information Leadership Share (Putnins)			lead source compared to CME
Alexander, et al.	Price Discovery in Bitcoin: The Impact of Unregulated Markets (2020)	Journal of Financial Stability	Generalized Information Share	04/01/2019 - 01/30/2020	Minute	finding that, in a multi-dimensional setting, including the main price leaders within futures, perpetuals, and spot markets, CME bitcoin futures have a very minor effect on price discovery and that faster speed of adjustment and information absorption occurs on the unregulated spot and derivatives platforms than on CME bitcoin futures
Aleti and Mizrach	Bitcoin spot and futures market microstructure (2020)	Journal of Futures Markets	Information Share, Component Share	01/02/2019 - 02/28/2019	5-Minute	finding that relatively more price discovery occurs on CME as compared to four spot exchanges
Chang, et al.	Efficient price discovery in the bitcoin markets (2020)	Available at SSRN: https://ssrn.com/abstract=3733924	Component Share	07/01/2019 - 12/31/2019	Minute	finding that CME bitcoin futures dominate price discovery
Hung, et al.	Trading activity and price discovery in Bitcoin futures markets (2021)	Journal of Empirical Finance	Modified Information Share	12/26/2017 - 04/30/2019	15-Minute	finding that the bitcoin spot market dominates price discovery
Wu, et al.	Fractional cointegration in bitcoin spot and futures markets (2021)	Journal of Futures Markets	Fractional Version of Component Share	12/18/2017 - 7/31/2020	Minute	finding that CME bitcoin futures dominate price discovery

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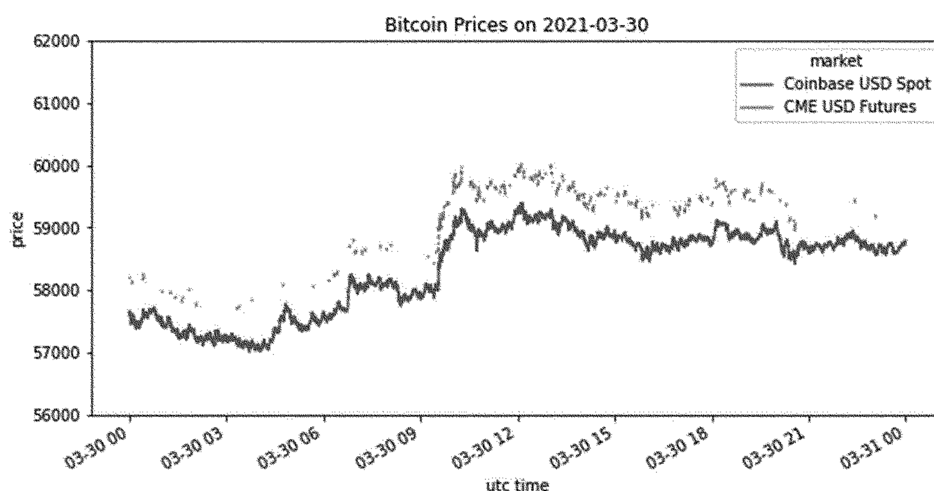
Sponsor noted that each of the studies reviewed used metrics derived from the Vector Error Correction Model (VECM) or an extension of VECM to examine price discovery. Within the column of metrics, Information Share (IS) proposed by Hasbrouk (1995) and Component Share (CS) pioneered by Gonzalo and Granger (1995) are mostly used. Hasbrouk transforms the VECM into a vector moving average with a common factor component and transitory component and defines the metric IS to measure the proportion of the variance of the permanent component of prices coming from each market with Cholesky factorization. The IS is not unique if switching the order of input price data of the underlying two markets. To overcome it, Lien and Shrestha (2009) use eigenvalue decomposition instead of Cholesky factorization—this metric is called Modified Information Share. Both Information Share and Modified Information Share are used for pair-wise analysis. The extension of Modified Information Share to more than two markets is called Generalized Information Share (Lien and Shrestha, 2014). Component Share is calculated from the normalized orthogonal coefficients to the vector of the lagged error correlation term in the VECM. Fractional Component Share is derived similarly to CS but from a version of VECM that uses a fractional difference operator instead of the first order difference operator. Information Leadership Share (Yan and Zivot, 2010) and Information Leadership Share (Putniņš, 2013) combine Information Share and Component Share non-linearly.

Although the metrics used in reviewed studies are similar, the conclusions from these papers are mixed as to which markets lead or lag in price discovery. Buccheri (2021)[67] discussed the limitations for VECM derived metrics and noted that when price observations are sparse (See CME price observations in Figure 1 as an example), a lot of zero returns are produced through imputation; therefore, the time series of prices strongly deviate from the standard semi-martingale assumption and sample covariances can be downward biased. The authors in Buccheri (2021) conclude that when the prices have a high level of sparsity, the VECM is clearly mis-specified and the estimates are potentially biased.

[67] Buccheri, Giuseppe, Giacomo Bormetti, Fulvio Corsi, and Fabrizio Lillo. ''Comment on: Price discovery in high resolution.'' *Journal of Financial Econometrics* 19, no. 3 (2021): 439–451. *https://doi.org/10.1093/jjfinec/nbz008.* The authors comment on the limitations of using information share within markets with trades on high resolution frequencies. The paper illustrates why the application of a VECM methodology like information share would be mis-specified and the OLS estimates could be biased because of high sparsity in the data.

Figure 1: Bitcoin Price Observations



This conclusion in Buccheri (2021) provides theorical support on why VECM derived metrics are not suitable to use when the underlying data has high level of sparsity but does not quantify the actual impact in practice. In ''Suitable Price Discovery Measurement of Bitcoin Spot and Futures Markets'' [68] (Robertson and Zhang, 2022), the authors demonstrate that the conclusions of Buccheri (2019) are of high importance by quantifying the impact of sparsity within bitcoin markets.

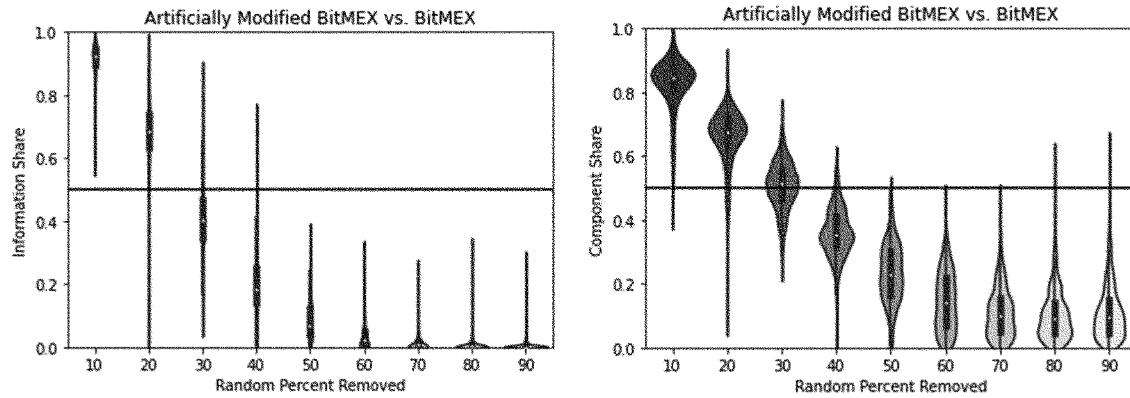
The authors show IS and CS are sensitive to input data's level of sparsity with numerical experiments. When the sparsity level is about 10% for a designed-to-lead market, IS and CS show the known-leading market clearly contributes a majority to price discovery. However, as the sparsity is increased, the known-leading market begins to contribute less to price discovery and, when the level of sparsity is higher than 30%, using IS and CS produces mixed results or the opposite conclusion of what is true.

Buccheri explains the effect of using VECM based metrics with violation of model assumptions from theorical perspective, and Robertson and Zhang show the effect with numerical experiments and provide empirical evidence about to what extent using VECM can give unreliable results. Both emphasize that sparsity level is important regarding price discovery measurement using VECM based metrics.

Although Robertson and Zhang state that the choice of market to create the experiment data does not change the conclusion, Sponsor replicated their experiment using a different market to provide additional evidence on the impact of sparsity on VECM based metrics. Sponsor calculates the IS and CS every day from Q1 2019 through Q1 2021 (821 days) between the artificially leading (by 3 seconds) version of the BitMEX USD perpetual futures market at 9 different levels of sparsity (measured by the percent of random data removed, 10% increments starting at 10% and ending at 90%) and the original BitMEX USD perpetual futures market. To satisfy the VECM assumption that prices/returns are synchronous, Sponsor used the typical and commonly used form of forward filling using previous second values. Figure 2 shows the distributions of daily IS and CS values for the designed-to-lead market. The x axis is the sparsity level, and the y axis is IS/CS. The plotted results show that, as the level of sparsity is increased, the known leading market begins to contribute less to price discovery causing mixed results (both IS and CS dropped from above 0.8 to less than 0.2) and the opposite conclusion of what is true. The market is considered leading when IS/CS is above 0.5.

[68] Robertson, Kevin, and Jiani Zhang. (2022) ''Suitable Price Discovery Measurement of Bitcoin Spot and Futures Markets.'' Available at SSRN: *https://ssrn.com/abstract=4012165* or *http://dx.doi.org/10.2139/ssrn.4012165.*

Figure 2: Effect of Sparsity on Information Share and Component Share



The observations from Sponsor's experiment confirm the conclusions of Buccheri (2019) and Robertson and Zhang (2022) that VECM derived metrics are sensitive to the level of sparsity within market data.

Robertson and Zhang (2022) show that only about half of the markets included in the quarter of 2021 have trades for every second increment. Taking the CME USD futures market, Coinbase USD spot market, and BitMEX USD perpetual futures markets as representatives of Bitcoin Futures market, spot market, and perpetual market, Table 3 shows their comparison in average time in seconds between trades in each quarter. In the first quarter of 2019, on average, CME records a trade every 111 seconds (~2 minutes) while Coinbase records a trade every 3 seconds. In more recent time periods, the sparsity level decreases for CME, but is still 25 times higher than the Coinbase USD spot market and BitMEX USD perpetual futures market in the first quarter of 2021.

TABLE 3—AVERAGE TIME BETWEEN TRADES

Exchange	2019 Q1	2019 Q2	2019 Q3	2019 Q4	2020 Q1	2020 Q2	2020 Q3	2020 Q4	2021 Q1
CME	111	36	57	68	34	53	43	37	25
Coinbase	3	2	2	2	2	2	2	1	1
BitMEX	2	1	1	1	1	1	2	2	1

Due to the high sparsity of CME Bitcoin Futures data, the Sponsor attributes the ''mixed results'' in previous academic studies that have failed to demonstrate that the CME Bitcoin Futures market constitutes a market of significant size to the problems associated with using econometric models without considering the suitability. When analyzing information flow with daily data that has low sparsity level, the analysis using metrics derived from VECM (*e.g.,* Hu, et al., 2019) is convincing. However, for analyzing intraday information flow and accounting for the varying levels of sparsity among the bitcoin market, the sponsor believes the framework of correlation-based lead-lag analysis using the Hayashi-Yoshida (HY) estimator [69] to compute correlation and its extension by other academic researchers, including Hoffman (2013) [70] and Huth (2011),[71] to obtain the lead-lag seconds and lead-lag ratio is more suitable.

Lead-lag seconds and lead-lag ratio are the typical output metrics in correlation-based lead-lag analysis. The former measures the relative time in lead or lag between two markets and the latter measures the relative strength of the lead-lag relationship between two markets. They are both free from any imputation or sampling within non-synchronous and/or infrequent data and have proven to be useful in price discovery research in other markets. Dao (2018) [72] applied the Hayashi-Yoshida estimator in a lead-lag framework with these two metrics on price discovery research of the S&P 500 index and the two most liquid ETFs that track it. This academic study is the first to analyze the effect of information arrival on the lead-lag relationship among related spot instruments and concludes that sophisticated investors have a more significant effect on the lead-lag relationship. The analysis from this study confirms that using the Hayashi-Yoshida estimator in a lead-lag framework is suitable for analyzing high frequency, tick level, non-synchronous data even timestamped to milliseconds.

[69] Hayashi, Takaki, and Nakahiro Yoshida. ''On covariance estimation of non-synchronously observed diffusion processes.'' *Bernoulli* 11, no. 2 (2005): 359–379. *http://www.jstor.org/stable/3318933.* The authors proposed a novel method (HY estimator) of estimating the covariance of two diffusion processes when they are observed only at discrete times in a non-synchronous manner. This methodology addresses the issue that the traditional realized covariance estimator encounters, which is that the choice of regular interval size and data interpolation scheme can lead to unreliable estimation. The new method Hayashi and Yoshida introduced in this paper is free from any interpolation and therefore avoids the bias and other problems caused by it.

[70] Hoffmann, Marc, Mathieu Rosenbaum, and Nakahiro Yoshida. ''Estimation of the lead-lag parameter from non-synchronous data.'' *Bernoulli* 19, no. 2 (2013): 426–461. *http://www.jstor.org/stable/23525731.* The authors propose a methodology for modeling the lead-lag effect between two financial assets with non-synchronous data based on Hayashi and Yoshida's work (2015). It has been applied in various price discovery research publications. The Sponsor's analysis utilized this methodology to obtain pairwise lead-lag seconds between two markets.

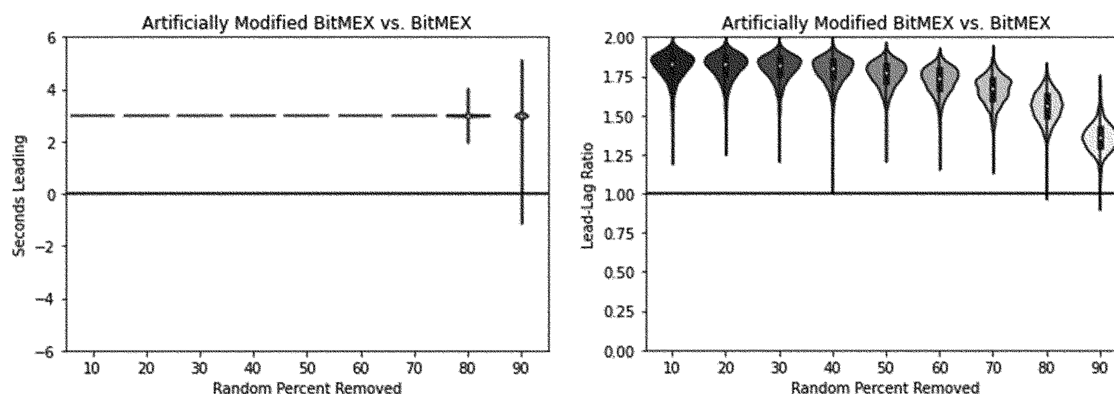
[71] Huth, Nicolas, and Frédéric Abergel. ''High frequency lead/lag relationships—empirical facts.'' *Journal of Empirical Finance* 26 (2014): 41–58. *https://doi.org/10.1016/j.jempfin.2014.01.003.*

[72] Dao, Thong Minh, Frank McGroarty, and Andrew Urquhart. ''Ultra-high-frequency lead-lag relationship and information arrival.'' *Quantitative Finance* 18, no. 5 (2018): 725–735. *https://doi.org/10.1080/14697688.2017.1414484.*

Sponsor notes that there is academic research studying high-frequency lead-lag relationships between multiple bitcoin spot markets using the Hayashi-Yoshida estimator with lead-lag seconds and lead-lag ratio from *Schei (2019).*[73] The suitability test performed by Robertson and Zhang (2022) shows that these two metrics are not sensitive to the level of sparsity within markets. Their experiment shows that the accuracy of lead-lag seconds is consistent across the varying levels of sparsity and the lead-lag ratio moves closer to 1 (*i.e.,* provides less certainty about the result) when the level of sparsity increases. Lead-lag ratio quantifies how strong the relationship is, and the strength can be considered as the confidence level associated with the conclusion that one market leads or lags another. The closer the lead-lag ratio is to 1, the less certain one can conclude the relationship is of one market's lead/lag over the other market.

Again, Sponsor replicated the suitability test using the HY estimator in a lead-lag framework performed by Robertson and Zhang (2022) but on the BitMEX USD perpetual futures market. As mentioned by the authors, no interpolation is needed in this version of the experiment because the HY estimator computes directly from non-synchronous data. Figure 3 shows the distribution of daily lead-lag seconds and daily lead-lag ratios between the artificially leading and sparse versions of the BitMEX USD perpetual futures market and the original BitMEX USD perpetual futures market.

Figure 3: Effect of Sparsity on Lead-Lag Seconds and Lead-Lag Ratio



The observations from Sponsor's experiment match those of Robertson and Zhang (2022) that the HY estimator used in a lead-lag framework is not sensitive to the level of sparsity within market data. The distribution of lead-lag seconds shows that the time shift parameter that maximizes the HY estimator is consistently +3 seconds—which is the amount of time the artificial market was advanced by. The distribution of the lead-lag ratios are consistently above 1, showing that the leading relationship of the artificial market over the original is strong. As Robertson and Zhang also noted, the lead-lag ratios decay towards the level of 1 with increasing levels of sparsity, which matches the expectation that the lead-lag relationship becomes weak when one of the markets rarely has data.

Sponsor's analysis expands the research of *Schei* by using the Hayashi-Yoshida estimator with a lead-lag framework and the same metrics but on both bitcoin spot and futures markets. It is worth mentioning, the lead-lag framework is different than a VECM based approach. A VECM based approach, for example IS, measures the proportion of the variance of the permanent component of prices coming from each market and the total variance and the variance proportion change when the number of markets included changes. Therefore, ''omitting substantial information flows from other markets [by using a two-dimensional methodology] can produce misleading results'', which Alexander and Heck (2020)[74] state in their study as the motivation to use Generalized Information Share instead of the original Information Share metric. This is a limitation for two-dimensional VECM based metrics and does not apply to Sponsor's correlation-based lead-lag analysis. This is because VECM based metrics measure the proportion of price discovery among markets while a lead-lag framework measures how much time one market leads/lags another without the need to compute the total variance of the permanent component of prices.

Lead-Lag Analysis

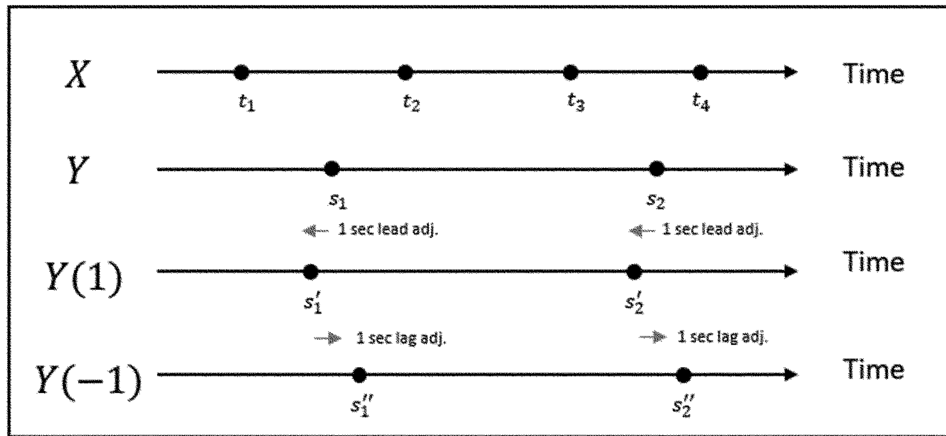
In the lead-lag analysis, Sponsor examined the pairwise lead-lag relationship within the spot market and futures market, as well as across them. For each pair, Sponsor computed the correlation coefficients using the HY estimator between one market price time series and a second market price time series as well as timestamp-adjusted (leading/lagging) versions of the second market to find the time delta that maximizes their correlation. The range of time deltas is from -*N* seconds to *N* seconds in one second increments. In the Sponsor's analysis, the parameter *N* is set as 15. In the Sponsor's analysis, the parameter *N* is set as 15. For illustration below, Sponsor uses the pair of CME USD Futures (denoted as price time series X) and Coinbase USD Spot (denoted as price time series Y) as an example to describe the process.

Step 1: Fix the timestamp of CME and adjust the timestamps of Coinbase from *N* seconds lagging to *N* seconds leading. Figure 4 shows this process with time deltas equal to 1 and −1 for illustration purpose.

[73] Schei, Norheim Schei. ''High Frequency Lead-Lag Relationships in the Bitcoin Market.'' (unpublished master's thesis, 2019). Copenhagen Business School, Copenhagen, Denmark.

[74] C. Alexander & D. Heck ''Price discovery in Bitcoin: The impact of unregulated markets'', 50 J. Financial Stability 100776 (2020).

Figure 4: Adjustment of Timestamps



Notes: Each dot is a price observation; t_i and s_j are the observation timestamps of X and Y; $Y(1)$ and $Y(-1)$ are timestamp adjusted price time series with 1 second backward shift and 1 second forward shift respectively.

Step 2: Compute the correlation coefficients between CME price time series and each of timestamp-adjusted time series of Coinbase with l seconds ($l \in [-N, N]$) lead/lag using HY estimator. The correlation coefficient is defined as (Hayashi & Yoshida 2005):

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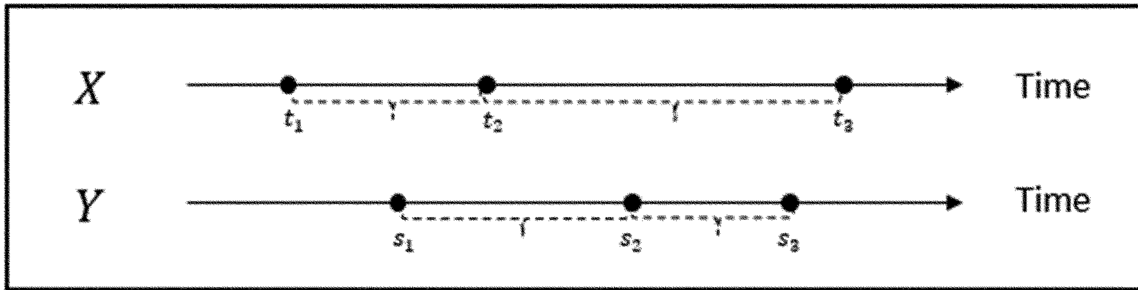
$$\hat{\rho} = \frac{\sum_{i,j} r_X^i r_Y^j \mathbb{I}_{\{O_{ij} \neq \emptyset\}}}{\sqrt{\sum_i (r_X^i)^2 \sum_j (r_Y^j)^2}},$$

where

- X and Y are trade prices on two different markets
- $r_X^i = X_{t_i} - X_{t_{i-1}}$ and t_i is the i_{th} observed time of X
- $r_Y^j = Y_{s_j} - Y_{s_{j-1}}$ and s_j is the j_{th} observed time of Y
- The observed times, t_i and s_j for X and Y are independent
- O_{ij} is the overlapping time between interval (t_{i-1}, t_i) and interval (s_{i-1}, s_i)
- $\mathbb{I}$ is defined as an indicator function, $\mathbb{I} = \begin{cases} 1, & O_{ij} \neq \emptyset \\ 0, & O_{ij} = \emptyset \end{cases}$.

The numerator of $\hat{\rho}$ is the covariance between CME and Coinbase, which equates to the sum of pf every product of price changes that share a time overlap. Figure 5 shows this process with a simple example.

Figure 5: Data Points Used in HY Estimator



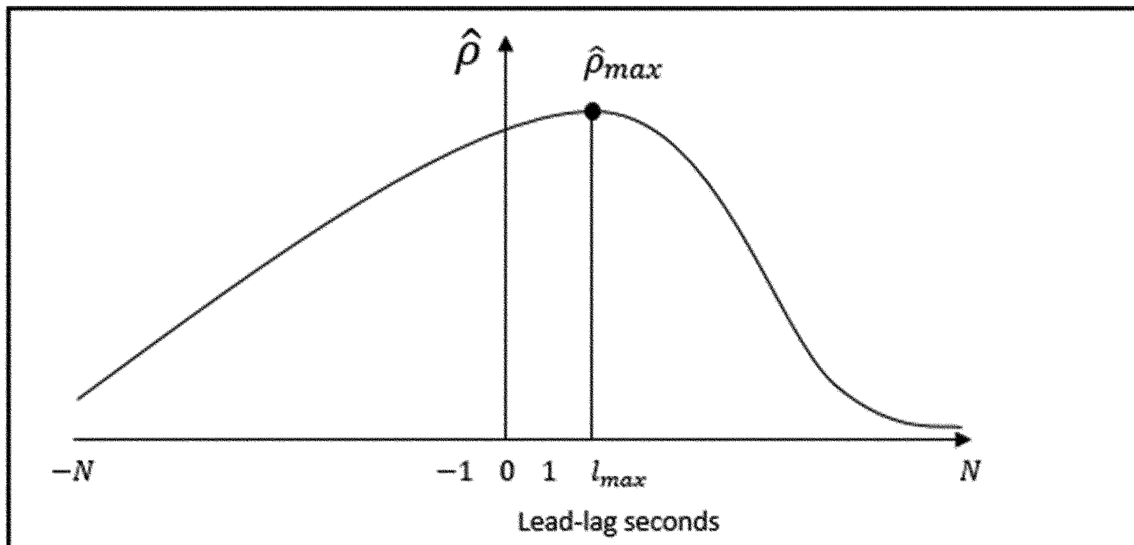
Notes: The interval (t_1, t_2) is overlapped with the interval (s_1, s_2), and the interval (t_2, t_3) is overlapped with both the interval (s_1, s_2) and the interval (s_2, s_3). Therefore, the covariance is calculated by summing the products of the following pairs of price changes: $(X_{t_2} - X_{t_1}, Y_{s_2} - Y_{s_1})$, $(X_{t_3} - X_{t_2}, Y_{s_2} - Y_{s_1})$, and $(X_{t_3} - X_{t_2}, Y_{s_3} - Y_{s_2})$.

Step 3: Collect the correlation coefficients with different lead-lag seconds as a correlation curve and search for the value l_{max} from $-N$ *to* N that maximizes their correlation. Meanwhile,compute the lead-lag ratio between CME and Coinbase, *llr*, to measure the strength of the lead-lag relationship (Huth & Abergel 2012. It is defined as

$$llr = \frac{\sum_{i=1}^{N} \hat{\rho}^2(l_i)}{\sum_{i=1}^{N} \hat{\rho}^2(-l_i)}.$$

The further the *llr* is from 1, the stronger the relationship is of one market's lead/lag over the other market. The *llr*is used in conjunction with the HY correlation coefficient and the lead-lag seconds to provide a more comprehensive analysis. If $llr \in [0.95, 1.05]$ and l_{max} is zero, we conclude neither market leads. If *llr* is not in range [0.95, 1.05] and l_{max} is positive, CME leads Coinbase by l_{max} seconds and vice versa. Figure 6 shows an example of the correlation curve.

Figure 6: Example of the Correlation Curve



Notes: l_{max} is the lead-lag seconds and $\hat{\rho}_{max}$ is the corresponding maximum HY correlation.

These three steps provide the pairwise lead-lag seconds between two markets. To measure a market's overall price discovery leadership, the results are aggregated by taking the average lead-lag seconds it has with all other markets included in a quarter.

Conclusion of Reasonable Likelihood—Lead Lag Analysis

Sponsor's results suggest that, out of the 20 spot markets and 26 futures markets analyzed, the CME Bitcoin Futures market plays the most important role in price discovery during each quarter spanning from the first quarter of 2019 to the first quarter of 2021. Figure 7 shows the average pairwise lead-lag seconds between CME Bitcoin Futures and other bitcoin markets with 95% confidence intervals using the calculations introduced in previous session. The blue dots

represent the CME's average leading time in seconds and the black line represents the confidence interval. All the blue dots are above 0 and only 6 markets have lower confidence bounds slightly below 0; therefore, Sponsor concludes the CME Bitcoin Futures market leads all other markets included in the analysis.

Figure 7: Pairwise Lead-Lag Seconds of CME Bitcoin Futures Market

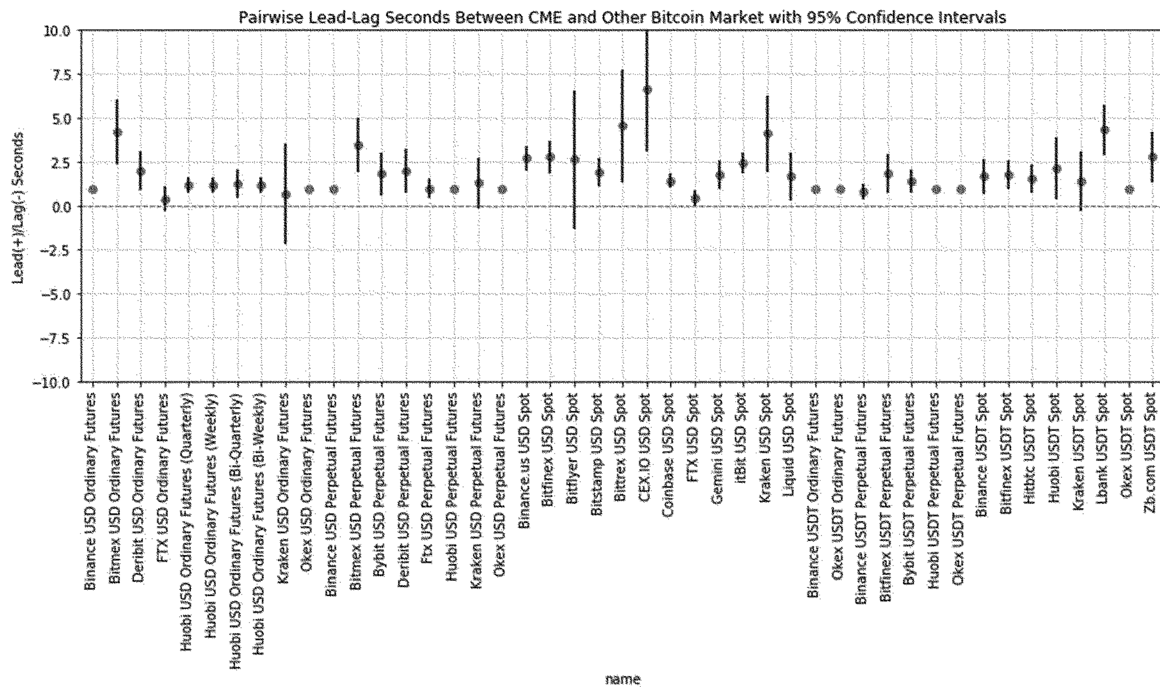


Table 4 lists the detailed results for every pair of CME against other markets with lead-lag seconds used to create Figure 7 along with lead-lag ratios.

Table 4: Pairwise Lead-Lag Leadership (Lead-Lag Seconds | Lead-Lag Ratio) of CME Bitcoin Futures Market

		Lead-Lag Seconds | Lead-Lag Ratio								
Category	Exchange	2019 Q1	2019 Q2	2019 Q3	2019 Q4	2020 Q1	2020 Q2	2020 Q3	2020 Q4	2021 Q1
USD Ordinary Futures	Binance						1 ¦ 1.48	1 ¦ 1.44	1 ¦ 1.15	1 ¦ 1.20
USD Ordinary Futures	BitMEX	9 ¦ 1.34	6 ¦ 1.35	5 ¦ 1.50	5 ¦ 1.38	3 ¦ 1.39	4 ¦ 1.44	3 ¦ 1.72	2 ¦ 1.18	1 ¦ 1.21
USD Ordinary Futures	Deribit	5 ¦ 1.27	3 ¦ 1.27	3 ¦ 1.31	2 ¦ 1.26	1 ¦ 1.25	1 ¦ 1.31	1 ¦ 1.32	1 ¦ 1.10	1 ¦ 1.12
USD Ordinary Futures	FTX					0 ¦ 0.96	0 ¦ 0.99	1 ¦ 1.08	0 ¦ 1.04	1 ¦ 1.10
USD Ordinary Futures	Huobi (Bi-Quarterly)				2 ¦ 1.25	1 ¦ 1.26	1 ¦ 1.32	1 ¦ 1.52	1 ¦ 1.16	1 ¦ 1.20
USD Ordinary Futures	Huobi (Weekly)				2 ¦ 1.25	1 ¦ 1.27	1 ¦ 1.27	1 ¦ 1.43	1 ¦ 1.12	1 ¦ 1.15
USD Ordinary Futures	Huobi (Quarterly)						2 ¦ 1.49	1 ¦ 1.40	1 ¦ 1.12	1 ¦ 1.16
USD Ordinary Futures	Huobi (Bi-Weekly)				2 ¦ 1.20	1 ¦ 1.22	1 ¦ 1.23	1 ¦ 1.35	1 ¦ 1.09	1 ¦ 1.13
USD Ordinary Futures	Kraken							2 ¦ 1.11	0 ¦ 1.01	0 ¦ 1.02
USD Ordinary Futures	Okex						1 ¦ 1.28	1 ¦ 1.47	1 ¦ 1.14	1 ¦ 1.19
USD Perpetual Futures	Binance							1 ¦ 1.54	1 ¦ 1.17	1 ¦ 1.23
USD Perpetual Futures	BitMEX	8 ¦ 1.36	4 ¦ 1.31	4 ¦ 1.45	4 ¦ 1.40	2 ¦ 1.39	3 ¦ 1.47	3 ¦ 1.92	2 ¦ 1.24	1 ¦ 1.38
USD Perpetual Futures	Bybit				4 ¦ 1.42	2 ¦ 1.39	2 ¦ 1.44	1 ¦ 1.86	1 ¦ 1.26	1 ¦ 1.41
USD Perpetual Futures	Deribit	6 ¦ 1.37	3 ¦ 1.28	2 ¦ 1.38	2 ¦ 1.33	1 ¦ 1.31	1 ¦ 1.37	1 ¦ 1.61	1 ¦ 1.16	1 ¦ 1.22
USD Perpetual Futures	FTX	0 ¦ 0.99	0 ¦ 1.02	2 ¦ 1.07	2 ¦ 1.15	1 ¦ 1.11	1 ¦ 1.24	1 ¦ 1.55	1 ¦ 1.16	1 ¦ 1.21
USD Perpetual Futures	Huobi							1 ¦ 1.84	1 ¦ 1.23	1 ¦ 1.33
USD Perpetual Futures	Kraken							2 ¦ 1.87	1 ¦ 1.13	1 ¦ 1.12
USD Perpetual Futures	Okex							1 ¦ 1.54	1 ¦ 1.14	1 ¦ 1.20
USD Spot	Binance.us			4 ¦ 1.16	3 ¦ 1.19	3 ¦ 1.17	2 ¦ 1.26	3 ¦ 1.45	2 ¦ 1.20	2 ¦ 1.28
USD Spot	Bitfinex	5 ¦ 1.33	4 ¦ 1.29	3 ¦ 1.44	3 ¦ 1.34	2 ¦ 1.35	3 ¦ 1.41	2 ¦ 1.68	2 ¦ 1.22	1 ¦ 1.32
USD Spot	Bitflyer		13 ¦ 1.06	0 ¦ 1.03	2 ¦ 1.05	6 ¦ 1.07	0 ¦ 1.02	0 ¦ 1.02	0 ¦ 1.04	0 ¦ 1.00
USD Spot	Bitstamp	3 ¦ 1.19	3 ¦ 1.24	3 ¦ 1.31	3 ¦ 1.24	1 ¦ 1.21	1 ¦ 1.19	1 ¦ 1.26	1 ¦ 1.13	1 ¦ 1.19
USD Spot	Bittrex	15 ¦ 1.22	6 ¦ 1.25	5 ¦ 1.35	4 ¦ 1.18	2 ¦ 1.25	2 ¦ 1.25	2 ¦ 1.38	3 ¦ 1.19	2 ¦ 1.29
USD Spot	CEX.IO	13 ¦ 1.23	11 ¦ 1.17	14 ¦ 1.24	4 ¦ 1.12	6 ¦ 1.18	3 ¦ 1.15	3 ¦ 1.22	3 ¦ 1.12	3 ¦ 1.22
USD Spot	Coinbase	2 ¦ 1.46	2 ¦ 1.30	2 ¦ 1.40	2 ¦ 1.34	1 ¦ 1.32	1 ¦ 1.35	1 ¦ 1.62	1 ¦ 1.20	1 ¦ 1.28
USD Spot	FTX			0 ¦ 1.05	0 ¦ 1.05	0 ¦ 0.99	0 ¦ 1.02	1 ¦ 1.26	1 ¦ 1.16	1 ¦ 1.23
USD Spot	Gemini	4 ¦ 1.19	3 ¦ 1.21	2 ¦ 1.25	2 ¦ 1.21	1 ¦ 1.22	1 ¦ 1.22	1 ¦ 1.37	1 ¦ 1.15	1 ¦ 1.20
USD Spot	itBit	4 ¦ 1.28	3 ¦ 1.20	3 ¦ 1.24	2 ¦ 1.23	2 ¦ 1.08	2 ¦ 1.18	2 ¦ 1.27	2 ¦ 1.22	2 ¦ 1.34
USD Spot	Kraken	9 ¦ 1.37	8 ¦ 1.31	6 ¦ 1.47	3 ¦ 1.30	2 ¦ 1.35	2 ¦ 1.33	3 ¦ 1.66	2 ¦ 1.25	2 ¦ 1.41
USD Spot	Liquid	5 ¦ 1.13	4 ¦ 1.12	2 ¦ 1.09	2 ¦ 1.07	1 ¦ 1.06	0 ¦ 1.05	1 ¦ 1.05	0 ¦ 1.03	0 ¦ 1.05
USDT Ordinary Futures	Binance									1 ¦ 1.08
USDT Ordinary Futures	Okex						1 ¦ 1.29	1 ¦ 1.39	1 ¦ 1.14	1 ¦ 1.19
USDT Perpetual Futures	Binance				1 ¦ 1.23	1 ¦ 1.22	1 ¦ 1.27	1 ¦ 1.43	1 ¦ 1.13	0 ¦ 1.17
USDT Perpetual Futures	Bitfinex			0 ¦ 1.01	1 ¦ 1.05	4 ¦ 1.15	2 ¦ 1.10	2 ¦ 1.23	2 ¦ 1.15	2 ¦ 1.16
USDT Perpetual Futures	Bybit					2 ¦ 1.08	2 ¦ 1.36	1 ¦ 1.71	1 ¦ 1.23	1 ¦ 1.35
USDT Perpetual Futures	Huobi								1 ¦ 1.16	1 ¦ 1.27
USDT Perpetual Futures	Okex							1 ¦ 1.52	1 ¦ 1.15	1 ¦ 1.20

USDT Spot	Binance	5 ¦ 1.29	2 ¦ 1.23	2 ¦ 1.31	1 ¦ 1.27	1 ¦ 1.25	1 ¦ 1.28	1 ¦ 1.47	1 ¦ 1.15	1 ¦ 1.20
USDT Spot	Bitfinex	0 ¦ 1.00	3 ¦ 1.05	3 ¦ 1.10	3 ¦ 1.13	2 ¦ 1.14	2 ¦ 1.20	1 ¦ 1.19	1 ¦ 1.12	1 ¦ 1.21
USDT Spot	Hitbtc	4 ¦ 1.27	2 ¦ 1.25	2 ¦ 1.35	1 ¦ 1.24	1 ¦ 1.22	1 ¦ 1.22	1 ¦ 1.36	1 ¦ 1.12	1 ¦ 1.22
USDT Spot	Huobi	7 ¦ 1.24	3 ¦ 1.27	2 ¦ 1.33		1 ¦ 1.27	1 ¦ 1.29	1 ¦ 1.50	1 ¦ 1.15	1 ¦ 1.20
USDT Spot	Kraken					0 ¦ 1.01	0 ¦ 1.04	3 ¦ 1.08	2 ¦ 1.08	2 ¦ 1.14
USDT Spot	LBank			5 ¦ 1.55	4 ¦ 1.37		4 ¦ 1.40			
USDT Spot	Okex					1 ¦ 1.13	1 ¦ 1.28	1 ¦ 1.52	1 ¦ 1.16	1 ¦ 1.20
USDT Spot	Zb.com	6 ¦ 1.20	5 ¦ 1.26	3 ¦ 1.37	4 ¦ 1.35	2 ¦ 1.40	2 ¦ 1.37	1 ¦ 1.64	1 ¦ 1.18	1 ¦ 1.23

Additionally, Sponsor compared the CME Bitcoin Futures market's leadership with other markets by aggregating each market's lead-lag by taking the average of each markets lead-lag seconds over all other markets in a quarter.

Figure 8 shows that, while other category leaders can change rank each quarter, they consistently rank below CME futures in average seconds leading. This consistency, along with the Sponsor's inclusion standards of strict overall average market correlations and demonstrative lead-lag ratios, speaks to the strength of CME futures' leadership across spot and futures markets globally.[75]

Figure 8: Leading Market Category – Based on the Leading Market within each Category

Leading Category	CME Bitcoin Futures	CME Bitcoin Futures	CME Bitcoin Futures	CME Bitcoin Futures	CME Bitcoin Futures	CME Bitcoin Futures	CME Bitcoin Futures	CME Bitcoin Futures	CME Bitcoin Futures
1st Lagging Category	USD Spot	USD Spot	USD Perpetual Futures	USD Spot	USD Futures	USD Futures	USD Spot	USD Futures	USD Futures
2nd Lagging Category	USDT Spot	USD Perpetual Futures	USD Spot	USDT Spot	USD Spot	USD Spot	USD Futures	USD Spot	USDT Futures
3rd Lagging Category	USD Perpetual Futures	USDT Spot	USDT Spot	USD Futures	USD Perpetual Futures	USDT Perpetual Futures	USDT Perpetual Futures	USD Perpetual Futures	USD Perpetual Futures
4th Lagging Category	USD Futures	USD Futures	USD Futures	USD Perpetual Futures	USDT Spot	USDT Spot	USDT Spot	USDT Perpetual Futures	USDT Perpetual Futures
5th Lagging Category	N/A	N/A	N/A	USDT Perpetual Futures	USDT Perpetual Futures	USD Perpetual Futures	USDT Futures	USDT Spot	USDT Spot
6th Lagging Category	N/A	N/A	N/A	N/A	N/A	USDT Futures	USD Perpetual Futures	USDT Futures	USD Spot
	Q1 2019	Q2 2019	Q3 2019	Q4 2019	Q1 2020	Q2 2020	Q3 2020	Q4 2020	Q1 2021

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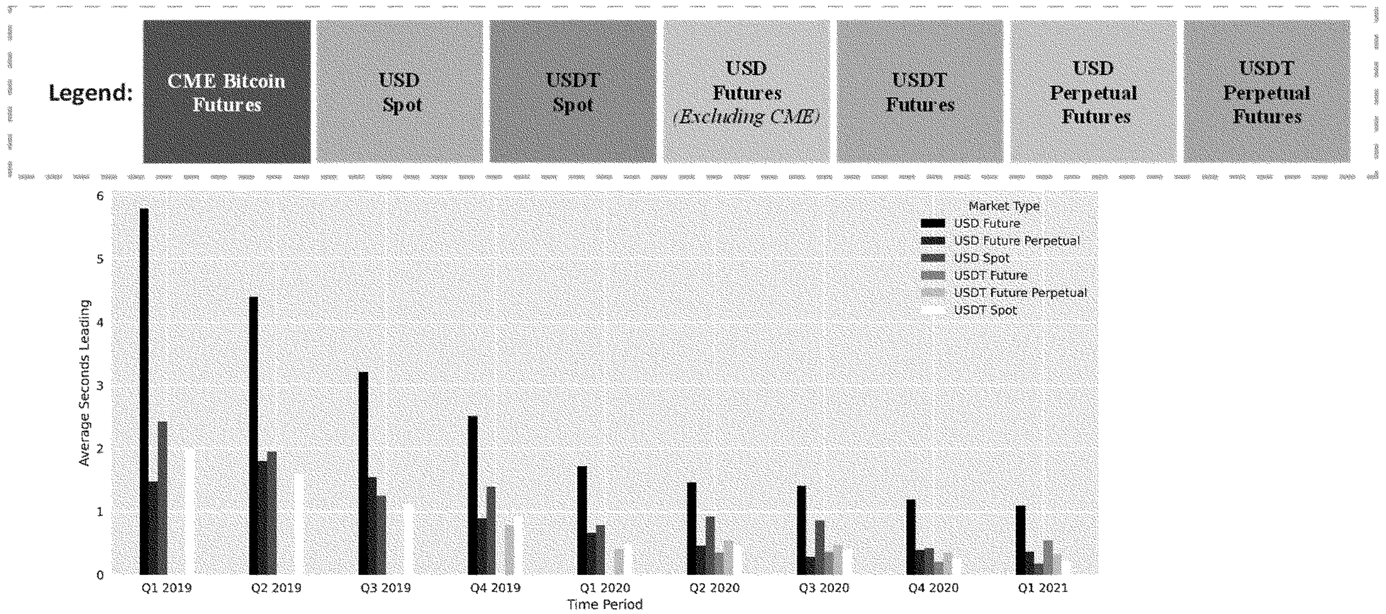
Figure 9 shows the average lead over all other markets for each market category leader by quarter. For example, the market leader within the USD Futures category (which is consistently CME) leads all other markets by an average of ~5.8 seconds in Q1 2019.

[75] For more information, see Memorandum from the Division of Trading and Markets regarding a September 8, 2021 meeting with representatives from Fidelity Digital Assets, et al. (Sept. 8, 2021) *available at https://www.sec.gov/comments/sr-cboebzx-2021-039/srcboebzx2021039-250110.pdf.*

Figure 9: Category Leaders' Average Lead Among All Markets

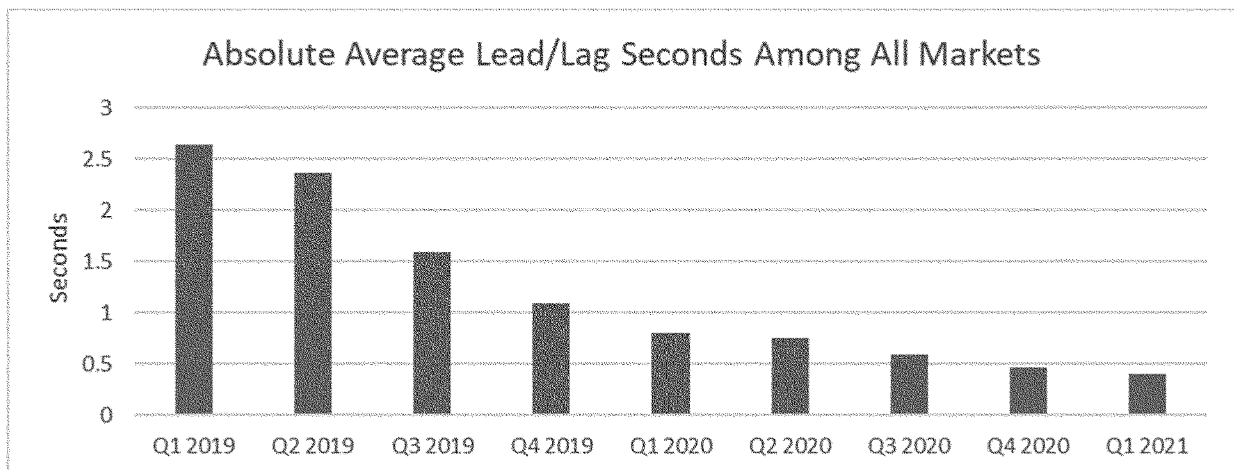


Another observation from Figure 9 is that there is a clear decline in seconds-leading through time for these market category leaders. As discussed further below (Figure 10 & 11), this declining lead-lag time does not mean that a particular market category leader's strength in leadership is deteriorating, as it is not only evident for market category leaders, but all markets, and suggests efficiency within the bitcoin markets has continued to improve.

The lead-lag relationships between and among Bitcoin Futures and spot markets provide insights into the directional influences of markets on price discovery, with the CME Bitcoin Futures market playing the most important role in price discovery during each quarter spanning from the first quarter of 2019 to the first quarter of 2021, as noted above. Arbitrage between the CME Bitcoin Futures market and spot markets would tend to counter an attempt to manipulate the spot market alone. Thus, the Sponsor's analysis supports the conclusion that there is a reasonable likelihood that a person attempting to manipulate the Shares would also have to trade on the CME Bitcoin Futures market to manipulate the ETP.

Figure 10 shows that the absolute average of every market's overall lead-lag seconds (average lead-lag seconds over all other markets) has steadily decreased from the first quarter of 2019 to the first quarter of 2021. This suggests that the efficiency within bitcoin markets has continued to improve, and the window of arbitrage opportunity has closed with increasing speed.

Figure 10: Absolute Average Lead/Lag Seconds Among All Markets



While average lead/lag among markets has decreased over time, this does not mean that relative leadership among markets has decreased over time. To understand relative leadership among markets during different time periods, Sponsor standardizes each market's average lead/lag with other markets by dividing the market's average lead with other markets by the average of every market's absolute average lead with other markets. This relative leadership score (RLS) of market x is defined as:

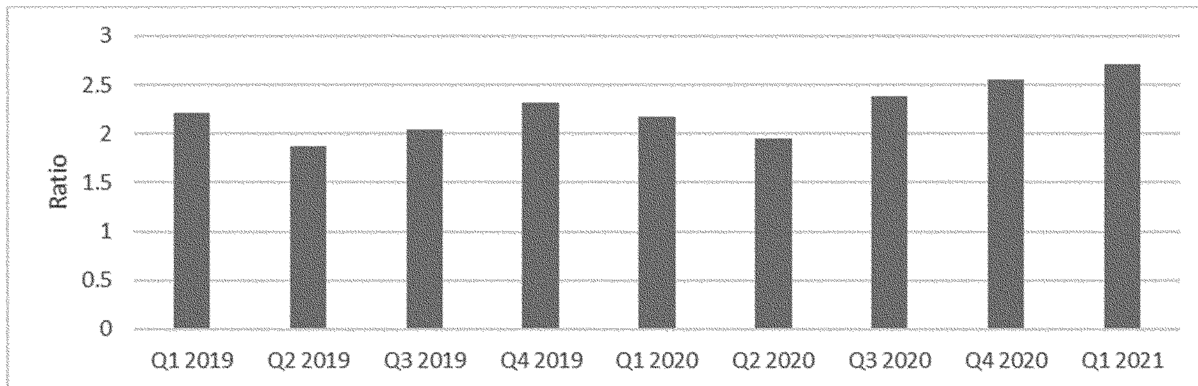
$$rls_x = \frac{\mu_x}{\sum_n^i |\mu_i| / n}$$

where,

- x is a market
- μ_x is the average lead of market x over all other markets
- $\Sigma^n_i|\mu_i|$ is the sum of each market's absolute lead all other markets
- n is the number of markets included in the time peroid

The RLS of the CME Bitcoin Futures market indicates that the strength of CME leadership has not deteriorated, shown in Figure 11. The RLS for the CME USD futures market is relatively stable—indicating that there is no deterioration in the strength of this market and even a slight increase in strength during the last three quarters observed—even the average lead/lag (the denominator of RLS plotted in Figure 10) among markets has decreased over time.

Figure 11: CME Bitcoin Futures Market Relative Leadership Score



To summarize, the top rank in average leading seconds and the pairwise leading results with confidence intervals for the CME Bitcoin Futures market, support the conclusion that there is a reasonable likelihood that a person attempting to manipulate the Shares would also have to trade on the CME Bitcoin Futures market to manipulate the ETP. The RLS of the CME Bitcoin Futures market provides evidence that that likelihood has stayed consistent while the efficiency within the bitcoin markets has continued to improve.

3. Trading in the Shares Unlikely To Be Predominant Influence on Prices in CME Bitcoin Futures Market

As described above, the Commission requires the Exchange to conclude that it is unlikely that trading in the Shares would become the predominant influence on prices in the CME Bitcoin Futures market. In a recent approval order [76] of a bitcoin-futures ETP, the Commission concluded that it is unlikely that trading in the proposed bitcoin-futures ETP would be the predominant influence on prices in the CME Bitcoin Futures market. The Commission specifies as reasons for its conclusion ''the maturation of the CME bitcoin futures market since its inception in 2017-including, but not limited to, the overall size, volume, liquidity, and number of years of trading in the CME bitcoin futures market and evidence from the 1940 Act-registered Bitcoin Futures ETFs''. Sponsor agrees with the Commission's remarks on the maturation of the CME Bitcoin Futures market and would also add ''price discovery leadership'', as discussed above, to the list of maturation evidence. As evidence from the 1940 Act-registered Bitcoin Futures ETFs, the Commission states it ''has neither observed any disruption to the CME Bitcoin Futures market, nor any evidence that the Bitcoin Futures ETFs have exerted dominant influence on CME Bitcoin Futures prices.'' Through its own analysis, Sponsor again agrees with the Commission's remarks and, as discussed below, also found that the level of price discovery leadership associated with the CME Bitcoin Futures market remained *unchanged* since the launch of Bitcoin Futures ETFs.

In considering the question of whether the proposed bitcoin-spot ETP would be the predominant influence on prices in the CME Bitcoin Futures market, Sponsor conducted a numerical experiment to best estimate the effect since it is not feasible to directly evaluate the effect for the proposed ETP before its existence. The experiment is designed to observe whether the price discovery leadership of the CME Bitcoin Futures market can be changed by a new market (specifically an ETP) entering with high trade activity. If it is, it is reasonable to assume that the proposed bitcoin-spot ETP could be the predominant influence on prices in the CME Bitcoin Futures market if it has high trade activity. However, if it is not, it is also reasonable to assume that the proposed bitcoin-spot ETP would not be the predominant influence. From the numerical experiment, Sponsor aims to demonstrate that high trade activity or volume is not the key factor in price discovery.

Sponsor used trade data from a recently launched Bitcoin Futures-based ETF, ProShares Bitcoin Strategy ETF (''BITO''), which caused high trading activity after its launch, as the model in its experiment. BITO is a Commission-registered ETF that is listed and traded on a US regulated national securities exchange and was launched on October 18, 2021. As described in its prospectus,

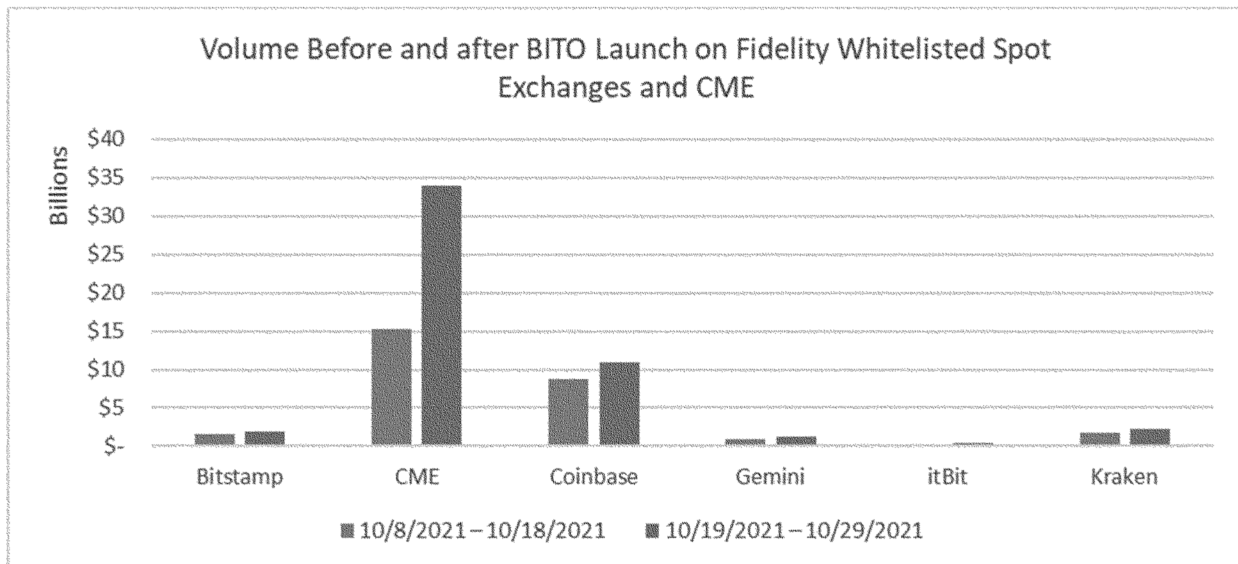
[76] See Exchange Act Release No. 94620 (April 6, 2022), 87 FR 21676 (April 12, 2022) (the ''Teucrium Approval'') and 94853 (May 5, 2022) (collectively, with the Teucrium Approval, the ''Bitcoin Futures Approvals'').

BITO seeks to invest primarily in CME Bitcoin Futures contracts.

Sponsor selected two periods, representing a regular period with normal trading activity and a period with new information and heightened trading activity (from approximately $15 billion to $34 billion) in the CME Bitcoin Futures market as seen from Figure 12. The experiment is to compare whether the leadership of CME increased during the second period. If not, it is reasonable to conclude the heightened trading activity in the futures market did not increase the leadership of the futures market. With that same logic, the potential heightened trading activity in the spot market would not increase the leadership of the spot market.

Sponsor obtained tick level data from Coin Metrics for all markets included in the lead-lag analysis described above spanning two specific periods: 11 days before the launch of BITO (10/8/2021–10/18/2021) and 11 days after the launch (10/19/2021–10/29/2021). For the 11 days after the launch of BITO, Sponsor obtained tick-level trade data on BITO via Bloomberg and aggregated to the one second floor level using the same method described above.

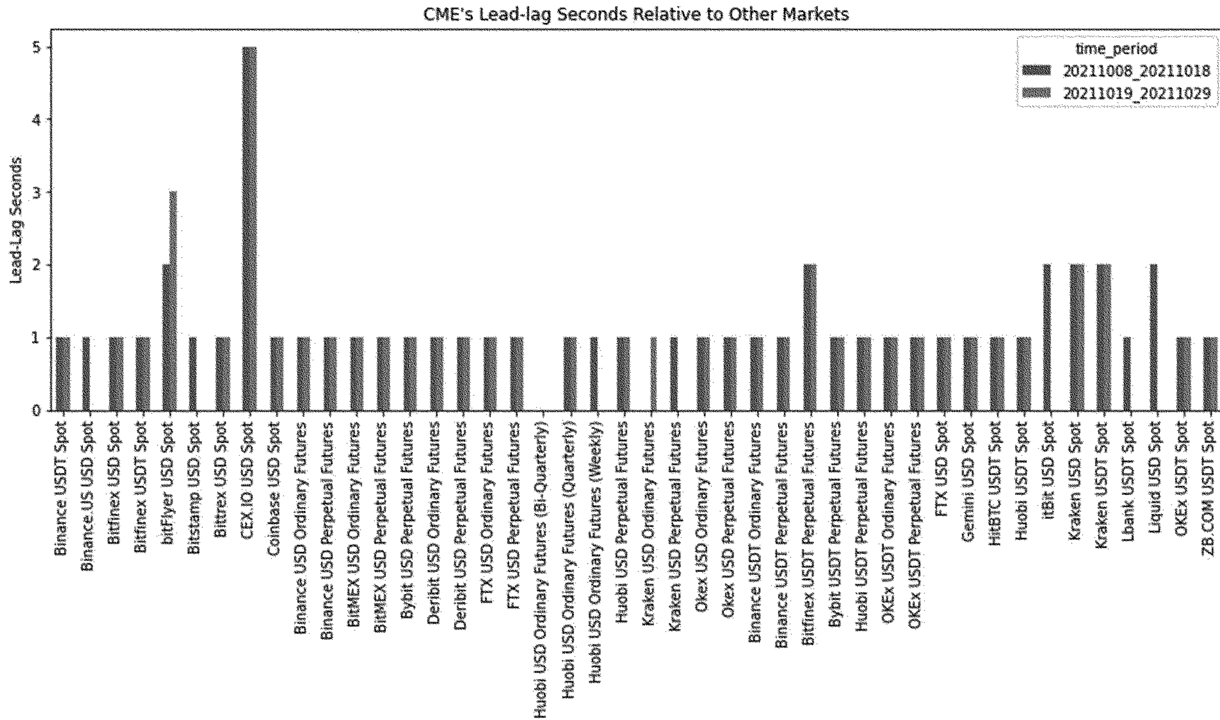
Figure 12: Volume Comparison Before and After BITO Launch on Fidelity Whitelisted Spot Exchanges and CME



Sponsor examined the pairwise lead-lag relationship between CME Bitcoin Futures and all other markets included. For each pair, Sponsor computed the correlation coefficients using the same lead-lag framework and HY estimator between CME Bitcoin Futures and the second market price timeseries as well as timestamp-adjusted (leading/lagging) versions of the second market to find the time delta that maximized their correlation. The only differences between Sponsor's BITO analysis and the quarterly analysis spanning Q1 2019 through Q1 2021 discussed above are the timeframes and a stricter average correlation threshold (.2 instead of .1) in the BITO analysis given the shorter timeframe.

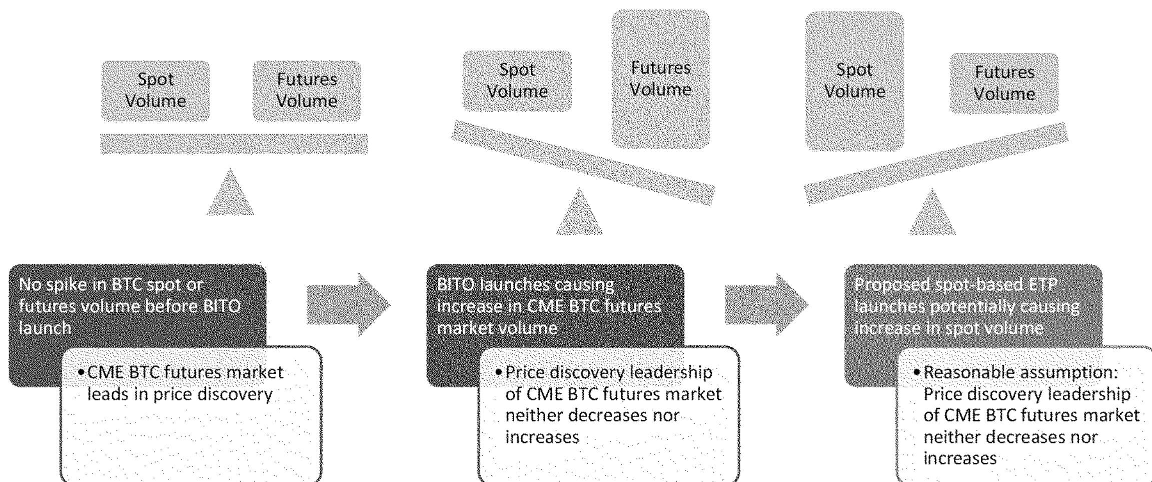
The results of this experiment in Figure 13 show the CME Bitcoin Futures market leading all markets for the period of 11 days prior to the launch of BITO. The price discovery leadership of the CME Bitcoin Futures market still leads after BITO's launch in the period of 10/19/2021 to 10/29/2020, but CME's leadership does not become stronger even though the trading volume increased significantly.

Figure 13: CME's Lead-lag Seconds Relative to Other Market Before and After BITO's Launch



Given that the CME Bitcoin Futures market did not see an increase in price discovery leadership even during a period of heightened activity (trading volume increased from 15 billion to 34 billion) on that market after BITO's launch, Sponsor believes it would be unreasonable to assume that the level of the spot markets' leadership would increase (CME Bitcoin Futures market price leadership would deteriorate) due to the potential heightened trade activity in the spot markets after the proposed spot-based ETP launch. This dynamic is illustrated in Figure 14.

Figure 14: Impact of heightened market activity on CME BTC futures market price discovery leadership



Based on the experiment, Sponsor concludes the inherent features of futures are more important factors in price discovery and allow this market to dominate even with lower or changing levels of volume. This conclusion is also supported in academic research [77]

[77] Futures with much smaller trading volumes compared to the underlying spot market can still

studying similar patterns in other asset classes. It is worth mentioning that it is not feasible to directly evaluate the effect for the proposed ETP before its existence. The numerical experiment above is to best estimate the effect and eliminate the concern on the potential high trade activity in spot markets caused by the proposed ETP.

Moreover, Sponsor believes that there will be no material effect of the Shares' trade prices on CME Bitcoin Futures prices from secondary market trading activities. To estimate this effect, Sponsor uses BITO in its analysis as the first ETP launched in US and a reasonable example of a general ETP. Sponsor examined the pairwise lead-lag relationship between BITO and all other markets included in previous analysis. As seen in Table 5, only four markets have a lead-lag ratio (the strength measurement of the lead-lag relationship) outside the range of [.95,1.05] and non-zero lead-lag seconds to conclude they are leading or lagging. Sponsor interprets this result as BITO's lead-lag relationship with other bitcoin markets is not significant.

TABLE 5—MARKETS WITH SIGNIFICANT LEAD/LAG RELATIONSHIPS TO BITO

	BITO leadership (lead-lag seconds)	Lead-lag ratio
CME USD Ordinary Futures	−1	0.909
Kraken USD Ordinary Futures	−1	0.926
Huobi USD Ordinary Futures (Bi-Quarterly)	−1	0.933
CEX.IO USD Spot	12	1.067

Regarding BITO's price discovery contribution measured by lead-lag seconds, it does not lead any bitcoin markets except CEX.IO USD spot market, which not only lags BITO but also lags all other bitcoin markets. More importantly, the CME Bitcoin Futures market leads BITO with the highest level of certainty as seen from the lead-lag ratio. As such, Sponsor concludes that the proposed ETP would have no material impact on CME Bitcoin Futures prices.

The gold market shares certain characteristics with the bitcoin market—both gold and bitcoin have a finite supply, are traded globally in various market venues against various currency pairs and have a robust futures market. In addition, many investors view bitcoin as a form of digital gold and in looking to determine the potential impact of price discovery in trading in the ETP shares on the secondary market, the Sponsor looks to the gold market as an analogous market to bitcoin when looking to determine the impact of price discovery. According to a previous study [78] the Sponsor reviewed, the authors analyzed intraday data on gold prices from 1997–2014 and concluded that futures markets tend to lead price discovery in the gold market despite the spot market having ten times more volume than the US futures market. A second study [79] that the sponsor analyzed, came to the same conclusion that futures are the global leader in price discovery for gold, with a growing influence of ETPs.

The Exchange also believes that trading in the Shares would not be the predominant force on prices in the Bitcoin Futures market (or spot market) for several additional reasons, including the significant volume in the Bitcoin Futures market, the size of bitcoin's market cap (approximately $1 trillion), and the significant liquidity available in the spot market. According to the Sponsor's analysis, in the second quarter of 2021, Bitcoin Futures volume greatly exceeded volumes in the spot markets. The volume of the Bitcoin Futures market was approximately $7.1 trillion where the volume of the bitcoin spot markets was approximately $1.4 trillion.[80] In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid. According to data from CoinRoutes from February 2021, the cost to buy or sell $5 million worth of bitcoin averages roughly 10 basis points with a market impact of 30 basis points.[81] For a $10 million market order, the cost to buy or sell is roughly 20 basis points with a market impact of 50 basis points. Stated another way, a market participant could enter a market buy or sell order for $10 million of bitcoin and only move the market 0.5%. More strategic purchases or sales (such as using limit orders and executing through OTC bitcoin trade desks) would likely have less obvious impact on the market—which is consistent with MicroStrategy, Tesla, and Square being able to collectively purchase billions of dollars in bitcoin. As such, the combination of Bitcoin Futures leading price discovery, the overall size of the bitcoin market, and the ability for market participants, including authorized participants creating and redeeming with the Trust, to buy or sell large amounts of bitcoin without significant market impact will help prevent the Shares from becoming the predominant force on pricing in either the bitcoin spot or Bitcoin Futures markets, satisfying part (b) of the test outlined above.

(b) SEC Approval of Bitcoin Futures ETFs and CME Surveillance

Bitcoin Futures represent a growing influence on pricing in the spot bitcoin market as has been laid out above and in other proposals to list and trade Spot Bitcoin ETPs. Pricing in Bitcoin Futures is based on pricing from spot bitcoin markets. As noted above, the statement from the Teucrium Approval that ''CME's surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts . . . indirectly by trading outside of the CME bitcoin futures market,'' makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on

dominate price discovery. See Hauptfleisch, Martin, Tālis J. Putniņš, and Brian Lucey. ''Who sets the price of gold? London or New York.'' *Journal of Futures Markets* 36, no. 6 (2016): 564–586. *https://doi.org/10.1002/fut.21775* for more information.

[78] *See* Hauptfleisch, et. al.

[79] Sehgal, Sanjay, Neharika Sobti, and Florent Diesting. ''Who leads in intraday gold price discovery and volatility connectedness: Spot, futures, or exchange-traded fund?'' *Journal of Futures Markets* 41, no. 7 (2021): 1092–1123. *https://doi.org/10.1002/fut.22208.*

[80] For more information, see Memorandum from the Division of Trading and Markets regarding a September 8, 2021 meeting with representatives from Fidelity Digital Assets, et al. (Sept. 8, 2021) *available at https://www.sec.gov/comments/sr-cboebzx-2021-039/srcboebzx2021039-250110.pdf.*

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

the pricing of Bitcoin Futures. While the Commission makes clear in the Teucrium Approval that the analysis only applies to the Bitcoin Futures market as it relates to an ETP that invests in Bitcoin Futures as its only non-cash or cash equivalent holding, if CME's surveillance is sufficient to mitigate concerns related to trading in Bitcoin Futures for which the pricing is based directly on pricing from spot bitcoin markets, it's not clear how such a conclusion could apply only to ETPs based on Bitcoin Futures and not extend to Spot Bitcoin ETPs.

Recently, the Commission allowed three ETFs primarily invested in CME Bitcoin Futures to register and list on a national securities exchange (''Bitcoin Futures ETFs'').[82] As described in its prospectus, BITO does not invest directly in bitcoin but rather seeks to provide capital appreciation primarily through managed exposure to cash-settled Bitcoin Futures contracts traded on commodity exchanges registered with the Commodity Futures Trading Commission (''CFTC''). Currently, the only such contracts that are traded on, or subject to the rules of, the CME. CME Bitcoin Futures are cash-settled in US dollars based on the CME CF Bitcoin Reference Rate (''BRR''), which is a volume-weighted composite of U.S. dollar-bitcoin trading activity on certain constituent trading platforms including Bitstamp, Coinbase, Gemini, itBit, Kraken, and LMAX Digital.[83]

The CME reference rate is based on substantially the same pricing data from digital asset trading platforms as the Index [84] used by the Trust. The Index is designed to reflect the performance of bitcoin in U.S. dollars and the current constituent trading platform composition of the Index is Bitstamp, Coinbase, Gemini, itBit, Kraken, and LMAX Digital. As noted recently by a commenter on another Rule 19b–4 application for a bitcoin spot ETP, Bitcoin Futures ETFs and the Trust are exposed to the same underlying pricing data and the same risks of manipulation.[85]

There is no basis, in law or in fact, for determining that the Bitcoin Futures ETFs satisfy the standards of section 6(b)(5) of the Exchange Act while the Trust does not. Bitcoin pricing, whether in the spot market or the futures market, is determined in the digital asset trading platforms where supply and demand interact; and there is almost complete overlap in the underlying digital asset trading platforms that supply pricing information for the reference indices used by both the CME Bitcoin Futures market and the Trust.

Just three weeks after the Bitcoin Futures ETFs began trading, the Commission again rejected a 19b–4 application filed by a spot bitcoin ETP on the grounds that the listing exchange had failed to demonstrate satisfaction of the section 6(b)(5) standard.[86] The Commission specifically disagreed with the exchange's premises that (i) it is inconsistent with the section 6(b)(5) standard for the Commission to permit a Bitcoin Futures ETF registered under the 1940 Act to launch but to disapprove the approval of a bitcoin spot ETP; (ii) it is inconsistent for the Commission to approve a Bitcoin Futures ETF that trades exclusively in CME Bitcoin Futures contracts and conclude that the CME Bitcoin Futures market is *not* a ''market of significant size'' under the section 6(b)(5) standard; and (iii) there is no basis of fact or law that the 1940 Act is designed to prevent market manipulation in the markets in which the Bitcoin Futures ETF trades. Instead, the Commission stated that it considers each proposed rule change on its own merits and noted that the proposed rule did not relate to a product regulated under the 1940 Act and did not relate to the same underlying holdings as the Bitcoin Futures ETFs. In practice, however, the Commission did not address why a bitcoin spot ETP fails to satisfy the section 6(b)(5) standard when it is exposed to the same underlying risks of manipulation as the CME Bitcoin Futures contracts primarily held by Bitcoin Futures ETFs, which have been allowed to register and list.

As recently as 2020, the Commission approved new exchange listing rules permitting ETFs registered under the 1940 Act, including Bitcoin Futures ETFs, to list under an exchange's generic listing standards without having to submit separate rule filing pursuant to section 19(b).[87] In determining that the rule change was reasonably designed to help prevent fraudulent and manipulative acts and practice, the SEC stated that ETFs would be required to disclose its portfolio holdings under the 1940 Act and that the exchange rule included requirements relating to fire walls and procedures to prevent the use and dissemination of material, non-pubic information regarding the applicable ETF index and portfolio.[88] Importantly, with regard to surveillance, the Commission stated only that the rule change required the exchange to implement and maintain written surveillance procedures for ETF shares and noted that the exchange would use its existing surveillance procedures applicable to derivative products to monitor trading in ETF shares. In approving the generic listing standards, the SEC did not require in-depth analyses into any particular markets or index components.[89] While noting the ability of an exchange to rely on FINRA for information related to certain securities held by ETPs, the Commission focused its determination on the exchange's surveillance of the market for ETF shares. As a result, Bitcoin Futures ETFs are permitted to list and trade under generic listing standards based solely on the oversight of the underlying futures by the CFTC and futures exchanges with no acknowledgement or assessment by the Commission of the actual risk of fraud or manipulation related to underlying bitcoin spot markets referenced by such Bitcoin Futures—even when such bitcoin markets mirror those proposed as reference markets in the Index used by the Trust and other spot bitcoin ETP listing proposals.

Because (i) the risks of manipulation in the bitcoin markets impacting the Trust are thus indistinguishable from those same risks impacting Bitcoin Futures ETFs; (ii) the Trust will have the same pricing sources, and (iii) the Trust will be subject to the same risks of manipulation as shares of Bitcoin Futures ETFs; the Exchange believes that the proposed rule change is sufficiently designed to prevent fraudulent and manipulative acts and practice. Approving this change is consistent with the treatment of substantially similar products, and the Exchange believes that any finding to the contrary would result in arbitrarily disparate treatment to the Trust.

[82] ProShares Bitcoin Strategy ETF (BITO); VanEck Bitcoin Strategy ETF (XBTF); Valkyrie Bitcoin Strategy ETF (BTF).

[83] *See* CME CF Bitcoin Reference Rate Index data at *https://www.cmegroup.com/trading/cryptocurrency-indices/cf-bitcoin-reference-rate.html.*

[84] As further described below, the ''Index'' for the Fund is the Fidelity Bitcoin Reference Rate PR.

[85] *See* Letter from Joseph A. Hall et al. to Vanessa Countryman on SR–NYSEArca–2021–90 (Nov. 29, 2021).

[86] Order Disapproving a Proposed Rule Change to List and Trade Shares of the VanEck Bitcoin Trust under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 93559 (Nov. 12, 2021), 86 FR 64 539 (Nov. 18, 2021) (SR–CboeBZX–2021–019) (''VanEck Order'').

[87] Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to Adopt NYSE Arca Rule 5.2–E(j)(8) Governing the Listing and Trading of Exchange-Traded Fund Shares (Apr. 13, 2020) (SR–NYSEArca–2019–81).

[88] *Id.*

[89] *Id.*

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying section 6(b)(5) of the act, specifically providing 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.[90]

The Exchange believes that such conditions are present. Specifically, the significant liquidity in the spot market and the impact of market orders on the overall price of bitcoin mean that attempting to move the price of bitcoin is costly and has grown more expensive over the past year. In January 2020, for example, the cost to buy or sell $5 million worth of bitcoin averaged roughly 30 basis points (compared to 10 basis points in 2/2021) with a market impact of 50 basis points (compared to 30 basis points in 2/2021).[91] For a $10 million market order, the cost to buy or sell was roughly 50 basis points (compared to 20 basis points in 2/2021) with a market impact of 80 basis points (compared to 50 basis points in 2/2021). As the liquidity in the bitcoin spot market increases, it follows that the impact of $5 million and $10 million orders will continue to decrease the overall impact in spot price.

As noted above, the Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present.

Fidelity Wise Origin Bitcoin Fund

The Registration Statement includes the following description of the Trust and its operations. The Trust will issue Shares that represent fractional undivided beneficial interests in and ownership of the Trust. The Trust is a Delaware statutory trust that operates pursuant to the Declaration of Trust and Trust Agreement (the ''Trust Agreement''), between Sponsor and Delaware Trust Company, the Delaware trustee of the Trust (the ''Trustee''). Sponsor manages the Trust and is responsible for the ongoing registration of the Shares. The Trust will engage Fidelity Service Company, Inc. (''FSC''), a Sponsor affiliate, to be the administrator (''Administrator''). State Street and Trust Company (the ''Transfer Agent'' and ''Cash Custodian'')) will facilitate the issuance and redemption of Shares of the Trust and respond to correspondence by Trust shareholders and others relating to its duties, maintain shareholder accounts, and make periodic reports to the Trust. Another affiliate of Sponsor, Fidelity Distributors Corporation, will be the distributor (''Distributor'') in connection with the creation and redemption of ''Creation Baskets'' of Shares. The Sponsor will provide assistance in the marketing of the Shares. FDAS, another Sponsor affiliate, will serve as the Custodian.

According to the Registration Statement, each Share will represent a fractional undivided beneficial interest in the Trust. The Trust's assets will only consist of bitcoin, cash, and cash equivalents.[92] Except for cash temporarily held to pay Trust expenses, facilitate redemption transactions, or received in creation transactions, the Trust will only invest in bitcoin.

According to the Registration Statement, the Trust is neither an investment company registered under the Investment Company Act of 1940, as amended (the ''1940 Act''),[93] nor a commodity pool for purposes of the Commodity Exchange Act (''CEA''), and neither the Trust nor the Sponsor is subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the Shares.

Investment Objective

The Trust's investment objective is to seek to track the performance of bitcoin, as measured by the performance of the Fidelity Bitcoin Reference Rate PR (the ''Index''), less the Trust's expenses and other liabilities. In seeking to achieve its investment objective, the Trust will hold bitcoin, cash, and cash equivalents and will value its Shares daily as of 4:00 p.m. Eastern time using the Index price to value the bitcoin and process all creations and redemptions in cash transactions with authorized participants. The Trust is not actively managed.

The Index

The Index is designed to reflect the performance of bitcoin in U.S. dollars. The current trading platform composition of the Index is Bitstamp, Coinbase, Gemini, itBit, Kraken, and LMAX Digital. The Index methodology was developed by Fidelity Product Services, LLC (the ''Index Provider'') and is administered by the Fidelity Index Committee. Coin Metrics, Inc. is the third-party calculation agent for the Index.[94]

The Index is constructed using bitcoin price feeds from eligible bitcoin spot markets and a volume-weighted median price (''VWMP'') methodology, calculated every 15 seconds based on VWMP spot market data over rolling 1-hour increments to develop a bitcoin price composite. The Index market value is the volume-weighted median price of bitcoin in U.S. dollars over the previous one hour, which is calculated by (1) ordering all individual transactions on eligible spot markets over the previous one hour by price, and then (2) selecting the price associated with the 50th percentile of total volume. Using rolling one-hour segments means malicious actors would need to sustain efforts to manipulate the market over an extended period of time, or such malicious actors would need to replicate efforts multiple times across eligible bitcoin spot markets, potentially triggering review. This extended period also supports authorized participant activity by capturing volume over a longer time period, rather than forcing authorized participants to mark an individual close or auction. The use of a median price reduces the ability of outlier prices to impact the NAV, as it systematically excludes those prices from the NAV calculation. The use of a volume-weighted median (as opposed to a traditional median) serves as an additional protection against attempts to manipulate the NAV by executing a large number of low-dollar trades, because any manipulation attempt would have to involve a majority of global spot bitcoin volume in a one-hour window to have any influence on the NAV.

Index data and the description of the Index are based on information made publicly available by the Index Provider on its website at *http://i.fidelity.com/indices.*

[90] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a ''cannot be manipulated'' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met. *Id.* at 37582.

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

[92] Cash equivalents are short-term instruments with maturities of less than 3 months.

[93] 15 U.S.C. 80a–1.

[94] The Sponsor's affiliates have an ownership interest in Coin Metrics, Inc.

Net Asset Value

As described in the Registration Statement, for purposes of calculating the Trust's NAV per Share, the Trust's holdings of bitcoin will be valued using the Index value as of 4:00 p.m. Eastern time. NAV means the total assets of the Trust which will include only bitcoin, cash, and cash equivalents, if any, less total liabilities of the Trust, each determined on the basis of generally accepted accounting principles. The Administrator calculates the NAV of the Trust once each Exchange trading day. The NAV for a normal trading day will be released after 4:00 p.m. Eastern time. Trading during the core trading session on the Exchange typically closes at 4:00 p.m. Eastern time. However, NAVs are not officially struck until later in the day (often by 5:30 p.m. Eastern time and almost always by 8:00 p.m. Eastern time). The pause between 4:00 p.m. Eastern time and 5:30 p.m. Eastern time (or later) provides an opportunity to algorithmically detect, flag, investigate, and correct unusual pricing should it occur.

The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. If the Sponsor determines in good faith that the Index does not reflect an accurate bitcoin price, then the Trust will cause to be employed an alternative method to determine the fair value of the Trust's assets as reviewed and approved by the Sponsor's valuation committee.[95]

Availability of Information

In addition to the price transparency of the Index, the Trust will provide information regarding the Trust's bitcoin holdings as well as additional data regarding the Trust. The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price[96] in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and other applicable quantitative information. The Trust will also disseminate its holdings on a daily basis on its website. The aforementioned information will be published as of the close of business and available on the Sponsor's website at *www.fidelity.com,* or any successor thereto.

The Trust will provide an Intraday Indicative Value (''IIV'') per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. Eastern time). The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours through the facilities of the consolidated tape association (CTA) and Consolidated Quotation System (CQS) high speed lines. In addition, the IIV will be available through on-line information services such as Bloomberg and Reuters. The IIV calculation agent will use the Trust's bitcoin holdings and cash and cash equivalents expected to comprise that day's NAV calculation to calculate the IIV. The calculation agent currently uses the Blockstream Crypto Data Feed Streaming Level 1[97] as the pricing source for the spot bitcoin, which will be used to update the IIV. The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day.

The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours.

The value of the Index will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours.

As noted above, the Index is calculated every day and is constructed using bitcoin price feeds from eligible bitcoin spot markets and a VWMP methodology, calculated every 15 seconds based on VWMP spot market data over rolling 1-hour increments. Information about the Index and Index value, including key elements of how the Index is calculated, will be publicly available at *http://i.fidelity.com/indices/.*

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the trading platforms on which bitcoin are traded. Depth of book information is also available from bitcoin trading platforms. The normal trading hours for bitcoin trading 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. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA'').

The Bitcoin Custodian

The Sponsor has selected FDAS to be the Trust's Custodian. FDAS is a New York state limited liability trust[98] that serves as bitcoin custodian to institutional and individual investors. The Custodian maintains a substantial portion of the private keys associated with the Trust's bitcoin in ''cold storage'' or similarly secure technology. Cold storage is a safeguarding method with multiple layers of protections and protocols, by which the private key(s) corresponding to the Trust's bitcoin is (are) generated and stored in an offline manner. Private keys are generated in offline computers that are not connected to the internet so that they are resistant to being hacked. Cold storage of private keys may involve keeping such keys on a non-networked computer or electronic device or storing the public key and private keys on a storage device (for example, a USB thumb drive) or printed medium and deleting the keys from all computers.

The Custodian may receive deposits of bitcoin but may not send bitcoin without use of the corresponding private keys. In order to send bitcoin

[95] Such alternative method will only be employed on an ad hoc basis. Any permanent change to the calculation of the NAV would require a proposed rule change under Rule 19b–4.

[96] As defined in Rule 11.23(a)(3), the term ''BZX Official Closing Price'' shall mean the price disseminated to the consolidated tape as the market center closing trade.

[97] Blockstream provides cryptocurrency data feeds delivering real-time and historical trade data from the world's leading cryptocurrency venues. *See https://blockstream.com/cryptofeed/.*

[98] New York state trust companies are subject to rigorous oversight similar to other types of entities, such as nationally chartered banking entities, that hold customer assets. Like national banks, they must obtain specific approval of their primary regulator for the exercise of their fiduciary powers. Moreover, limited purpose trust companies engaged in the custody of digital assets are subject to even more stringent requirements than national banks which, following initial approval of trust powers, generally can exercise those powers broadly without further approval of the OCC. In contrast, NYDFS requires in their approval orders that limited purpose trust companies obtain separate approval for all material changes in business.

when the private keys are kept in cold storage, either the private keys must be retrieved from cold storage and entered into a software program to sign the transaction, or the unsigned transaction must be sent to the ''cold'' server in which the private keys are held for signature by the private keys. At that point, the Custodian can transfer the bitcoin. The Trust's Transfer Agent will facilitate the settlement of Shares in response to the placement of creation orders and redemption orders from authorized participants. The Trust will only hold bitcoin, cash and cash equivalents. The Trust will enter into a cash custody agreement with the Cash Custodian as custodian of the Trust's cash and cash equivalents.

Creation and Redemption of Shares

When the Trust sells or redeems its Shares, it will do so in cash transactions in blocks of 25,000 Shares (a ''Creation Basket'') that are based on the amount of bitcoin held by the Trust on a per unit (*i.e.,* 25,000 Share) basis. According to the Registration Statement, on any business day, an authorized participant may place an order to create one or more Creation Baskets. Purchase orders must be placed by close of Regular Trading Hours on the Exchange or an earlier time as determined and communicated by the Sponsor and its agent. The day on which an order is received is considered the purchase order date. The total deposit of cash required is an amount of cash sufficient to purchase such amount of bitcoin, the amount of which is equal to the combined NAV of the number of Shares included in the Creation Baskets being created determined as of 4:00 p.m. ET on the date the order to purchase is properly received. The Administrator determines the required deposit for a given day by dividing the number of bitcoin held by the Trust as of the opening of business on that business day, adjusted for the amount of bitcoin constituting estimated accrued but unpaid fees and expenses of the Trust as of the opening of business on that business day, by the quotient of the number of Shares outstanding at the opening of business divided by the aggregation of Shares associated with a Creation Basket. The procedures by which an authorized participant can redeem one or more Creation Baskets mirror the procedures for the creation of Creation Baskets.

The authorized participants will deliver only cash to create shares and will receive only cash when redeeming shares. Further, authorized participants will not directly or indirectly purchase, hold, deliver, or receive bitcoin 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 bitcoin as part of the creation or redemption process.

The Trust will create shares by receiving bitcoin 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 bitcoin. Further, the third party will not be acting as an agent of the authorized participant with respect to the delivery of the bitcoin to the Trust or acting at the direction of the authorized participant with respect to the delivery of the bitcoin to the Trust. The Trust will redeem shares by delivering bitcoin 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 bitcoin. Further, the third party will not be acting as an agent of the authorized participant with respect to the receipt of the bitcoin from the Trust or acting at the direction of the authorized participant with respect to the receipt of the bitcoin from the Trust.

The procedures by which an authorized participant can redeem one or more Creation Baskets mirror the procedures for the creation of Creation Baskets. A third party, that is unaffiliated with the Trust and the Sponsor, will use cash to buy and deliver bitcoin to create Shares or withdraw and sell bitcoin for cash to redeem Shares, on behalf of the Trust.

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

Rule 14.11(e)(4)—Commodity-Based Trust Shares

The Shares will be subject to BZX Rule 14.11(e)(4), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. The Exchange represents that, for initial and continued listing, the Trust must be in compliance with Rule 10A–3 under the Act. A minimum of 100,000 Shares will be outstanding at the commencement of listing on the Exchange. The Exchange will obtain a representation that the NAV will be calculated daily and that the NAV and information about the assets of the Trust will be made available to all market participants at the same time. The Exchange notes that, as defined in Rule 14.11(e)(4)(C)(i), the Shares will be: (a) issued by a trust that holds (1) a specified commodity [99] deposited with the trust, or (2) a specified commodity and, in addition to such specified commodity, cash; (b) 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 (c) 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.

Upon termination of the Trust, the Shares will be removed from listing. The Trustee, Delaware Trust Company, is a trust company having substantial capital and surplus and the experience and facilities for handling corporate trust business, as required under Rule 14.11(e)(4)(E)(iv)(a) and that no change will be made to the trustee without prior notice to and approval of the Exchange. The Exchange also notes that, pursuant to Rule 14.11(e)(4)(F), 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 Trust in connection with issuance of Commodity-Based Trust Shares; 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. Finally, as required in Rule 14.11(e)(4)(G), the Exchange notes that any registered market maker (''Market Maker'') in the Shares must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker shall trade in an underlying commodity, related

[99] For purposes of Rule 14.11(e)(4), the term commodity takes on the definition of the term as provided in the Commodity Exchange Act. As noted above, the CFTC has opined that Bitcoin is a commodity as defined in section 1a(9) of the Commodity Exchange Act. *See* Coinflip.

commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule. In addition to the existing obligations under Exchange rules regarding the production of books and records (see, *e.g.,* Rule 4.2), the registered Market Maker in Commodity-Based Trust Shares 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 derivatives, as may be requested by the Exchange.

The Exchange is able to obtain information regarding trading in the Shares and the underlying bitcoin, Bitcoin Futures contracts, options on Bitcoin Futures, or any other bitcoin 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 organization 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 organizations of which such subsidiary or affiliate is a member.

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 BZX Rule 11.18. 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 bitcoin underlying the Shares; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(e)(4)(E)(ii), which sets forth circumstances under which trading in the Shares may be halted.

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 with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. BZX will allow trading in the Shares during all trading sessions on the Exchange. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a) the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01 where the price is greater than $1.00 per share or $0.0001 where the price is less than $1.00 per share. The Shares of the Trust will conform to the initial and continued listing criteria set forth in BZX Rule 14.11(e)(4).

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and Bitcoin Futures 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 Bitcoin Futures from such markets and other entities.[100] The Exchange may obtain information regarding trading in the Shares and Bitcoin Futures via ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

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

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares 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 or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (i) the procedures for the creation and redemption of Creation Baskets (and that the Shares are not individually redeemable); (ii) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (iii) how information regarding the IIV and the Trust's NAV are disseminated; (iv) the risks involved in trading the Shares outside of Regular Trading Hours[101] when an updated IIV will not be calculated or publicly disseminated; (v) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (vi) trading information. The Information Circular will also reference the fact that there is no regulated source of last sale information regarding bitcoin, that the

[100] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.*

[101] Regular Trading Hours is the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

Commission has no jurisdiction over the trading of bitcoin as a commodity, and that the CFTC has regulatory jurisdiction over the trading of Bitcoin Futures contracts and options on Bitcoin Futures contracts.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Shares. Members purchasing the Shares for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act [102] in general and section 6(b)(5) of the Act [103] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission has approved numerous series of Trust Issued Receipts,[104] including Commodity-Based Trust Shares,[105] to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; [106] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the and, as described and discussed above, the Sponsor's analysis demonstrates that the Exchange has satisfied the requirements under the Act that the CME Bitcoin Futures Market (i) is a regulated market, (ii) has a comprehensive surveillance-sharing agreement with the Exchange; and (iii) satisfies the Commission's ''significant market'' definition.'' In addition, the Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act because this filing sufficiently demonstrates that the standard that has previously been articulated by the Commission applicable to Commodity-Based Trust Shares has been met as outlined below.

Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order for a proposal to list and trade a series of Commodity-Based Trust Shares to be deemed consistent with the Act, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place [107] with a regulated market of significant size. Both the Exchange and CME are members of ISG.[108] As such, the only remaining issue to be addressed is whether the Bitcoin Futures market constitutes a market of significant size, which the Exchange believes that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[109]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying section 6(b)(5) of the act, specifically providing 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.[110]

(a) Reasonable Likelihood That a Person Attempting To Manipulate the ETP Would Also Have To Trade on That Market To Manipulate the ETP

Bitcoin Futures represent a growing influence on pricing in the spot bitcoin market as has been laid out above and in other proposals to list and trade Spot Bitcoin ETPs. Pricing in Bitcoin Futures is based on pricing from spot bitcoin markets. As noted above, the statement from the Teucrium Approval that ''CME's surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts . . . indirectly by trading

[102] 15 U.S.C. 78f.

[103] 15 U.S.C. 78f(b)(5).

[104] *See* Exchange Rule 14.11(f).

[105] Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

[106] As the Exchange has stated in a number of other public documents, it continues to believe that bitcoin is resistant to price manipulation and that ''other means to prevent fraudulent and manipulative acts and practices'' exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin. The fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging. To the extent that there are bitcoin trading platforms engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, such pricing does not normally impact prices on other bitcoin trading platforms because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global Bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin trading platform or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

[107] As previously articulated by the Commission, ''The standard requires such surveillance-sharing agreements since ''they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.'' The Commission has historically held that joint membership in ISG constitutes such a surveillance sharing agreement. *See* Wilshire Phoenix Disapproval.

[108] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.*

[109] *See* Wilshire Phoenix Disapproval.

[110] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a ''cannot be manipulated'' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met. *Id.* at 37582.

outside of the CME bitcoin futures market,'' makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of Bitcoin Futures. While the Commission makes clear in the Teucrium Approval that the analysis only applies to the Bitcoin Futures market as it relates to an ETP that invests in Bitcoin Futures as its only non-cash or cash equivalent holding, if CME's surveillance is sufficient to mitigate concerns related to trading in Bitcoin Futures for which the pricing is based directly on pricing from spot bitcoin markets, it's not clear how such a conclusion could apply only to ETPs based on Bitcoin Futures and not extend to Spot Bitcoin ETPs.

(b) Predominant Influence on Prices in Spot and Bitcoin Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices in the Bitcoin Futures market or spot market for a number of reasons, the significant volume in the Bitcoin Futures market, the size of bitcoin's market cap, and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid. According to data from Skew, the cost to buy or sell $5 million worth of bitcoin averages roughly 48 basis points with a market impact of $139.08.[111] Stated another way, a market participant could enter a market buy or sell order for $5 million of bitcoin and only move the market 0.48%. More strategic purchases or sales (such as using limit orders and executing through OTC bitcoin trade desks) would likely have less obvious impact on the market—which is consistent with MicroStrategy, Tesla, and Square being able to collectively purchase billions of dollars in bitcoin.

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

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present.

The Exchange also believes that reviewing this proposal through the lens of the Bitcoin Futures Approvals would also lead the Commission to approving this proposal. Previous disapproval orders have made clear that a market that constitutes a regulated market of significant size is generally a futures and/or options market based on the underlying reference asset rather than the spot commodity markets, which are often unregulated.[112] The Exchange believes that the following excerpt from the Teucrium Approval is particular informative:

> The CME ''comprehensively surveils futures market conditions and price movements on a real-time and ongoing basis in order to detect and prevent price distortions, including price distortions caused by manipulative efforts.'' Thus the CME's surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts, whether that attempt is made by directly trading on the CME bitcoin futures market or indirectly by trading outside of the CME bitcoin futures market. As such, when the CME shares its surveillance information with Arca, the information would assist in detecting and deterring fraudulent or manipulative misconduct related to the non-cash assets held by the proposed ETP.[113]

Bitcoin Futures pricing is based on pricing from spot bitcoin markets. The statement from the Teucrium Approval that ''CME's surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts . . . indirectly by trading outside of the CME bitcoin futures market,'' makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of Bitcoin Futures. If CME is able to detect such attempts at manipulation in the complex and interconnected spot bitcoin market, how would such an ability to detect attempted manipulation and the utility in sharing that information with the listing exchange apply only to Bitcoin Futures ETFs and not Spot Bitcoin ETPs? Stated a different way, given that there is significant trading volume on numerous bitcoin trading platforms that are not part of the CME CF Bitcoin Reference Rate and that arbitrage opportunities across bitcoin trading platforms means that such trading volume will influence spot bitcoin prices across the market and, despite this, the Commission still believes that CME can detect attempted manipulation of the Bitcoin Futures through ''trading outside of the CME bitcoin futures market,'' it is clear that such ability would apply equally to both Bitcoin Futures ETFs and Spot Bitcoin ETPs. To take it a step further, such an ability would also seem to be a strong indication that the CME Bitcoin Futures market represents a regulated market of significant size. To be clear, the Exchange agrees with the Commission on this point (and the implications of their conclusions) and further notes that the pricing mechanism applicable to the Shares is similar to the CME CF Bitcoin Reference Rate.

(d) Designed To Protect Investors and the Public Interest

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past several years, U.S. investor exposure to bitcoin through OTC Bitcoin Funds has grown into the tens of billions of dollars, including through Bitcoin Futures ETFs. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors through roll costs for Bitcoin Futures ETFs and premium/discount volatility and management fees for OTC Bitcoin Funds. The Exchange believes that the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently

[111] These statistics are based on samples of bitcoin liquidity in USD (excluding stablecoins or Euro liquidity) based on executable quotes on Coinbase, FTX and Kraken during the one-year period ending May 2022.

[112] *See* Winklevoss Order at 37593, specifically footnote 202, which includes the language from numerous approval orders for which the underlying futures markets formed the basis for approving series of ETPs that hold physical metals, including gold, silver, palladium, platinum, and precious metals more broadly; and 37600, specifically where the Commission provides that ''when the spot market is unregulated—the requirement of preventing fraudulent and manipulative acts may possibly be satisfied by showing that the ETP listing market has entered into a surveillance-sharing agreement with a regulated market of significant size in derivatives related to the underlying asset.'' As noted above, the Exchange believes that these citations are particularly helpful in making clear that the spot market for a spot commodity ETP need not be ''regulated'' in order for a spot commodity ETP to be approved by the Commission, and in fact that it's been the common historical practice of the Commission to rely on such derivatives markets as the regulated market of significant size because such spot commodities markets are largely unregulated.

[113] *See* Teucrium Approval at 21679.

addressed to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, such concerns are now outweighed by investor protection concerns. As such, the Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to bitcoin in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks and costs associated with investing in Bitcoin Futures ETFs and operating companies that are imperfect proxies for bitcoin exposure; and (iv) providing an alternative to custodying spot bitcoin.

Commodity-Based Trust Shares

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in Exchange Rule 14.11(e)(4). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares 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 or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and listed bitcoin derivatives via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

Availability of Information

The Exchange also believes that the proposal promotes market transparency in that a large amount of information is currently available about bitcoin and will be available regarding the Trust and the Shares.

In addition to the price transparency of the Index, the Trust will provide information regarding the Trust's bitcoin holdings as well as additional data regarding the Trust. The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price [114] in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and other applicable quantitative information. The Trust will also disseminate its holdings on a daily basis on its website. The aforementioned information will be published as of the close of business and available on the Sponsor's website at *www.fidelity.com,* or any successor thereto.

The Trust will provide an IIV per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. Eastern time). The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours through the facilities of the consolidated tape association (CTA) and Consolidated Quotation System (CQS) high speed lines. In addition, the IIV will be available through on-line information services such as Bloomberg and Reuters. The IIV calculation agent will use the Trust's bitcoin holdings and cash and cash equivalents expected to comprise that day's NAV calculation to calculate the IIV. The calculation agent will use the Blockstream Crypto Data Feed Streaming Level 1 [115] as the pricing source for the spot bitcoin, which will be used to update the IIV. The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day.

The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours.

The value of the Index will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours.

As noted above, the Index is calculated every day and is constructed using bitcoin price feeds from eligible bitcoin spot markets and a VWMP methodology, calculated every 15 seconds based on VWMP spot market data over rolling 1-hour increments. Information about the Index and Index value, including key elements of how the Index is calculated, will be publicly available at *http://i.fidelity.com/indices/.*

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the trading platforms on which bitcoin are traded. Depth of book information is also available from bitcoin trading platforms. The normal trading hours for bitcoin trading 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. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association ("CTA").

In sum, the Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act, that this filing sufficiently demonstrates that the CME Bitcoin Futures market represents a regulated market of significant size, and that on the whole the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by investor protection issues that would be resolved by approving this proposal.

The Exchange believes that the proposal is, in particular, designed to protect investors and the public interest. Premium and discount volatility, high fees, rolling costs, insufficient disclosures, and technical hurdles are putting U.S. investor money at risk on

[114] As defined in Rule 11.23(a)(3), the term "BZX Official Closing Price" shall mean the price disseminated to the consolidated tape as the market center closing trade.

[115] Blockstream provides cryptocurrency data feeds delivering real-time and historical trade data from the world's leading cryptocurrency venues. *See https://blockstream.com/cryptofeed/.*

a daily basis that could potentially be eliminated through access to a Spot Bitcoin ETP. As such, the Exchange believes that this proposal acts to limit the risk to U.S. investors that are increasingly seeking exposure to bitcoin by providing direct, 1-for-1 exposure to bitcoin in a regulated, transparent, exchange-traded vehicle, specifically by: (i) reducing premium volatility; (ii) reducing management fees through meaningful competition; (iii) providing an alternative to Bitcoin Futures ETFs which will eliminate roll cost; (iv) reducing risks associated with investing in operating companies that are imperfect proxies for bitcoin exposure; and (v) providing an alternative to custodying spot bitcoin. Finally, the Exchange notes that in addition to all of the arguments herein which it believes sufficiently establishes the CME Bitcoin Futures market as a regulated market of significant size, it is logically inconsistent to find that the CME Bitcoin Futures market is a significant market as it relates to the CME Bitcoin Futures market, but not a significant market as it relates to the bitcoin spot market for the numerous reasons laid out above.

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

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

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

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

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

III. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBZX–2023–044 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–CboeBZX–2023–044. 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–CboeBZX–2023–044 and should be submitted on or before February 2, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[116]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–00506 Filed 1–11–24; 8:45 am]

BILLING CODE 8011–01–P

[116] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99286; File No. SR–CboeBZX–2023–072]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of Amendment No. 1 to a Proposed Rule Change To List and Trade Shares of the Franklin Bitcoin ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

January 8, 2024.

On September 26, 2023, Cboe BZX Exchange, Inc. (''BZX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Franklin Bitcoin ETF under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on October 3, 2023.[3] On November 15, 2023, pursuant to section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On November 28, 2023, the Commission instituted proceedings to determine whether to disapprove the proposed rule change.[6] On January 5, 2024, the Exchange filed Amendment No. 1 to the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment No. 1 amended and replaced the proposed rule change in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

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

Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') is filing with the Securities and Exchange Commission

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 98562 (Sept. 27, 2023), 88 FR 68240. Comments on the proposed rule change are available at: *https://www.sec.gov/comments/sr-cboebzx-2023-072/srcboebzx2023072.htm.*

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

[5] *See* Securities Exchange Act Release No. 98945, 88 FR 81150 (Nov. 21, 2023).

[6] *See* Securities Exchange Act Release No. 99030, 88 FR 84004 (Dec. 1, 2023).

(''Commission'' or ''SEC'') a proposed rule change to list and trade shares of the Franklin Bitcoin ETF (the ''Fund''), a series of Franklin Templeton Digital Holdings Trust (the ''Trust''),[7] under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, 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

This Amendment No. 1 to SR–CboeBZX–2023–072 amends and replaces in its entirety the proposal as originally submitted on September 26, 2023. The Exchange submits this Amendment No. 1 in order to clarify certain points and add additional details to the proposal.

The Exchange proposes to list and trade the Shares under BZX Rule 14.11(e)(4),[8] which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.[9] Franklin Holdings, LLC is the sponsor of the Fund (''Sponsor''). The Shares will be registered with the Commission by means of the Trust's registration statement on Form S–1 (the ''Registration Statement'').[10] Coinbase Custody Trust Company, LLC (the ''bitcoin Custodian''), which is a third-party U.S.-based trust company and qualified custodian, will be responsible for custody of the Fund's bitcoin holdings and Bank of New York Mellon will be the custodian for the Fund's cash holdings, if any (the ''Cash Custodian'' and together with the bitcoin Custodian, the ''Custodians'').

As further discussed below, the Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts,[11] including spot-based Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.[12] Prior orders from the Commission have pointed out that in every prior approval order for Commodity-Based Trust Shares, there has been a derivatives market that represents the regulated market of significant size, generally a Commodity Futures Trading Commission (the ''CFTC'') regulated futures market.[13]

[7] The Trust was formed as a Delaware statutory trust on September 6, 2023. The Fund is operated as a grantor trust for U.S. federal tax purposes. The Trust and Fund have no fixed termination date.

[8] The Commission approved BZX Rule 14.11(e)(4) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[9] Any of the statements or representations regarding the index composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, and intraday indicative values, or the applicability of Exchange listing rules specified in this filing to list a series of Other Securities (collectively, ''Continued Listing Representations'') shall constitute continued listing requirements for the Shares listed on the Exchange.

[10] *See* Pre-Effective Amendment No. 2 to Form S–1 Registration Statement filed on December 29, 2023 (Registration No. 333–274474). The Registration Statement is not yet effective, and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

[11] *See* Exchange Rule 14.11(f)(1).

[12] *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018). This proposal was subsequently disapproved by the Commission. *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the ''Winklevoss Order'').

[13] *See* streetTRACKS Gold Shares, Exchange Act Release No. 50603 (Oct. 28, 2004), 69 FR 64614, 64618–19 (Nov. 5, 2004) (SR–NYSE–2004–22) (the ''First Gold Approval Order''); iShares COMEX Gold Trust, Exchange Act Release No. 51058 (Jan. 19, 2005), 70 FR 3749, 3751, 3754–55 (Jan. 26, 2005) (SR–Amex–2004–38); iShares Silver Trust, Exchange Act Release No. 53521 (Mar. 20, 2006), 71 FR 14967, 14968, 14973–74 (Mar. 24, 2006) (SR–Amex–2005–072); ETFS Gold Trust, Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993, 22994–95, 22998, 23000 (May 15, 2009) (SR–NYSEArca–2009–40); ETFS Silver Trust, Exchange Act Release No. 59781 (Apr. 17, 2009), 74 FR 18771, 18772, 18775–77 (Apr. 24, 2009) (SR–NYSEArca–2009–28); ETFS Palladium Trust, Exchange Act Release No. 61220 (Dec. 22, 2009), 74 FR 68895, 68896 (Dec. 29, 2009) (SR–NYSEArca–2009–94) (notice of proposed rule change included NYSE Arca's representation that ''[t]he most significant palladium futures exchanges are the NYMEX and the Tokyo Commodity Exchange,'' that ''NYMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which NYMEX is a member, Exchange Act Release No. 60971 (Nov. 9, 2009), 74 FR 59283, 59285–86, 59291 (Nov. 17, 2009)); ETFS Platinum Trust, Exchange Act Release No. 61219 (Dec. 22, 2009), 74 FR 68886, 68887–88 (Dec. 29, 2009) (SR–NYSEArca–2009–95) (notice of proposed rule change included NYSE Arca's representation that ''[t]he most significant platinum futures exchanges are the NYMEX and the Tokyo Commodity Exchange,'' that ''NYMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which NYMEX is a member, Exchange Act Release No. 60970 (Nov. 9, 2009), 74 FR 59319, 59321, 59327 (Nov. 17, 2009)); Sprott Physical Gold Trust, Exchange Act Release No. 61496 (Feb. 4, 2010), 75 FR 6758, 6760 (Feb. 10, 2010) (SR–NYSEArca–2009–113) (notice of proposed rule change included NYSE Arca's representation that the COMEX is one of the ''major world gold markets,'' that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' and that NYMEX, of which COMEX is a division, is a member of the Intermarket Surveillance Group, Exchange Act Release No. 61236 (Dec. 23, 2009), 75 FR 170, 171, 174 (Jan. 4, 2010)); Sprott Physical Silver Trust, Exchange Act Release No. 63043 (Oct. 5, 2010), 75 FR 62615, 62616, 62619, 62621 (Oct. 12, 2010) (SR–NYSEArca–2010–84); ETFS Precious Metals Basket Trust, Exchange Act Release No. 62692 (Aug. 11, 2010), 75 FR 50789, 50790 (Aug. 17, 2010) (SR–NYSEArca–2010–56) (notice of proposed rule change included NYSE Arca's representation that ''the most significant gold, silver, platinum and palladium futures exchanges are the COMEX and the TOCOM'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 62402 (Jun. 29, 2010), 75 FR 39292, 39295, 39298 (July 8, 2010)); ETFS White Metals Basket Trust, Exchange Act Release No. 62875 (Sept. 9, 2010), 75 FR 56156, 56158 (Sept. 15, 2010) (SR–NYSEArca–2010–71) (notice of proposed rule change included NYSE Arca's representation that ''the most significant silver, platinum and palladium futures exchanges are the COMEX and the TOCOM'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 62620 (July 30, 2010), 75 FR 47655, 47657, 47660 (Aug. 6, 2010)); ETFS Asian Gold Trust, Exchange Act Release No. 63464 (Dec. 8, 2010), 75 FR 77926, 77928 (Dec. 14, 2010) (SR–NYSEArca–2010–95) (notice of proposed rule change included NYSE Arca's representation that ''the most significant gold futures exchanges are the COMEX and the Tokyo Commodity Exchange,'' that ''COMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 63267 (Nov. 8, 2010), 75 FR 69494, 69496, 69500–01 (Nov. 12, 2010)); Sprott Physical Platinum and Palladium Trust, Exchange Act Release No. 68430 (Dec. 13, 2012), 77 FR 75239, 75240–41 (Dec. 19, 2012) (SR–NYSEArca–2012–111) (notice of proposed rule change included NYSE Arca's representation that ''[f]utures on platinum and palladium are traded on two major exchanges: The New York Mercantile Exchange . . . and Tokyo Commodities Exchange'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 68101 (Oct. 24, 2012), 77 FR 65732, 65733, 65739 (Oct. 30, 2012)); APMEX Physical—1 oz. Gold Redeemable Trust, Exchange Act Release No. 66930 (May 7, 2012), 77 FR 27817, 27818 (May 11, 2012) (SR–NYSEArca–2012–18) (notice of proposed rule change included NYSE Arca's representation that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, and that

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Further to this point, the Commission's prior orders have noted that the spot commodities and currency markets for which it has previously approved spot exchange-traded products (''ETPs'') are generally unregulated and that the Commission relied on the underlying futures market as the regulated market of significant size that formed the basis for approving the series of Currency [14] and Commodity-Based Trust Shares, including gold, silver, platinum, palladium, copper, and other commodities and currencies. The Commission specifically noted in the Winklevoss Order that the First Gold Approval Order ''was based on an assumption that the currency market and the spot gold market were largely unregulated.'' [15]

As such, the regulated market of significant size test does not require that the spot bitcoin market be regulated in order for the Commission to approve this proposal, and precedent makes clear that an underlying market for a spot commodity or currency being a regulated market would actually be an exception to the norm. These largely unregulated currency and commodity markets do not provide the same protections as the markets that are subject to the Commission's oversight, but the Commission has consistently looked to surveillance sharing agreements with the underlying futures market in order to determine whether such products were consistent with the Act. With this in mind, the Chicago Mercantile Exchange (''CME'') bitcoin futures (''Bitcoin Futures'') market is the proper market to consider in determining whether there is a related regulated market of significant size.

Further to this point, the Exchange notes that the Commission has approved proposals related to the listing and trading of funds that would primarily hold CME Bitcoin Futures that are registered under the Securities Act of 1933.[16] In the Teucrium Approval, the Commission found the CME Bitcoin Futures market to be a regulated market of significant size as it relates to CME Bitcoin Futures; a position that represents a departure from prior disapproval orders for ETPs that would hold actual bitcoin instead of derivatives contracts (''Spot Bitcoin ETPs'') that use the exact same pricing methodology as the CME Bitcoin Futures. In the recently decided Grayscale Investments, LLC v Securities and Exchange Commission,[17] however, the court addressed this conflict by finding that the SEC had failed to provide a coherent explanation as to why it had approved the Bitcoin Futures ETPs while disapproving the proposal to list and trade shares of the Grayscale Bitcoin Trust and vacating the disapproval order.[18] As further discussed below, both the Exchange and the Sponsor believe that this proposal and the included analysis are sufficient to establish that the CME Bitcoin Futures market represents a regulated market of significant size as it relates both to the CME Bitcoin Futures market and to the spot bitcoin market and that this proposal should be approved, consistent with the Teucrium precedent and in view of the court's findings relating to the Grayscale Order.

Finally, as discussed in greater detail below, by using professional custodians and other service providers, the Fund provides investors interested in exposure to bitcoin via the securities markets with important protections that are not always available to investors that invest directly in bitcoin, including protection against counterparty insolvency, cyber attacks, and other risks. For example, an exchange-traded vehicle such as the Fund, which will be subject to the registration and periodic reporting requirements of the 1933 Act and the Exchange Act, would offer U.S. investors an alternative to directing their bitcoin investments into loosely regulated offshore vehicles (including loosely regulated centralized trading platforms that have since faced bankruptcy proceedings or other insolvencies).

Background

Bitcoin is a digital asset based on the decentralized, open source protocol of the peer-to-peer computer network launched in 2009 that governs the creation, movement, and ownership of bitcoin and hosts the public ledger, or ''blockchain,'' on which all bitcoin transactions are recorded (the ''Bitcoin Network'' or ''Bitcoin''). The decentralized nature of the Bitcoin Network allows parties to transact directly with one another based on cryptographic proof instead of relying on a trusted third party. The protocol also lays out the rate of issuance of new bitcoin within the Bitcoin Network, a rate that is reduced by half approximately every four years with an eventual hard cap of 21 million. It's generally understood that the combination of these two features—a systemic hard cap of 21 million bitcoin and the ability to transact trustlessly with anyone connected to the Bitcoin Network—gives bitcoin its value. The first rule filing proposing to list an ETP to provide exposure to bitcoin in the U.S. was submitted by the Exchange on June 30, 2016.[19] At that time, blockchain technology, and digital assets that utilized it, were relatively new to the broader public. The market capitalization of all bitcoin in existence at that time was approximately $10 billion. No registered offering of digital asset securities or shares in an investment vehicle with exposure to bitcoin or any other cryptocurrency had yet been conducted, and the regulated infrastructure for conducting a digital asset securities offering had not begun to develop.[20] Similarly, regulated U.S.

gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the ''major world gold markets,'' Exchange Act Release No. 66627 (Mar. 20, 2012), 77 FR 17539, 17542–43, 17547 (Mar. 26, 2012)); JPM XF Physical Copper Trust, Exchange Act Release No. 68440 (Dec. 14, 2012), 77 FR 75468, 75469–70, 75472, 75485–86 (Dec. 20, 2012) (SR–NYSEArca–2012–28); iShares Copper Trust, Exchange Act Release No. 68973 (Feb. 22, 2013), 78 FR 13726, 13727, 13729–30, 13739–40 (Feb. 28, 2013) (SR–NYSEArca–2012–66); First Trust Gold Trust, Exchange Act Release No. 70195 (Aug. 14, 2013), 78 FR 51239, 51240 (Aug. 20, 2013) (SR–NYSEArca–2013–61) (notice of proposed rule change included NYSE Arca's representation that FINRA, on behalf of the exchange, may obtain trading information regarding gold futures and options on gold futures from members of the Intermarket Surveillance Group, including COMEX, or from markets ''with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement,'' and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the ''major world gold markets,'' Exchange Act Release No. 69847 (June 25, 2013), 78 FR 39399, 39400, 39405 (July 1, 2013)); Merk Gold Trust, Exchange Act Release No. 71378 (Jan. 23, 2014), 79 FR 4786, 4786–87 (Jan. 29, 2014) (SR–NYSEArca–2013–137) (notice of proposed rule change included NYSE Arca's representation that ''COMEX is the largest gold futures and options exchange'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' including with respect to transactions occurring on COMEX pursuant to CME and NYMEX's membership, or from exchanges ''with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement,'' Exchange Act Release No. 71038 (Dec. 11, 2013), 78 FR 76367, 76369, 76374 (Dec. 17, 2013)); Long Dollar Gold Trust, Exchange Act Release No. 79518 (Dec. 9, 2016), 81 FR 90876, 90881, 90886, 90888 (Dec. 15, 2016) (SR–NYSEArca–2016–84).

[14] *See* Exchange Rule 14.11(e)(5).

[15] *See* Winklevoss Order at 37592.

[16] *See* Exchange Act Release No. 94620 (April 6, 2022), 87 FR 21676 (April 12, 2022) (the ''Teucrium Approval'') and 94853 (May 5, 2022) (collectively, with the Teucrium Approval, the ''Bitcoin Futures Approvals'').

[17] *Grayscale Investments, LLC* v. *Securities and Exchange Commission,* et al., Case No. 22–1142 (the ''Grayscale Order'').

[18] *Id.*

[19] *See* Winklevoss Order.

[20] Digital assets that are securities under U.S. law are referred to throughout this proposal as ''digital asset securities.'' All other digital assets, including bitcoin, are referred to interchangeably as ''cryptocurrencies'' or ''virtual currencies.'' The

Bitcoin Futures contracts did not exist. The CFTC had determined that bitcoin is a commodity,[21] but had not engaged in significant enforcement actions in the space. The New York Department of Financial Services (''NYDFS'') adopted its final ''BitLicense'' regulatory framework in 2015, but had only approved four entities to engage in activities relating to virtual currencies (whether through granting a BitLicense or a limited-purpose trust charter) as of June 30, 2016.[22] While the first over-the-counter bitcoin fund launched in 2013, public trading was limited and the fund had only $60 million in assets.[23] There were very few, if any, traditional financial institutions engaged in the space, whether through investment or providing services to digital asset companies. In January 2018, the staff of the Commission noted in a letter to the Investment Company Institute (''ICI'') and Securities Industry and Financial Markets Association (''SIFMA'') that it was not aware, at that time, of a single custodian providing fund custodial services for digital assets.[24] The digital assets financial ecosystem, including bitcoin, has progressed significantly in the intervening years. The development of a regulated market for digital asset securities has significantly evolved, with market participants having conducted registered public offerings of both digital asset securities [25] and shares in investment vehicles holding Bitcoin Futures.[26] Additionally, licensed and regulated service providers have emerged to provide fund custodial services for digital assets, among other services, including the bitcoin Custodian. For example, in February 2023, the Commission proposed to amend Rule 206(4)–2 under the Advisers Act of 1940 (the ''custody rule'') to expand the scope beyond client funds and securities to include all crypto assets, among other assets; [27] in May 2021, the staff of the Commission released a statement permitting open-end mutual funds to invest in cash-settled Bitcoin Futures; in December 2020, the Commission adopted a conditional no-action position permitting certain special purpose broker-dealers to custody digital asset securities under Rule 15c3–3 under the Exchange Act (the ''Custody Statement''); [28] in September 2020, the staff of the Commission released a no-action letter permitting certain broker-dealers to operate a non-custodial Alternative Trading System (''ATS'') for digital asset securities, subject to specified conditions; [29] in October 2019, the staff of the Commission granted temporary relief from the clearing agency registration requirement to an entity seeking to establish a securities clearance and settlement system based on distributed ledger technology,[30] and multiple transfer agents who provide services for digital asset securities registered with the Commission.[31]

Outside the Commission's purview, the regulatory landscape has also changed significantly since 2016, and cryptocurrency markets have grown and evolved as well. The market for bitcoin is approximately 100 times larger, having at one point reached a market capitalization of over $1 trillion.[32] According to the CME Bitcoin Futures report, from February 13, 2023 through March 27, 2023, CFTC regulated Bitcoin Futures represented between $750 million and $3.2 billion in notional trading volume on CME Bitcoin Futures on a daily basis.[33] Open interest was over $1.4 billion for the entirety of the period and at one point was over $2 billion.[34] ETPs that primarily hold CME Bitcoin Futures have raised over $1 billion dollars in assets. The CFTC has exercised its regulatory jurisdiction in bringing a number of enforcement actions related to bitcoin and against trading platforms that offer cryptocurrency trading.[35] As of February 14, 2023, the NYDFS has granted no fewer than thirty-four BitLicenses,[36] including to established public payment companies like PayPal Holdings, Inc. and Square, Inc., and limited purpose trust charters to entities providing cryptocurrency custody services. In addition, the Treasury's Office of Foreign Assets Control (''OFAC'') has brought enforcement actions over apparent violations of applicable sanctions laws in connection with the provision of wallet management services for digital assets.[37]

term ''digital assets'' refers to all digital assets, including both digital asset securities and cryptocurrencies, together.

[21] *See* ''In the Matter of Coinflip, Inc.'' (''Coinflip'') (CFTC Docket 15–29 (September 17, 2015)) (order instituting proceedings pursuant to sections 6(c) and 6(d) of the CEA, making findings and imposing remedial sanctions), in which the CFTC stated: ''Section 1a(9) of the CEA defines 'commodity' to include, among other things, 'all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.' 7 U.S.C. 1a(9). The definition of a 'commodity' is broad. *See, e.g.,* Board of Trade of City of Chicago v. SEC, 677 F. 2d 1137, 1142 (7th Cir. 1982). Bitcoin and other virtual currencies are encompassed in the definition and properly defined as commodities.''

[22] A list of virtual currency businesses that are entities regulated by the NYDFS is available on the NYDFS website. *See https://www.dfs.ny.gov/apps_and_licensing/virtual_currency_businesses/regulated_entities.*

[23] Data as of March 31, 2016 according to publicly available filings. *See* Bitcoin Investment Trust Form S–1, dated May 27, 2016, available: *https://www.sec.gov/Archives/edgar/data/1588489/000095012316017801/filename1.htm.*

[24] *See* letter from Dalia Blass, Director, Division of Investment Management, U.S. Securities and Exchange Commission to Paul Schott Stevens, President & CEO, Investment Company Institute and Timothy W. Cameron, Asset Management Group—Head, Securities Industry and Financial Markets Association (January 18, 2018), *available at https://www.sec.gov/divisions/investment/noaction/2018/cryptocurrency-011818.htm.*

[25] *See* Prospectus supplement filed pursuant to Rule 424(b)(1) for INX Tokens (Registration No. 333–233363), *available at: https://www.sec.gov/Archives/edgar/data/1725882/000121390020023202/ea125858-424b1_inxlimited.htm.*

[26] *See* Prospectus filed by Stone Ridge Trust VI on behalf of NYDIG Bitcoin Strategy Fund Registration, *available at: https://www.sec.gov/Archives/edgar/data/1764894/000119312519309942/d693146d497.htm.*

[27] *See* Investment Advisers Act Release No. 6240 88 FR 14672 (March 9, 2023) (Safeguarding Advisory Client Assets).

[28] *See* Securities Exchange Act Release No. 90788, 86 FR 11627 (February 26, 2021) (File Number S7–25–20) (Custody of Digital Asset Securities by Special Purpose Broker-Dealers).

[29] *See* letter from Elizabeth Baird, Deputy Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Kris Dailey, Vice President, Risk Oversight & Operational Regulation, Financial Industry Regulatory Authority (September 25, 2020), *available at: https://www.sec.gov/divisions/marketreg/mr-noaction/2020/finra-ats-role-in-settlement-of-digital-asset-security-trades-09252020.pdf.*

[30] *See* letter from Jeffrey S. Mooney, Associate Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Charles G. Cascarilla & Daniel M. Burstein, Paxos Trust Company, LLC (October 28, 2019), *available at: https://www.sec.gov/divisions/marketreg/mr-noaction/2019/paxos-trust-company-102819-17a.pdf.*

[31] *See, e.g.,* Form TA–1/A filed by Tokensoft Transfer Agent LLC (CIK: 0001794142) on January 8, 2021, *available at: https://www.sec.gov/Archives/edgar/data/1794142/000179414219000001/xslFTA1X01/primary_doc.xml.*

[32] As of December 1, 2021, the total market capitalization of all bitcoin in circulation was approximately $1.08 trillion.

[33] Data sourced from the CME Bitcoin Futures Report: 30 March 2023, *available at: https://www.cmegroup.com/markets/cryptocurrencies/bitcoin/bitcoin.volume.htm.*

[34] See, *e.g.,* Id.

[35] The CFTC's annual report for Fiscal Year 2022 (which ended on September 30, 2022) noted that the CFTC completed the fiscal year with 18 enforcement filings related to digital assets. ''Digital asset actions included manipulation, a $1.7 billion fraudulent scheme, and a decentralized autonomous organization (DAO) failing to register as a SEF or FCM or to seek DCM designation.'' *See* CFTC FY 2022 Agency Financial Report, *available at: https://www.cftc.gov/media/7941/2022afr/download.* Additionally, the CFTC filed on March 27, 2023, a civil enforcement action against the owner/operators of the Binance centralized digital asset trading platform, which is one of the largest bitcoin derivative exchanges. *See* CFTC Release No. 8680–23 (March 27, 2023), *available at: https://www.cftc.gov/PressRoom/PressReleases/8680-23.*

[36] *See https://www.dfs.ny.gov/virtual_currency_businesses.*

[37] *See* U.S. Department of the Treasury Enforcement Release: ''OFAC Enters Into $98,830 Settlement with BitGo, Inc. for Apparent Violations of Multiple Sanctions Programs Related to Digital

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In addition to the regulatory developments laid out above, more traditional financial market participants have become more active in cryptocurrency trading and investment activity: large insurance companies, asset managers, university endowments, pension funds, and even historically bitcoin skeptical fund managers have allocated to bitcoin investments. As noted in the Financial Stability Oversight Council (''FSOC'') report on Digital Asset Financial Stability Risks and Regulation, ''[i]ndustry surveys suggest that the scale of these investments grew quickly during the boom in crypto-asset markets through late 2021. In June 2022, PwC estimated that the number of crypto-specialist hedge funds was more than 300 globally, with $4.1 billion in assets under management. In addition, in a survey PwC found that 38 percent of surveyed traditional hedge funds were currently investing in 'digital assets,' compared to 21 percent the year prior.'' [38] The largest over-the-counter bitcoin fund previously filed a Form 10 registration statement, which the staff of the Commission reviewed and which took effect automatically, and is now a reporting company.[39] Established U.S. exchange-traded companies like Tesla, Inc., MicroStrategy Incorporated, and Square, Inc., among others, have announced substantial investments in bitcoin in amounts as large as $1.5 billion (Tesla) and $425 million (MicroStrategy). The foregoing examples demonstrate that bitcoin has gained mainstream usage and recognition across the U.S. market.

Despite these developments, access for U.S. retail investors to gain exposure to bitcoin via a transparent and U.S. regulated, U.S. exchange-traded vehicle remains limited. Instead current options include: (i) facing the counter-party risk, legal uncertainty, technical risk, and complexity associated with accessing spot bitcoin; (ii) over-the-counter bitcoin funds (''OTC Bitcoin Funds'') with high management fees and potentially volatile premiums and discounts; [40] (iii) purchasing shares of operating companies that they believe will provide proxy exposure to bitcoin with limited disclosure about the associated risks; [41] or (iv) purchasing Bitcoin Futures exchange-traded funds (''ETFs''), as defined below, which represent a sub-optimal structure for long-term investors that will cost them significant amounts of money every year compared to Spot Bitcoin ETPs, as further discussed below. Meanwhile, investors in many other countries, including Canada and Brazil, are able to use more traditional exchange listed and traded products (including ETFs holding physical bitcoin) to gain exposure to bitcoin. Similarly, investors in Switzerland and across Europe have access to ETPs which trade on regulated exchanges and provide exposure to a broad array of spot crypto assets. U.S. investors, by contrast, are left with fewer and more risky means of getting bitcoin exposure, as described above.[42]

To this point, the lack of a Spot Bitcoin ETP exposes U.S. investor assets to significant risk because investors that would otherwise seek crypto asset exposure through a Spot Bitcoin ETP are forced to find alternative exposure through generally riskier means. For instance, many U.S. investors that held their digital assets in accounts at FTX,[43] Celsius Network LLC,[44] BlockFi Inc.[45] and Voyager Digital Holdings, Inc.[46] have become unsecured creditors in the insolvencies of those entities. If a Spot Bitcoin ETP was available, it is likely that at least a portion of the billions of dollars tied up in those proceedings would still reside in the brokerage accounts of U.S. investors, having instead been invested in a transparent, regulated, and well-understood structure—a Spot Bitcoin ETP. To this point, approval of a Spot Bitcoin ETP would represent a major win for the protection of U.S. investors in the crypto asset space. As further described below, the Fund, like all other series of Commodity-Based Trust Shares, is designed to protect investors against the risk of losses through fraud and insolvency that arise by holding bitcoin on centralized platforms.

Additionally, investors in other countries, specifically Canada, generally pay lower fees than U.S. retail investors that invest in OTC Bitcoin Funds due to the fee pressure that results from increased competition among available bitcoin investment options. Without an approved and regulated Spot Bitcoin ETP in the U.S. as a viable alternative, U.S. investors could seek to purchase shares of non-U.S. bitcoin vehicles in order to get access to bitcoin exposure. Given the separate regulatory regime and the potential difficulties associated with any international litigation, such an arrangement would create more risk exposure for U.S. investors than they would otherwise have with a U.S.

Currency Transactions'' (December 30, 2020) *available at: https://home.treasury.gov/system/files/126/20201230_bitgo.pdf. See also* U.S. Department of the Treasury Enforcement Release: ''Treasury Announces Two Enforcement Actions for over $24M and $29M Against Virtual Currency Exchange, Bittrex, Inc.'' (October 11, 2022) *available at: https://home.treasury.gov/news/press-releases/jy1006. See also* U.S. Department of Treasure Enforcement Release ''OFAC Settles with Virtual Currency Exchange Kraken for $362,158.70 Related to Apparent Violations of the Iranian Transactions and Sanctions Regulations'' (November 28, 2022) *available at: https://home.treasury.gov/system/files/126/20221128_kraken.pdf.*

[38] *See* the FSOC ''Report on Digital Asset Financial Stability Risks and Regulation 2022'' (October 3, 2022) (at footnote 26) at *https://home.treasury.gov/system/files/261/FSOC-Digital-Assets-Report-2022.pdf.*

[39] *See* Letter from Division of Corporation Finance, Office of Real Estate & Construction to Barry E. Silbert, Chief Executive Officer, Grayscale Bitcoin Trust (January 31, 2020) *https://www.sec.gov/Archives/edgar/data/1588489/000000000020000953/filename1.pdf.*

[40] The premium and discount for OTC Bitcoin Funds is known to move rapidly. For example, over the period of 12/21/20 to 1/21/21, the premium for the largest OTC Bitcoin Fund went from 40.18% to 2.79%. While the price of bitcoin appreciated significantly during this period and NAV per share increased by 41.25%, the price per share increased by only 3.58%. This means that investors are buying shares of a fund that experiences significant volatility in its premium and discount outside of the fluctuations in price of the underlying asset. Even operating within the normal premium and discount range, it's possible for an investor to buy shares of an OTC Bitcoin Fund only to have those shares quickly lose 10% or more in dollar value excluding any movement of the price of bitcoin. That is to say—the price of bitcoin could have stayed exactly the same from market close on one day to market open the next, yet the value of the shares held by the investor decreased only because of the fluctuation of the premium. As more investment vehicles, including mutual funds and ETFs, seek to gain exposure to bitcoin, the easiest option for a buy and hold strategy for such vehicles is often an OTC Bitcoin Fund, meaning that even investors that do not directly buy OTC Bitcoin Funds can be disadvantaged by extreme premiums (or discounts) and premium/discount volatility.

[41] A number of operating companies engaged in unrelated businesses—such as Tesla (a car manufacturer) and MicroStrategy (an enterprise software company)—have announced investments as large as $5.3 billion in bitcoin. Without access to bitcoin exchange-traded products, retail investors seeking investment exposure to bitcoin may end up purchasing shares in these companies in order to gain the exposure to bitcoin that they seek. In fact, mainstream financial news networks have written a number of articles providing investors with guidance for obtaining bitcoin exposure through publicly traded companies (such as MicroStrategy, Tesla, and bitcoin mining companies, among others) instead of dealing with the complications associated with buying spot bitcoin in the absence of a bitcoin ETP. *See e.g.,* ''7 public companies with exposure to bitcoin'' (February 8, 2021) available at: *https://finance.yahoo.com/news/7-public-companies-with-exposure-to-bitcoin-154201525.html;* and ''Want to get in the crypto trade without holding bitcoin yourself? Here are some investing ideas'' (February 19, 2021) available at: *https://www.cnbc.com/2021/02/19/ways-to-invest-in-bitcoin-without-holding-the-cryptocurrency-yourself-.html.*

[42] The Exchange notes that the list of countries above is not exhaustive and that securities regulators in a number of additional countries have either approved or otherwise allowed the listing and trading of Spot Bitcoin ETPs.

[43] *See* FTX Trading Ltd., et al., Case No. 22–11068.

[44] *See* Celsius Network LLC, et al., Case No. 22–10964.

[45] *See* BlockFi Inc., Case No. 22–19361.

[46] *See* Voyager Digital Holdings, Inc., et al., Case No. 22–10943.

exchange listed ETP. In addition to the benefits to U.S. investors articulated throughout this proposal, approving this proposal (and others like it) would provide U.S. ETFs and mutual funds with a U.S.-listed and regulated product to provide such access rather than relying on either more expensive, riskier U.S. based products or products listed and primarily regulated in other countries.

Bitcoin Futures ETFs

The Exchange and Sponsor applaud the Commission for allowing the launch of ETFs registered under the Investment Company Act of 1940, as amended (the ''1940 Act''), and the Bitcoin Futures Approvals that provide exposure to bitcoin primarily through CME Bitcoin Futures (''Bitcoin Futures ETFs''). Allowing such products to list and trade is a productive first step in providing U.S. investors and traders with transparent, exchange-listed tools for expressing an investment view on bitcoin. The Bitcoin Futures Approvals, however, have created a logical inconsistency in the application of the standard the Commission applies when considering Bitcoin ETP proposals.

As discussed further below, the standard applicable to Bitcoin ETPs is whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size in the underlying asset. Previous disapproval orders have made clear that a market that constitutes a regulated market of significant size is generally a futures and/or options market based on the underlying reference asset rather than the spot commodity markets, which are often unregulated.[47] Leaving aside the analysis of that standard until later in this proposal,[48] the Exchange believes that the following rationale the Commission applied to a Bitcoin Futures ETF should result in the Commission approving this and other Spot Bitcoin ETP proposals:

> The CME ''comprehensively surveils futures market conditions and price movements on a real-time and ongoing basis in order to detect and prevent price distortions, including price distortions caused by manipulative efforts.'' Thus, the CME's surveillance can reasonably be relied upon to capture the effects on the CME Bitcoin Futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME Bitcoin Futures contracts, whether that attempt is made by directly trading on the CME Bitcoin Futures market or indirectly by trading outside of the CME Bitcoin Futures market. As such, when the CME shares its surveillance information with Arca, the information would assist in detecting and deterring fraudulent or manipulative misconduct related to the non-cash assets held by the proposed ETP.[49]

CME Bitcoin Futures pricing is based on pricing from spot bitcoin markets. The statement from the Teucrium Approval that ''CME's surveillance can reasonably be relied upon to capture the effects on the CME Bitcoin Futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME Bitcoin Futures contracts . . . indirectly by trading outside of the CME Bitcoin Futures market,'' makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of CME Bitcoin Futures.

This was further acknowledged in the ''Grayscale lawsuit'' [50] when Judge Rao stated ''. . . the Commission in the Teucrium order recognizes that the futures prices are influenced by the spot prices, and the Commission concludes in approving futures ETPs that any fraud on the spot market can be adequately addressed by the fact that the futures market is a regulated one . . .''. The Exchange agrees with the Commission on this point and notes that the pricing mechanism applicable to the Shares is similar to that of the CME Bitcoin Futures.

The structure of Bitcoin Futures ETFs provides negative outcomes for buy and hold investors as compared to a Spot Bitcoin ETP.[51] Specifically, the cost of rolling CME Bitcoin Futures contracts will cause the Bitcoin Futures ETFs to lag the performance of bitcoin itself and would cost U.S. investors significant amounts of money on an annual basis compared to Spot Bitcoin ETPs. Such rolling costs would not be required for Spot Bitcoin ETPs that hold bitcoin. Further, Bitcoin Futures ETFs could potentially hit CME position limits, which would force a Bitcoin Futures ETF to invest in non-futures assets for bitcoin exposure and cause potential investor confusion and lack of certainty about what such Bitcoin Futures ETFs are actually holding to try to get exposure to bitcoin, which would also materially change the risk profile associated with such an ETF. While Bitcoin Futures ETFs represent a useful trading tool, they are clearly sub-optimal as the sole exchange traded vehicle structure for U.S. investors that are looking for long-term exposure to bitcoin and could, based on the calculations above, unnecessarily cost U.S. investors significant amounts of money every year compared to Spot Bitcoin ETPs. The Exchange believes that any proposal to list and trade a Spot Bitcoin ETP should be reviewed by the Commission with this important investor protection context in mind.

Based on the foregoing, the Exchange and Sponsor believe that an objective review of the proposals to list Spot Bitcoin ETPs compared to and in view of the Bitcoin Futures ETFs and the Bitcoin Futures Approvals as well as limitations of existing approved product structures, would lead to the conclusion that Spot Bitcoin ETPs would benefit U.S. investors and should be available to U.S. investors. As such, this proposal and other comparable proposals to list and trade Spot Bitcoin ETPs should be approved by the Commission. In summary, U.S. investors lose significant amounts of money from holding Bitcoin Futures ETFs as compared to Spot Bitcoin ETPs, losses which could be prevented by the Commission approving Spot Bitcoin ETPs.

[47] *See* Winklevoss Order at 37593, specifically footnote 202, which includes the language from numerous approval orders for which the underlying futures markets formed the basis for approving series of ETPs that hold physical metals, including gold, silver, palladium, platinum, and precious metals more broadly; and 37600, specifically where the Commission provides that ''when the spot market is unregulated—the requirement of preventing fraudulent and manipulative acts may possibly be satisfied by showing that the ETP listing market has entered into a surveillance-sharing agreement with a regulated market of significant size in derivatives related to the underlying asset.'' As noted above, the Exchange believes that these citations are particularly helpful in making clear that the spot market for a spot commodity ETP need not be ''regulated'' in order for a spot commodity ETP to be approved by the Commission, and in fact that it's been the common historical practice of the Commission to rely on such derivatives markets as the regulated market of significant size because such spot commodities markets are largely unregulated.

[48] As further outlined below, both the Exchange and the Sponsor believe that the Bitcoin Futures market represents a regulated market of significant size and that this proposal and others like it should be approved on this basis.

[49] *See* Teucrium Approval at 21679.

[50] *Grayscale Investments, LLC* v. *Securities and Exchange Commission,* et al., Case No. 22–1142.

[51] *See e.g.,* ''Bitcoin ETF's Success Could Come at Fundholders' Expense,'' Wall Street Journal (October 24, 2021), available at: *https://www.wsj.com/articles/bitcoin-etfs-success-could-come-at-fundholders-expense-11635080580;* ''Physical Bitcoin ETF Prospects Accelerate,'' *ETF.com* (October 25, 2021), available at: *https://www.etf.com/sections/blog/physical-bitcoin-etf-prospects-shine?nopaging=1&__cf_chl_jschl_tk__=pmd_JsK.fjXz9eAQW9zol0qpzhXDrrlpIVdoCloLXbLjl44-1635476946-0-gqNtZGzNApCjcnBszQql.*

Additionally, any concerns related to preventing fraudulent and manipulative acts and practices related to Spot Bitcoin ETPs would apply equally to the spot markets underlying the futures contracts held by a Bitcoin Futures ETF. Both the Exchange and Sponsor believe that the CME Bitcoin Futures market is a regulated market of significant size and that such manipulation concerns are mitigated, as described extensively below. After allowing and approving the listing and trading of Bitcoin Futures ETFs that hold primarily CME Bitcoin Futures, however, the only consistent outcome would be approving Spot Bitcoin ETPs on the basis that the CME Bitcoin Futures market is a regulated market of significant size.

Given the current landscape, approving this proposal (and others like it) and allowing Spot Bitcoin ETPs to be listed and traded alongside Bitcoin Futures ETFs would establish a consistent regulatory approach, provide U.S. investors with choice in product structures for bitcoin exposure, and offer flexibility in the means of gaining exposure to bitcoin through transparent, regulated, U.S. exchange-listed vehicles.

Bitcoin Futures

CME began offering trading in Bitcoin Futures in 2017. Each contract represents five bitcoin and is based on the CME CF Bitcoin Reference Rate.[52] The contracts trade and settle like other cash-settled commodity futures contracts. Nearly every measurable metric related to Bitcoin Futures has generally trended up since launch, although certain notional volume calculations have decreased roughly in line with the decrease in the price of bitcoin. For example, there were 143,215 Bitcoin Futures contracts traded in April 2023 (approximately $20.7 billion) compared to 193,182 ($5 billion), 104,713 ($3.9 billion), 118,714 ($42.7 billion), and 111,964 ($23.2 billion) contracts traded in April 2019, April 2020, April 2021, and April 2022, respectively.[53]

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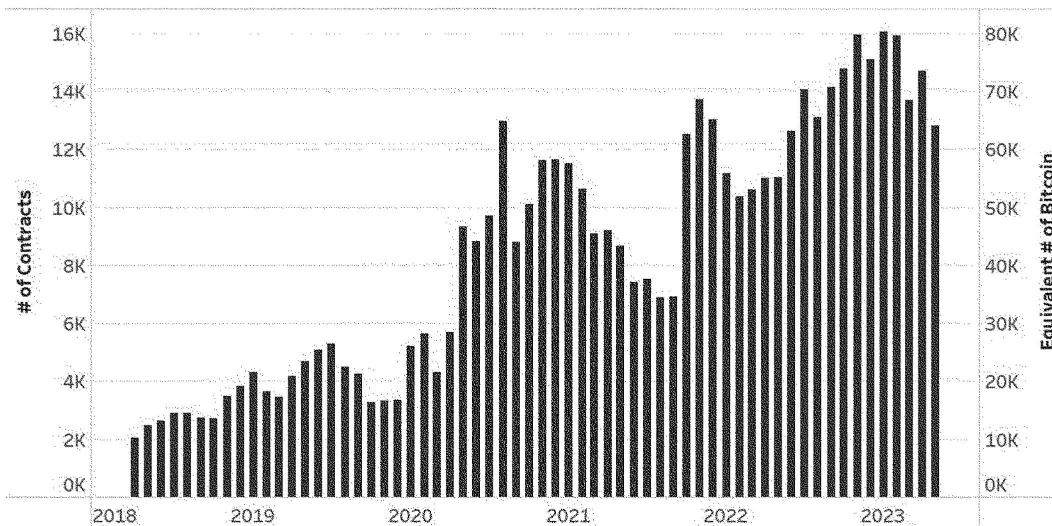
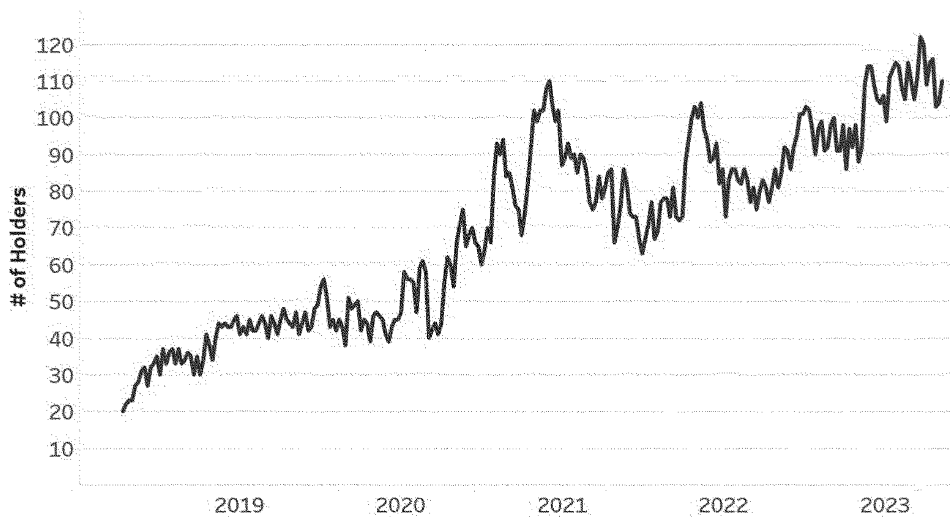


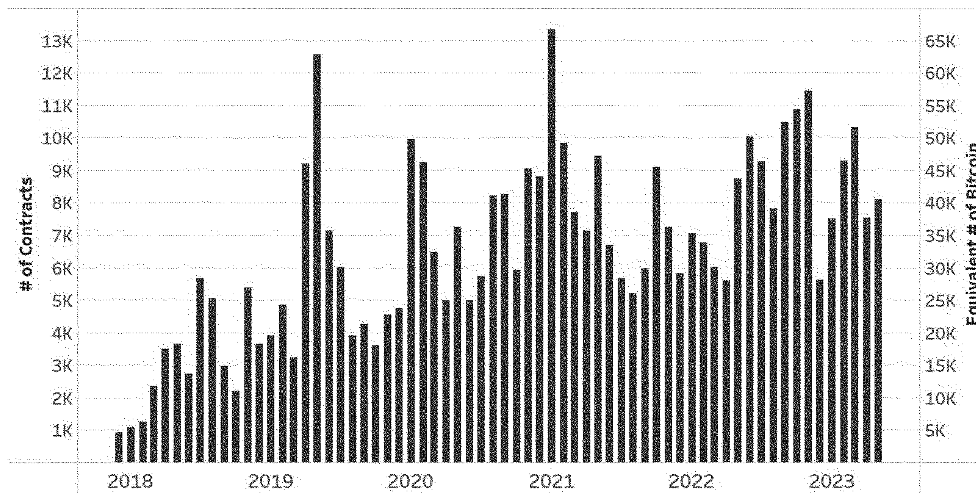
The number of large open interest holders[54] and unique accounts trading Bitcoin Futures have both increased, even in the face of heightened bitcoin price volatility.

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

[53] Source: CME, Yahoo Finance 4/30/23.

[54] A large open interest holder in Bitcoin Futures is an entity that holds at least 25 contracts, which is the equivalent of 125 bitcoin. At a price of approximately $29,268.81 per bitcoin on 4/30/2023, more than 100 firms had outstanding positions of greater than $3.65 million in Bitcoin Futures.





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The Sponsor further believes that publicly available research, including research done as part of rule filings proposing to list and trade shares of Spot Bitcoin ETPs, corroborates the overall trend outlined above and supports the thesis that the Bitcoin Futures pricing leads the spot market and, thus, a person attempting to manipulate the Shares would also have to trade on that market to manipulate the ETP. Specifically, the Sponsor believes that such research indicates that Bitcoin Futures lead the bitcoin spot market in price formation.[55]

Section 6(b)(5) and the Applicable Standards

The Commission has approved numerous series of Trust Issued Receipts,[56] including Commodity-Based Trust Shares,[57] to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; [58] and

[55] *See* Exchange Act Releases No. 94080 (January 27, 2022), 87 FR 5527 (April 12, 2022) (specifically ''Amendment No. 1 to the Proposed Rule Change To List and Trade Shares of the Wise Origin Bitcoin Trust Under BZX Rule 14.11(3)(4), Commodity-Based Trust Shares''); 94982 (May 25, 2022), 87 FR 33250 (June 1, 2022); 94844 (May 4, 2022), 87 FR 28043 (May 10, 2022); and 93445 (October 28, 2021), 86 FR 60695 (November 3, 2021). See also Hu, Y., Hou, Y. and Oxley, L. (2019). ''What role do futures markets play in Bitcoin pricing? Causality, cointegration and price discovery from a time-varying perspective'' (available at: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7481826/*). This academic research paper concludes that ''There exist no episodes where the Bitcoin spot markets dominates the price discovery processes with regard to Bitcoin futures. This points to a conclusion that the price formation originates solely in the Bitcoin futures market. We can, therefore, conclude that the Bitcoin futures markets dominate the dynamic price discovery process based upon time-varying information share measures. Overall, price discovery seems to occur in the Bitcoin futures markets rather than the underlying spot market based upon a time-varying perspective.''

[56] *See* Exchange Rule 14.11(f).

[57] Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

[58] As the Exchange has stated in a number of other public documents, it continues to believe that bitcoin is resistant to price manipulation and that ''other means to prevent fraudulent and manipulative acts and practices'' exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and

Continued

(ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act and that this filing sufficiently demonstrates that the CME Bitcoin Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place [59] with a regulated market of significant size. Both the Exchange and CME are members of the Intermarket Surveillance Group (''ISG'').[60] The only remaining issue to be addressed is whether the Bitcoin Futures market constitutes a market of significant size, which both the Exchange and the Sponsor believe that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[61]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying section 6(b)(5) of the act, specifically providing 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.[62]

(a) Manipulation of the ETP

According to the research and analysis presented above, the Bitcoin Futures market is the leading market for bitcoin price formation. Where Bitcoin Futures lead the price in the spot market such that a potential manipulator of the bitcoin spot market (beyond just the constituents of the Reference Rate [63]) would have to participate in the Bitcoin Futures market, it follows that a potential manipulator of the Shares would similarly have to transact in the Bitcoin Futures market because the Reference Rate is based on spot prices. As such, the Exchange believes that part (a) of the significant market test outlined above is satisfied and that common membership in ISG between the Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the trading of the Shares.

(b) Predominant Influence on Prices in Spot and Bitcoin Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force influencing prices in the Bitcoin Futures market or spot market for a number of reasons, including the significant daily trading volume in the Bitcoin Futures market, the size of bitcoin's market capitalization, and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid. As the court found in the Grayscale Order, the Exchange and the Sponsor submit that ''[b]ecause the spot market is deeper and more liquid than the futures market, manipulation should be more difficult, not less.''

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

The Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present.

(ii) Designed To Protect Investors and the Public Interest

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past several years, U.S. investor exposure to bitcoin through OTC Bitcoin Funds has grown into the tens of billions of dollars, including through Bitcoin Futures ETFs. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors including in connection with roll costs for Bitcoin Futures ETFs and premium/discount volatility and management fees for OTC Bitcoin Funds. The Exchange believes that the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed for this proposal to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, such concerns are now outweighed by investor protection concerns. As such,

continuous nature of bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin. The fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging. To the extent that there are bitcoin trading platforms engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, such pricing does not normally impact prices on other trading platforms because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin trading platform or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

[59] As previously articulated by the Commission, ''The standard requires such surveillance-sharing agreements since ''they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.'' The Commission has historically held that joint membership in the ISG constitutes such a surveillance sharing agreement. *See* Securities Exchange Act Release No. 88284 (February 26, 2020), 85 FR 12595 (March 3, 2020) (SR–NYSEArca–2019–39) (the ''Wilshire Phoenix Disapproval'').

[60] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.*

[61] *See* Wilshire Phoenix Disapproval.

[62] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a 'cannot be manipulated' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.'' *Id.* at 37582.

[63] As further described below, the ''Reference Rate'' for the Fund is the CME CF Bitcoin Reference Rate—New York Variant.

the Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors to access bitcoin in a regulated and transparent exchange-traded vehicle that would act to limit risk and benefit U.S. investors by: (i) reducing premium and discount volatility as compared to OTC investment vehicles; (ii) increasing competitive pressure on management fees resulting in fee compression/reductions; (iii) reducing risks and costs as compared to those associated with investing in Bitcoin Futures ETFs and operating companies that represent imperfect proxies for bitcoin exposure; and (iv) providing an alternative to custodying spot bitcoin.

Franklin Templeton Digital Holdings Trust

Delaware Trust Company is the trustee (''Trustee''). Bank of New York Mellon serves as the Trust's administrator (the ''Administrator'') and transfer agent (''Transfer Agent''). As noted above, Coinbase Custody Trust Company, LLC is the bitcoin Custodian and will be responsible for safekeeping of the Fund's bitcoin, while the Bank of New York Mellon (the Cash Custodian) will act as custodian of the Fund's cash and cash equivalents.[64]

According to the Registration Statement, each Share will represent a fractional undivided beneficial interest in the Fund. The Fund's assets will only consist of bitcoin, cash, and cash equivalents.

According to the Registration Statement, the Trust is neither an investment company registered under the Investment Company Act of 1940, as amended,[65] nor a commodity pool for purposes of the Commodity Exchange Act (''CEA''), and none of the Trust, the Fund or the Sponsor is subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the Shares.

When the Fund sells or redeems its Shares, it will do so in cash transactions in large blocks of 50,000 Shares (a ''Creation Basket'') at the Fund's NAV. In such cases, a third party that is unaffiliated with the Fund and the Sponsor will use cash to buy and deliver bitcoin to create Shares or withdraw and sell bitcoin for cash to redeem Shares, on behalf of the Fund. Authorized participants will deliver, or facilitate the delivery of, cash to the Fund's account with the Cash Custodian in exchange for Shares when they purchase Shares, and the Fund, through the Cash Custodian, will deliver cash to such authorized participants when they redeem Shares. Authorized participants may then offer Shares to the public at prices that depend on various factors, including the supply and demand for Shares, the value of the Fund's assets, and market conditions at the time of a transaction. Shareholders who buy or sell Shares during the day from their broker may do so at a premium or discount relative to the NAV of the Shares of the Fund.

Investment Objective

According to the Registration Statement and as further described below, the investment objective of the Fund is to generally reflect the performance of the price of bitcoin before payment of the Fund's expenses. In seeking to achieve its investment objective, the Fund will hold only bitcoin, cash, and cash equivalents. The Fund will value its Shares daily based on the value of bitcoin as reflected by the CME CF Bitcoin Reference Rate—New York Variant (the ''Reference Rate''), which is an independently calculated value based on an aggregation of executed trade flow of major bitcoin spot trading platforms. Specifically, the Reference Rate is calculated based on certain transactions of all of its constituent bitcoin trading platforms, which are currently Bitstamp, Coinbase, itBit, Kraken, Gemini, and LMAX Digital, and which may change from time to time. If the Reference Rate is not available or the Sponsor determines, in its sole discretion, that the Reference Rate should not be used, the Fund's holdings may be fair valued in accordance with the policy approved by the Sponsor.[66]

The Reference Rate

As described in the Registration Statement, the Fund will value its Shares daily based on the value of bitcoin as reflected by the Reference Rate. The Reference Rate is calculated daily and aggregates the notional value of bitcoin trading activity across major bitcoin spot trading platforms. The Reference Rate uses the same methodology as the CME CF Bitcoin Reference Rate (''BRR''), including utilizing the same constituent bitcoin trading platforms, which is the underlying rate to determine settlement of CME Bitcoin Futures contracts, except that the Reference Rate is calculated as of 4 p.m. ET, whereas the BRR is calculated as of 4 p.m. London time. The Reference Rate is designed based on the International Organization of Securities Commissions (''IOSCO'') Principals for Financial Benchmarks. The administrator of the Reference Rate is CF Benchmarks Ltd. (the ''Reference Rate Provider'').

The Reference Rate was created to facilitate financial products based on bitcoin. It serves as a once-a-day benchmark rate of the U.S. dollar price of bitcoin (USD/BTC), calculated as of 4:00 p.m. ET. The Reference Rate, which has been calculated and published since February 28, 2022, aggregates the trade flow of several bitcoin trading platforms, during an observation window between 3:00 p.m. and 4:00 p.m. ET into the U.S. dollar price of one bitcoin at 4:00 p.m. ET. Specifically, the Reference Rate is calculated based on the ''Relevant Transactions'' (as defined below) of all of its constituent bitcoin trading platforms, which are currently Coinbase, Bitstamp, Kraken, itBit, LMAX Digital and Gemini (the ''Constituent Platforms''), as follows:

- All Relevant Transactions are added to a joint list, recording the time of execution, trade price and size for each transaction.
- The list is partitioned by timestamp into 12 equally-sized time intervals of 5 (five) minute length.
- For each partition separately, the volume-weighted median trade price is calculated from the trade prices and sizes of all Relevant Transactions, *i.e.,* across all Constituent Platforms. A volume-weighted median differs from a standard median in that a weighting factor, in this case trade size, is factored into the calculation.
- The Reference Rate is then determined by the equally-weighted average of the volume medians of all partitions.

The Reference Rate does not include any futures prices in its methodology. A ''Relevant Transaction'' is any cryptocurrency 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 Constituent Platform in the BTC/USD pair that is reported and disseminated by a Constituent Platform through its publicly available Application Programming Interface (''API'') and observed by the Reference Rate Provider.

The Sponsor believes that the use of the Reference Rate is reflective of a reasonable valuation of the average spot price of bitcoin and that resistance to manipulation is a priority aim of its design methodology. The methodology: (i) takes an observation period and

[64] Cash equivalents are short-term instruments with maturities of less than 3 months.

[65] 15 U.S.C. 80a–1.

[66] Any alternative method will only be employed on an ad hoc basis. Any permanent change to the calculation of the NAV would require a proposed rule change under Rule 19b-4.

divides it into equal partitions of time; (ii) then calculates the volume-weighted median of all transactions within each partition; and (iii) the value is determined from the arithmetic mean of the volume-weighted medians, equally weighted. By employing the foregoing steps, the Reference Rate thereby seeks to ensure that transactions in bitcoin conducted at outlying prices do not have an undue effect on the value of the Reference Rate, large trades or clusters of trades transacted over a short period of time will not have an undue influence on the Reference Rate value, and the effect of large trades at prices that deviate from the prevailing price are mitigated from having an undue influence on the Reference Rate value.

In addition, the Sponsor notes that an oversight function is implemented by the Reference Rate Provider in seeking to ensure that the Reference Rate is administered through codified policies for Reference Rate integrity.

Reference Rate data and the description of the Reference Rate are based on information made publicly available by the Reference Rate Provider on its website at *https://www.cfbenchmarks.com.*

Net Asset Value

NAV means the total assets of the Fund (which includes bitcoin, cash and cash equivalents) less total liabilities of the Fund. The Administrator will determine the NAV of the Fund on each day that the Exchange is open for regular trading, as promptly as practical after 4:00 p.m. EST. The NAV of the Fund is the aggregate value of the Fund's assets less its estimated accrued but unpaid liabilities (which include accrued expenses). In determining the Fund's NAV, the Administrator values the bitcoin held by the Fund based on the price set by the Reference Rate as of 4:00 p.m. EST. The Administrator also determines the NAV per Share.

The NAV for the Fund will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time.

If the Reference Rate is not available or the Sponsor determines, in its sole discretion, that the Reference Rate should not be used, the Fund's holdings may be fair valued in accordance with the policy approved by the Sponsor.

Availability of Information

The website for the Fund, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price [67] in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Fund, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The aforementioned information will be published as of the close of business available on the Fund's website at *https://www.franklintempleton.com/investments/options/exchange-traded-funds/products/39639/SINGLCLASS/franklin-bitcoin-etf/EZBC,* or any successor thereto. The Fund will also disseminate its holdings on a daily basis on its website.

The Intraday Indicative Value (''IIV'') will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Fund's bitcoin holdings during the trading day, which is based on the CME CF Bitcoin Real Time Index (''BRTI''). The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours through the facilities of the consolidated tape association (CTA) and Consolidated Quotation System (CQS) high speed lines. In addition, the IIV will be available through on-line information services such as Bloomberg and Reuters.

The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours.

As noted above, the Reference Rate is calculated daily and aggregates the notional value of bitcoin trading activity across major bitcoin spot trading platforms. Reference Rate data, the Reference Rate value, and the description of the Reference Rate are based on information made publicly available by the Reference Rate Provider on its website at *https://www.cfbenchmarks.com.*

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the trading platforms on which bitcoin are traded. Depth of book information is also available from bitcoin trading platforms. The normal trading hours for bitcoin trading 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. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA'').

The Bitcoin Custodian

The bitcoin Custodian carefully considers the design of the physical, operational and cryptographic systems for secure storage of the Fund's private keys in an effort to lower the risk of loss or theft. The bitcoin Custodian utilizes a variety of security measures to ensure that private keys necessary to transfer digital assets remain uncompromised and that the Fund maintains exclusive ownership of its assets. The bitcoin Custodian will keep the private keys associated with the Fund's bitcoin in ''cold storage'' [68] (the ''Cold Vault Balance''). The hardware, software, systems, and procedures of the bitcoin Custodian may not be available or cost-effective for many investors to access directly. Only specific individuals are authorized to participate in the custody process, and no individual acting alone will be able to access or use any of the private keys. In addition, no combination of the executive officers of the Sponsor, acting alone or together, will be able to access or use any of the private keys that hold the Fund's bitcoin.

Creation and Redemption of Shares

When the Fund sells or redeems its Shares, it will do so in cash transactions

[67] As defined in Rule 11.23(a)(3), the term ''BZX Official Closing Price'' shall mean the price disseminated to the consolidated tape as the market center closing trade.

[68] The term ''cold storage'' refers to a safeguarding method by which the private keys corresponding to bitcoins stored on a digital wallet are removed from any computers actively connected to the internet. Cold storage of private keys may involve keeping such wallet on a non-networked computer or electronic device or storing the public key and private keys relating to the digital wallet on a storage device (for example, a USB thumb drive) or printed medium (for example, papyrus or paper) and deleting the digital wallet from all computers.

in blocks of 50,000 Shares that are based on the quantity of bitcoin attributable to each Share of the Fund (*e.g.,* a Creation Basket) at the NAV. According to the Registration Statement, on any business day, an authorized participant may place an order to create one or more Creation Baskets. Purchase orders for cash transaction Creation Baskets must be placed by 3:00 p.m. Eastern Time, or the close of regular trading on the Exchange, whichever is earlier. The day on which an order is received is considered the purchase order date. The Administrator determines the required deposit for a given day by dividing the number of bitcoin held by the Fund as of the opening of business on that business day, adjusted for the amount of bitcoin constituting estimated accrued but unpaid fees and expenses of the Fund as of the opening of business on that business day, by the quotient of the number of Shares outstanding at the opening of business divided by the number of Shares in a Creation Basket. The procedures by which an authorized participant can redeem one or more Creation Baskets mirror the procedures for the creation of Creation Baskets.

The authorized participants will deliver only cash to create Shares and will receive only cash when redeeming Shares. Further, authorized participants will not directly or indirectly purchase, hold, deliver, or receive bitcoin as part of the creation or redemption process or otherwise direct the Fund or a third party with respect to purchasing, holding, delivering, or receiving bitcoin as part of the creation or redemption process.

The Fund will create Shares by receiving bitcoin from a third party that is not the authorized participant and the Fund—not the authorized participant—is responsible for selecting the third party to deliver the bitcoin. Further, the third party will not be acting as an agent of the authorized participant with respect to the delivery of the bitcoin to the Fund or acting at the direction of the authorized participant with respect to the delivery of the bitcoin to the Fund. The Fund will redeem Shares by delivering bitcoin to a third party that is not the authorized participant and the Fund—not the authorized participant—is responsible for selecting the third party to receive the bitcoin. Further, the third party will not be acting as an agent of the authorized participant with respect to the receipt of the bitcoin from the Fund or acting at the direction of the authorized participant with respect to the receipt of the bitcoin from the Fund.

A third party, that is unaffiliated with the Fund and the Sponsor, will use cash to buy and deliver bitcoin to create Shares or withdraw and sell bitcoin for cash to redeem Shares, on behalf of the Fund.

The Sponsor (including its delegates) will maintain ownership and control of the Fund's bitcoin in a manner consistent with good delivery requirements for spot commodity transactions.

Rule 14.11(e)(4)—Commodity-Based Trust Shares

The Shares will be subject to BZX Rule 14.11(e)(4), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. The Exchange represents that, for initial and continued listing, the Fund must be in compliance with Rule 10A–3 under the Act. A minimum of 100,000 Shares will be outstanding at the commencement of listing on the Exchange. The Exchange will obtain a representation that the NAV will be calculated daily and information about the NAV and the assets of the Fund will be made available to all market participants at the same time. The Exchange notes that, as defined in Rule 14.11(e)(4)(C)(i), the Shares will be: (a) issued by a trust that holds (1) a specified commodity [69] deposited with the trust, or (2) a specified commodity and, in addition to such specified commodity, cash; (b) 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 (c) 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.

Upon termination of the Fund, the Shares will be removed from listing. The Trustee, Delaware Trust Company, is a trust company having substantial capital and surplus and the experience and facilities for handling corporate trust business, as required under Rule 14.11(e)(4)(E)(iv)(a) and that no change will be made to the trustee without prior notice to and approval of the Exchange. The Exchange also notes that, pursuant to Rule 14.11(e)(4)(F), 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-Based Trust Shares; 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. Finally, as required in Rule 14.11(e)(4)(G), the Exchange notes that any registered market maker (''Market Maker'') in the Shares must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule. In addition to the existing obligations under Exchange rules regarding the production of books and records (see, *e.g.,* Rule 4.2), the registered Market Maker in Commodity-Based Trust Shares 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 derivatives, as may be requested by the Exchange.

The Exchange is able to obtain information regarding trading in the Shares and the underlying bitcoin, Bitcoin Futures contracts, options on Bitcoin Futures, or any other bitcoin 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

[69] For purposes of Rule 14.11(e)(4), the term commodity takes on the definition of the term as provided in the Commodity Exchange Act. As noted above, the CFTC has opined that bitcoin is a commodity as defined in section 1a(9) of the Commodity Exchange Act. *See* Coinflip.

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 organization 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 organizations of which such subsidiary or affiliate is a member.

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 BZX Rule 11.18. 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 bitcoin underlying the Shares; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(e)(4)(E)(ii), which sets forth circumstances under which trading in the Shares may be halted.

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

In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. BZX will allow trading in the Shares during all trading sessions on the Exchange. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a) the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01 where the price is greater than $1.00 per share or $0.0001 where the price is less than $1.00 per share. The Shares of the Fund will conform to the initial and continued listing criteria set forth in BZX Rule 14.11(e)(4).

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and Bitcoin Futures 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 Bitcoin Futures from such markets and other entities.[70] The Exchange may obtain information regarding trading in the Shares and Bitcoin Futures via ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

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

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund or the Shares 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 Fund or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (i) the procedures for the creation and redemption of Creation Baskets (and that the Shares are not individually redeemable); (ii) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (iii) how information regarding the IIV and the Fund's NAV are disseminated; (iv) the risks involved in trading the Shares outside of Regular Trading Hours[71] when an updated IIV will not be calculated or publicly disseminated; (v) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (vi) trading information. The Information Circular will also reference the fact that there is no regulated source of last sale information regarding bitcoin, that the Commission has no jurisdiction over the trading of bitcoin as a commodity, and that the CFTC has regulatory jurisdiction over the trading of Bitcoin Futures contracts and options on Bitcoin Futures contracts.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Shares. Members purchasing the Shares for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act[72] in general and section 6(b)(5) of the Act[73] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in

[70] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.*

[71] Regular Trading Hours is the time between 9:30 a.m. and 4:00 p.m. Eastern time.

[72] 15 U.S.C. 78f.

[73] 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest.

The Commission has approved numerous series of Trust Issued Receipts, including Commodity-Based Trust Shares, to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices;[74] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act and that this filing, in conjunction with precedent filings, sufficiently demonstrates that the CME Bitcoin Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place[75] with a regulated market of significant size. Both the Exchange and CME are members of ISG. The only remaining issue to be addressed is whether the Bitcoin Futures market constitutes a market of significant size, which both the Exchange and the Sponsor believe that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[76]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying section 6(b)(5) of the Act, specifically providing 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.[77]

(a) Manipulation of the ETP

According to the research and analysis presented above, the Bitcoin Futures market is the leading market for bitcoin price formation. Where Bitcoin Futures lead the price in the spot market such that a potential manipulator of the bitcoin spot market (beyond just the constituents of the Reference Rate) would have to participate in the Bitcoin Futures market, it follows that a potential manipulator of the Shares would similarly have to transact in the Bitcoin Futures market because the Reference Rate is based on spot prices. As such, the Exchange believes that part (a) of the significant market test outlined above is satisfied and that common membership in ISG between the Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the Shares.

(b) Predominant Influence on Prices in Spot and Bitcoin Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant influence on prices in the Bitcoin Futures market or spot market for a number of reasons, including the significant daily trading volume in the Bitcoin Futures market, the size of bitcoin's market capitalization, and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid. As the court found in the Grayscale Order, the Exchange and the Sponsor submit that ''[b]ecause the spot market is deeper and more liquid than the futures market, manipulation should be more difficult, not less.''

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present in this case, in addition to the existence of a surveillance sharing agreement that meets the Commission's previously articulated standards.

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[74] As the Exchange has stated in a number of other public documents, it continues to believe that bitcoin is resistant to price manipulation and that ''other means to prevent fraudulent and manipulative acts and practices'' exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin. The fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging and impractical. To the extent that there are bitcoin trading platforms engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, such pricing does not normally impact prices on other trading platforms because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin trading platform or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

[75] As previously articulated by the Commission, ''The standard requires such surveillance-sharing agreements since ''they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.'' The Commission has historically held that joint membership in the ISG constitutes such a surveillance sharing agreement. *See* Wilshire Phoenix Disapproval).

[76] *Id.*

[77] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a 'cannot be manipulated' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.'' *Id.* at 37582.

(ii) Designed To Protect Investors and the Public Interest

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past several years, U.S. investor exposure to bitcoin through OTC Bitcoin Funds has grown into the tens of billions of dollars, including through Bitcoin Futures ETFs. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors including in connection with roll costs for Bitcoin Futures ETFs and premium/discount volatility and management fees for OTC Bitcoin Funds. The Exchange believes that the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed for this proposal to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, such concerns are now outweighed by investor protection concerns. As such, the Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors to access bitcoin in a regulated and transparent exchange-traded vehicle that would act to limit risk and benefit U.S. investors by: (i) reducing premium and discount volatility as compared to OTC investment vehicles; (ii) increasing competitive pressure on management fees resulting in fee compression/reductions; (iii) reducing risks and costs as compared to those associated with investing in Bitcoin Futures ETFs and operating companies that represent imperfect proxies for bitcoin exposure; and (iv) providing an alternative to custodying spot bitcoin.

Commodity-Based Trust Shares

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in Exchange Rule 14.11(e)(4). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund or the Shares 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 Fund or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and listed bitcoin derivatives via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

Availability of Information

The Exchange also believes that the proposal promotes market transparency in that a large amount of information is currently available about bitcoin and will be available regarding the Fund and the Shares. The website for the Fund, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price [78] in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Fund, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The aforementioned information will be published as of the close of business available on the Fund's website at *https://www.franklintempleton.com/investments/options/exchange-traded-funds/products/39639/SINGLCLASS/franklin-bitcoin-etf/EZBC,* or any successor thereto. The Fund will also disseminate its holdings on a daily basis on its website.

The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Fund's bitcoin holdings during the trading day, which is based on the CME CF Bitcoin Real Time Index (''BRTI''). The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours through the facilities of the consolidated tape association (CTA) and Consolidated Quotation System (CQS) high speed lines. In addition, the IIV will be available through on-line information services such as Bloomberg and Reuters.

The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours.

As noted above, the Reference Rate is calculated daily and aggregates the notional value of bitcoin trading activity across major bitcoin spot trading platforms. Reference Rate data, the Reference Rate value, and the description of the Reference Rate are based on information made publicly available by the Reference Rate Provider on its website at *https://www.cfbenchmarks.com.*

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the trading platforms on which bitcoin are traded. Depth of book information is also available from bitcoin trading platforms. The normal trading hours for bitcoin trading 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. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA'').

In sum, the Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act, that this filing sufficiently demonstrates that the CME Bitcoin Futures market represents a regulated market of significant size, and that on the whole the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by investor protection issues that would be resolved by approving this proposal.

The Exchange believes that the proposal is, in particular, designed to

[78] As defined in Rule 11.23(a)(3), the term ''BZX Official Closing Price'' shall mean the price disseminated to the consolidated tape as the market center closing trade.

protect investors and the public interest. The investor protection issues for U.S. investors has grown significantly over the last several years, through roll costs for Bitcoin Futures ETFs and premium/discount volatility and management fees for OTC Bitcoin Funds. As discussed herein, this growth investor protection concerns need to be reevaluated and rebalanced with the prevention of fraudulent and manipulative acts and practices concerns that previous disapproval orders have relied upon. Finally, the Exchange notes that in addition to all of the arguments herein which it believes sufficiently establish the CME Bitcoin Futures market as a regulated market of significant size, it is logically inconsistent to find that the CME Bitcoin Futures market is a significant market as it relates to the CME Bitcoin Futures market, but not a significant market as it relates to the bitcoin spot market for the numerous reasons laid out above.

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

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

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

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

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

III. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBZX–2023–072 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–CboeBZX–2023–072. 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–CboeBZX–2023–072 and should be submitted on or before February 2, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[79]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–00509 Filed 1–11–24; 8:45 am]

BILLING CODE 8011–01–P

[79] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99288; File No. SR-CboeBZX–2023–028]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of Amendment No. 5 to a Proposed Rule Change To List and Trade Shares of the ARK 21Shares Bitcoin ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

January 8, 2024.

On April 25, 2023, Cboe BZX Exchange, Inc. (''BZX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the ARK 21Shares Bitcoin ETF under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on May 15, 2023.[3] On June 15, 2023, pursuant to section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On June 28, 2023, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. On June 30, 2023, the Exchange filed Amendment No. 2 to the proposed rule change, which amended and replaced the proposed rule change, as modified by Amendment No. 1, in its entirety. On July 11, 2023, the Exchange filed Amendment No. 3 to the proposed rule change, which amended and replaced the proposed rule change, as modified by Amendment No. 2, in its entirety. On August 11, 2023, the Commission noticed Amendment No. 3 and instituted proceedings to determine whether to disapprove the proposed rule change, as modified by Amendment No. 3.[6] On September 26, 2023, the Commission designated a longer period for Commission action on the proposed

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 97461 (May 9, 2023), 88 FR 31045. Comments received on the proposed rule change can be found at: *https://www.sec.gov/comments/sr-cboebzx-2023-028/srcboebzx2023028.htm.*

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

[5] *See* Securities Exchange Act Release No. 97732, 88 FR 40877 (June 22, 2023).

[6] *See* Securities Exchange Act Release No. 98112, 88 FR 55743 (Aug. 16, 2023).

rule change, as modified by Amendment No. 3.[7] On October 24, 2023, the Exchange filed Amendment No. 4 to the proposed rule change, which amended and replaced the proposed rule change, as modified by Amendment No. 3, in its entirely. On January 5, 2024, the Exchange filed Amendment No. 5 to the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment No. 5 amended and replaced the proposed rule change, as modified by Amendment No. 4, in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 5, from interested persons.

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

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to list and trade shares of the ARK 21Shares Bitcoin ETF (the ''Trust''),[8] under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, 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

This Amendment No. 5 to SR–CboeBZX–2023–028 amends and replaces in its entirety the proposal as originally submitted on April 25, 2023 and as amended by Amendment No. 1 on June 28, 2023, Amendment No. 2 on June 30, 2023, and Amendment No. 3 on July 11, 2023, and Amendment No. 4 on October 24, 2023. The Exchange submits this Amendment No. 5 in order to clarify certain points and add additional details to the proposal.

The Exchange proposes to list and trade the Shares under BZX Rule 14.11(e)(4),[9] which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.[10] [11] 21Shares US LLC is the sponsor of the Trust (the ''Sponsor''). The Shares will be registered with the Commission by means of the Trust's registration statement on Form S–1 (the ''Registration Statement'').[12] As further discussed below, the Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts,[13] including spot-based Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.[14] Prior orders from the Commission have pointed out that in every prior approval order for Commodity-Based Trust Shares, there has been a derivatives market that represents the regulated market of significant size, generally a Commodity Futures Trading Commission (the ''CFTC'') regulated futures market.[15]

[7] *See* Securities Exchange Act Release No. 98530, 88 FR 67851 (Oct. 2, 2023). The Commission designated January 10, 2024, as the date by which the Commission shall approve or disapprove the proposed rule change.

[8] The Trust was formed as a Delaware statutory trust on June 22, 2021 and is operated as a grantor trust for U.S. federal tax purposes. The Trust has no fixed termination date.

[9] The Commission approved BZX Rule 14.11(e)(4) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[10] Any of the statements or representations regarding the index composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, and intraday indicative values, or the applicability of Exchange listing rules specified in this filing to list a series of Other Securities (collectively, ''Continued Listing Representations'') shall constitute continued listing requirements for the Shares listed on the Exchange.

[11] The Exchange notes that two different proposals to list and trade shares of the Trust were disapproved by the Commission on March 31, 2022 and January 26, 2023. *See* Exchange Act Release Nos. 94571 (March 31, 2022), 87 FR 20014 (April 6, 2022) and 96751 (January 26, 2023), 88 FR 628 (January 31, 2023).

[12] *See* draft Amendment No. 5 to the Registration Statement on Form S–1, dated December 28, 2023 submitted to the Commission by the Sponsor on behalf of the Trust. The descriptions of the Trust, the Shares, and the Index (as defined below) contained herein are based, in part, on information in the Registration Statement. The Registration Statement is not yet effective and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

[13] *See* Exchange Rule 14.11(f)(1).

[14] *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018). This proposal was subsequently disapproved by the Commission. *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the ''Winklevoss Order'').

[15] *See* streetTRACKS Gold Shares, Exchange Act Release No. 50603 (Oct. 28, 2004), 69 FR 64614, 64618–19 (Nov. 5, 2004) (SR–NYSE–2004–22) (the ''First Gold Approval Order''); iShares COMEX Gold Trust, Exchange Act Release No. 51058 (Jan. 19, 2005), 70 FR 3749, 3751, 3754–55 (Jan. 26, 2005) (SR–Amex–2004–38); iShares Silver Trust, Exchange Act Release No. 53521 (Mar. 20, 2006), 71 FR 14967, 14968, 14973–74 (Mar. 24, 2006) (SR–Amex–2005–072); ETFS Gold Trust, Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993, 22994–95, 22998, 23000 (May 15, 2009) (SR–NYSEArca–2009–40); ETFS Silver Trust, Exchange Act Release No. 59781 (Apr. 17, 2009), 74 FR 18771, 18772, 18775–77 (Apr. 24, 2009) (SR–NYSEArca–2009–28); ETFS Palladium Trust, Exchange Act Release No. 61220 (Dec. 22, 2009), 74 FR 68895, 68896 (Dec. 29, 2009) (SR–NYSEArca–2009–94) (notice of proposed rule change included NYSE Arca's representation that ''[t]he most significant palladium futures exchanges are the NYMEX and the Tokyo Commodity Exchange,'' that ''NYMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which NYMEX is a member, Exchange Act Release No. 60971 (Nov. 9, 2009), 74 FR 59283, 59285–86, 59291 (Nov. 17, 2009)); ETFS Platinum Trust, Exchange Act Release No. 61219 (Dec. 22, 2009), 74 FR 68886, 68887–88 (Dec. 29, 2009) (SR–NYSEArca–2009–95) (notice of proposed rule change included NYSE Arca's representation that ''[t]he most significant platinum futures exchanges are the NYMEX and the Tokyo Commodity Exchange,'' that ''NYMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which NYMEX is a member, Exchange Act Release No. 60970 (Nov. 9, 2009), 74 FR 59319, 59321, 59327 (Nov. 17, 2009)); Sprott Physical Gold Trust, Exchange Act Release No. 61496 (Feb. 4, 2010), 75 FR 6758, 6760 (Feb. 10, 2010) (SR–NYSEArca–2009–113) (notice of proposed rule change included NYSE Arca's representation that the COMEX is one of the ''major world gold markets,'' that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' and that NYMEX, of which COMEX is a division, is a member of the Intermarket Surveillance Group, Exchange Act Release No. 61236 (Dec. 23, 2009), 75 FR 170, 171, 174 (Jan. 4, 2010)); Sprott Physical Silver Trust, Exchange Act Release No. 63043 (Oct. 5, 2010), 75 FR 62615, 62616, 62619, 62621 (Oct. 12, 2010) (SR–NYSEArca–2010–84); ETFS Precious Metals Basket Trust, Exchange Act Release No. 62692 (Aug. 11, 2010), 75 FR 50789, 50790 (Aug. 17, 2010) (SR–NYSEArca–2010–56) (notice of proposed rule change included NYSE Arca's representation that ''the most significant gold, silver, platinum and palladium futures exchanges are the COMEX and the TOCOM'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 62402 (Jun. 29, 2010), 75 FR 39292, 39295, 39298 (July 8, 2010));

ETFS White Metals Basket Trust, Exchange Act Release No. 62875 (Sept. 9, 2010), 75 FR 56156, 56158 (Sept. 15, 2010) (SR–NYSEArca–2010–71) (notice of proposed rule change included NYSE Arca's representation that ''the most significant silver, platinum and palladium futures exchanges are the COMEX and the TOCOM'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 62620 (July 30, 2010), 75 FR 47655, 47657, 47660 (Aug. 6, 2010)); ETFS Asian Gold Trust, Exchange Act Release No. 63464 (Dec. 8, 2010), 75 FR 77926, 77928 (Dec. 14, 2010) (SR–NYSEArca–2010–95) (notice of proposed rule change included NYSE Arca's representation that ''the most significant gold futures exchanges are the COMEX and the Tokyo Commodity Exchange,'' that ''COMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 63267 (Nov. 8, 2010), 75 FR 69494, 69496, 69500–01 (Nov. 12, 2010)); Sprott Physical Platinum and Palladium Trust, Exchange Act Release No. 68430 (Dec. 13, 2012), 77 FR 75239, 75240–41 (Dec. 19, 2012) (SR–NYSEArca–2012–111) (notice of proposed rule change included NYSE Arca's representation that ''[f]utures on platinum and palladium are traded on two major exchanges: The New York Mercantile Exchange ... and Tokyo Commodities Exchange'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 68101 (Oct. 24, 2012), 77 FR 65732, 65733, 65739 (Oct. 30, 2012)); APMEX Physical—1 oz. Gold Redeemable Trust, Exchange Act Release No. 66930 (May 7, 2012), 77 FR 27817, 27818 (May 11, 2012) (SR–NYSEArca–2012–18) (notice of proposed rule change included NYSE Arca's representation that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the ''major world gold markets,'' Exchange Act Release No. 66627 (Mar. 20, 2012), 77 FR 17539, 17542–43, 17547 (Mar. 26, 2012)); JPM XF Physical Copper Trust, Exchange Act Release No. 68440 (Dec. 14, 2012), 77 FR 75468, 75469–70, 75472, 75485–86 (Dec. 20, 2012) (SR–NYSEArca–2012–28); iShares Copper Trust, Exchange Act Release No. 68973 (Feb. 22, 2013), 78 FR 13726, 13727, 13729–30, 13739–40 (Feb. 28, 2013) (SR–NYSEArca–2012–66); First Trust Gold Trust, Exchange Act Release No. 70195 (Aug. 14, 2013), 78 FR 51239, 51240 (Aug. 20, 2013) (SR–NYSEArca–2013–61) (notice of proposed rule change included NYSE Arca's representation that FINRA, on behalf of the exchange, may obtain trading information regarding gold futures and options on gold futures from members of the Intermarket Surveillance Group, including COMEX, or from markets ''with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement,'' and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the ''major world gold markets,'' Exchange Act Release No. 69847 (June 25, 2013), 78 FR 39399, 39400, 39405 (July 1, 2013)); Merk Gold Trust, Exchange Act Release No. 71378 (Jan. 23, 2014), 79 FR 4786, 4786–87 (Jan. 29, 2014) (SR–NYSEArca–2013–137) (notice of proposed rule change included NYSE Arca's representation that ''COMEX is the largest gold futures and options exchange'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' including with respect to transactions occurring on COMEX pursuant to CME and NYMEX's membership, or from exchanges ''with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement,'' Exchange Act Release No. 71038 (Dec. 11, 2013), 78 FR 76367, 76369, 76374 (Dec. 17, 2013)); Long Dollar Gold Trust, Exchange Act Release No. 79518 (Dec. 9, 2016), 81 FR 90876, 90881, 90886, 90888 (Dec. 15, 2016) (SR–NYSEArca–2016–84).

Further to this point, the Commission's prior orders have noted that the spot commodities and currency markets for which it has previously approved spot exchange-traded products (''ETPs'') are generally unregulated and that the Commission relied on the underlying futures market as the regulated market of significant size that formed the basis for approving the series of Currency[16] and Commodity-Based Trust Shares, including gold, silver, platinum, palladium, copper, and other commodities and currencies. The Commission specifically noted in the Winklevoss Order that the First Gold Approval Order ''was based on an assumption that the currency market and the spot gold market were largely unregulated.''[17]

As such, the regulated market of significant size test does not require that the spot bitcoin market be regulated in order for the Commission to approve this proposal, and precedent makes clear that an underlying market for a spot commodity or currency being a regulated market would actually be an exception to the norm. These largely unregulated currency and commodity markets do not provide the same protections as the markets that are subject to the Commission's oversight, but the Commission has consistently looked to surveillance sharing agreements with the underlying futures market in order to determine whether such products were consistent with the Act. With this in mind, the Chicago Mercantile Exchange (''CME'') bitcoin futures (''Bitcoin Futures'') market is the proper market to consider in determining whether there is a related regulated market of significant size.

Further to this point, the Exchange notes that the Commission has approved proposals related to the listing and trading of funds that would primarily hold CME Bitcoin Futures that are registered under the Securities Act of 1933.[18] In the Teucrium Approval, the Commission found the CME Bitcoin Futures market to be a regulated market of significant size as it relates to CME Bitcoin Futures, an odd tautological truth that is also inconsistent with prior disapproval orders for ETPs that would hold actual bitcoin instead of derivatives contracts (''Spot Bitcoin ETPs'') that use the exact same pricing methodology as the CME Bitcoin Futures. As further discussed below, both the Exchange and the Sponsor believe that this proposal and the included analysis are sufficient to establish that the CME Bitcoin Futures market represents a regulated market of significant size as it relates both to the CME Bitcoin Futures market and to the spot bitcoin market and that this proposal should be approved.

Finally, as discussed in greater detail below, the Trust provides investors interested in exposure to bitcoin with important protections that are not always available to investors that invest directly in bitcoin, including protection against insolvency, cyber attacks, and other risks. If U.S. investors had access to vehicles such as the Trust for their bitcoin investments, instead of directing their bitcoin investments into loosely regulated offshore vehicles (such as loosely regulated centralized trading platforms that have since faced bankruptcy proceedings or other insolvencies), then countless investors would have protected their principal investments in bitcoin and thus benefited.

Background

Bitcoin is a digital asset based on the decentralized, open-source protocol of the peer-to-peer computer network launched in 2009 that governs the creation, movement, and ownership of bitcoin and hosts the public ledger, or ''blockchain,'' on which all bitcoin transactions are recorded (the ''Bitcoin Network'' or ''Bitcoin''). The decentralized nature of the Bitcoin Network allows parties to transact directly with one another based on cryptographic proof instead of relying on a trusted third party. The protocol also lays out the rate of issuance of new bitcoin within the Bitcoin Network, a rate that is reduced by half approximately every four years with an eventual hard cap of 21 million. It's generally understood that the combination of these two features—a systemic hard cap of 21 million bitcoin and the ability to transact trustlessly with anyone connected to the Bitcoin Network—gives bitcoin its value.[19] The

[16] *See* Exchange Rule 14.11(e)(5).

[17] *See* Winklevoss Order at 37592.

[18] *See* Exchange Act Release No. 94620 (April 6, 2022), 87 FR 21676 (April 12, 2022) (the ''Teucrium Approval'') and 94853 (May 5, 2022) (collectively, with the Teucrium Approval, the ''Bitcoin Futures Approvals'').

[19] For additional information about bitcoin and the Bitcoin Network, *see https://bitcoin.org/en/getting-started; https://www.fidelitydigitalassets.com/articles/addressing-bitcoin-criticisms;* and

Continued

first rule filing proposing to list an ETP to provide exposure to bitcoin in the U.S. was submitted by the Exchange on June 30, 2016.[20] At that time, blockchain technology, and digital assets that utilized it, were relatively new to the broader public. The market cap of all bitcoin in existence at that time was approximately $10 billion. No registered offering of digital asset securities or shares in an investment vehicle with exposure to bitcoin or any other cryptocurrency had yet been conducted, and the regulated infrastructure for conducting a digital asset securities offering had not begun to develop.[21] Similarly, regulated U.S. Bitcoin Futures contracts did not exist. The CFTC had determined that bitcoin is a commodity,[22] but had not engaged in significant enforcement actions in the space. The New York Department of Financial Services (''NYDFS'') adopted its final ''BitLicense'' regulatory framework in 2015, but had only approved four entities to engage in activities relating to virtual currencies (whether through granting a BitLicense or a limited-purpose trust charter) as of June 30, 2016.[23] While the first over-the-counter bitcoin fund launched in 2013, public trading was limited and the fund had only $60 million in assets.[24] There were very few, if any, traditional financial institutions engaged in the space, whether through investment or providing services to digital asset companies. In January 2018, the staff of the Commission noted in a letter to the Investment Company Institute (''ICI'') and Securities Industry and Financial Markets Association (''SIFMA'') that it was not aware, at that time, of a single custodian providing fund custodial services for digital assets.[25] Fast forward to today and the digital assets financial ecosystem, including bitcoin, has progressed significantly. The development of a regulated market for digital asset securities has significantly evolved, with market participants having conducted registered public offerings of both digital asset securities [26] and shares in investment vehicles holding Bitcoin Futures.[27] Additionally, licensed and regulated service providers have emerged to provide fund custodial services for digital assets, among other services. For example, in February 2023, the Commission proposed to amend Rule 206(4)–2 under the Advisers Act of 1940 (the ''custody rule'') to expand the scope beyond client funds and securities to include all crypto assets, among other assets; [28] in May 2021, the staff of the Commission released a statement permitting open-end mutual funds to invest in cash-settled Bitcoin Futures; in December 2020, the Commission adopted a conditional no-action position permitting certain special purpose broker-dealers to custody digital asset securities under Rule 15c3–3 under the Exchange Act (the ''Custody Statement''); [29] in September 2020, the staff of the Commission released a no-action letter permitting certain broker-dealers to operate a non-custodial Alternative Trading System (''ATS'') for digital asset securities, subject to specified conditions; [30] in October 2019, the staff of the Commission granted temporary relief from the clearing agency registration requirement to an entity seeking to establish a securities clearance and settlement system based on distributed ledger technology,[31] and multiple transfer agents who provide services for digital asset securities registered with the Commission.[32]

Outside the Commission's purview, the regulatory landscape has changed significantly since 2016, and cryptocurrency markets have grown and evolved as well. The market for bitcoin is approximately 100 times larger, having at one point reached a market cap of over $1 trillion.[33] According to the CME Bitcoin Futures report, from February 13, 2023 through March 27, 2023, CFTC regulated Bitcoin Futures represented between $750 million and $3.2 billion in notional trading volume on CME Bitcoin Futures on a daily basis.[34] Open interest was over $1.4 billion for the entirety of the period and at one point was over $2 billion. The CFTC has exercised its regulatory jurisdiction in bringing a number of enforcement actions related to bitcoin and against trading platforms that offer cryptocurrency trading.[35] As of

https://www.vaneck.com/education/investment-ideas/investing-in-bitcoin-and-digital-assets/.

[20] *See* Winklevoss Order.

[21] Digital assets that are securities under U.S. law are referred to throughout this proposal as ''digital asset securities.'' All other digital assets, including bitcoin, are referred to interchangeably as ''cryptocurrencies'' or ''virtual currencies.'' The term ''digital assets'' refers to all digital assets, including both digital asset securities and cryptocurrencies, together.

[22] *See* ''In the Matter of Coinflip, Inc.'' (''Coinflip'') (CFTC Docket 15–29 (September 17, 2015)) (order instituting proceedings pursuant to sections 6(c) and 6(d) of the CEA, making findings and imposing remedial sanctions), in which the CFTC stated: ''Section 1a(9) of the CEA defines 'commodity' to include, among other things, 'all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.' 7 U.S.C. 1a(9). The definition of a 'commodity' is broad. *See, e.g., Board of Trade of City of Chicago* v. *SEC,* 677 F. 2d 1137, 1142 (7th Cir. 1982). Bitcoin and other virtual currencies are encompassed in the definition and properly defined as commodities.''

[23] A list of virtual currency businesses that are entities regulated by the NYDFS is available on the NYDFS website. *See https://www.dfs.ny.gov/apps_and_licensing/virtual_currency_businesses/regulated_entities.*

[24] Data as of March 31, 2016 according to publicly available filings. *See* Bitcoin Investment Trust Form S–1, dated May 27, 2016, available: *https://www.sec.gov/Archives/edgar/data/1588489/000095012316017801/filename1.htm.*

[25] *See* letter from Dalia Blass, Director, Division of Investment Management, U.S. Securities and Exchange Commission to Paul Schott Stevens, President & CEO, Investment Company Institute and Timothy W. Cameron, Asset Management Group—Head, Securities Industry and Financial Markets Association (January 18, 2018), *available at https://www.sec.gov/divisions/investment/noaction/2018/cryptocurrency-011818.htm.*

[26] *See* Prospectus supplement filed pursuant to Rule 424(b)(1) for INX Tokens (Registration No. 333–233363), *available at: https://www.sec.gov/Archives/edgar/data/1725882/000121390020023202/ea125858-424b1_inxlimited.htm.*

[27] *See* Prospectus filed by Stone Ridge Trust VI on behalf of NYDIG Bitcoin Strategy Fund Registration, *available at: https://www.sec.gov/Archives/edgar/data/1764894/000119312519309942/d693146d497.htm.*

[28] *See* Investment Advisers Act Release No. 6240 88 FR 14672 (March 9, 2023) (Safeguarding Advisory Client Assets).

[29] *See* Securities Exchange Act Release No. 90788, 86 FR 11627 (February 26, 2021) (File Number S7–25–20) (Custody of Digital Asset Securities by Special Purpose Broker-Dealers).

[30] *See* letter from Elizabeth Baird, Deputy Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Kris Dailey, Vice President, Risk Oversight & Operational Regulation, Financial Industry Regulatory Authority (September 25, 2020), *available at: https://www.sec.gov/divisions/marketreg/mr-noaction/2020/finra-ats-role-in-settlement-of-digital-asset-security-trades-09252020.pdf.*

[31] *See* letter from Jeffrey S. Mooney, Associate Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Charles G. Cascarilla & Daniel M. Burstein, Paxos Trust Company, LLC (October 28, 2019), *available at: https://www.sec.gov/divisions/marketreg/mr-noaction/2019/paxos-trust-company-102819-17a.pdf.*

[32] *See, e.g.,* Form TA–1/A filed by Tokensoft Transfer Agent LLC (CIK: 0001794142) on January 8, 2021, *available at: https://www.sec.gov/Archives/edgar/data/1794142/000179414219000001/xslFTA1X01/primary_doc.xml.*

[33] As of February 1, 2023, the total market cap of all bitcoin in circulation was approximately $450 billion.

[34] Data sourced from the CME Bitcoin Futures Report: 30 March, 2023, *available at: https://www.cmegroup.com/markets/cryptocurrencies/bitcoin/bitcoin.volume.htm.*

[35] The CFTC's annual report for Fiscal Year 2022 (which ended on September 30, 2022) noted that the CFTC completed the fiscal year with 18 enforcement filings related to digital assets. ''Digital asset actions included manipulation, a $1.7 billion fraudulent scheme, and a decentralized autonomous organization (DAO) failing to register as a SEF or FCM or to seek DCM designation.'' *See* CFTC FY 2022 Agency Financial Report, *available at: https://www.cftc.gov/media/7941/2022afr/download.* Additionally, the CFTC filed on March 27, 2023, a civil enforcement action against the owner/operators of the Binance centralized digital asset trading platform, which is one of the largest bitcoin derivative trading platforms. *See* CFTC Release No. 8680–23 (March 27, 2023), *available at: https://www.cftc.gov/PressRoom/PressReleases/8680-23.*

February 14, 2023 the NYDFS has granted no fewer than thirty-four BitLicenses,[36] including to established public payment companies like PayPal Holdings, Inc. and Square, Inc., and limited purpose trust charters to entities providing cryptocurrency custody services, including the Trust's Custodian.[37] In addition, the Treasury's Office of Foreign Assets Control (''OFAC'') has brought enforcement actions over apparent violations of the sanctions laws in connection with the provision of wallet management services for digital assets.[38]

In addition to the regulatory developments laid out above, more traditional financial market participants have become more active in cryptocurrency: large insurance companies, asset managers, university endowments, pension funds, and even historically bitcoin skeptical fund managers have allocated to bitcoin. As noted in the Financial Stability Oversight Council (''FSOC'') report on Digital Asset Financial Stability Risks and Regulation, ''[i]ndustry surveys suggest that the scale of these investments grew quickly during the boom in crypto-asset markets through late 2021. In June 2022, PwC estimated that the number of crypto-specialist hedge funds was more than 300 globally, with $4.1 billion in assets under management. In addition, in a survey PwC found that 38 percent of surveyed traditional hedge funds were currently investing in 'digital assets,' compared to 21 percent the year prior.'' [39] The largest over-the-counter bitcoin fund previously filed a Form 10 registration statement, which the staff of the Commission reviewed and which took effect automatically, and is now a reporting company.[40] Established companies like Tesla, Inc., MicroStrategy Incorporated, and Square, Inc., among others, announced substantial investments in bitcoin in amounts as large as $1.5 billion (Tesla) and $425 million (MicroStrategy). The foregoing examples demonstrate that bitcoin has gained mainstream usage and recognition.

Despite these developments, access for U.S. retail investors to gain exposure to bitcoin via a transparent and U.S. regulated, U.S. exchange-traded vehicle remains limited. Instead current options include: (i) facing the counter-party risk, legal uncertainty, technical risk, and complexity associated with accessing spot bitcoin; (ii) over-the-counter bitcoin funds (''OTC Bitcoin Funds'') with high management fees and potentially volatile premiums and discounts; [41] (iii) purchasing shares of operating companies that they believe will provide proxy exposure to bitcoin with limited disclosure about the associated risks; [42] or (iv) purchasing Bitcoin Futures exchange-traded funds (''ETFs''), as defined below, which represent a sub-optimal structure for long-term investors that will cost them significant amounts of money every year compared to Spot Bitcoin ETPs, as further discussed below. Meanwhile, investors in many other countries, including Canada and Brazil, are able to use more traditional exchange listed and traded products (including ETFs holding physical bitcoin) to gain exposure to bitcoin. Similarly, investors in Switzerland and across Europe have access to ETPs (issued by 21Shares, among others) which trade on regulated exchanges and provide exposure to a broad array of spot crypto assets. U.S. investors, by contrast, are left with fewer and more risky means of getting bitcoin exposure, as described above.[43]

To this point, the lack of a Spot Bitcoin ETP exposes U.S. investor assets to significant risk because investors that would otherwise seek crypto asset exposure through a Spot Bitcoin ETP are forced to find alternative exposure through generally riskier means. For instance, many U.S. investors that held their digital assets in accounts at FTX,[44] Celsius Network LLC,[45] BlockFi Inc.[46] and Voyager Digital Holdings, Inc.[47] have become unsecured creditors in the insolvencies of those entities. If a Spot Bitcoin ETP was available, it is likely that at least a portion of the billions of dollars tied up in those proceedings would still reside in the brokerage accounts of U.S. investors, having instead been invested in a transparent, regulated, and well-understood structure—a Spot Bitcoin ETP. To this point, approval of a Spot Bitcoin ETP would represent a major win for the protection of U.S. investors in the crypto asset space. As further described below, the Trust, like all other series of Commodity-Based Trust Shares, is designed to protect investors against the

[36] *See https://www.dfs.ny.gov/virtual_currency_businesses.*

[37] The ''Custodian'' is Coinbase Trust Company, LLC.

[38] *See* U.S. Department of the Treasury Enforcement Release: ''OFAC Enters Into $98,830 Settlement with BitGo, Inc. for Apparent Violations of Multiple Sanctions Programs Related to Digital Currency Transactions'' (December 30, 2020) *available at: https://home.treasury.gov/system/files/126/20201230_bitgo.pdf. See also* U.S. Department of the Treasury Enforcement Release: ''Treasury Announces Two Enforcement Actions for over $24M and $29M Against Virtual Currency Exchange, Bittrex, Inc.'' (October 11, 2022) *available at: https://home.treasury.gov/news/press-releases/jy1006. See also* U.S. Department of Treasure Enforcement Release ''OFAC Settles with Virtual Currency Exchange Kraken for $362,158.70 Related to Apparent Violations of the Iranian Transactions and Sanctions Regulations'' (November 28, 2022) *available at: https://home.treasury.gov/system/files/126/20221128_kraken.pdf.*

[39] *See* the FSOC ''Report on Digital Asset Financial Stability Risks and Regulation 2022'' (October 3, 2022) (at footnote 26) at *https://home.treasury.gov/system/files/261/FSOC-Digital-Assets-Report-2022.pdf.*

[40] *See* Letter from Division of Corporation Finance, Office of Real Estate & Construction to Barry E. Silbert, Chief Executive Officer, Grayscale Bitcoin Trust (January 31, 2020) *https://www.sec.gov/Archives/edgar/data/1588489/000000000020000953/filename1.pdf.*

[41] The premium and discount for OTC Bitcoin Funds is known to move rapidly. For example, over the period of 12/21/20 to 1/21/21, the premium for the largest OTC Bitcoin Fund went from 40.18% to 2.79%. While the price of bitcoin appreciated significantly during this period and NAV per share increased by 41.25%, the price per share increased by only 3.58%. This means that investors are buying shares of a fund that experiences significant volatility in its premium and discount outside of the fluctuations in price of the underlying asset. Even operating within the normal premium and discount range, it's possible for an investor to buy shares of an OTC Bitcoin Fund only to have those shares quickly lose 10% or more in dollar value excluding any movement of the price of bitcoin. That is to say—the price of bitcoin could have stayed exactly the same from market close on one day to market open the next, yet the value of the shares held by the investor decreased only because of the fluctuation of the premium. As more investment vehicles, including mutual funds and ETFs, seek to gain exposure to bitcoin, the easiest option for a buy and hold strategy for such vehicles is often an OTC Bitcoin Fund, meaning that even investors that do not directly buy OTC Bitcoin Funds can be disadvantaged by extreme premiums (or discounts) and premium volatility.

[42] A number of operating companies engaged in unrelated businesses—such as Tesla (a car manufacturer) and MicroStrategy (an enterprise software company)—have announced investments as large as $5.3 billion in bitcoin. Without access to bitcoin exchange-traded products, retail investors seeking investment exposure to bitcoin may end up purchasing shares in these companies in order to gain the exposure to bitcoin that they seek. In fact, mainstream financial news networks have written a number of articles providing investors with guidance for obtaining bitcoin exposure through publicly traded companies (such as MicroStrategy, Tesla, and bitcoin mining companies, among others) instead of dealing with the complications associated with buying spot bitcoin in the absence of a bitcoin ETP. *See e.g.,* ''7 public companies with exposure to bitcoin'' (February 8, 2021) available at: *https://finance.yahoo.com/news/7-public-companies-with-exposure-to-bitcoin-154201525.html;* and ''Want to get in the crypto trade without holding bitcoin yourself? Here are some investing ideas'' (February 19, 2021) available at: *https://www.cnbc.com/2021/02/19/ways-to-invest-in-bitcoin-without-holding-the-cryptocurrency-yourself-.html.*

[43] The Exchange notes that the list of countries above is not exhaustive and that securities regulators in a number of additional countries have either approved or otherwise allowed the listing and trading of Spot Bitcoin ETPs.

[44] *See* FTX Trading Ltd., et al., Case No. 22–11068.

[45] *See* Celsius Network LLC, et al., Case No. 22–10964.

[46] *See* BlockFi Inc., Case No. 22–19361.

[47] *See* Voyager Digital Holdings, Inc., et al., Case No. 22–10943.

risk of losses through fraud and insolvency that arise by holding digital assets, including bitcoin, on centralized platforms.

Additionally, investors in other countries, specifically Canada, generally pay lower fees than U.S. retail investors that invest in OTC Bitcoin Funds due to the fee pressure that results from increased competition among available bitcoin investment options. Without an approved and regulated Spot Bitcoin ETP in the U.S. as a viable alternative, U.S. investors could seek to purchase shares of non-U.S. bitcoin vehicles in order to get access to bitcoin exposure. Given the separate regulatory regime and the potential difficulties associated with any international litigation, such an arrangement would create more risk exposure for U.S. investors than they would otherwise have with a U.S. exchange listed ETP. In addition to the benefits to U.S. investors articulated throughout this proposal, approving this proposal (and others like it) would provide U.S. ETFs and mutual funds with a U.S.-listed and regulated product to provide such access rather than relying on either flawed products or products listed and primarily regulated in other countries.

Bitcoin Futures ETFs

The Exchange and Sponsor applaud the Commission for allowing the launch of ETFs registered under the Investment Company Act of 1940, as amended (the ''1940 Act'') and the Bitcoin Futures Approvals that provide exposure to bitcoin primarily through CME Bitcoin Futures (''Bitcoin Futures ETFs''). Allowing such products to list and trade is a productive first step in providing U.S. investors and traders with transparent, exchange-listed tools for expressing a view on bitcoin. The Bitcoin Futures Approvals, however, have created a logical inconsistency in the application of the standard the Commission applies when considering Bitcoin ETP proposals.

As discussed further below, the standard applicable to Bitcoin ETPs is whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size in the underlying asset. Previous disapproval orders have made clear that a market that constitutes a regulated market of significant size is generally a futures and/or options market based on the underlying reference asset rather than the spot commodity markets, which are often unregulated.[48] Leaving aside the analysis of that standard until later in this proposal,[49] the Exchange believes that the following rationale the Commission applied to a Bitcoin Futures ETF should result in the Commission approving this and other Spot Bitcoin ETP proposals:

> The CME ''comprehensively surveils futures market conditions and price movements on a real-time and ongoing basis in order to detect and prevent price distortions, including price distortions caused by manipulative efforts.'' Thus, the CME's surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts, whether that attempt is made by directly trading on the CME bitcoin futures market or indirectly by trading outside of the CME bitcoin futures market. As such, when the CME shares its surveillance information with Arca, the information would assist in detecting and deterring fraudulent or manipulative misconduct related to the non-cash assets held by the proposed ETP.[50]

CME Bitcoin Futures pricing is based on pricing from spot bitcoin markets. The statement from the Teucrium Approval that ''CME's surveillance can reasonably be relied upon to capture the effects on the CME Bitcoin Futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME Bitcoin Futures contracts . . . indirectly by trading outside of the CME Bitcoin Futures market,'' makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of CME Bitcoin Futures. This was further acknowledged in the ''Grayscale lawsuit'' [51] when Judge Rao stated ''. . . the Commission in the Teucrium order recognizes that the futures prices are influenced by the spot prices, and the Commission concludes in approving futures ETPs that any fraud on the spot market can be adequately addressed by the fact that the futures market is a regulated one . . .'' The Exchange agrees with the Commission on this point and notes that the pricing mechanism applicable to the Shares is similar to that of the CME Bitcoin Futures. As further discussed below, this view is also consistent with the Sponsor's research.

The structure of Bitcoin Futures ETFs provides negative outcomes for buy and hold investors as compared to a Spot Bitcoin ETP.[52] Specifically, the cost of rolling CME Bitcoin Futures contracts will cause the Bitcoin Futures ETFs to lag the performance of bitcoin itself and, at over a billion dollars in assets under management, would cost U.S. investors significant amounts of money on an annual basis compared to Spot Bitcoin ETPs. Such rolling costs would not be required for Spot Bitcoin ETPs that hold bitcoin. Further, Bitcoin Futures ETFs could potentially hit CME position limits, which would force a Bitcoin Futures ETF to invest in non-futures assets for bitcoin exposure and cause potential investor confusion and lack of certainty about what such Bitcoin Futures ETFs are actually holding to try to get exposure to bitcoin, not to mention completely changing the risk profile associated with such an ETF. While Bitcoin Futures ETFs represent a useful trading tool, they are clearly a sub-optimal structure for U.S. investors that are looking for long-term exposure to bitcoin that will, based on the calculations above, unnecessarily cost U.S. investors significant amounts of money every year compared to Spot Bitcoin ETPs and the Exchange believes that any proposal to list and trade a Spot Bitcoin ETP should be reviewed by the Commission with this important investor protection context in mind.

To the extent the Commission may view differential treatment of Bitcoin Futures ETFs and Spot Bitcoin ETPs as

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[48] *See* Winklevoss Order at 37593, specifically footnote 202, which includes the language from numerous approval orders for which the underlying futures markets formed the basis for approving series of ETPs that hold physical metals, including gold, silver, palladium, platinum, and precious metals more broadly; and 37600, specifically where the Commission provides that ''when the spot market is unregulated—the requirement of preventing fraudulent and manipulative acts may possibly be satisfied by showing that the ETP listing market has entered into a surveillance-sharing agreement with a regulated market of significant size in derivatives related to the underlying asset.'' As noted above, the Exchange believes that these citations are particularly helpful in making clear that the spot market for a spot commodity ETP need not be ''regulated'' in order for a spot commodity ETP to be approved by the Commission, and in fact that it's been the common historical practice of the Commission to rely on such derivatives markets as the regulated market of significant size because such spot commodities markets are largely unregulated.

[49] As further outlined below, both the Exchange and the Sponsor believe that the CME Bitcoin Futures market represents a regulated market of significant size and that this proposal and others like it should be approved on this basis.

[50] *See* Teucrium Approval at 21679.

[51] *Grayscale Investments, LLC* v. *Securities and Exchange Commission,* et al., Case No. 22–1142.

[52] *See e.g.,* ''Bitcoin ETF's Success Could Come at Fundholders' Expense,'' Wall Street Journal (October 24, 2021), available at: *https://www.wsj.com/articles/bitcoin-etfs-success-could-come-at-fundholders-expense-11635080580;* ''Physical Bitcoin ETF Prospects Accelerate,'' *ETF.com* (October 25, 2021), available at: *https://www.etf.com/sections/blog/physical-bitcoin-etf-prospects-shine?nopaging=1&__cf_chl_jschl_tk__=pmd_JsK.fjXz9eAQW9zol0qpzhXDrrlpIVdoCloLXbLjl44-1635476946-0-gqNtZGzNApCjcnBszQql.*

warranted based on the Commission's concerns about the custody of physical bitcoin that a Spot Bitcoin ETP would hold (compared to cash-settled futures contracts),[53] the Sponsor believes this concern is mitigated to a significant degree by the custodial arrangements that the Trust has contracted with the Custodian to provide, as further outlined below. In the Custody Statement, the Commission stated that the fourth step that a broker-dealer could take to shield traditional securities customers and others from the risks and consequences of digital asset security fraud, theft, or loss is to establish, maintain, and enforce reasonably designed written policies, procedures, and controls for safekeeping and demonstrating the broker-dealer has exclusive possession or control over digital asset securities that are consistent with industry best practices to protect against the theft, loss, and unauthorized and accidental use of the private keys necessary to access and transfer the digital asset securities the broker-dealer holds in custody. While bitcoin is not a security and the Custodian is not a broker-dealer, the Sponsor believes that similar considerations apply to the Custodian's holding of the Trust's bitcoin. After diligent investigation, the Sponsor believes that the Custodian's policies, procedures, and controls for safekeeping, exclusively possessing, and controlling the Trust's bitcoin holdings are consistent with industry best practices to protect against the theft, loss, and unauthorized and accidental use of the private keys. As a trust company chartered by the NYDFS, the Sponsor notes that the Custodian is subject to extensive regulation and has among longest track records in the industry of providing custodial services for digital asset private keys. Under the circumstances, therefore, to the extent the Commission believes that its concerns about the risks of spot bitcoin custody justifies differential treatment of a Bitcoin Futures ETF versus a Spot Bitcoin ETP, the Sponsor believes that the fact that the Custodian employs the same types of policies, procedures, and safeguards in handling spot bitcoin that the Commission has stated that broker-dealers should implement with respect to digital asset securities would appear to weaken the justification for treating a Bitcoin Futures ETF compared to a Spot Bitcoin ETP differently due to spot bitcoin custody concerns.

Based on the foregoing, the Exchange and Sponsor believe that any objective review of the proposals to list Spot Bitcoin ETPs compared to the Bitcoin Futures ETFs and the Bitcoin Futures Approvals would lead to the conclusion that Spot Bitcoin ETPs should be available to U.S. investors and, as such, this proposal and other comparable proposals to list and trade Spot Bitcoin ETPs should be approved by the Commission. Stated simply, U.S. investors will continue to lose significant amounts of money from holding Bitcoin Futures ETFs as compared to Spot Bitcoin ETPs, losses which could be prevented by the Commission approving Spot Bitcoin ETPs. Additionally, any concerns related to preventing fraudulent and manipulative acts and practices related to Spot Bitcoin ETPs would apply equally to the spot markets underlying the futures contracts held by a Bitcoin Futures ETF. Both the Exchange and Sponsor believe that the CME Bitcoin Futures market is a regulated market of significant size and that such manipulation concerns are mitigated, as described extensively below. After allowing and approving the listing and trading of Bitcoin Futures ETFs that hold primarily CME Bitcoin Futures, however, the only consistent outcome would be approving Spot Bitcoin ETPs on the basis that the CME Bitcoin Futures market is a regulated market of significant size.

Given the current landscape, approving this proposal (and others like it) and allowing Spot Bitcoin ETPs to be listed and traded alongside Bitcoin Futures ETFs would establish a consistent regulatory approach, provide U.S. investors with choice in product structures for bitcoin exposure, and offer flexibility in the means of gaining exposure to bitcoin through transparent, regulated, U.S. exchange-listed vehicles.

Bitcoin Futures[54]

CME began offering trading in Bitcoin Futures in 2017. Each contract represents five bitcoin and is based on the CME CF Bitcoin Reference Rate.[55] The contracts trade and settle like other cash-settled commodity futures contracts. Nearly every measurable metric related to Bitcoin Futures has trended consistently up since launch.

According to the Sponsor, the increase in the volume on CME, over the past few years, is reflected in a higher proportion of the bitcoin market share. This is illustrated by plotting the proportion of monthly volume traded in bitcoin on the CME[56] (categorized as regulated in the chart and used as the numerator) in relation to the total bitcoin market, which is comprised of the sum of the volume of Bitcoin Futures on the CME and the spot volume on cryptocurrency trading platforms[57] (categorized as unregulated and used as the denominator) from January 1, 2018 to January 31, 2023.

[53] See, *e.g.,* Division of Investment Management Staff, Staff Statement on Funds Registered Under the Investment Company Act Investing in the Bitcoin Futures Market, May 11, 2021 (''The Bitcoin Futures market also has not presented the custody challenges associated with some cryptocurrency-based investing because the futures are cash-settled'').

[54] Unless otherwise noted, all data and analysis presented in this section and referenced elsewhere in the filing has been provided by the Sponsor.

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

[56] Data on Bitcoin Futures is available at *https://www.cmegroup.com/markets/cryptocurrencies/bitcoin/bitcoin.volume.html.*

[57] Data on bitcoin volume traded on cryptocurrency trading platforms is available at *https://www.cryptocompare.com.*

The proportion of volume traded on CME has increased from less than 1% at inception, to more than 10% over three and a half years. Furthermore, the CME market, as well as other crypto-linked markets, and the spot market are highly correlated. In markets that are globally and efficiently integrated, one would expect that changes in prices of an asset across all markets to be highly correlated. The rationale behind this is that quick and efficient arbitrageurs would capture potentially profitable opportunities, consequently converging prices to the average intrinsic value very rapidly.

Bitcoin markets exhibit a high degree of correlation. Using daily bitcoin prices from centralized trading platforms, ETP providers, and the CME from January 20, 2021 to February 1, 2023,[58] the Sponsor calculates the Pearson correlation of returns [59] across these markets and find a high degree of correlation.

Correlations are between 57% and 99%, with the latter found mainly across centralized trading platforms due to their higher level of interconnectedness. The lower correlations pertain mainly to the ETPs, which are relatively newer products and are mainly offered by a few competing market makers who are required to trade in large blocks, thus making it economically infeasible to capture small mispricings. As additional investors and arbitrageurs enter the market and capture the mispricing opportunities between these markets, it is likely that there will be much higher levels of correlations across all markets.

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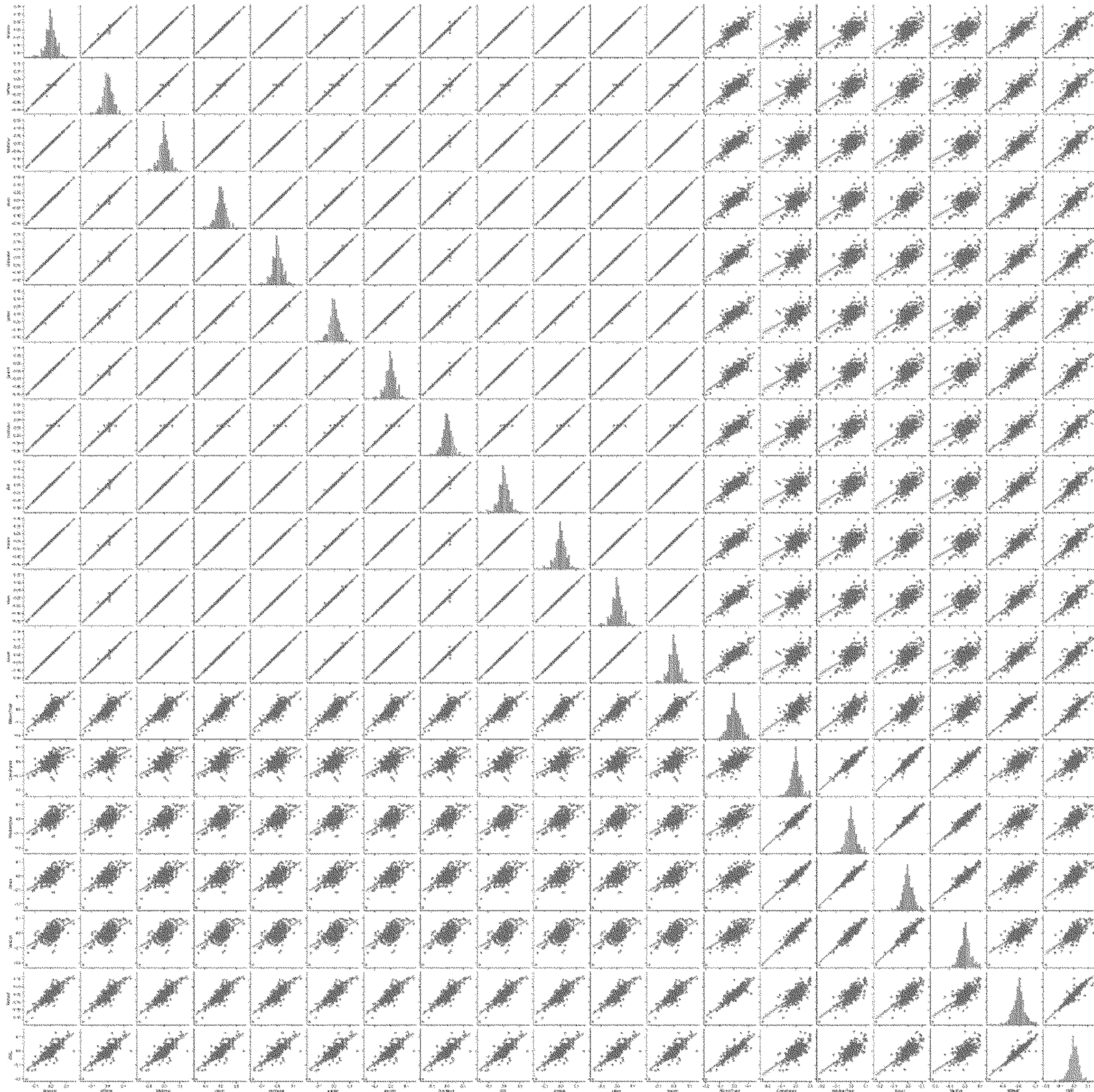
[58] The calculation of daily correlations used the period January 20, 2021 to February 1, 2023 as this is the common period across all the trading platforms and data sources being analyzed.

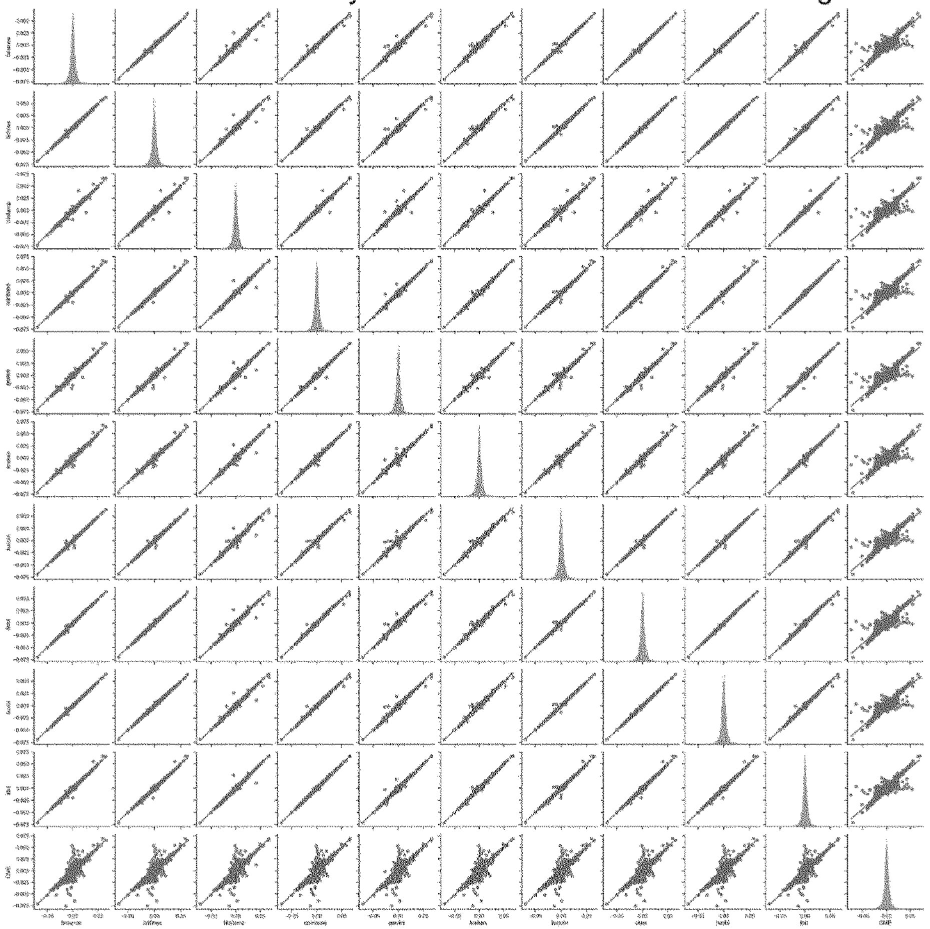
[59] The Pearson correlation is a measure of linear association between two variables and indicates the magnitude as well as direction of this relationship. The value can range between −1 (suggesting a strong negative association) and 1 (suggesting a strong positive association).

Pairwise Correlation of Bitcoin Daily Returns across Centralized Exchanges, ETPs, and the CME

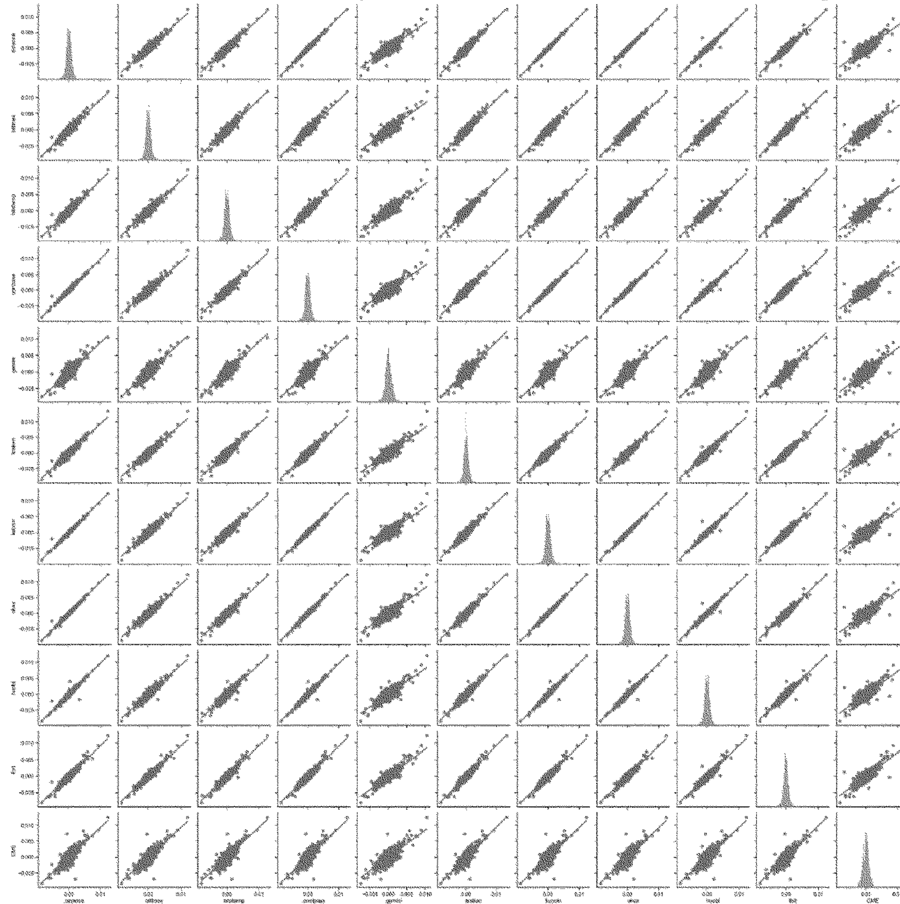


Pair-wise correlations of bitcoin returns are also calculated on hourly and minute-by-minute sampling frequencies in order to estimate the intra-day associations across the different bitcoin markets. The results show correlations no less than 92% among centralized trading platforms and between the CME Bitcoin Futures and centralized trading platforms on an hourly basis, and no less than 78% on a minutely basis. This suggests that bitcoin prices on centralized trading platforms and the CME markets move very similarly and in a very efficient manner to quickly reflect changes in market conditions, not only on a daily basis, but also at much higher intra-day frequencies.

Pairwise Correlation of Bitcoin Hourly Returns across Centralized Exchanges and the CME



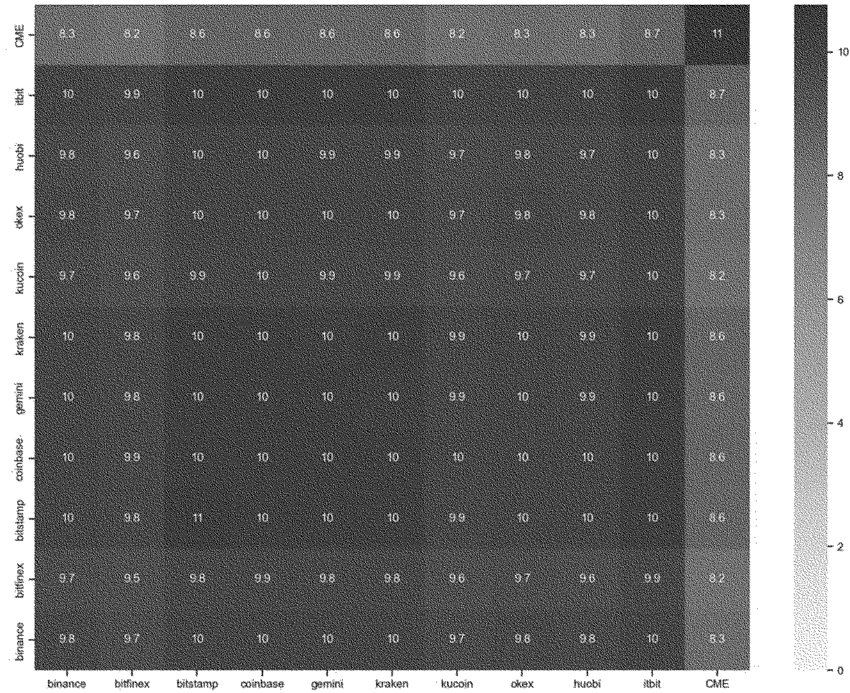
Pairwise Correlation of Bitcoin Minutely Returns across Centralized Exchanges and the CME



According to the Sponsor's research, this relationship holds true during periods of extreme price volatility. This implies that no single bitcoin market can deviate significantly from the consensus, such that the market is sufficiently large and has an inherent unique resistance to manipulation. Hence, the Sponsor introduces a statistical co-moment called co-kurtosis, which measures to what extent two random variables change together.[60] If two returns series exhibit a high degree of co-kurtosis, this means that they tend to undergo extreme positive and negative changes simultaneously. A co-kurtosis value larger than +3 or less than −3 is considered statistically significant. The following table shows that the level of co-kurtosis is positive and very high between all market combinations of hourly returns, which suggests that bitcoin markets tend to move very similarly especially for extreme price deviations.

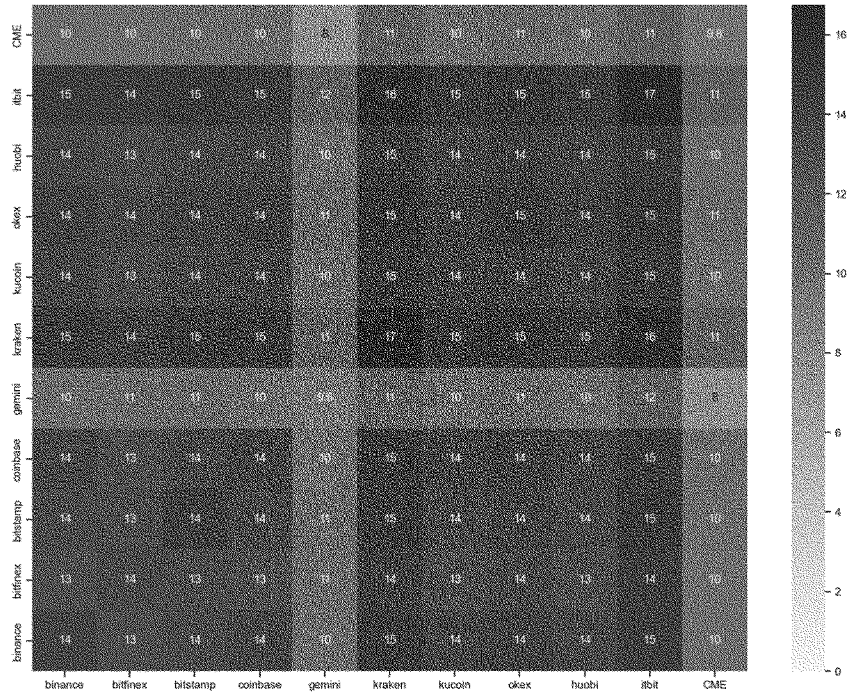
Co-Kurtosis of Bitcoin Hourly Returns Across Centralized Exchanges, ETPs, and the CME

[60] Co-skewness and Co-kurtosis are higher order cross-moments used in finance to examine how assets move together. Co-skewness measures the extent to which two variables undergo extreme deviations at the same time, whereby a positive (negative) value means that both values exhibit positive (negative) values simultaneously. While this measure is useful for estimating co-movements in one direction or the other, it does not allow us to test whether two variables comove similarly in either direction. For that, we apply the co-kurtosis, which measures the extent to which two variables undergo both extreme positive and negative deviations at the same time.



As a robustness check, the co-kurtosis metric is also calculated using minute-by-minute returns, and the conclusion remains the same, suggesting that all bitcoin markets move in tandem especially during extreme market movements.

Co-Kurtosis of Bitcoin Minutely Returns Across Centralized Exchanges, ETPs, and the CME



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These results present evidence of a robust global bitcoin market that quickly reacts in a unanimous manner to extreme price movements across both the spot markets, futures and ETP markets.

The Sponsor further believes that academic research corroborates the overall trend outlined above and supports the thesis that the Bitcoin Futures pricing leads the spot market and, thus, a person attempting to manipulate the Shares would also have to trade on that market to manipulate the ETP. Specifically, the Sponsor believes that such research indicates

that Bitcoin Futures lead the bitcoin spot market in price formation.[61]

Section 6(b)(5) and the Applicable Standards

The Commission has approved numerous series of Trust Issued Receipts,[62] including Commodity-Based Trust Shares,[63] to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; [64] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act and that this filing sufficiently demonstrates that the CME Bitcoin Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place [65] with a regulated market of significant size. Both the Exchange and CME are members of the Intermarket Surveillance Group (''ISG'').[66] The only remaining issue to be addressed is whether the Bitcoin Futures market constitutes a market of significant size, which both the Exchange and the Sponsor believe that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[67]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying section 6(b)(5) of the act, specifically providing 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.[68]

(a) Manipulation of the ETP

According to the Sponsor's research presented above, the Bitcoin Futures market is the leading market for bitcoin price formation. Where Bitcoin Futures lead the price in the spot market such that a potential manipulator of the bitcoin spot market (beyond just the constituents of the Index [69]) would have to participate in the Bitcoin Futures market, it follows that a potential manipulator of the Shares would similarly have to transact in the Bitcoin Futures market because the Index is based on spot prices. As such, the Exchange believes that part (a) of the significant market test outlined above is satisfied and that common membership in ISG between the Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the Shares.

(b) Predominant Influence on Prices in Spot and Bitcoin Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices

[61] *See* Hu, Y., Hou, Y. and Oxley, L. (2019). ''What role do futures markets play in Bitcoin pricing? Causality, cointegration and price discovery from a time-varying perspective'' (available at: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7481826/*). This academic research paper concludes that ''There exist no episodes where the Bitcoin spot markets dominates the price discovery processes with regard to Bitcoin futures. This points to a conclusion that the price formation originates solely in the Bitcoin futures market. We can, therefore, conclude that the Bitcoin futures markets dominate the dynamic price discovery process based upon time-varying information share measures. Overall, price discovery seems to occur in the Bitcoin futures markets rather than the underlying spot market based upon a time-varying perspective.'' *See also* Matthew Hougan, Hong Kim, and Satyajeet Pal (2021). ''Price Discovery in the Modern Bitcoin Market: Examining Lead-Lag Relationships Between the Bitcoin Spot and Bitcoin Futures Market'' (available at *https://static.bitwiseinvestments.com/Bitwise-Bitcoin-ETP-White-Paper-1.pdf*). This academic research paper also concluded that ''the CME bitcoin futures market is the dominant source of price discovery when compared with the bitcoin spot market, and that prices on the CME bitcoin futures market lead prices on bitcoin spot markets . . .''

[62] *See* Exchange Rule 14.11(f).

[63] Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

[64] As the Exchange has stated in a number of other public documents, it continues to believe that bitcoin is resistant to price manipulation and that ''other means to prevent fraudulent and manipulative acts and practices'' exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin. The fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging. To the extent that there are bitcoin trading platforms engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, such pricing does not normally impact prices on other trading platforms because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin trading platform or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

[65] As previously articulated by the Commission, ''The standard requires such surveillance-sharing agreements since ''they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.'' The Commission has historically held that joint membership in the Intermarket Surveillance Group constitutes such a surveillance sharing agreement. See Wilshire Phoenix Disapproval.

[66] For a list of the current members and affiliate members of ISG, see *www.isgportal.com.*

[67] *See* Wilshire Phoenix Disapproval.

[68] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a 'cannot be manipulated' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.'' *Id.* at 37582.

[69] As further described below, the ''Index'' for the Trust is the CME CF Bitcoin Reference Rate—New York Variant. The current trading platform composition of the Index is Coinbase, Bistamp, Kraken, itBit, LMAX Digital, and Gemini (the ''Constituent Platforms'').

in the Bitcoin Futures market or spot market for a number of reasons, including the significant volume in the Bitcoin Futures market, the size of bitcoin's market cap, and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid.

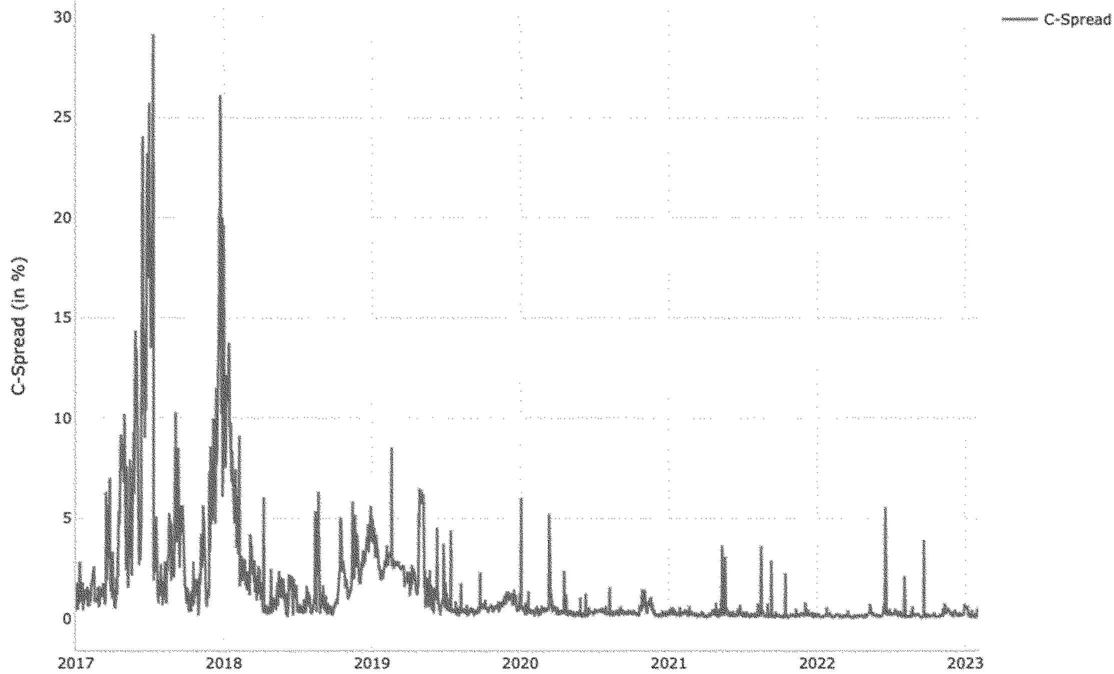
(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present.

According to the Sponsor, a significant portion of the considerations around crypto pricing have historically stemmed from a lack of consistent pricing across markets. However, according to the Sponsor's research, cross-platforms spreads in bitcoin have been declining consistently over the past several years. Based on the daily bitcoin price series from several popular centralized trading platforms [70] the Sponsor has calculated the largest cross-platform percentage spread (labelled as %C-Spread) by deducting the highest or maximum price (P) at time t from the lowest or minimum, and dividing by the lowest across all trading platforms (i). Formally, this is expressed as:

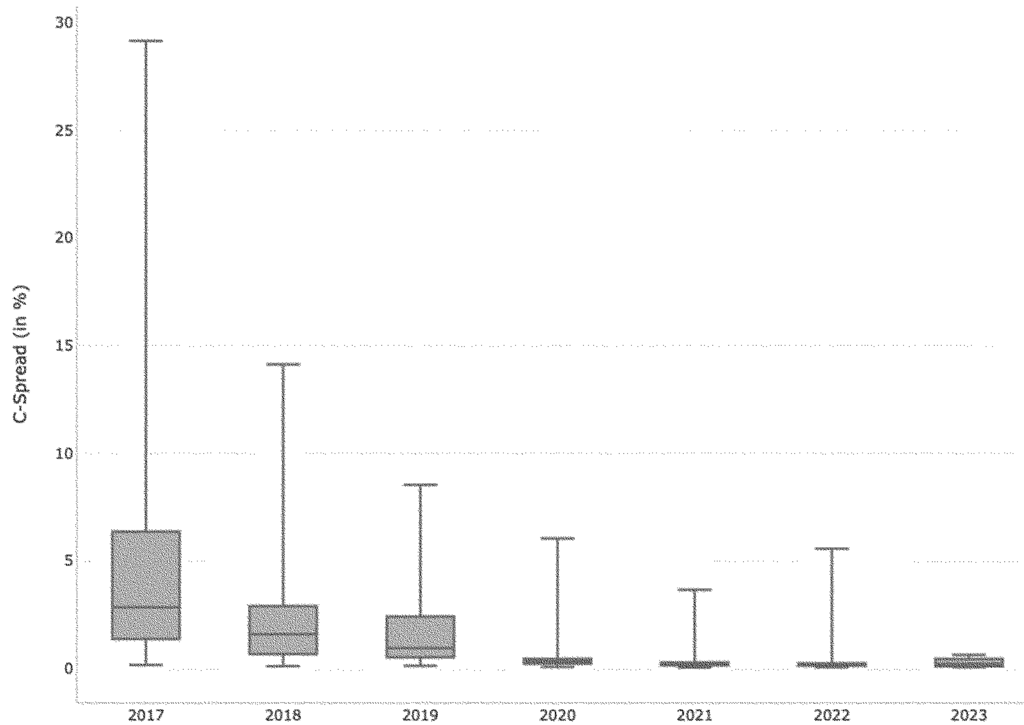
$$\%C - Spread_t = \frac{max(P_{i,t}) - min(P_{i,t})}{min(P_{i,t})}$$

The results show a clear and sharp decline in the %C-Spread, indicating that the bitcoin market has become more efficient as cross-platform prices have converged over time.



In addition, the magnitude of outlier % C-spreads has also declined over time. This boxplot shows that, not only did the median value of the %C-Spread decline over time, but also the extreme outlier values. For instance, the maximum %C-Spread for 2017, 2018, 2019, 2020, 2021, 2022, and 2023 (up until February 01, 2023) are 29.14%, 14.12%, 8.54%, 6.04%, 3.65%, 5.56%, and 0.63%, respectively. The market has experienced a 38% year-on-year decline in the annual median %C-Spread indicating a greater degree of bitcoin price convergence across trading platforms and a more efficient market.

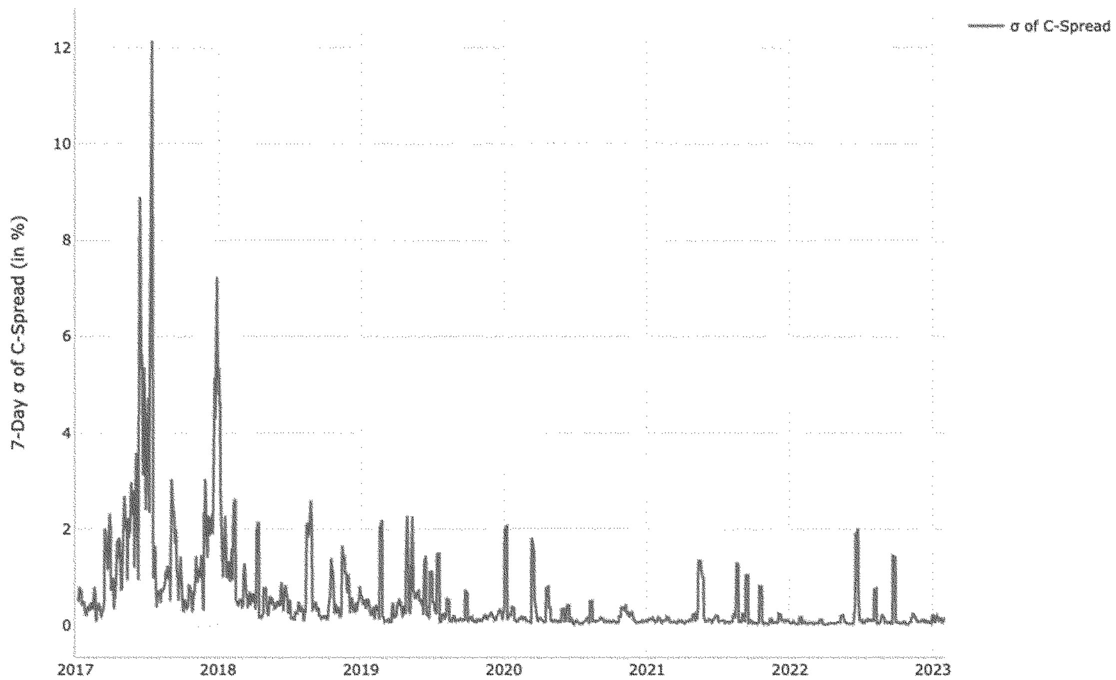
[70] The trading platforms include Binance, Bitfinex, Bithumb, Bitstamp, Cexio, Coinbase, Coinone, Gateio, Gemini, HuobiPro, itBit, Kraken, Kucoin, and OKEX.



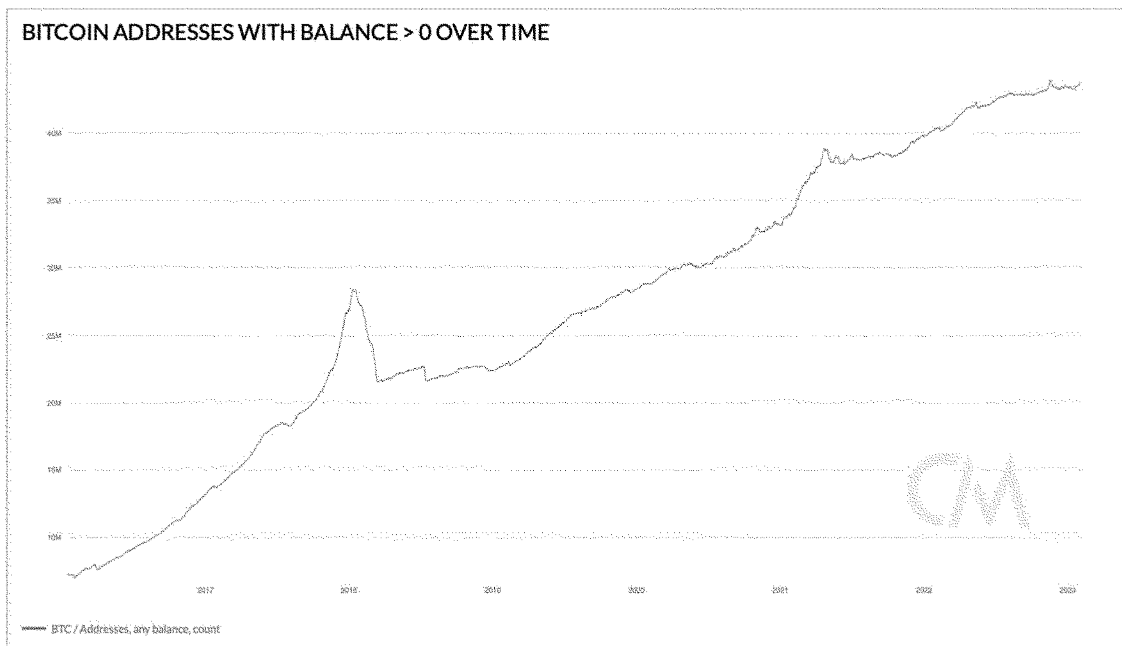
The dispersion (σ) of bitcoin Prices has also declined over the same period. This chart shows the 7-day rolling standard deviation of the %C-Spread from January 1, 2017 to February 1, 2023. The Sponsor's research finds that the dispersion in bitcoin prices across all trading platforms has decreased over time, indicating that prices on all the considered trading platforms converge towards the intrinsic average much more efficiently. This suggests that the market has become better at quickly reaching a consensus price for bitcoin.

As the pricing of the crypto market becomes increasingly efficient, pricing methodologies become more accurate and less susceptible to manipulation. The clustering of prices across a variety of sources within the primary market points towards robust price discovery mechanisms and efficient arbitrage.

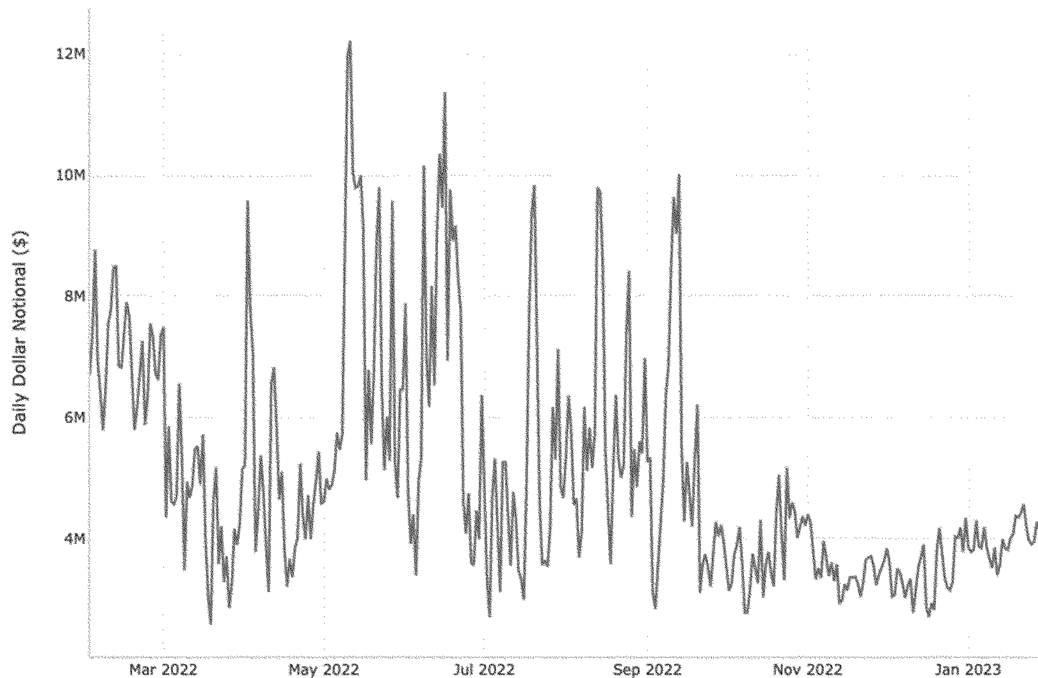
7-Day Standard Deviation (σ) of C-Spread across Exchanges From January 1, 2017 to February 1, 2023



One factor that has contributed to the overall efficiency of, and improved price discovery within the bitcoin market is the increase in the number of participants, and subsequently, the total dollar amount allocated to this market. This can be illustrated by the following chart, which shows the number of wallet addresses holding bitcoin from January 2016 to February 2023.



The large number of participants in the bitcoin market has manifested itself in high liquidity in the market. This is exhibited in the following chart, which shows the daily aggregated dollar notional of the bid and ask order books within the first 100 price levels across several of the largest centralized crypto trading platforms from February 2022 to January 2023. Specifically, the dollar notional that is allocated closest to the mid price has hovered between $2.6 million and $12 million over that period.



An increased notional order book suggests that there is a higher degree of consensus among investors regarding the price of bitcoin. Moreover, this market characteristic hampers any attempt of price manipulation by any single large entity.

As a robustness check, the Sponsor investigates whether the dollar notional in the order book changes significantly prior to and post an extreme price event. Specifically, for events constituting large increases in the price of bitcoin, if the ask (or sell) side of the order book experiences a significant shrinkage in the dollar notional right before the event, then this may be an indication of market manipulation whereby the ask-side of the order book becomes sufficiently thin for a large order to move the price upward. Similarly, for events constituting large decreases in the price of bitcoin, if the bid (or buy) side of the order book experiences a significant shrinkage in the dollar notional prior to such events, then this may be an indication of market manipulation whereby the thinner bid-side of the order book may potentially lead to significant downward price movements.

Using the top and bottom 0.1% of hourly price changes from February 1, 2022 to February 1, 2023 as events of extreme upward and downward market movements, respectively, the Sponsor plotted the bid (left charts) and ask (right charts) dollar notional of the bitcoin order book within a six-hour window around these events in the chart below, which shows the results for extreme upward price movements. The extreme price events (indicated by the dashed green lines) perfectly coincide with the decrease in dollar notional of the ask-side of the order book. This is indicative of an efficient market, whereby large market movements are quickly and dynamically absorbed by a thick orderbook. Moreover, the dollar notional on the ask side after the event is replenished back to its pre-event level, which implies that market participants' reactions are quick to restore the market back to its equilibrium level.

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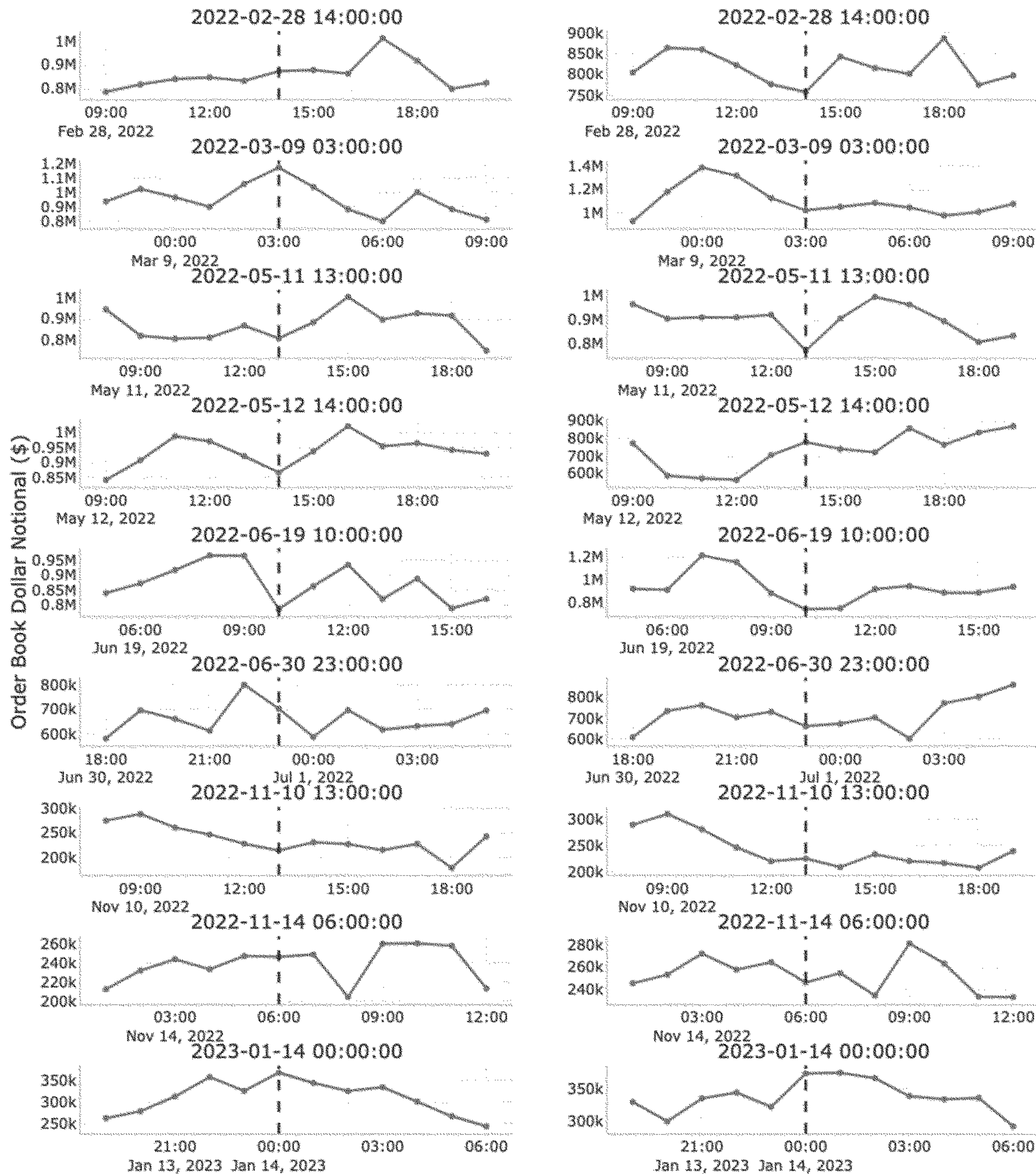
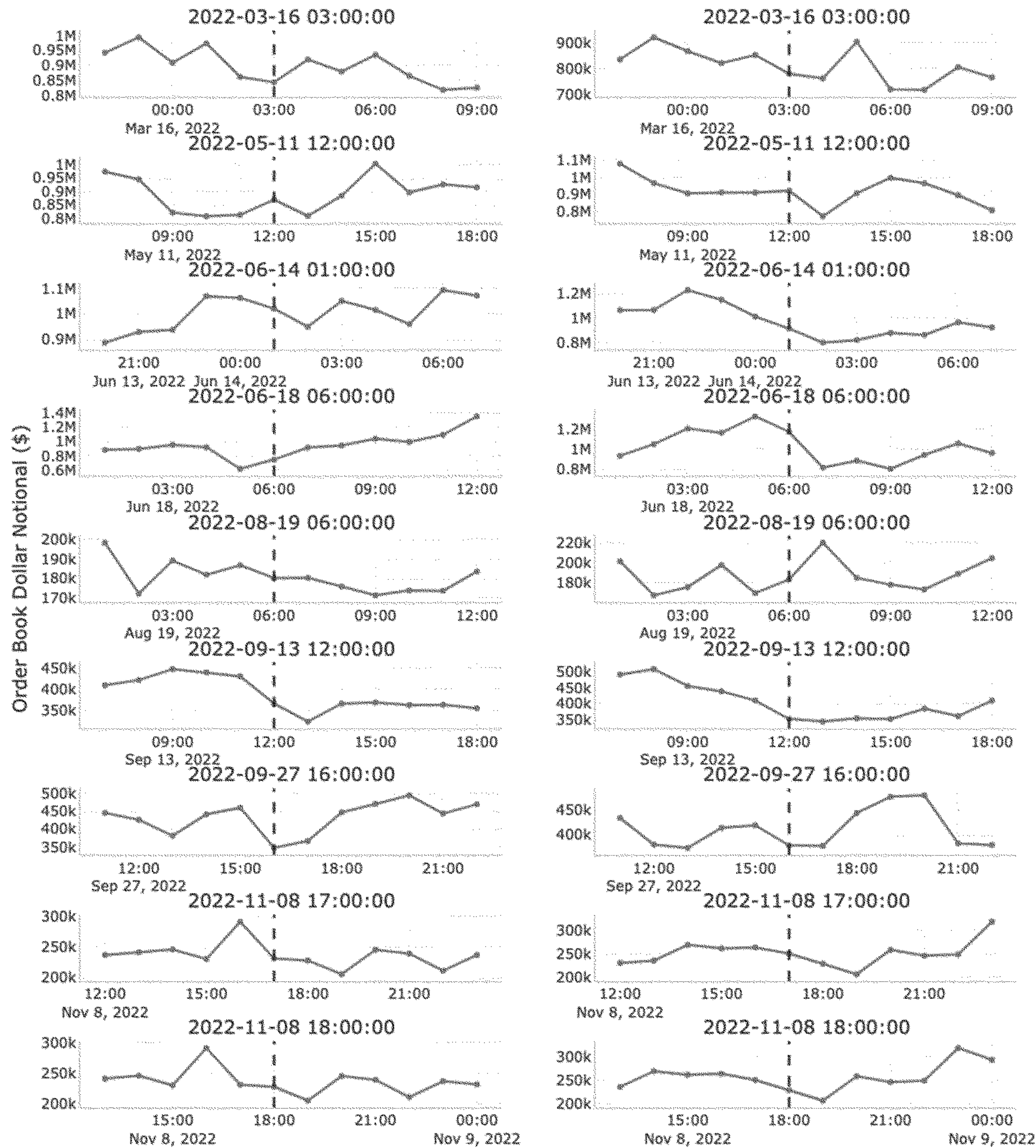


The same results and conclusions are found for extreme downward price movements. The charts below show that such price events perfectly coincide with shrinkages on the bid side of the order book (left charts), indicating an efficient and dynamic bitcoin market. Moreover, the bid-side of the order book after the event is also restored back to its pre-event level, which suggests that the market is symmetrically efficient in moving back to equilibrium.

Median Hourly Order Book Dollar Notional of Bid (Left Charts) and Ask (Right Charts) on Binance, Six Hours Pre and Post Extreme Price Deviations in the Bottom 0.1%



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(ii) Designed To Protect Investors and the Public Interest

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past several years, U.S. investor exposure to bitcoin through OTC Bitcoin Funds has grown into the tens of billions of dollars, including through Bitcoin Futures ETFs. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors through roll costs for Bitcoin Futures ETFs and premium/discount volatility and management fees for OTC Bitcoin Funds. The Exchange believes that the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, such concerns are now outweighed by investor protection concerns. As such, the Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to bitcoin in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks and costs associated with investing in Bitcoin Futures ETFs and operating companies that are imperfect proxies for bitcoin exposure; and (iv) providing an alternative to custodying spot bitcoin.

ARK 21Shares Bitcoin ETF

Delaware Trust Company is the trustee (''Trustee''). The Bank of New York Mellon will be the administrator (''Administrator'') and transfer agent (''Transfer Agent''). Foreside Global Services, LLC will be the marketing agent (''Marketing Agent'') in connection with the creation and redemption of ''Baskets'' of Shares. ARK Investment Management LLC (the

''Subadviser'') [71] is the sub-adviser of the Trust and will provide data, research, and, as needed, operational support to the Trust, including with respect to assistance in the marketing of the Shares. As noted above, Coinbase Custody Trust Company, LLC, is the Custodian and will be responsible for custody of the Trust's bitcoin. The Bank of New York Mellon (the ''Cash Custodian'') will act as custodian of the Trust's cash and cash equivalents.

According to the Registration Statement, each Share will represent a fractional undivided beneficial interest in the Trust. The Trust's assets will only consist of bitcoin, cash, and cash equivalents.[72]

According to the Registration Statement, the Trust is neither an investment company registered under the Investment Company Act of 1940, as amended,[73] nor a commodity pool for purposes of the Commodity Exchange Act (''CEA''), and neither the Trust nor the Sponsor is subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the Shares.

When the Trust creates or redeems its Shares, it will do so in cash transactions in blocks of 5,000 Shares (a ''Creation Basket'') at the Trust's net asset value (''NAV''). Authorized participants will deliver, or facilitate the delivery of, cash to the Trust's account with the Cash Custodian, in exchange for Shares when they create Shares, and the Trust, through the Cash Custodian, will deliver cash to such authorized participants when they redeem Shares with the Trust. Authorized participants may then offer Shares to the public at prices that depend on various factors, including the supply and demand for Shares, the value of the Trust's assets, and market conditions at the time of a transaction.

As noted above, the Trust is designed to protect investors against the risk of losses through fraud and insolvency that arise by holding bitcoin on centralized platforms. Specifically, the Trust is designed to protect investors as follows:

(i) Assets of the Trust Protected From Insolvency

The Trust's bitcoin will be held by its Custodian,[74] which is a New York chartered trust company overseen by the NYDFS and a qualified custodian under Rule 206–4 of the Investment Adviser Act. The Custodian will custody the Trust's bitcoin pursuant to a custody agreement, which requires the Custodian to maintain the Trust's bitcoin in segregated accounts that clearly identify the Trust as owner of the accounts and assets held on those accounts; the segregation will be both from the proprietary property of the Custodian and the assets of any other customer. Such an arrangement is generally deemed to be ''bankruptcy remote,'' that is, in the event of an insolvency of the Custodian, assets held in such segregated accounts would not become property of the Custodian's estate and would not be available to satisfy claims of creditors of the Custodian. In addition, according to the Registration Statement, the Custodian carries fidelity insurance, which covers assets held by the Custodian in custody from risks such as theft of funds. These arrangements provide significant protections to investors and could have mitigated the type of losses incurred by investors in the numerous crypto-related insolvencies, including Celsius, Voyager, BlockFi and FTX.

(ii) Trust's Transfer Agent Will Instruct Disposition of Trust's Bitcoin

According to the Registration Statement, except with respect to sale of bitcoin from time to time to cover expenses of the Trust, the only time bitcoin will move into or out from the Trust will be with respect to creations or redemptions of Shares of the Trust. In such cases, a third party will use cash to buy and deliver bitcoin to create Shares or withdraw and sell bitcoin for cash to redeem Shares, on behalf of the Trust. Authorized participants will deliver cash to the Trust's account with the Cash Custodian in exchange for Shares of the Trust, and the Trust, through the Cash Custodian, will deliver cash to authorized participants when those authorized participants redeem Shares of the Trust. The Transfer Agent will facilitate the settlement of Shares in response to the placement of creation orders and redemption orders from authorized participants. The creation and redemption procedures are administered by the Transfer Agent, an independent third party. Specifically, Shares are issued in registered form in accordance with the Trust agreement.[75] The Transfer Agent has been appointed registrar and transfer agent for the purpose of transferring Shares in certificated form. The Transfer Agent keeps a record of all shareholders and holder of the Shares in certified form in the registry. The Sponsor recognizes transfers of Shares in certified form only if done in accordance with the Trust agreement. In other words, according to the Registration Statement, with very limited exceptions, the Sponsor will not give instructions with respect to the transfer or disposition of the Trust's bitcoin. Bitcoin owned by the Trust will at all times be held by, and in the control of, the Custodian, and transfer of such bitcoin to or from the Custodian will occur only in connection with creation and redemptions of Shares. This will provide safeguards against the movement of bitcoin owned by the Trust by or to the Sponsor or affiliates of the Sponsor.

(iii) Trust's Assets Are Subject to Regular Audit

According to the Registration Statement, audit trails exist for all movement of bitcoin within Custodian-controlled bitcoin wallets and are audited annually for accuracy and completeness by an independent external audit firm. In addition, the Trust will be audited by an independent registered public accounting firm on a regular basis.

(iv) Trust is Subject to the Exchange's Obligations of Companies Listed on the Exchange and Applicable Corporate Governance Requirements

The Trust will be subject to the obligations of companies listed on the Exchange set forth in BZX Rule 14.6, which require the listed companies to make public disclosure of material events and any notifications of deficiency by the Exchange, file and distribute period financial reports,

[71] The Subadviser is an investment adviser. An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[72] Cash equivalents are short-term instruments with maturities of less than 3 months.

[73] 15 U.S.C. 80a–1.

[74] According to the Registration Statement, the Trust's cash will be held at The Bank of New York Mellon pursuant to a cash custody agreement.

[75] The Trust agreement refers to the ''Amended and Restated Trust Agreement of Ark 21Shares Bitcoin ETF.''

engage independent public accountants registered with the Exchange, among other things. Such disclosures serve a key investor protection role. In addition, the Trust will be subject to the corporate governance requirements for companies listed on the Exchange set forth in BZX Rule 14.10.

Investment Objective

According to the Registration Statement and as further described below, the investment objective of the Trust is to seek to track the performance of bitcoin, as measured by the performance of the CME CF Bitcoin Reference Rate—New York Variant (the ''Index''), adjusted for the Trust's expenses and other liabilities. In seeking to achieve its investment objective, the Trust will hold bitcoin and will value the Shares daily based on the Index. The Trust will process all creations and redemptions in cash transactions with authorized participants. The Trust is not actively managed.

The Index

As described in the Registration Statement, the Trust will use the Index to calculate the Trust's NAV. The Trust will determine the bitcoin Index price and value its Shares daily based on the value of bitcoin as reflected by the Index. The Index is calculated daily and aggregates the notional value of bitcoin trading activity across major bitcoin spot trading platforms. The Index currently uses substantially the same methodology as the CME CF Bitcoin Reference Rate (''BRR''), including utilizing the same constituent bitcoin trading platforms, which is the underlying rate to determine settlement of CME Bitcoin Futures contracts, except that the Index is calculated as of 4 p.m. ET, whereas the BRR is calculated as of 4 p.m. London time. The Index is designed based on the International Organization of Securities Commissions (''IOSCO'') Principals for Financial Benchmarks. The administrator of the Index is CF Benchmarks Ltd. (the ''Index Provider''). The Trust also uses the bitcoin Index price to calculate its bitcoin holdings, which is the aggregate U.S. Dollar value of bitcoins in the Trust, based on the bitcoin Index price, less its liabilities and expenses.

The Index was created to facilitate financial products based on bitcoin. It serves as a once-a-day benchmark rate of the U.S. dollar price of bitcoin (USD/BTC), calculated as of 4 p.m. ET. The Index, which has been calculated and published since February 28, 2022, aggregates the trade flow of several bitcoin trading platforms, during an observation window between 3:00 p.m. and 4:00 p.m. ET into the U.S. dollar price of one bitcoin at 4:00 p.m. ET. Specifically, the Index is calculated based on the ''Relevant Transactions'' (as defined below) of all of its constituent bitcoin trading platforms, which are currently Coinbase, Bitstamp, Kraken, itBit, LMAX Digital and Gemini (the ''Constituent Platforms''), as follows:

- All Relevant Transactions are added to a joint list, recording the time of execution, trade price and size for each transaction.
- The list is partitioned by timestamp into 12 equally-sized time intervals of 5 (five) minute length.
- For each partition separately, the volume-weighted median trade price is calculated from the trade prices and sizes of all Relevant Transactions, *i.e.,* across all Constituent Platforms. A volume-weighted median differs from a standard median in that a weighting factor, in this case trade size, is factored into the calculation.
- The Index is then determined by the equally-weighted average of the volume medians of all partitions.

Description of the Index, Index Construction and Maintenance

The Index does not include any futures prices in its methodology. A ''Relevant Transaction'' is any cryptocurrency 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 Constituent Platform in the BTC/USD pair that is reported and disseminated by a Constituent Platform through its publicly available Application Programming Interface (''API'') and observed by the Index Provider.

An oversight function is implemented by the Index Provider in seeking to ensure that the Index is administered through the Index Provider's codified policies for Index integrity, which include a conflicts of interest policy, a control framework, an accountability framework, and an input data policy. The Index is subject to oversight by the CME CF Oversight Committee. The CME CF Oversight Committee shall be comprised of at least five members, including at least: (i) two who are representatives of CME (''CME Members''); (ii) one who is a representative of CF (''CF Member''); and (iii) two who bring expertise and industry knowledge relating to benchmark determination, issuance and operations. The CME CF Oversight Committee meets no less frequently than quarterly. The CME CF Oversight Committee's Founding Charter and quarterly meeting minutes are publicly available.

The Sponsor believes that the use of the Index is reflective of a reasonable valuation of the average spot price of bitcoin and that resistance to manipulation is a priority aim of its design methodology. The methodology: (i) takes an observation period and divides it into equal partitions of time; (ii) then calculates the volume-weighted median of all transactions within each partition; and (iii) the value is determined from the arithmetic mean of the volume-weighted medians, equally weighted. By employing the foregoing steps, the Index thereby seeks to ensure that transactions in bitcoin conducted at outlying prices do not have an undue effect on the value of a specific partition, large trades or clusters of trades transacted over a short period of time will not have an undue influence on the index level, and the effect of large trades at prices that deviate from the prevailing price are mitigated from having an undue influence on the benchmark level.

Index data and the description of the Index are based on information made publicly available by the Index Provider on its website at *https://www.cfbenchmarks.com.*

Net Asset Value

NAV means the total assets of the Trust (which includes all bitcoin and cash and cash equivalents) less total liabilities of the Trust. The Administrator determines the NAV of the Trust on each day that the Exchange is open for regular trading, as promptly as practical after 4:00 p.m. EST. The NAV of the Trust is the aggregate value of the Trust's assets less its estimated accrued but unpaid liabilities (which include accrued expenses). In determining the Trust's NAV, the Administrator values the bitcoin held by the Trust based on the price set by the Index as of 4:00 p.m. EST. The Administrator also determines the NAV per Share.

The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time.

If the Index is not available, or if the Sponsor determines in good faith that the Index does not reflect an accurate bitcoin price, then the Administrator will employ an alternative method to determine the fair value of the Trust's assets.[76]

[76] Such alternative method will only be employed on an ad hoc basis. Any permanent change to the calculation of the NAV would require a proposed rule change under Rule 19b–4.

Availability of Information

In addition to the price transparency of the Index, the Trust will provide information regarding the Trust's bitcoin holdings as well as additional data regarding the Trust. The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price [77] in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The aforementioned information will be published as of the close of business and available on the Sponsor's website at *www.21shares.com,* or any successor thereto.

The Intraday Indicative Value (''IIV'') will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust's bitcoin holdings during the trading day. The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV may differ from the NAV due to the differences in the time window of trades used to calculate each price (the NAV uses the Index price as of 4 p.m. ET, whereas the IIV draws prices from the last trade on each Constituent Platform in an effort to produce a relevant, real-time price). The Trust will provide an IIV per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. E.T.). The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours through the facilities of the consolidated tape association (CTA) and Consolidated Quotation System (CQS) high speed lines. In addition, the IIV will be available through on-line information services such as Bloomberg and Reuters.

The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours.

As noted above, the Index is calculated daily and aggregates the notional value of bitcoin trading activity across major bitcoin spot trading platforms. Index data, value, and the description of the Index are based on information made publicly available by the Index Provider on its website at *https://www.cfbenchmarks.com.*

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the trading platforms on which bitcoin are traded. Depth of book information is also available from bitcoin trading platforms. The normal trading hours for bitcoin trading 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. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA'').

The Bitcoin Custodian

The Custodian carefully considers the design of the physical, operational and cryptographic systems for secure storage of the Trust's private keys in an effort to lower the risk of loss or theft. The Custodian utilizes a variety of security measures to ensure that private keys necessary to transfer digital assets remain uncompromised and that the Trust maintains exclusive ownership of its assets. The operational procedures of the Custodian are reviewed by third-party advisors with specific expertise in physical security. The devices that store the keys will never be connected to the internet or any other public or private distributed network—this is colloquially known as ''cold storage.'' Only specific individuals are authorized to participate in the custody process, and no individual acting alone will be able to access or use any of the private keys. In addition, no combination of the executive officers of the Sponsor or the investment professionals managing the Trust, acting alone or together, will be able to access or use any of the private keys that hold the Trust's bitcoin.

Creation and Redemption of Shares

When the Trust creates or redeems its Shares, it will do so in cash transactions in blocks of 5,000 Shares that are based on the quantity of bitcoin attributable to each Share of the Trust (*e.g.,* a Creation Basket) at the Trust's NAV. The authorized participants will deliver only cash to create shares and will receive only cash when redeeming shares. Further, authorized participants will not directly or indirectly purchase, hold, deliver, or receive bitcoin 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 bitcoin as part of the creation or redemption process. The Trust will create shares by receiving bitcoin 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 bitcoin. Further, the third party will not be acting as an agent of the authorized participant with respect to the delivery of the bitcoin to the Trust or acting at the direction of the authorized participant with respect to the delivery of the bitcoin to the Trust. The Trust will redeem shares by delivering bitcoin 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 bitcoin. Further, the third party will not be acting as an agent of the authorized participant with respect to the receipt of the bitcoin from the Trust or acting at the direction of the authorized participant with respect to the receipt of the bitcoin from the Trust.

According to the Registration Statement, on any business day, an authorized participant may place an order to create one or more Creation Basket. Purchase orders must be placed by 12:00 p.m. Eastern Time, the close of regular trading on the Exchange, or another time determined by the Sponsor. The day on which an order is received is considered the purchase order date. The total deposit of cash required is an amount of cash sufficient to purchase such amount of bitcoin, the amount of which is equal to the combined NAV of the number of Shares included in the Creation Baskets being created determined as promptly as practicable after 4:00 p.m. ET on the date the order to purchase is properly received. The Administrator determines the quantity of bitcoin used to calculate the cash deposit in the Creation Basket

[77] As defined in Rule 11.23(a)(3), the term ''BZX Official Closing Price'' shall mean the price disseminated to the consolidated tape as the market center closing trade.

for a given day by dividing the number of bitcoin held by the Trust as of the opening of business on that business day, adjusted for the amount of bitcoin constituting estimated accrued but unpaid fees and expenses of the Trust as of the opening of business on that business day, by the quotient of the number of Shares outstanding at the opening of business divided by 5,000. For example, assume the total bitcoin held by the Trust less any estimated accrued but unpaid fees and expenses is 1,000 bitcoin and the total number of Shares outstanding is 10,000. The Administrator would determine the required deposit as follows:

$$\frac{1{,}000\ BTC}{\left(\frac{10{,}000\ Shares}{5{,}000}\right)} = 500\ BTC\ per\ Creation\ Basket$$

Total deposited cash as described in the example above would be 500 multiplied by the purchase price of bitcoin.

The procedures by which an authorized participant can redeem one or more Creation Baskets mirror the procedures for the creation of Creation Baskets. A third party, that is unaffiliated with the Trust and the Sponsor, will use cash to buy and deliver bitcoin to create Shares or withdraw and sell bitcoin for cash to redeem Shares, on behalf of the Trust.

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

Rule 14.11(e)(4)—Commodity-Based Trust Shares

The Shares will be subject to BZX Rule 14.11(e)(4), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. The Exchange represents that, for initial and continued listing, the Trust must be in compliance with Rule 10A–3 under the Act. A minimum of 10,000 Shares will be outstanding at the commencement of listing on the Exchange. The Exchange will obtain a representation that the NAV will be calculated daily and information about the NAV and the assets of the Trust will be made available to all market participants at the same time. The Exchange notes that, as defined in Rule 14.11(e)(4)(C)(i), the Shares will be: (a) issued by a trust that holds (1) a specified commodity [78] deposited with the trust, or (2) a specified commodity and, in addition to such specified commodity, cash; (b) 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 (c) 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.

Upon termination of the Trust, the Shares will be removed from listing. The Trustee, Delaware Trust Company, is a trust company having substantial capital and surplus and the experience and facilities for handling corporate trust business, as required under Rule 14.11(e)(4)(E)(iv)(a) and that no change will be made to the trustee without prior notice to and approval of the Exchange. The Exchange also notes that, pursuant to Rule 14.11(e)(4)(F), 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 Trust in connection with issuance of Commodity-Based Trust Shares; 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. Finally, as required in Rule 14.11(e)(4)(G), the Exchange notes that any registered market maker (''Market Maker'') in the Shares must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule. In addition to the existing obligations under Exchange rules regarding the production of books and records (see, *e.g.,* Rule 4.2), the registered Market Maker in Commodity-Based Trust Shares 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 derivatives, as may be requested by the Exchange.

The Exchange is able to obtain information regarding trading in the Shares and the underlying bitcoin, Bitcoin Futures contracts, options on Bitcoin Futures, or any other bitcoin 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 organization 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 organizations of which such subsidiary or affiliate is a member.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant

[78] For purposes of Rule 14.11(e)(4), the term commodity takes on the definition of the term as provided in the Commodity Exchange Act. As noted above, the CFTC has opined that bitcoin is a commodity as defined in section 1a(9) of the Commodity Exchange Act. *See* Coinflip.

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 BZX Rule 11.18. 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 bitcoin underlying the Shares; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(e)(4)(E)(ii), which sets forth circumstances under which trading in the Shares may be halted.

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 with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. BZX will allow trading in the Shares during all trading sessions on the Exchange. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01 where the price is greater than $1.00 per share or $0.0001 where the price is less than $1.00 per share. The Shares of the Trust will conform to the initial and continued listing criteria set forth in BZX Rule 14.11(e)(4).

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and Bitcoin Futures 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 Bitcoin Futures from such markets and other entities.[79] The Exchange may obtain information regarding trading in the Shares and Bitcoin Futures via ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

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

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares 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 or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (i) the procedures for the creation and redemption of Baskets (and that the Shares are not individually redeemable); (ii) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (iii) how information regarding the IIV and the Trust's NAV are disseminated; (iv) the risks involved in trading the Shares outside of Regular Trading Hours[80] when an updated IIV will not be calculated or publicly disseminated; (v) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (vi) trading information. The Information Circular will also reference the fact that there is no regulated source of last sale information regarding bitcoin, that the Commission has no jurisdiction over the trading of bitcoin as a commodity, and that the CFTC has regulatory jurisdiction over the trading of Bitcoin Futures contracts and options on Bitcoin Futures contracts.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Shares. Members purchasing the Shares for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act[81] in general and section 6(b)(5) of the Act[82] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission has approved numerous series of Trust Issued Receipts,[83] including Commodity-Based Trust Shares,[84] to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and

[79] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.*

[80] Regular Trading Hours is the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

[81] 15 U.S.C. 78f.

[82] 15 U.S.C. 78f(b)(5).

[83] See Exchange Rule 14.11(f).

[84] Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

manipulative acts and practices;[85] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act and that this filing sufficiently demonstrates that the CME Bitcoin Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place[86] with a regulated market of significant size. Both the Exchange and CME are members of ISG.[87] The only remaining issue to be addressed is whether the Bitcoin Futures market constitutes a market of significant size, which both the Exchange and the Sponsor believe that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[88]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying section 6(b)(5) of the act, specifically providing 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.[89]

(a) Manipulation of the ETP

According to the Sponsor's research presented above, the Bitcoin Futures market is the leading market for bitcoin price formation. Where Bitcoin Futures lead the price in the spot market such that a potential manipulator of the bitcoin spot market (beyond just the constituents of the Index[90]) would have to participate in the Bitcoin Futures market, it follows that a potential manipulator of the Shares would similarly have to transact in the Bitcoin Futures market because the Index is based on spot prices. As such, the Exchange believes that part (a) of the significant market test outlined above is satisfied and that common membership in ISG between the Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the Shares.

(b) Predominant Influence on Prices in Spot and Bitcoin Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices in the Bitcoin Futures market or spot market for a number of reasons, including the significant volume in the Bitcoin Futures market, the size of bitcoin's market cap, and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid.

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present.

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past several years, U.S. investor exposure to bitcoin through OTC Bitcoin Funds has grown into the tens of billions of dollars and more than a billion dollars of exposure through Bitcoin Futures ETFs. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors through roll costs for Bitcoin Futures ETFs and premium/discount volatility and management fees for OTC Bitcoin Funds. The Exchange

[85] As the Exchange has stated in a number of other public documents, it continues to believe that bitcoin is resistant to price manipulation and that ''other means to prevent fraudulent and manipulative acts and practices'' exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin. The fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging. To the extent that there are bitcoin trading platforms engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, such activity does not normally impact prices on other trading platforms because participants will generally ignore markets with quotes that they deem non-executable. The reason is that wash trading aims to manipulate the volume rather than the price of an asset to give the impression of heightened market activity in hopes of attracting investors to that asset. Moreover, wash trades are executed within a trading platform rather than cross trading platforms since the entity executing the wash trades would aim to trade against itself, and as such, this can only happen within a trading platform. Should the wash trades of that entity result in a deviation of the price on that trading platform relative to others, arbitrageurs would then be able to capitalize on this mispricing, and bring the manipulated price back to equilibrium, resulting in a loss to the entity executing the wash trades. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin trading platform or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

[86] As previously articulated by the Commission, ''The standard requires such surveillance-sharing agreements since ''they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance- sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.'' The Commission has historically held that joint membership in ISG constitutes such a surveillance sharing agreement. See Wilshire Phoenix Disapproval.

[87] For a list of the current members and affiliate members of ISG, see *www.isgportal.com.*

[88] *See* Wilshire Phoenix Disapproval.

[89] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a 'cannot be manipulated' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.'' *Id.* at 37582.

[90] As further described below, the ''Index'' for the Trust is the CME CF Bitcoin Reference Rate—New York Variant. The current trading platform composition of the Index is Coinbase, Bistamp, Kraken, itBit, LMAX Digital, and Gemini (the ''Constituent Platforms'').

believes that the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, also believes that such concerns are now outweighed by these investor protection concerns. As such, the Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to bitcoin in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks and costs associated with investing in Bitcoin Futures ETFs and operating companies that are imperfect proxies for bitcoin exposure; and (iv) providing an alternative to custodying spot bitcoin.

Commodity-Based Trust Shares

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in Exchange Rule 14.11(e)(4). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares 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 or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and listed bitcoin derivatives via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

Availability of Information

The Exchange also believes that the proposal promotes market transparency in that a large amount of information is currently available about bitcoin and will be available regarding the Trust and the Shares. In addition to the price transparency of the Index, the Trust will provide information regarding the Trust's bitcoin holdings as well as additional data regarding the Trust. The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price [91] in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The aforementioned information will be published as of the close of business and available on the Sponsor's website at *www.21shares.com,* or any successor thereto.

The Trust will provide an IIV per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. E.T.). The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours through the facilities of the consolidated tape association (CTA) and Consolidated Quotation System (CQS) high speed lines. In addition, the IIV will be available through on-line information services such as Bloomberg and Reuters.

The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours.

As noted above, the Index is calculated daily and aggregates the notional value of bitcoin trading activity across major bitcoin spot trading platforms. Index data, value, and the description of the Index are based on information made publicly available by the Index Provider on its website at *https://www.cfbenchmarks.com.*

[91] As defined in Rule 11.23(a)(3), the term ''BZX Official Closing Price'' shall mean the price disseminated to the consolidated tape as the market center closing trade.

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the trading platforms on which bitcoin are traded. Depth of book information is also available from bitcoin trading platforms. The normal trading hours for bitcoin trading 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. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA'').

In sum, the Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act, that this filing sufficiently demonstrates that the CME Bitcoin Futures market represents a regulated market of significant size, and that on the whole the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by investor protection issues that would be resolved by approving this proposal.

The Exchange believes that the proposal is, in particular, designed to protect investors and the public interest. The investor protection issues for U.S. investors has grown significantly over the last several years, through roll costs for Bitcoin Futures ETFs and premium/discount volatility and management fees for OTC Bitcoin Funds. As discussed throughout, this growth investor protection concerns need to be re-evaluated and rebalanced with the prevention of fraudulent and manipulative acts and practices concerns that previous disapproval orders have relied upon. Finally, the Exchange notes that in addition to all of the arguments herein which it believes sufficiently establish the CME Bitcoin Futures market as a regulated market of significant size, it is logically inconsistent to find that the CME Bitcoin Futures market is a significant market as it relates to the CME Bitcoin Futures market, but not a significant market as it relates to the bitcoin spot market for the numerous reasons laid out above.

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

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

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

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

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

III. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBZX–2023–028 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–CboeBZX–2023–028. 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–CboeBZX–2023–028 and should be submitted on or before February 2, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[92]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–00499 Filed 1–11–24; 8:45 am]

BILLING CODE 8011–01–P

[92] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99289; File No. SR–CboeBZX–2023–040]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of Amendment No. 2 to a Proposed Rule Change To List and Trade Shares of the VanEck Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

January 8, 2024.

On June 30, 2023, Cboe BZX Exchange, Inc. (''BZX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the VanEck Bitcoin Trust under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. On July 11, 2023, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on July 19, 2023.[3] On August 31, 2023, pursuant to section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, as modified by Amendment No. 1.[5] On September 28, 2023, the Commission instituted proceedings to determine whether to disapprove the proposed rule change, as modified by Amendment No. 1.[6] On January 5, 2024, the Exchange filed Amendment No. 2 to the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment No. 2 amended and replaced the proposed rule change, as modified by Amendment No. 1, in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 2, from interested persons.

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

Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change to list and trade shares of the VanEck Bitcoin Trust (the ''Trust''),[7] under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, 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

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 97903 (July 13, 2023), 88 FR 46320. Comments on the proposed rule change, as modified by Amendment No. 1, are available at: *https://www.sec.gov/comments/sr-cboebzx-2023-040/srcboebzx2023040.htm.*

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

[5] *See* Securities Exchange Act Release No. 98265, 88 FR 61641 (Sept. 7, 2023).

[6] *See* Securities Exchange Act Release No. 98614, 88 FR 68785 (Oct. 4, 2023).

[7] The Trust was formed as a Delaware statutory trust on December 17, 2020 and is operated as a grantor trust for U.S. federal tax purposes. The Trust has no fixed termination date.

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

This Amendment No. 2 to SR–CboeBZX–2023–040 amends and replaces in its entirety the proposal as originally submitted on June 30, 2023, and as amended by Amendment No. 1 on July 11, 2023. The Exchange submits this Amendment No. 2 in order to clarify certain points and add additional details to the proposal.

The Exchange proposes to list and trade the Shares under BZX Rule 14.11(e)(4),[8] which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.[9] VanEck Digital Assets, LLC is the sponsor of the Trust (''Sponsor'').[10] The Shares will be registered with the Commission by means of the Trust's registration statement on Form S–1 (the ''Registration Statement'').[11] As further discussed below, the Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts,[12] including spot-based Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.[13] Prior orders from the Commission have pointed out that in every prior approval order for Commodity-Based Trust Shares, there has been a derivatives market that represents the regulated market of significant size, generally a Commodity Futures Trading Commission (the ''CFTC'') regulated futures market.[14]

[8] The Commission approved BZX Rule 14.11(e)(4) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[9] Any of the statements or representations regarding the index composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, and intraday indicative values, or the applicability of Exchange listing rules specified in this filing to list a series of Other Securities (collectively, ''Continued Listing Representations'') shall constitute continued listing requirements for the Shares listed on the Exchange.

[10] The Exchange notes that two other proposals to list and trade shares of the Trust were previously disapproved pursuant to delegated authority, one of which is currently pending Commission Review pursuant to Rule 431 of the Commission's Rules of Practice, 17 CFR 201.431. *See* Securities Exchange Act Release Nos. 93559 (November 12, 2021) (SR–CboeBZX–2021–019), 86 FR 64539 (November 18, 2021); 95978 (October 4, 2022) 87 FR 61418 (October 11, 2022) (SR–CboeBZX–2022–035). *See also* Letter from Assistant Secretary J. Matthew DeLesDernier to Kyle Murray, Assistant General Counsel, Cboe Global Markets, dated November 12, 2021.

[11] *See* Amendment No. 6 to Registration Statement on Form S–1, dated December 29, 2023, submitted to the Commission by the Sponsor on behalf of the Trust (333–251808). The descriptions of the Trust, the Shares, and the Benchmark contained herein are based, in part, on information in the Registration Statement. The Registration Statement is not yet effective and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

[12] *See* Exchange Rule 14.11(f)(1).

[13] *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018). This proposal was subsequently disapproved by the Commission. *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the ''Winklevoss Order'').

[14] *See* streetTRACKS Gold Shares, Exchange Act Release No. 50603 (Oct. 28, 2004), 69 FR 64614, 64618–19 (Nov. 5, 2004) (SR–NYSE–2004–22) (the ''First Gold Approval Order''); iShares COMEX Gold Trust, Exchange Act Release No. 51058 (Jan. 19, 2005), 70 FR 3749, 3751, 3754–55 (Jan. 26, 2005) (SR–Amex–2004–38); iShares Silver Trust, Exchange Act Release No. 53521 (Mar. 20, 2006), 71 FR 14967, 14968, 14973–74 (Mar. 24, 2006) (SR–Amex–2005–072); ETFS Gold Trust, Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993, 22994–95, 22998, 23000 (May 15, 2009) (SR–NYSEArca–2009–40); ETFS Silver Trust, Exchange Act Release No. 59781 (Apr. 17, 2009), 74 FR 18771, 18772, 18775–77 (Apr. 24, 2009) (SR–NYSEArca–2009–28); ETFS Palladium Trust, Exchange Act Release No. 61220 (Dec. 22, 2009), 74 FR 68895, 68896 (Dec. 29, 2009) (SR–NYSEArca–2009–94) (notice of proposed rule change included NYSE Arca's representation that ''[t]he most significant palladium futures exchanges are the NYMEX and the Tokyo Commodity Exchange,'' that ''NYMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which NYMEX is a member, Exchange Act Release No. 60971 (Nov. 9, 2009), 74 FR 59283, 59285–86, 59291 (Nov. 17, 2009)); ETFS Platinum Trust, Exchange Act Release No. 61219 (Dec. 22, 2009), 74 FR 68886, 68887–88 (Dec. 29, 2009) (SR–NYSEArca–2009–95) (notice of proposed rule change included NYSE Arca's representation that ''[t]he most significant platinum futures exchanges are the NYMEX and the Tokyo Commodity Exchange,'' that ''NYMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which NYMEX is a member, Exchange Act Release No. 60970 (Nov. 9, 2009), 74 FR 59319, 59321, 59327 (Nov. 17, 2009)); Sprott Physical Gold Trust, Exchange Act Release No. 61496 (Feb. 4, 2010), 75 FR 6758, 6760 (Feb. 10, 2010) (SR–NYSEArca–2009–113) (notice of proposed rule change included NYSE Arca's representation that the COMEX is one of the ''major world gold markets,'' that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' and that NYMEX, of which COMEX is a division, is a member of the Intermarket Surveillance Group, Exchange Act Release No. 61236 (Dec. 23, 2009), 75 FR 170, 171, 174 (Jan. 4, 2010)); Sprott Physical Silver Trust, Exchange Act Release No. 63043 (Oct. 5, 2010), 75 FR 62615, 62616, 62619, 62621 (Oct. 12, 2010) (SR–NYSEArca–2010–84); ETFS Precious Metals Basket Trust, Exchange Act Release No. 62692 (Aug. 11, 2010), 75 FR 50789, 50790 (Aug. 17, 2010) (SR–NYSEArca–2010–56) (notice of proposed rule change included NYSE Arca's representation that ''the most significant gold, silver, platinum and palladium futures exchanges are the COMEX and the TOCOM'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 62402 (Jun. 29, 2010), 75 FR 39292, 39295, 39298 (July 8, 2010)); ETFS White Metals Basket Trust, Exchange Act Release No. 62875 (Sept. 9, 2010), 75 FR 56156, 56158 (Sept. 15, 2010) (SR–NYSEArca–2010–71) (notice of proposed rule change included NYSE Arca's representation that ''the most significant silver, platinum and palladium futures exchanges are the COMEX and the TOCOM'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 62620 (July 30, 2010), 75 FR 47655, 47657, 47660 (Aug. 6, 2010)); ETFS Asian Gold Trust, Exchange Act Release No. 63464 (Dec. 8, 2010), 75 FR 77926, 77928 (Dec. 14, 2010) (SR–NYSEArca–2010–95) (notice of proposed rule change included NYSE Arca's representation that ''the most significant gold futures exchanges are the COMEX and the Tokyo Commodity Exchange,'' that ''COMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 63267 (Nov. 8, 2010), 75 FR 69494, 69496, 69500–01 (Nov. 12, 2010)); Sprott Physical Platinum and Palladium Trust, Exchange Act Release No. 68430 (Dec. 13, 2012), 77 FR 75239, 75240–41 (Dec. 19, 2012) (SR–NYSEArca–2012–111) (notice of proposed rule change included NYSE Arca's representation that ''[f]utures on platinum and palladium are traded on two major exchanges: The New York Mercantile Exchange . . . and Tokyo Commodities Exchange'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 68101 (Oct. 24, 2012), 77 FR 65732, 65733, 65739 (Oct. 30, 2012)); APMEX Physical—1 oz. Gold Redeemable Trust, Exchange Act Release No. 66930 (May 7, 2012), 77 FR 27817, 27818 (May 11, 2012) (SR–NYSEArca–2012–18) (notice of proposed rule change included NYSE Arca's representation that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the ''major world gold markets,'' Exchange Act Release No. 66627 (Mar. 20, 2012), 77 FR 17539, 17542–43, 17547 (Mar. 26, 2012)); JPM XF Physical Copper Trust, Exchange Act Release No. 68440 (Dec. 14, 2012), 77 FR 75468, 75469–70, 75472, 75485–86 (Dec. 20, 2012) (SR–NYSEArca–2012–28); iShares Copper Trust, Exchange Act Release No. 68973 (Feb. 22, 2013), 78 FR 13726, 13727, 13729–30, 13739–40 (Feb. 28, 2013) (SR–NYSEArca–2012–66); First Trust Gold Trust, Exchange Act Release No. 70195 (Aug. 14, 2013), 78 FR 51239, 51240 (Aug. 20, 2013) (SR–NYSEArca–2013–61) (notice of proposed rule change included NYSE Arca's representation that FINRA, on behalf of the exchange, may obtain trading information regarding gold futures and options on gold futures from members of the Intermarket Surveillance Group, including COMEX, or from markets ''with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement,'' and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the ''major world gold markets,'' Exchange Act Release No. 69847 (June 25, 2013), 78 FR 39399, 39400, 39405 (July 1, 2013)); Merk Gold Trust, Exchange Act Release No. 71378 (Jan. 23, 2014), 79 FR 4786, 4786–87 (Jan. 29, 2014) (SR–NYSEArca–2013–137) (notice of proposed rule change included NYSE

Further to this point, the Commission's prior orders have noted that the spot commodities and currency markets for which it has previously approved spot exchange-traded products (''ETPs'') are generally unregulated and that the Commission relied on the underlying futures market as the regulated market of significant size that formed the basis for approving the series of Currency [15] and Commodity-Based Trust Shares, including gold, silver, platinum, palladium, copper, and other commodities and currencies. The Commission specifically noted in the Winklevoss Order that the First Gold Approval Order ''was based on an assumption that the currency market and the spot gold market were largely unregulated.'' [16]

As such, the regulated market of significant size test does not require that the spot bitcoin market be regulated in order for the Commission to approve this proposal, and precedent makes clear that an underlying market for a spot commodity or currency being a regulated market would actually be an exception to the norm. These largely unregulated currency and commodity markets do not provide the same protections as the markets that are subject to the Commission's oversight, but the Commission has consistently looked to surveillance sharing agreements with the underlying futures market in order to determine whether such products were consistent with the Act. With this in mind, the Chicago Mercantile Exchange (''CME'') bitcoin futures (''Bitcoin Futures'') market is the proper market to consider in determining whether there is a related regulated market of significant size.

Further to this point, the Exchange notes that the Commission has approved proposals related to the listing and trading of funds that would primarily hold CME Bitcoin Futures that are registered under the Securities Act of 1933.[17] In the Teucrium Approval, the Commission found the CME Bitcoin Futures market to be a regulated market of significant size as it relates to CME Bitcoin Futures, an odd tautological truth that is also inconsistent with prior disapproval orders for ETPs that would hold actual bitcoin instead of derivatives contracts (''Spot Bitcoin ETPs'') that use the exact same pricing methodology as the CME Bitcoin Futures. As further discussed below, both the Exchange and the Sponsor believe that this proposal and the included analysis are sufficient to establish that the CME Bitcoin Futures market represents a regulated market of significant size as it relates both to the CME Bitcoin Futures market and to the spot bitcoin market and that this proposal should be approved.

Finally, as discussed in greater detail below, by using professional custodians and other service providers, the Trust provides investors interested in exposure to bitcoin with important protections that are not always available to investors that invest directly in bitcoin, including protection against insolvency, cyber attacks, and other risks. If U.S. investors had access to vehicles such as the Trust for their bitcoin investments, instead of directing their bitcoin investments into loosely regulated offshore vehicles (such as the offshore regulated centralized trading platforms that have since faced bankruptcy proceedings or other insolvencies), then countless investors might have protected their principal investments in bitcoin and thus benefited.

Background

Bitcoin is a digital asset based on the decentralized, open source protocol of the peer-to-peer computer network launched in 2009 that governs the creation, movement, and ownership of bitcoin and hosts the public ledger, or ''blockchain,'' on which all bitcoin transactions are recorded (the ''Bitcoin Network'' or ''Bitcoin''). The decentralized nature of the Bitcoin Network allows parties to transact directly with one another based on cryptographic proof instead of relying on a trusted third party. The protocol also lays out the rate of issuance of new bitcoin within the Bitcoin Network, a rate that is reduced by half approximately every four years with an eventual hard cap of 21 million. It's generally understood that the combination of these two features—a systemic hard cap of 21 million bitcoin and the ability to transact trustlessly with anyone connected to the Bitcoin Network—gives bitcoin its value. The first rule filing proposing to list an ETP to provide exposure to bitcoin in the U.S. was submitted by the Exchange on June 30, 2016.[18] At that time, blockchain technology, and digital assets that utilized it, were relatively new to the broader public. The market cap of all bitcoin in existence at that time was approximately $10 billion. No registered offering of digital asset securities or shares in an investment vehicle with exposure to bitcoin or any other cryptocurrency had yet been conducted, and the regulated infrastructure for conducting a digital asset securities offering had not begun to develop.[19] Similarly, regulated U.S. Bitcoin Futures contracts did not exist. The CFTC had determined that bitcoin is a commodity,[20] but had not engaged in significant enforcement actions in the space. The New York Department of Financial Services (''NYDFS'') adopted its final ''BitLicense'' regulatory framework in 2015, but had only approved four entities to engage in activities relating to virtual currencies (whether through granting a BitLicense or a limited-purpose trust charter) as of June 30, 2016.[21] While the first over-the-counter bitcoin fund launched in 2013, public trading was limited and the fund had only $60 million in assets.[22] There were very few, if any, traditional financial institutions engaged in the space, whether through investment or providing services to digital asset companies. In January 2018, the staff of the Commission noted in a letter to the Investment Company Institute (''ICI'') and Securities Industry and Financial Markets Association (''SIFMA'') that it

Arca's representation that ''COMEX is the largest gold futures and options exchange'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' including with respect to transactions occurring on COMEX pursuant to CME and NYMEX's membership, or from exchanges ''with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement,'' Exchange Act Release No. 71038 (Dec. 11, 2013), 78 FR 76367, 76369, 76374 (Dec. 17, 2013)); Long Dollar Gold Trust, Exchange Act Release No. 79518 (Dec. 9, 2016), 81 FR 90876, 90881, 90886, 90888 (Dec. 15, 2016) (SR–NYSEArca–2016–84).

[15] *See* Exchange Rule 14.11(e)(5).

[16] *See* Winklevoss Order at 37592.

[17] *See* Exchange Act Release No. 94620 (April 6, 2022), 87 FR 21676 (April 12, 2022) (the ''Teucrium Approval'') and 94853 (May 5, 2022) (collectively, with the Teucrium Approval, the ''Bitcoin Futures Approvals'').

[18] *See* Winklevoss Order.

[19] Digital assets that are securities under U.S. law are referred to throughout this proposal as ''digital asset securities.'' All other digital assets, including bitcoin, are referred to interchangeably as ''cryptocurrencies'' or ''virtual currencies.'' The term ''digital assets'' refers to all digital assets, including both digital asset securities and cryptocurrencies, together.

[20] *See* ''In the Matter of Coinflip, Inc.'' (''Coinflip'') (CFTC Docket 15–29 (September 17, 2015)) (order instituting proceedings pursuant to sections 6(c) and 6(d) of the CEA, making findings and imposing remedial sanctions), in which the CFTC stated: ''section 1a(9) of the CEA defines 'commodity' to include, among other things, 'all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.' 7 U.S.C. 1a(9). The definition of a 'commodity' is broad. *See, e.g., Board of Trade of City of Chicago* v. *SEC,* 677 F. 2d 1137, 1142 (7th Cir. 1982). Bitcoin and other virtual currencies are encompassed in the definition and properly defined as commodities.''

[21] A list of virtual currency businesses that are entities regulated by the NYDFS is available on the NYDFS website. *See https://www.dfs.ny.gov/apps_and_licensing/virtual_currency_businesses/regulated_entities.*

[22] Data as of March 31, 2016 according to publicly available filings. *See* Bitcoin Investment Trust Form S–1, dated May 27, 2016, available: *https://www.sec.gov/Archives/edgar/data/1588489/000095012316017801/filename1.htm.*

was not aware, at that time, of a single custodian providing fund custodial services for digital assets.[23] Fast forward to today and the digital assets financial ecosystem, including bitcoin, has progressed significantly. The development of a regulated market for digital asset securities has significantly evolved, with market participants having conducted registered public offerings of both digital asset securities [24] and shares in investment vehicles holding Bitcoin Futures.[25] Additionally, licensed and regulated service providers have emerged to provide fund custodial services for digital assets, among other services. For example, in February 2023, the Commission proposed to amend Rule 206(4)–2 under the Advisers Act of 1940 (the ''custody rule'') to expand the scope beyond client funds and securities to include all crypto assets, among other assets; [26] in May 2021, the staff of the Commission released a statement permitting open-end mutual funds to invest in cash-settled Bitcoin Futures; in December 2020, the Commission adopted a conditional no-action position permitting certain special purpose broker-dealers to custody digital asset securities under Rule 15c3–3 under the Exchange Act (the ''Custody Statement''); [27] in September 2020, the staff of the Commission released a no-action letter permitting certain broker-dealers to operate a non-custodial Alternative Trading System (''ATS'') for digital asset securities, subject to specified conditions; [28] in October 2019, the staff of the Commission granted temporary relief from the clearing agency registration requirement to an entity seeking to establish a securities clearance and settlement system based on distributed ledger technology,[29] and multiple transfer agents who provide services for digital asset securities registered with the Commission.[30]

Outside the Commission's purview, the regulatory landscape has changed significantly since 2016, and cryptocurrency markets have grown and evolved as well. The market for bitcoin is approximately 100 times larger, having at one point reached a market cap of over $1 trillion.[31] According to the CME Bitcoin Futures report, from October 2, 2023 through October 31, 2023, CFTC regulated Bitcoin Futures represented between $633 million and $6.5 billion in notional trading volume on CME Bitcoin Futures on a daily basis.[32] Daily average open interest was over $2.6 billion for the entirety of the period. The CFTC has exercised its regulatory jurisdiction in bringing a number of enforcement actions related to bitcoin and against trading platforms that offer cryptocurrency trading.[33] As of April 25, 2023 the NYDFS has granted no fewer than thirty-four BitLicenses,[34] including to established public payment companies like PayPal Holdings, Inc. and Square, Inc., and limited purpose trust charters to entities providing cryptocurrency custody services. The Treasury's Office of Foreign Assets Control (''OFAC'') has brought enforcement actions over apparent violations of the sanctions laws in connection with the provision of wallet management services for digital assets.[35]

In addition to the regulatory developments laid out above, more traditional financial market participants become more active in cryptocurrency: large insurance companies, asset managers, university endowments, pension funds, and even historically bitcoin skeptical fund managers have allocated to bitcoin. As noted in the Financial Stability Oversight Council (''FSOC'') report on Digital Asset Financial Stability Risks and Regulation, ''[i]ndustry surveys suggest that the scale of these investments grew quickly during the boom in crypto-asset markets through late 2021. In June 2022, PwC estimated that the number of crypto-specialist hedge funds was more than 300 globally, with $4.1 billion in assets under management. In addition, in a survey PwC found that 38 percent of surveyed traditional hedge funds were currently investing in 'digital assets,' compared to 21 percent the year prior.'' [36] The largest over-the-counter bitcoin fund previously filed a Form 10 registration statement, which the staff of the Commission reviewed and which took effect automatically, and is now a reporting company.[37] Established companies like Tesla, Inc., MicroStrategy Incorporated, and Square, Inc., among others, have announced substantial investments in bitcoin in

[23] *See* letter from Dalia Blass, Director, Division of Investment Management, U.S. Securities and Exchange Commission to Paul Schott Stevens, President & CEO, Investment Company Institute and Timothy W. Cameron, Asset Management Group—Head, Securities Industry and Financial Markets Association (January 18, 2018), *available at https://www.sec.gov/divisions/investment/noaction/2018/cryptocurrency-011818.htm.*

[24] *See* Prospectus supplement filed pursuant to Rule 424(b)(1) for INX Tokens (Registration No. 333–233363), *available at: https://www.sec.gov/Archives/edgar/data/1725882/000121390020023202/ea125858-424b1_inxlimited.htm.*

[25] *See* Prospectus filed by Stone Ridge Trust VI on behalf of NYDIG Bitcoin Strategy Fund Registration, *available at: https://www.sec.gov/Archives/edgar/data/1764894/000119312519309942/d693146d497.htm.*

[26] *See* Investment Advisers Act Release No. 6240 88 FR 14672 (March 9, 2023) (Safeguarding Advisory Client Assets).

[27] *See* Securities Exchange Act Release No. 90788, 86 FR 11627 (February 26, 2021) (File Number S7–25–20) (Custody of Digital Asset Securities by Special Purpose Broker-Dealers).

[28] *See* letter from Elizabeth Baird, Deputy Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Kris Dailey, Vice President, Risk Oversight & Operational Regulation, Financial Industry Regulatory Authority (September 25, 2020), *available at: https://www.sec.gov/divisions/marketreg/mr-noaction/2020/finra-ats-role-in-settlement-of-digital-asset-security-trades-09252020.pdf.*

[29] *See* letter from Jeffrey S. Mooney, Associate Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Charles G. Cascarilla & Daniel M. Burstein, Paxos Trust Company, LLC (October 28, 2019), *available at: https://www.sec.gov/divisions/marketreg/mr-noaction/2019/paxos-trust-company-102819-17a.pdf.*

[30] *See, e.g.,* Form TA–1/A filed by Tokensoft Transfer Agent LLC (CIK: 0001794142) on January 8, 2021, *available at: https://www.sec.gov/Archives/edgar/data/1794142/000179414219000001/xslFTA1X01/primary_doc.xml.*

[31] As of December 1, 2021, the total market cap of all bitcoin in circulation was approximately $1.08 trillion.

[32] Data sourced from Bloomberg as of October 31, 2023.

[33] The CFTC's annual report for Fiscal Year 2022 (which ended on September 30, 2022) noted that the CFTC completed the fiscal year with 18 enforcement filings related to digital assets. ''Digital asset actions included manipulation, a $1.7 billion fraudulent scheme, and a decentralized autonomous organization (DAO) failing to register as a SEF or FCM or to seek DCM designation.'' *See* CFTC FY 2022 Agency Financial Report, *available at: https://www.cftc.gov/media/7941/2022afr/download.* Additionally, the CFTC filed on March 27, 2023, a civil enforcement action against the owner/operators of the Binance centralized digital asset trading platform, which is one of the largest bitcoin derivative exchanges. *See* CFTC Release No. 8680–23 (March 27, 2023), *available at: https://www.cftc.gov/PressRoom/PressReleases/8680-23.*

[34] *See https://www.dfs.ny.gov/virtual_currency_businesses.*

[35] *See* U.S. Department of the Treasury Enforcement Release: ''OFAC Enters Into $98,830 Settlement with BitGo, Inc. for Apparent Violations of Multiple Sanctions Programs Related to Digital Currency Transactions'' (December 30, 2020) *available at: https://home.treasury.gov/system/files/126/20201230_bitgo.pdf. See also* U.S. Department of the Treasury Enforcement Release: ''Treasury Announces Two Enforcement Actions for over $24M and $29M Against Virtual Currency Exchange, Bittrex, Inc.'' (October 11, 2022) *available at: https://home.treasury.gov/news/press-releases/jy1006. See also* U.S. Department of Treasure Enforcement Release ''OFAC Settles with Virtual Currency Exchange Kraken for $362,158.70 Related to Apparent Violations of the Iranian Transactions and Sanctions Regulations'' (November 28, 2022) *available at: https://home.treasury.gov/system/files/126/20221128_kraken.pdf.*

[36] *See* the FSOC ''Report on Digital Asset Financial Stability Risks and Regulation 2022'' (October 3, 2022) (at footnote 26) at *https://home.treasury.gov/system/files/261/FSOC-Digital-Assets-Report-2022.pdf.*

[37] *See* Letter from Division of Corporation Finance, Office of Real Estate & Construction to Barry E. Silbert, Chief Executive Officer, Grayscale Bitcoin Trust (January 31, 2020) *https://www.sec.gov/Archives/edgar/data/1588489/000000000020000953/filename1.pdf.*

amounts as large as $1.5 billion (Tesla) and $1 billion (MicroStrategy).[38] The foregoing examples demonstrate that bitcoin has gained mainstream usage and recognition.

Despite these developments, access for U.S. retail investors to gain exposure to bitcoin via a transparent and U.S. regulated, U.S. exchange-traded vehicle remains limited. Instead current options include: (i) facing the counter-party risk, legal uncertainty, technical risk, and complexity associated with accessing spot bitcoin; (ii) over-the-counter bitcoin funds (''OTC Bitcoin Funds'') with high management fees and potentially volatile premiums and discounts;[39] (iii) purchasing shares of operating companies that they believe will provide proxy exposure to bitcoin with limited disclosure about the associated risks;[40] or (iv) purchasing Bitcoin Futures exchange-traded funds (''ETFs''), as defined below, which represent a sub-optimal structure for long-term investors that will cost them significant amounts of money every year compared to Spot Bitcoin ETPs, as further discussed below. Meanwhile, investors in many other countries, including Canada and Brazil, are able to use more traditional exchange listed and traded products (including ETFs holding physical bitcoin) to gain exposure to bitcoin. Similarly, investors in Switzerland and across Europe have access to ETPs which trade on regulated exchanges and provide exposure to a broad array of spot crypto assets. U.S. investors, by contrast, are left with fewer and more risky means of getting bitcoin exposure, as described above.[41]

To this point, the lack of a Spot Bitcoin ETP exposes U.S. investor assets to significant risk because investors that would otherwise seek crypto asset exposure through a Spot Bitcoin ETP are forced to find alternative exposure through generally riskier means. For instance, many U.S. investors that held their digital assets in accounts at FTX,[42] Celsius Network LLC,[43] BlockFi Inc.[44] and Voyager Digital Holdings, Inc.[45] have become unsecured creditors in the insolvencies of those entities. If a Spot Bitcoin ETP was available, it is likely that at least a portion of the billions of dollars tied up in those proceedings would still reside in the brokerage accounts of U.S. investors, having instead been invested in a transparent, regulated, and well-understood structure—a Spot Bitcoin ETP. To this point, approval of a Spot Bitcoin ETP would represent a major win for the protection of U.S. investors in the crypto asset space. As further described below, the Trust, like all other series of Commodity-Based Trust Shares, is designed to protect investors against the risk of losses through fraud and insolvency that arise by holding digital assets, including bitcoin, on centralized platforms.

Additionally, investors in other countries, specifically Canada, generally pay lower fees than U.S. retail investors that invest in OTC Bitcoin Funds due to the fee pressure that results from increased competition among available bitcoin investment options. Without an approved and regulated Spot Bitcoin ETP in the U.S. as a viable alternative, U.S. investors could seek to purchase shares of non-U.S. bitcoin vehicles in order to get access to bitcoin exposure. Given the separate regulatory regime and the potential difficulties associated with any international litigation, such an arrangement would create more risk exposure for U.S. investors than they would otherwise have with a U.S. exchange listed ETP. In addition to the benefits to U.S. investors articulated throughout this proposal, approving this proposal (and others like it) would provide U.S. ETFs and mutual funds with a U.S.-listed and regulated product to provide such access rather than relying on either flawed products or products listed and primarily regulated in other countries.

Bitcoin Futures ETFs

The Exchange and Sponsor applaud the Commission for allowing the launch of ETFs registered under the Investment Company Act of 1940, as amended (the ''1940 Act'') and the Bitcoin Futures Approvals that provide exposure to bitcoin primarily through CME Bitcoin Futures (''Bitcoin Futures ETFs''). Allowing such products to list and trade is a productive first step in providing U.S. investors and traders with transparent, exchange-listed tools for expressing a view on bitcoin. The Bitcoin Futures Approvals, however, have created a logical inconsistency in the application of the standard the Commission applies when considering bitcoin ETP proposals.

As discussed further below, the standard applicable to bitcoin ETPs is whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulCated market of significant size in the underlying asset. Previous disapproval orders have made clear that a market that constitutes a regulated market of significant size is generally a futures and/or options market based on the underlying reference asset rather than the spot commodity markets, which are often unregulated.[46] Leaving aside the

[38] *See https://www.microstrategy.com/en/investor-relations/press/microstrategy-acquires-additional-19452-bitcoins-for-1-026-billion_02-24-2021.*

[39] The premium and discount for OTC Bitcoin Funds is known to move rapidly. For example, over the period of 12/21/20 to 1/21/21, the premium for the largest OTC Bitcoin Fund went from 40.18% to 2.79%. While the price of bitcoin appreciated significantly during this period and NAV per share increased by 41.25%, the price per share increased by only 3.58%. This means that investors are buying shares of a fund that experiences significant volatility in its premium and discount outside of the fluctuations in price of the underlying asset. Even operating within the normal premium and discount range, it's possible for an investor to buy shares of an OTC Bitcoin Fund only to have those shares quickly lose 10% or more in dollar value excluding any movement of the price of bitcoin. That is to say—the price of bitcoin could have stayed exactly the same from market close on one day to market open the next, yet the value of the shares held by the investor decreased only because of the fluctuation of the premium. As more investment vehicles, including mutual funds and ETFs, seek to gain exposure to bitcoin, the easiest option for a buy and hold strategy for such vehicles is often an OTC Bitcoin Fund, meaning that even investors that do not directly buy OTC Bitcoin Funds can be disadvantaged by extreme premiums (or discounts) and premium volatility.

[40] A number of operating companies engaged in unrelated businesses—such as Tesla (a car manufacturer) and MicroStrategy (an enterprise software company)—have announced investments as large as $5.3 billion in bitcoin. Without access to bitcoin exchange-traded products, retail investors seeking investment exposure to bitcoin may end up purchasing shares in these companies in order to gain the exposure to bitcoin that they seek. In fact, mainstream financial news networks have written a number of articles providing investors with guidance for obtaining bitcoin exposure through publicly traded companies (such as MicroStrategy, Tesla, and bitcoin mining companies, among others) instead of dealing with the complications associated with buying spot bitcoin in the absence of a bitcoin ETP. *See e.g.,* ''7 public companies with exposure to bitcoin'' (February 8, 2021) available at: *https://finance.yahoo.com/news/7-public-companies-with-exposure-to-bitcoin-154201525.html;* and ''Want to get in the crypto trade without holding bitcoin yourself? Here are some investing ideas'' (February 19, 2021) available at: *https://www.cnbc.com/2021/02/19/ways-to-invest-in-bitcoin-without-holding-the-cryptocurrency-yourself-.html.*

[41] The Exchange notes that the list of countries above is not exhaustive and that securities regulators in a number of additional countries have either approved or otherwise allowed the listing and trading of Spot Bitcoin ETPs.

[42] *See* FTX Trading Ltd., et al., Case No. 22–11068.

[43] *See* Celsius Network LLC, et al., Case No. 22–10964.

[44] *See* BlockFi Inc., Case No. 22–19361.

[45] *See* Voyager Digital Holdings, Inc., et al., Case No. 22–10943.

[46] *See* Winklevoss Order at 37593, specifically footnote 202, which includes the language from numerous approval orders for which the underlying futures markets formed the basis for approving series of ETPs that hold physical metals, including gold, silver, palladium, platinum, and precious metals more broadly; and 37600, specifically where the Commission provides that ''when the spot market is unregulated—the requirement of preventing fraudulent and manipulative acts may possibly be satisfied by showing that the ETP listing

Continued

analysis of that standard until later in this proposal,[47] the Exchange believes that the following rationale the Commission applied to a Bitcoin Futures ETF should result in the Commission approving this and other Spot Bitcoin ETP proposals:

The CME ''comprehensively surveils futures market conditions and price movements on a real-time and ongoing basis in order to detect and prevent price distortions, including price distortions caused by manipulative efforts.'' Thus the CME's surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts, whether that attempt is made by directly trading on the CME bitcoin futures market or indirectly by trading outside of the CME bitcoin futures market. As such, when the CME shares its surveillance information with Arca, the information would assist in detecting and deterring fraudulent or manipulative misconduct related to the non-cash assets held by the proposed ETP.[48]

CME Bitcoin Futures pricing is based on pricing from spot bitcoin markets. The statement from the Teucrium Approval that ''CME's surveillance can reasonably be relied upon to capture the effects on the CME Bitcoin Futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME Bitcoin Futures contracts . . . indirectly by trading outside of the CME Bitcoin Futures market,'' makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of CME Bitcoin Futures. This was further acknowledged in the ''Grayscale lawsuit'' [49] when Judge Rao stated ''. . . the Commission in the Teucrium order recognizes that the futures prices are influenced by the spot prices, and the Commission concludes in approving futures ETPs that any fraud on the spot market can be adequately addressed by the fact that the futures market is a regulated one . . .'' The Exchange agrees with the Commission on this point and notes that the pricing mechanism applicable to the Shares is similar to that of the CME Bitcoin Futures. As further discussed below, this view is also consistent with the Sponsor's research.

The structure of Bitcoin Futures ETFs provides negative outcomes for buy and hold investors as compared to a Spot Bitcoin ETP.[50] Specifically, the cost of rolling CME Bitcoin Futures contracts will cause the Bitcoin Futures ETFs to lag the performance of bitcoin itself and, at over a billion dollars in assets under management, would cost U.S. investors significant amounts of money on an annual basis compared to Spot Bitcoin ETPs. Such rolling costs would not be required for Spot Bitcoin ETPs that hold bitcoin. Further, Bitcoin Futures ETFs could potentially hit CME position limits, which would force a Bitcoin Futures ETF to invest in non-futures assets for bitcoin exposure and cause potential investor confusion and lack of certainty about what such Bitcoin Futures ETFs are actually holding to try to get exposure to bitcoin, not to mention completely changing the risk profile associated with such an ETF. While Bitcoin Futures ETFs represent a useful trading tool, they are clearly a sub-optimal structure for U.S. investors that are looking for long-term exposure to bitcoin that will, based on the calculations above, unnecessarily cost U.S. investors significant amounts of money every year compared to Spot Bitcoin ETPs and the Exchange believes that any proposal to list and trade a Spot Bitcoin ETP should be reviewed by the Commission with this important investor protection context in mind.

Based on the foregoing, the Exchange and Sponsor believe that any objective review of the proposals to list Spot Bitcoin ETPs compared to the Bitcoin Futures ETFs and the Bitcoin Futures Approvals would lead to the conclusion that Spot Bitcoin ETPs should be available to U.S. investors and, as such, this proposal and other comparable proposals to list and trade Spot Bitcoin ETPs should be approved by the Commission. Stated simply, U.S. investors will continue to lose significant amounts of money from holding Bitcoin Futures ETFs as compared to Spot Bitcoin ETPs, losses which could be prevented by the Commission approving Spot Bitcoin ETPs. Additionally, any concerns related to preventing fraudulent and manipulative acts and practices related to Spot Bitcoin ETPs would apply equally to the spot markets underlying the futures contracts held by a Bitcoin Futures ETF. Both the Exchange and Sponsor believe that the CME Bitcoin Futures market is a regulated market of significant size and that such manipulation concerns are mitigated, as described extensively below. After allowing and approving the listing and trading of Bitcoin Futures ETFs that hold primarily CME Bitcoin Futures, however, the only consistent outcome would be approving Spot Bitcoin ETPs on the basis that the CME Bitcoin Futures market is a regulated market of significant size.

Given the current landscape, approving this proposal (and others like it) and allowing Spot Bitcoin ETPs to be listed and traded alongside Bitcoin Futures ETFs would establish a consistent regulatory approach, provide U.S. investors with choice in product structures for bitcoin exposure, and offer flexibility in the means of gaining exposure to bitcoin through transparent, regulated, U.S. exchange-listed vehicles.

Spot and Proxy Exposure to Bitcoin

Exposure to bitcoin through an ETP also presents certain advantages for retail investors compared to buying spot bitcoin directly. The most notable advantage from the Sponsor's perspective is the elimination of the need for an individual retail investor to either manage their own private keys or to hold bitcoin through a cryptocurrency trading platform that lacks sufficient protections. Typically, retail trading platforms hold most, if not all, retail investors' bitcoin in ''hot'' (internet-connected) storage and do not make any commitments to indemnify retail investors or to observe any particular cybersecurity standard. Meanwhile, a retail investor holding spot bitcoin directly in a self-hosted wallet may suffer from inexperience in private key management (*e.g.,* insufficient password protection, lost key, etc.), which could cause them to lose some or all of their bitcoin holdings. Thus, with respect to custody of the Trust's bitcoin assets, the Trust presents advantages from an investment protection standpoint for retail investors compared to owning spot bitcoin directly.

market has entered into a surveillance-sharing agreement with a regulated market of significant size in derivatives related to the underlying asset.'' As noted above, the Exchange believes that these citations are particularly helpful in making clear that the spot market for a spot commodity ETP need not be ''regulated'' in order for a spot commodity ETP to be approved by the Commission, and in fact that it's been the common historical practice of the Commission to rely on such derivatives markets as the regulated market of significant size because such spot commodities markets are largely unregulated.

[47] As further outlined below, both the Exchange and the Sponsor believe that the Bitcoin Futures market represents a regulated market of significant size and that this proposal and others like it should be approved on this basis.

[48] *See* Teucrium Approval at 21679.

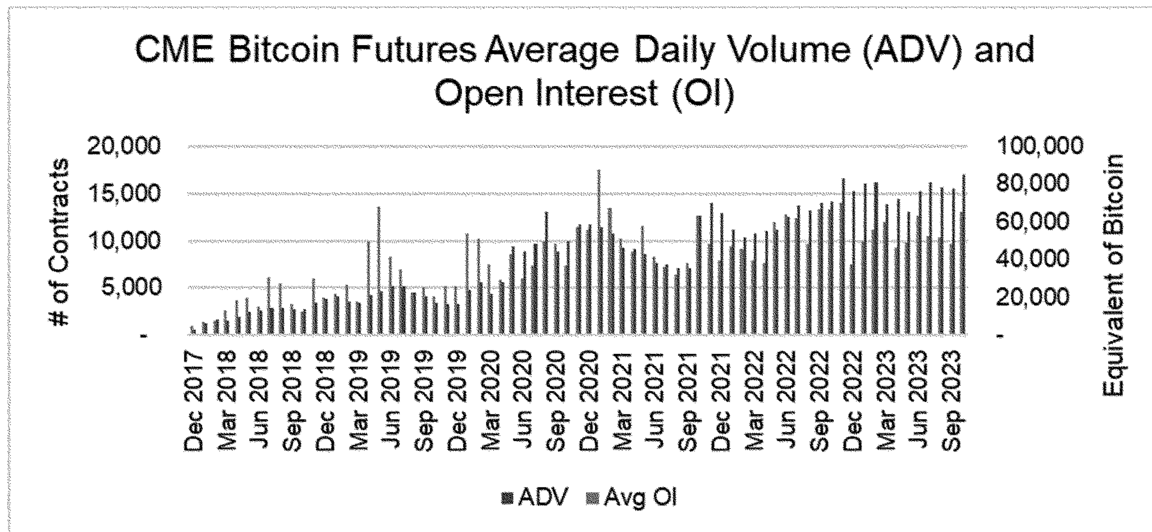
[49] *Grayscale Investments, LLC* v. *Securities and Exchange Commission,* et al., Case No. 22–1142.

[50] *See e.g.,* ''Bitcoin ETF's Success Could Come at Fundholders' Expense,'' Wall Street Journal (October 24, 2021), available at: *https://www.wsj.com/articles/bitcoin-etfs-success-could-come-at-fundholders-expense-11635080580;* ''Physical Bitcoin ETF Prospects Accelerate,'' *ETF.com* (October 25, 2021), available at: *https://www.etf.com/sections/blog/physical-bitcoin-etf-prospects-shine?nopaging=1&__cf_chl_jschl_tk__=pmd_JsK.fjXz9eAQW9zol0qpzhXDrrlpIVdoCloLXbLjl44-1635476946-0-gqNtZGzNApCjcnBszQql.*

Finally, as described in the Background section above, a number of operating companies largely engaged in unrelated businesses—such as Tesla (a car manufacturer) and MicroStrategy (an enterprise software company)—have announced significant investments in bitcoin. Without access to bitcoin exchange-traded products, retail investors seeking investment exposure to bitcoin may end up purchasing shares in these companies in order to gain the exposure to bitcoin that they seek.[51] In fact, mainstream financial news networks have written a number of articles providing investors with guidance for obtaining bitcoin exposure through publicly traded companies (such as MicroStrategy, Tesla, and bitcoin mining companies, among others) instead of dealing with the complications associated with buying spot bitcoin in the absence of a bitcoin ETP.[52] Such operating companies, however, are imperfect bitcoin proxies and provide investors with partial bitcoin exposure paired with a host of additional risks associated with whichever operating company they decide to purchase. Additionally, the disclosures provided by the aforementioned operating companies with respect to risks relating to their bitcoin holdings are generally substantially smaller than the registration statement of a bitcoin ETP, including the Registration Statement, typically amounting to a few sentences of narrative description and a handful of risk factors.[53] In other words, investors seeking bitcoin exposure through publicly traded companies are gaining only partial exposure to bitcoin and are not fully benefitting from the risk disclosures and associated investor protections that come from the securities registration process.

Bitcoin Futures

CME began offering trading in Bitcoin Futures in 2017. Each contract represents five bitcoin and is based on the CME CF Bitcoin Reference Rate.[54] The contracts trade and settle like other cash-settled commodity futures contracts. Nearly every measurable metric related to Bitcoin Futures has generally trended up since launch, although certain notional volume calculations have decreased roughly in line with the decrease in the price of bitcoin. For example, there were 286,519 Bitcoin Futures contracts traded in October 2023 (approximately $43.5 billion) compared to 93,611 ($3.9 billion), 162,403 ($9.9 billion), 266,975 ($79.2 billion), and 279,399 ($27.5 billion) contracts traded in October 2019, October 2020, October 2021, and October 2022, respectively.[55]



The number of large open interest holders[56] and unique accounts trading Bitcoin Futures have both increased.

[51] In August 2017, the Commission's Office of Investor Education and Advocacy warned investors about situations where companies were publicly announcing events relating to digital coins or tokens in an effort to affect the price of the company's publicly traded common stock. *See https://www.sec.gov/oiea/investor-alerts-and-bulletins/ia_icorelatedclaims.*

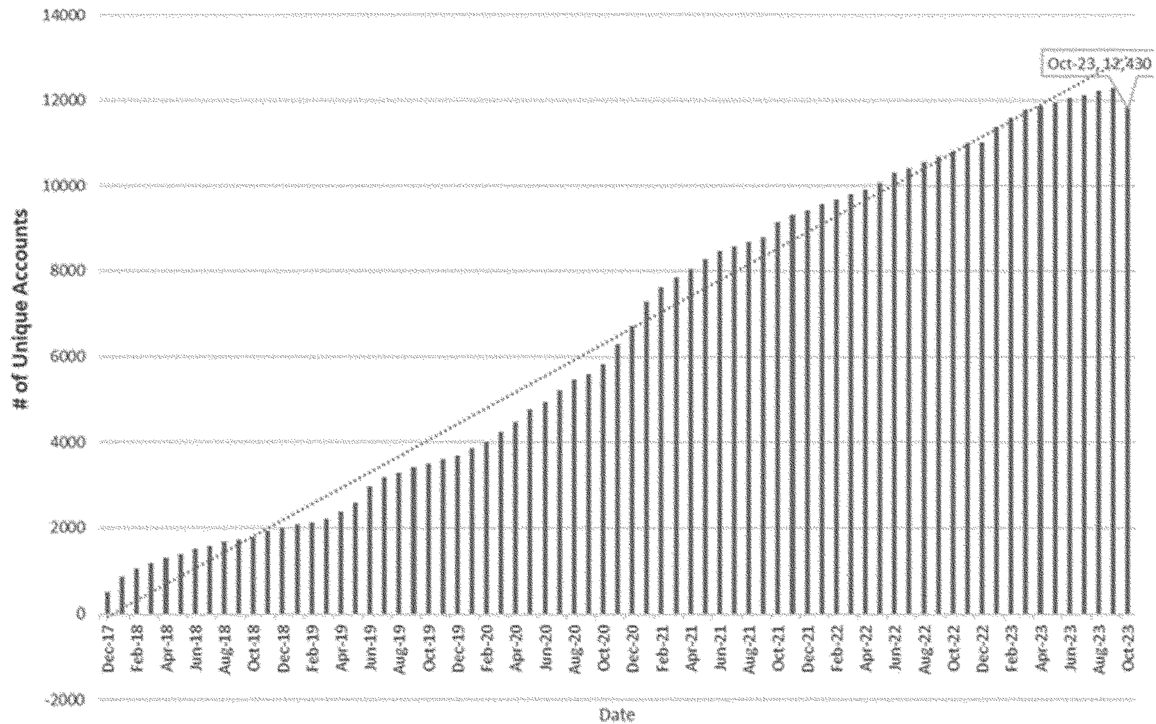
[52] *See e.g.,* "7 public companies with exposure to bitcoin" (February 8, 2021) available at: *https://finance.yahoo.com/news/7-public-companies-with-exposure-to-bitcoin-154201525.html;* and "Want to get in the crypto trade without holding bitcoin yourself? Here are some investing ideas" (February 19, 2021) available at: *https://www.cnbc.com/2021/02/19/ways-to-invest-in-bitcoin-without-holding-the-cryptocurrency-yourself-.html.*

[53] *See, e.g.,* Tesla 10–K for the year ended December 31, 2020, which mentions bitcoin just nine times: *https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/000156459021004599/tsla-10k_20201231.htm.*

[54] The CME CF Bitcoin Reference Rate is based on a publicly available calculation methodology based on pricing sourced from several crypto trading platforms, including Bitstamp, Coinbase, Gemini, itBit, Kraken, and LMAX Digital.

[55] Source: Bloomberg as of October 31, 2023.

[56] A large open interest holder in Bitcoin Futures is an entity that holds at least 25 contracts, which is the equivalent of 125 bitcoin. At a price of approximately $36,304.40 per bitcoin on November 14, 2023, more than 131 firms had outstanding positions of greater than $4.5 million in Bitcoin Futures.



The Sponsor further believes that publicly available research, including research done as part of rule filings proposing to list and trade shares of Spot Bitcoin ETPs, corroborates the overall trend outlined above and supports the thesis that the Bitcoin Futures pricing leads the spot market and, thus, a person attempting to manipulate the Shares would also have to trade on that market to manipulate the ETP. Specifically, the Sponsor believes that such research indicates that Bitcoin Futures lead the bitcoin spot market in price formation.[57]

Section 6(b)(5) and the Applicable Standards

The Commission has approved numerous series of Trust Issued Receipts,[58] including Commodity-Based Trust Shares,[59] to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices;[60] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act and that this filing sufficiently demonstrates that the CME Bitcoin Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

[57] *See* Exchange Act Releases No. 94080 (January 27, 2022), 87 FR 5527 (April 12, 2022) (specifically ''Amendment No. 1 to the Proposed Rule Change To List and Trade Shares of the Wise Origin Bitcoin Trust Under BZX Rule 14.11(3)(4), Commodity-Based Trust Shares''); 94982 (May 25, 2022), 87 FR 33250 (June 1, 2022); 94844 (May 4, 2022), 87 FR 28043 (May 10, 2022); and 93445 (October 28, 2021), 86 FR 60695 (November 3, 2021). *See also* Hu, Y., Hou, Y. and Oxley, L. (2019). ''What role do futures markets play in Bitcoin pricing? Causality, cointegration and price discovery from a time-varying perspective'' (available at: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7481826/*). This academic research paper concludes that ''There exist no episodes where the Bitcoin spot markets dominates the price discovery processes with regard to Bitcoin futures. This points to a conclusion that the price formation originates solely in the Bitcoin futures market. We can, therefore, conclude that the Bitcoin futures markets dominate the dynamic price discovery process based upon time-varying information share measures. Overall, price discovery seems to occur in the Bitcoin futures markets rather than the underlying spot market based upon a time-varying perspective.''

[58] *See* Exchange Rule 14.11(f).

[59] Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

[60] As the Exchange has stated in a number of other public documents, it continues to believe that bitcoin is resistant to price manipulation and that ''other means to prevent fraudulent and manipulative acts and practices'' exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin. The fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging. To the extent that there are bitcoin trading platforms engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, such pricing does not normally impact prices on other trading platforms because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin trading platform or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place [61] with a regulated market of significant size. Both the Exchange and CME are members of the Intermarket Surveillance Group (''ISG'').[62] The only remaining issue to be addressed is whether the Bitcoin Futures market constitutes a market of significant size, which both the Exchange and the Sponsor believe that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[63]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying section 6(b)(5) of the act, specifically providing 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.[64]

(a) Manipulation of the ETP

According to the Sponsor's research presented above, the Bitcoin Futures market is the leading market for bitcoin price formation. Where Bitcoin Futures lead the price in the spot market such that a potential manipulator of the bitcoin spot market (beyond just the constituents of the Benchmark [65]) would have to participate in the Bitcoin Futures market, it follows that a potential manipulator of the Shares would similarly have to transact in the Bitcoin Futures market because the Benchmark is based on spot prices.

(b) Predominant Influence on Prices in Spot and Bitcoin Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices in the Bitcoin Futures market or spot market for a number of reasons, including the significant volume in the Bitcoin Futures market, the size of bitcoin's market cap, and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid.

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present.

(ii) Designed To Protect Investors and the Public Interest

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past several years, U.S. investor exposure to bitcoin through OTC Bitcoin Funds has grown into the tens of billions of dollars, including through Bitcoin Futures ETFs. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors through roll costs for Bitcoin Futures ETFs and premium/discount volatility and management fees for OTC Bitcoin Funds. As noted above, many U.S. investors that held digital assets in accounts at FTX, Celsius Network LLC, BlockFi Inc, and Voyager Digital Holdings Inc, have become unsecured creditors in the insolvencies of those entities and, consequently, have suffered monetary losses. Moreover, most of those U.S. investors do not have access to any of their assets at this time due to such bankruptcy proceedings or other insolvencies. The Exchange believes that the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, such concerns are now outweighed by investor protection concerns. As such, the Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to bitcoin in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks and costs associated with investing in Bitcoin Futures ETFs and operating companies that are imperfect proxies for bitcoin exposure; and (iv) providing an alternative to custodying spot bitcoin.

VanEck Bitcoin Trust

Delaware Trust Company is the trustee (''Trustee''). The State Street Bank and Trust Company will be the administrator (''Administrator''), transfer agent (''Transfer Agent'') and will be responsible for the custody of the Trust's cash and cash equivalents [66] (the ''Cash Custodian''). Van Eck Securities Corporation will be the marketing agent (''Marketing Agent'') in connection with the creation and redemption of ''Creation Baskets'', as defined below, of Shares. Van Eck Securities Corporation (''VanEck'') provides assistance in the marketing of the Shares. Gemini Trust Company, LLC (the ''Custodian'') will be responsible for custody of the Trust's bitcoin.

According to the Registration Statement, each Share will represent a fractional undivided beneficial interest in the Trust's net assets. The Trust's

[61] As previously articulated by the Commission, ''The standard requires such surveillance-sharing agreements since ''they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance- sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.'' The Commission has historically held that joint membership in the Intermarket Surveillance Group (''ISG'') constitutes such a surveillance sharing agreement. *See* Securities Exchange Act Release No. 88284 (February 26, 2020), 85 FR 12595 (March 3, 2020) (SR–NYSEArca–2019–39) (the ''Wilshire Phoenix Disapproval'').

[62] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.*

[63] *See* Wilshire Phoenix Disapproval.

[64] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a 'cannot be manipulated' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.'' Id. at 37582.

[65] As further described below, the ''Benchmark'' for the Fund is the MarketVector Bitcoin Benchmark Rate.

[66] Cash equivalents are short-term instruments with maturities of less than 3 months.

assets will only consist of bitcoin, cash and cash equivalents.

According to the Registration Statement, the Trust is neither an investment company registered under the Investment Company Act of 1940, as amended,[67] nor a commodity pool for purposes of the Commodity Exchange Act (''CEA''), and neither the Trust nor the Sponsor is subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the Shares.

When the Trust sells or redeems its Shares, it will do so in cash transactions in blocks of 50,000 Shares (a ''Creation Basket'') at the Trust's net asset value (''NAV''). A third party will use cash to buy and deliver bitcoin to create Shares or withdraw and sell bitcoin for cash to redeem Shares, on behalf of the Trust. For creations, authorized participants will deliver cash to the Trust's account with the Cash Custodian in exchange for Shares. Upon receipt of an approved creation order, the Sponsor, on behalf of the Trust, will submit an order to buy the amount of bitcoin represented by a Creation Basket. Based off bitcoin executions, the Cash Custodian will request the required cash from the authorized participant; the Transfer Agent will only issue ETF shares when the authorized participant has made delivery of the cash. Following receipt by the Cash Custodian of the cash from an authorized participant, the Sponsor, on behalf of the Trust, will approve an order with one or more previously onboarded trading partners to purchase the amount of bitcoin represented by the Creation Basket. This purchase of bitcoin will normally be cleared through an affiliate of the Custodian (although the purchase may also occur directly with the trading partner) and the bitcoin will settle directly into the Trust's account at the Custodian.[68] Authorized participants may then offer Shares to the public at prices that depend on various factors, including the supply and demand for Shares, the value of the Trust's assets, and market conditions at the time of a transaction. Shareholders who buy or sell Shares during the day from their broker may do so at a premium or discount relative to the NAV of the Shares of the Trust.

[67] 15 U.S.C. 80a–1.

[68] For redemptions, the process will occur in the reverse order. Upon receipt of an approved redemption order, the Sponsor, on behalf of the Trust, will submit an order to sell the amount of bitcoin represented by a Creation Basket and the cash proceeds will be remitted to the authorized participant when the 50,000 Shares are received by the Transfer Agent.

Investment Objective

According to the Registration Statement and as further described below, the investment objective of the Trust is for the Shares to reflect the performance of bitcoin less the expenses of the Trust's operations. In seeking to achieve its investment objective, the Trust will hold bitcoin and will value its Shares daily based on the reported Benchmark and process all creations and redemptions in cash transactions with authorized participants. The Trust is not actively managed.

The Benchmark

As described in the Registration Statement, the Fund will use the Benchmark to calculate the Trust's NAV. The Benchmark is designed to be a robust price for bitcoin in USD and there is no component other than bitcoin in the Benchmark. The underlying bitcoin platforms are sourced from the industry leading CryptoCompare Exchange Benchmark review report. CryptoCompare Exchange Benchmark was established in 2019 as a tool designed to bring clarity to the digital asset trading platform sector by providing a framework for assessing risk and in turn bringing transparency and accountability to a complex and rapidly evolving market.[69] The current bitcoin platform composition of the Benchmark is Bitstamp, Coinbase, Bitfinex, LMAX and Kraken. The MarketVector Indexes GmbH (''MarketVector'') is the index sponsor and index administrator for the Benchmark. Data is the calculation agent for the Benchmark. The Benchmark is calculated daily between 00:00 and 24:00 (CET) and the Benchmark values are disseminated to data vendors every fifteen seconds. The Benchmark is disseminated in USD and the closing value is calculated at 16:00:00 ET with fixed 16:00 bitcoin platform rates.

[69] The CryptoCompare Exchange Benchmark methodology utilizes a combination of qualitative and quantitative metrics to analyze a comprehensive data set across eight categories of evaluation legal/regulation, KYC/transaction risk, data provision, security, team/trading platform, asset quality/diversity, market quality and negative events. The CryptoCompare Exchange Benchmark review report assigns a grade to each trading platform which helps identify what it believes to be the lowest risk trading platforms in the industry. Based on the CryptoCompare Exchange Benchmark, the Benchmark initially selects the top five trading platforms by rank for inclusion in the Benchmark. If an eligible trading platform is downgraded by two or more notches in a semi-annual review and is no longer in the top five by rank, it is replaced by the highest ranked non-component trading platform. Adjustments to trading platform coverage are announced four business days prior to the first business day of each of March and September at 23:00 CET. The Benchmark is rebalanced at 16:00:00 GMT/BST on the last business day of each of February and August.

In calculating the closing price of the Benchmark, the methodology captures trade prices and sizes from bitcoin platforms and examines twenty three-minute periods leading up to 4:00 p.m. EST. It then calculates an equal-weighted average of the volume-weighted median price of these twenty three-minute periods, removing the highest and lowest contributed prices. Using twenty consecutive three-minute segments over a sixty-minute period means malicious actors would need to sustain efforts to manipulate the market over an extended period of time, or would need to replicate efforts multiple times across bitcoin platforms, potentially triggering review. This extended period also supports authorized participant activity by capturing volume over a longer time period, rather than forcing authorized participants to mark an individual close or auction. The use of a median price reduces the ability of outlier prices to impact the NAV, as it systematically excludes those prices from the NAV calculation. The use of a volume-weighted median (as opposed to a traditional median) serves as an additional protection against attempts to manipulate the NAV by executing a large number of low-dollar trades, because, any manipulation attempt would have to involve a majority of global spot bitcoin volume in a three-minute window to have any influence on the NAV. As discussed in the Registration Statement, removing the highest and lowest prices further protects against attempts to manipulate the NAV, requiring bad actors to act on multiple bitcoin platforms at once to have any ability to influence the price.

Net Asset Value

NAV means the total assets of the Trust (which includes all bitcoin, cash, and cash equivalents) less total liabilities of the Trust. The Administrator determines the NAV of the Trust on each day that the Exchange is open for regular trading, as promptly as practical after 4:00 p.m. ET based on the Benchmark. The NAV of the Trust is the aggregate value of the Trust's assets less its estimated accrued but unpaid liabilities (which include accrued expenses). In determining the NAV, the Administrator values the Shares of the Trust based on the closing price of the Benchmark as of 4:00 p.m. Eastern time. The Administrator also determines the NAV per Share.

The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to

all market participants at the same time. The Sponsor will monitor for significant events related to crypto assets that may impact the value of bitcoin and will determine, in good faith, and in accordance with its valuation policies and procedures, whether to fair value the Trust's bitcoin on a given day based on whether certain pre-determined criteria have been met. For example, if the Benchmark deviates by more than a pre-determined amount from an alternate benchmark available to the Sponsor, the Sponsor may determine to utilize an alternate benchmark, such as the MarketVector™ Bitcoin Index or the S&P Bitcoin Index. The Sponsor may also fair value the Trust's bitcoin using observed market transactions from various trading platforms, including some or all of the trading platforms included in the Benchmark.[70]

Availability of Information

In addition to the price transparency of the Benchmark, the Trust will provide information regarding the Trust's bitcoin holdings as well as additional data regarding the Trust. The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price[71] in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The aforementioned information will be published as of the close of business available on the Sponsor's website at *www.vaneck.com,* or any successor thereto. The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA''). The Trust will also disseminate its holdings on a daily basis on its website.

The Intraday Indicative Value (''IIV'') will be updated during Regular Trading Hours to reflect changes in the value of the Trust's bitcoin holdings during the trading day. The IIV may differ from the NAV because NAV is calculated, using the closing price of the Benchmark, once a day at 4:00 p.m. Eastern time whereas the IIV draws prices from the last trade on each bitcoin platform to produce a relevant, real-time price. The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The Trust will provide an IIV per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. E.T.). The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours through the facilities of the consolidated tape association (CTA) and Consolidated Quotation System (CQS) high speed lines. In addition, the IIV will be available through on-line information services such as Bloomberg and Reuters.

The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours.

As noted above, the Benchmark is calculated every 15 seconds and information about the Benchmark and Benchmark value, including index data and key elements of how the Benchmark is calculated, will be publicly available at *https://www.marketvector.com/.*

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the trading platforms on which bitcoin are traded. Depth of book information is also available from bitcoin trading platforms. The normal trading hours for bitcoin trading 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.

The Custodian

The Custodian's services (i) allow bitcoin to be deposited from a public blockchain address to the Trust's bitcoin account and (ii) allow bitcoin to be withdrawn from the bitcoin account to a public blockchain address as instructed by the Trust. The custody agreement requires the Custodian to hold the Trust's bitcoin in cold storage, unless required to facilitate withdrawals as a temporary measure. The Custodian will use segregated cold storage bitcoin addresses for the Trust which are separate from the bitcoin addresses that the Custodian uses for its other customers and which are directly verifiable via the Bitcoin Blockchain. The Custodian will safeguard the private keys to the bitcoin associated with the Trust's bitcoin account. The Custodian will at all times record and identify in its books and records that such bitcoins constitute the property of the Trust. The Custodian will not withdraw the Trust's bitcoin from the Trust's account with the Custodian, or loan, hypothecate, pledge or otherwise encumber the Trust's bitcoin, without the Trust's instruction. If the custody agreement terminates, the Sponsor may appoint another custodian and the Trust may enter into a custodian agreement with such custodian.

Creation and Redemption of Shares

When the Trust sells or redeems its Shares, it will do so in cash transactions in blocks of 50,000 Shares that are based on the amount of bitcoin held by the Trust on a per unit (*i.e.,* 50,000 Share) basis. According to the Registration Statement, on any business day, an authorized participant may place an order to create one or more Creation Baskets. Purchase orders must be placed by 4:00 p.m. ET, or the close of regular trading on the Exchange, whichever is earlier. The day on which an order is received is considered the purchase order date. The total deposit of cash required is an amount of cash sufficient to purchase such amount of bitcoin, the amount of which is equal to the combined NAV of the number of Shares included in the Creation Baskets being created determined as of 4:00 p.m. ET on the date the order to purchase is properly received. The Administrator determines the required deposit for a given day by dividing the number of bitcoin held by the Trust as of the opening of business on that business day, adjusted for the amount of bitcoin constituting estimated accrued but unpaid fees and expenses of the Trust as of the opening of business on that business day, by the quotient of the

[70] Any alternative method to determining NAV will only be employed on an ad hoc basis. Any permanent change to the calculation of the NAV would require a proposed rule change under Rule 19b–4.

[71] As defined in Rule 11.23(a)(3), the term ''BZX Official Closing Price'' shall mean the price disseminated to the consolidated tape as the market center closing trade.

number of Shares outstanding at the opening of business divided by 50,000. The procedures by which an authorized participant can redeem one or more Creation Baskets mirror the procedures for the creation of Creation Baskets. For example, assume the total bitcoin held by the Trust less any estimated accrued but unpaid fees and expenses is 10,000 bitcoin and the total number of Shares outstanding is 100,000. The Administrator would determine the required deposit as follows:

$$\frac{10{,}000\ BTC}{\left(\frac{100{,}000\ Shares}{50{,}000}\right)} = 5{,}000\ BTC\ per\ Creation\ Basket$$

Total deposited cash as described in the example above would be 5,000 multiplied by the price of bitcoin.

The authorized participants will deliver only cash to create shares and will receive only cash when redeeming shares. Further, authorized participants will not directly or indirectly purchase, hold, deliver, or receive bitcoin 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 bitcoin as part of the creation or redemption process.

The Trust will create shares by receiving bitcoin 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 facilitate the delivery of the bitcoin. Further, the third party will not be acting as an agent of the authorized participant with respect to the delivery of the bitcoin to the Trust or acting at the direction of the authorized participant with respect to the delivery of the bitcoin to the Trust. When fulfilling a redemption request, the Trust will deliver bitcoin to a third party that is not the authorized participant and the Trust—not the authorized participant- is responsible for selecting such third party to receive the bitcoin. Further, the third party will not be acting as an agent of the authorized participant with respect to the receipt of the bitcoin from the Trust or acting at the direction of the authorized participant with respect to the receipt of the bitcoin from the Trust.

The procedures by which an authorized participant can redeem one or more Creation Baskets mirror the procedures for the creation of Creation Baskets. A third party, that is unaffiliated with the Trust and the Sponsor, will use cash to buy and deliver bitcoin to create Shares or withdraw and sell bitcoin for cash to redeem Shares, on behalf of the Trust.

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

Rule 14.11(e)(4)—Commodity-Based Trust Shares

The Shares will be subject to BZX Rule 14.11(e)(4), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. The Exchange represents that, for initial and continued listing, the Trust must be in compliance with Rule 10A–3 under the Act. A minimum of 100,000 Shares will be outstanding at the commencement of listing on the Exchange. The Exchange will obtain a representation that the NAV will be calculated daily and that the NAV and information about the assets of the Trust will be made available to all market participants at the same time. The Exchange notes that, as defined in Rule 14.11(e)(4)(C)(i), the Shares will be: (a) issued by a trust that holds (1) a specified commodity [72] deposited with the trust, or (2) a specified commodity and, in addition to such specified commodity, cash; (b) 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 (c) 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.

Upon termination of the Trust, the Shares will be removed from listing. The Trustee, Delaware Trust Company, is a trust company having substantial capital and surplus and the experience and facilities for handling corporate trust business, as required under Rule 14.11(e)(4)(E)(iv)(a) and that no change will be made to the trustee without prior notice to and approval of the Exchange. The Exchange also notes that, pursuant to Rule 14.11(e)(4)(F), 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 Trust in connection with issuance of Commodity-Based Trust Shares; 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. Finally, as required in Rule 14.11(e)(4)(G), the Exchange notes that any registered market maker (''Market Maker'') in the Shares must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule. In addition to the existing obligations under Exchange rules regarding the production of books and records (see, *e.g.,* Rule 4.2), the registered Market Maker in Commodity-Based Trust Shares 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

[72] For purposes of Rule 14.11(e)(4), the term commodity takes on the definition of the term as provided in the Commodity Exchange Act. As noted above, the CFTC has opined that Bitcoin is a commodity as defined in section 1a(9) of the Commodity Exchange Act. *See* Coinflip.

futures, or any other related commodity derivatives, as may be requested by the Exchange.

The Exchange is able to obtain information regarding trading in the Shares and the underlying bitcoin, Bitcoin Futures contracts, options on Bitcoin Futures, or any other bitcoin 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 organization 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 organizations of which such subsidiary or affiliate is a member.

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 BZX Rule 11.18. 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 bitcoin underlying the Shares; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(e)(4)(E)(ii), which sets forth circumstances under which trading in the Shares may be halted.

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

In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. BZX will allow trading in the Shares during all trading sessions on the Exchange. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a) the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01 where the price is greater than $1.00 per share or $0.0001 where the price is less than $1.00 per share. The Shares of the Trust will conform to the initial and continued listing criteria set forth in BZX Rule 14.11(e)(4).

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and Bitcoin Futures 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 Bitcoin Futures from such markets and other entities.[73] The Exchange may obtain information regarding trading in the Shares and Bitcoin Futures via ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

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

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares 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 or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (i) the procedures for the creation and redemption of Baskets (and that the Shares are not individually redeemable); (ii) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (iii) how information regarding the IIV and the Trust's NAV are disseminated; (iv) the risks involved in trading the Shares outside of Regular Trading Hours[74] when an updated IIV will not be calculated or publicly disseminated; (v) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (vi) trading information. The Information Circular will also reference the fact that there is no regulated source of last sale information regarding bitcoin, that the Commission has no jurisdiction over the trading of bitcoin as a commodity, and that the CFTC has regulatory jurisdiction over the trading of Bitcoin Futures contracts and options on Bitcoin Futures contracts.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Shares. Members purchasing the Shares for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

[73] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.*

[74] Regular Trading Hours is the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act[75] in general and section 6(b)(5) of the Act[76] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission has approved numerous series of Trust Issued Receipts,[77] including Commodity-Based Trust Shares,[78] to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices;[79] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act and that this filing sufficiently demonstrates that the CME Bitcoin Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place[80] with a regulated market of significant size. Both the Exchange and CME are members of ISG.[81] The only remaining issue to be addressed is whether the Bitcoin Futures market constitutes a market of significant size, which both the Exchange and the Sponsor believe that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[82]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying section 6(b)(5) of the act, specifically providing 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.[83]

(a) Reasonable Likelihood That a Person Attempting To Manipulate the ETP Would Also Have To Trade on That Market To Manipulate the ETP

Bitcoin Futures represent a growing influence on pricing in the spot bitcoin market as has been laid out above and in other proposals to list and trade Spot Bitcoin ETPs. Pricing in Bitcoin Futures is based on pricing from spot bitcoin markets. As noted above, the statement from the Teucrium Approval that ''CME's surveillance can reasonably be relied upon to capture the effects on the CME Bitcoin Futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME Bitcoin Futures contracts . . . indirectly by trading outside of the CME Bitcoin Futures market,'' makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of Bitcoin Futures. While the Commission makes clear in the Teucrium Approval that the analysis only applies to the Bitcoin Futures market as it relates to an ETP that invests in Bitcoin Futures as its only non-cash or cash equivalent holding, if CME's surveillance is sufficient to mitigate concerns related to trading in

[75] 15 U.S.C. 78f.

[76] 15 U.S.C. 78f(b)(5).

[77] See Exchange Rule 14.11(f).

[78] Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

[79] As the Exchange has stated in a number of other public documents, it continues to believe that bitcoin is resistant to price manipulation and that ''other means to prevent fraudulent and manipulative acts and practices'' exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin. The fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging. To the extent that there are bitcoin trading platforms engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, such activity does not normally impact prices on other trading platforms because participants will generally ignore markets with quotes that they deem non-executable. The reason is that wash trading aims to manipulate the volume rather than the price of an asset to give the impression of heightened market activity in hopes of attracting investors to that asset. Moreover, wash trades are executed within a trading platform rather than cross trading platforms since the entity executing the wash trades would aim to trade against itself, and as such, this can only happen within a trading platform. Should the wash trades of that entity result in a deviation of the price on that trading platform relative to others, arbitrageurs would then be able to capitalize on this mispricing, and bring the manipulated price back to equilibrium, resulting in a loss to the entity executing the wash trades. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin trading platform or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

[80] As previously articulated by the Commission, ''The standard requires such surveillance-sharing agreements since ''they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.'' The Commission has historically held that joint membership in ISG constitutes such a surveillance sharing agreement. See Wilshire Phoenix Disapproval.

[81] For a list of the current members and affiliate members of ISG, see *www.isgportal.com.*

[82] *See* Wilshire Phoenix Disapproval.

[83] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a 'cannot be manipulated' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.'' Id. at 37582.

Bitcoin Futures for which the pricing is based directly on pricing from spot bitcoin markets, it's not clear how such a conclusion could apply only to ETPs based on Bitcoin Futures and not extend to Spot Bitcoin ETPs.

(b) Predominant Influence on Prices in Spot and Bitcoin Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices in the Bitcoin Futures market or spot market for a number of reasons, including the significant volume in the Bitcoin Futures market, the size of bitcoin's market cap, and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid. According to data from Skew, the cost to buy or sell $5 million worth of bitcoin averages roughly 48 basis points with a market impact of $139.08.[84] Stated another way, a market participant could enter a market buy or sell order for $5 million of bitcoin and only move the market 0.48%. More strategic purchases or sales (such as using limit orders and executing through OTC bitcoin trade desks) would likely have less obvious impact on the market—which is consistent with MicroStrategy, Tesla, and Square being able to collectively purchase billions of dollars in bitcoin.

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

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present.

(ii) Designed To Protect Investors and the Public Interest

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past several years, U.S. investor exposure to bitcoin through OTC Bitcoin Funds has grown into the tens of billions of dollars and more than a billion dollars of exposure through Bitcoin Futures ETFs. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors through roll costs for Bitcoin Futures ETFs and premium/discount volatility and management fees for OTC Bitcoin Funds. The Exchange believes that the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, also believes that such concerns are now outweighed by these investor protection concerns. As such, the Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to bitcoin in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks and costs associated with investing in Bitcoin Futures ETFs and operating companies that are imperfect proxies for bitcoin exposure; and (iv) providing an alternative to custodying spot bitcoin.

Commodity-Based Trust Shares

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in Exchange Rule 14.11(e)(4). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares 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 or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and listed bitcoin derivatives via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

Availability of Information

The Exchange also believes that the proposal promotes market transparency in that a large amount of information is currently available about bitcoin and will be available regarding the Trust and the Shares. In addition to the price transparency of the Benchmark, the Trust will provide information regarding the Trust's bitcoin holdings as well as additional data regarding the Trust. The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price[85] in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The aforementioned information will be published as of the close of business available on the Sponsor's website at *www.vaneck.com,* or any successor thereto. The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The Trust will also disseminate its holdings on a daily basis on its website.

The IIV will be updated during Regular Trading Hours to reflect changes in the value of the Trust's bitcoin holdings during the trading day. The IIV may differ from the NAV because NAV is calculated, using the closing price of the Benchmark, once a day at 4:00 p.m. Eastern time whereas the IIV draws prices from the last trade

[84] These statistics are based on samples of bitcoin liquidity in USD (excluding stablecoins or Euro liquidity) based on executable quotes on Coinbase, FTX and Kraken during the one year period ending May 2022.

[85] As defined in Rule 11.23(a)(3), the term ''BZX Official Closing Price'' shall mean the price disseminated to the consolidated tape as the market center closing trade.

on each bitcoin platform to produce a relevant, real-time price. The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The Trust will provide an IIV per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. E.T.). The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours through the facilities of the consolidated tape association (CTA) and Consolidated Quotation System (CQS) high speed lines. In addition, the IIV will be available through on-line information services such as Bloomberg and Reuters.

The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours.

As noted above, the Benchmark is calculated every 15 seconds and information about the Benchmark and Benchmark value, including index data and key elements of how the Benchmark is calculated, will be publicly available at *https://www.marketvector.com/.*

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the trading platforms on which bitcoin are traded. Depth of book information is also available from bitcoin trading platforms. The normal trading hours for bitcoin trading 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.

In sum, the Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act, that this filing sufficiently demonstrates that the CME Bitcoin Futures market represents a regulated market of significant size, and that on the whole the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by investor protection issues that would be resolved by approving this proposal.

The Exchange believes that the proposal is, in particular, designed to protect investors and the public interest. Premium and discount volatility, high fees, rolling costs, insufficient disclosures, and technical hurdles are putting U.S. investor money at risk on a daily basis that could potentially be eliminated through access to a Spot Bitcoin ETP. As such, the Exchange believes that this proposal acts to limit the risk to U.S. investors that are increasingly seeking exposure to bitcoin by providing direct, 1-for-1 exposure to bitcoin in a regulated, transparent, exchange-traded vehicle, specifically by: (i) reducing premium volatility; (ii) reducing management fees through meaningful competition; (iii) providing an alternative to Bitcoin Futures ETFs which will eliminate roll cost; (iv) reducing risks associated with investing in operating companies that are imperfect proxies for bitcoin exposure; and (v) providing an alternative to custodying spot bitcoin. The investor protection issues for U.S. investors has grown significantly over the last several years, through roll costs for Bitcoin Futures ETFs and premium/discount volatility and management fees for OTC Bitcoin Funds. As discussed throughout, this growth investor protection concerns need to be reevaluated and rebalanced with the prevention of fraudulent and manipulative acts and practices concerns that previous disapproval orders have relied upon. Finally, the Exchange notes that in addition to all of the arguments herein which it believes sufficiently establishes the CME Bitcoin Futures market as a regulated market of significant size, it is logically inconsistent to find that the CME Bitcoin Futures market is a significant market as it relates to the CME Bitcoin Futures market, but not a significant market as it relates to the bitcoin spot market for the numerous reasons laid out above.

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

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

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

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

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

III. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBZX–2023–040 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–CboeBZX–2023–040. 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–CboeBZX–2023–040 and should be submitted on or before February 2, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[86]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–00503 Filed 1–11–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99292; File No. SR–CboeBZX–2023–042]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of Amendment No. 2 to a Proposed Rule Change To List and Trade Shares of the WisdomTree Bitcoin Fund Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

January 8, 2024.

On June 30, 2023, Cboe BZX Exchange, Inc. (''BZX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the WisdomTree Bitcoin Fund (f/k/a WisdomTree Bitcoin Trust) under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. On July 11, 2023, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on July 19, 2023.[3] On August 31, 2023, pursuant to section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, as modified by Amendment No. 1.[5] On September 28, 2023, the Commission instituted proceedings to determine whether to disapprove the proposed rule change, as modified by Amendment No. 1.[6] On January 5, 2024, the Exchange filed Amendment No. 2 to the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment No. 2 amended and replaced the proposed rule change, as modified by Amendment No. 1, in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 2, from interested persons.

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

Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change to list and trade shares of the WisdomTree Bitcoin Fund (the ''Trust''),[7] under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, 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

This Amendment No. 2 to SR–CboeBZX–2023–042 amends and replaces in its entirety the proposal as originally submitted on June 30, 2023 and as amended July 11, 2023. The Exchange submits this Amendment No. 2 in order to clarify certain points and add additional details to the proposal.

The Exchange proposes to list and trade the Shares under BZX Rule 14.11(e)(4),[8] which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.[9] WisdomTree Digital Commodity Services, LLC is the sponsor of the Trust (''Sponsor''). The Shares will be registered with the Commission by means of the Trust's registration statement on Form S–1 (the ''Registration Statement'').[10] Coinbase Custody Trust Company LLC (the ''Bitcoin Custodian''), which is a third-party U.S.-based trust company and qualified custodian, will be responsible for custody of the Trust's bitcoin.

As further discussed below, the Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts,[11] including spot-based Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.[12] Prior orders from the Commission have pointed out that in every prior approval order for Commodity-Based Trust Shares, there has been a derivatives market that represents the regulated market of significant size, generally a Commodity Futures Trading Commission (the ''CFTC'') regulated futures market.[13]

[86] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 97904 (July 13, 2023), 88 FR 46207. Comments on the proposed rule change, as modified by Amendment No. 1, are available at: *https://www.sec.gov/comments/sr-cboebzx-2023-042/srcboebzx2023042.htm.*

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

[5] *See* Securities Exchange Act Release No. 98264, 88 FR 61657 (Sept. 7, 2023).

[6] *See* Securities Exchange Act Release No. 98623, 88 FR 68758 (Oct. 4, 2023).

[7] The Trust was formed as a Delaware statutory trust on December 17, 2020, and is operated as a grantor trust for U.S. federal tax purposes. The Trust has no fixed termination date.

[8] The Commission approved BZX Rule 14.11(e)(4) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[9] Any of the statements or representations regarding the index composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, and intraday indicative values, or the applicability of Exchange listing rules specified in this filing to list a series of Other Securities (collectively, ''Continued Listing Representations'') shall constitute continued listing requirements for the Shares listed on the Exchange.

[10] *See* Pre-Effective Amendment No. 5 to Form S–1 Registration Statement filed on December 29, 2023 (Registration No. 333–254134). The Registration Statement is not yet effective, and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

[11] *See* Exchange Rule 14.11(f)(1).

[12] *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018). This proposal was subsequently disapproved by the Commission. *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the ''Winklevoss Order'').

[13] *See* streetTRACKS Gold Shares, Exchange Act Release No. 50603 (Oct. 28, 2004), 69 FR 64614, 64618–19 (Nov. 5, 2004) (SR–NYSE–2004–22) (the ''First Gold Approval Order''); iShares COMEX Gold Trust, Exchange Act Release No. 51058 (Jan. 19, 2005), 70 FR 3749, 3751, 3754–55 (Jan. 26, 2005)

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(SR–Amex–2004–38); iShares Silver Trust, Exchange Act Release No. 53521 (Mar. 20, 2006), 71 FR 14967, 14968, 14973–74 (Mar. 24, 2006) (SR–Amex–2005–072); ETFS Gold Trust, Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993, 22994–95, 22998, 23000 (May 15, 2009) (SR–NYSEArca–2009–40); ETFS Silver Trust, Exchange Act Release No. 59781 (Apr. 17, 2009), 74 FR 18771, 18772, 18775–77 (Apr. 24, 2009) (SR–NYSEArca–2009–28); ETFS Palladium Trust, Exchange Act Release No. 61220 (Dec. 22, 2009), 74 FR 68895, 68896 (Dec. 29, 2009) (SR–NYSEArca–2009–94) (notice of proposed rule change included NYSE Arca's representation that ''[t]he most significant palladium futures exchanges are the NYMEX and the Tokyo Commodity Exchange,'' that ''NYMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which NYMEX is a member, Exchange Act Release No. 60971 (Nov. 9, 2009), 74 FR 59283, 59285–86, 59291 (Nov. 17, 2009)); ETFS Platinum Trust, Exchange Act Release No. 61219 (Dec. 22, 2009), 74 FR 68886, 68887–88 (Dec. 29, 2009) (SR–NYSEArca–2009–95) (notice of proposed rule change included NYSE Arca's representation that ''[t]he most significant platinum futures exchanges are the NYMEX and the Tokyo Commodity Exchange,'' that ''NYMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which NYMEX is a member, Exchange Act Release No. 60970 (Nov. 9, 2009), 74 FR 59319, 59321, 59327 (Nov. 17, 2009)); Sprott Physical Gold Trust, Exchange Act Release No. 61496 (Feb. 4, 2010), 75 FR 6758, 6760 (Feb. 10, 2010) (SR–NYSEArca–2009–113) (notice of proposed rule change included NYSE Arca's representation that the COMEX is one of the ''major world gold markets,'' that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' and that NYMEX, of which COMEX is a division, is a member of the Intermarket Surveillance Group, Exchange Act Release No. 61236 (Dec. 23, 2009), 75 FR 170, 171, 174 (Jan. 4, 2010)); Sprott Physical Silver Trust, Exchange Act Release No. 63043 (Oct. 5, 2010), 75 FR 62615, 62616, 62619, 62621 (Oct. 12, 2010) (SR–NYSEArca–2010–84); ETFS Precious Metals Basket Trust, Exchange Act Release No. 62692 (Aug. 11, 2010), 75 FR 50789, 50790 (Aug. 17, 2010) (SR–NYSEArca–2010–56) (notice of proposed rule change included NYSE Arca's representation that ''the most significant gold, silver, platinum and palladium futures exchanges are the COMEX and the TOCOM'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 62402 (Jun. 29, 2010), 75 FR 39292, 39295, 39298 (July 8, 2010)); ETFS White Metals Basket Trust, Exchange Act Release No. 62875 (Sept. 9, 2010), 75 FR 56156, 56158 (Sept. 15, 2010) (SR–NYSEArca–2010–71) (notice of proposed rule change included NYSE Arca's representation that ''the most significant silver, platinum and palladium futures exchanges are the COMEX and the TOCOM'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 62620 (July 30, 2010), 75 FR 47655, 47657, 47660 (Aug. 6, 2010)); ETFS Asian Gold Trust, Exchange Act Release No. 63464 (Dec. 8, 2010), 75 FR 77926, 77928 (Dec. 14, 2010) (SR–NYSEArca–2010–95) (notice of proposed rule change included NYSE Arca's representation that ''the most significant gold futures exchanges are the COMEX and the Tokyo Commodity Exchange,'' that ''COMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 63267 (Nov. 8, 2010), 75 FR 69494, 69496, 69500–01 (Nov. 12, 2010)); Sprott Physical Platinum and Palladium Trust, Exchange Act Release No. 68430 (Dec. 13, 2012), 77 FR 75239, 75240–41 (Dec. 19, 2012) (SR–NYSEArca–2012–111) (notice of proposed rule change included NYSE Arca's representation that ''[f]utures on platinum and palladium are traded on two major exchanges: The New York Mercantile Exchange . . . and Tokyo Commodities Exchange'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 68101 (Oct. 24, 2012), 77 FR 65732, 65733, 65739 (Oct. 30, 2012)); APMEX Physical—1 oz. Gold Redeemable Trust, Exchange Act Release No. 66930 (May 7, 2012), 77 FR 27817, 27818 (May 11, 2012) (SR–NYSEArca–2012–18) (notice of proposed rule change included NYSE Arca's representation that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the ''major world gold markets,'' Exchange Act Release No. 66627 (Mar. 20, 2012), 77 FR 17539, 17542–43, 17547 (Mar. 26, 2012)); JPM XF Physical Copper Trust, Exchange Act Release No. 68440 (Dec. 14, 2012), 77 FR 75468, 75469–70, 75472, 75485–86 (Dec. 20, 2012) (SR–NYSEArca–2012–28); iShares Copper Trust, Exchange Act Release No. 68973 (Feb. 22, 2013), 78 FR 13726, 13727, 13729–30, 13739–40 (Feb. 28, 2013) (SR–NYSEArca–2012–66); First Trust Gold Trust, Exchange Act Release No. 70195 (Aug. 14, 2013), 78 FR 51239, 51240 (Aug. 20, 2013) (SR–NYSEArca–2013–61) (notice of proposed rule change included NYSE Arca's representation that FINRA, on behalf of the exchange, may obtain trading information regarding gold futures and options on gold futures from members of the Intermarket Surveillance Group, including COMEX, or from markets ''with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement,'' and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the ''major world gold markets,'' Exchange Act Release No. 69847 (June 25, 2013), 78 FR 39399, 39400, 39405 (July 1, 2013)); Merk Gold Trust, Exchange Act Release No. 71378 (Jan. 23, 2014), 79 FR 4786, 4786–87 (Jan. 29, 2014) (SR–NYSEArca–2013–137) (notice of proposed rule change included NYSE Arca's representation that ''COMEX is the largest gold futures and options exchange'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' including with respect to transactions occurring on COMEX pursuant to CME and NYMEX's membership, or from exchanges ''with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement,'' Exchange Act Release No. 71038 (Dec. 11, 2013), 78 FR 76367, 76369, 76374 (Dec. 17, 2013)); Long Dollar Gold Trust, Exchange Act Release No. 79518 (Dec. 9, 2016), 81 FR 90876, 90881, 90886, 90888 (Dec. 15, 2016) (SR–NYSEArca–2016–84).

Further to this point, the Commission's prior orders have noted that the spot commodities and currency markets for which it has previously approved spot exchange-traded products (''ETPs'') are generally unregulated and that the Commission relied on the underlying futures market as the regulated market of significant size that formed the basis for approving the series of Currency and Commodity-Based Trust Shares, including gold, silver, platinum, palladium, copper, and other commodities and currencies. The Commission specifically noted in the Winklevoss Order that the First Gold Approval Order ''was based on an assumption that the currency market and the spot gold market were largely unregulated.'' [14]

As such, the regulated market of significant size test does not require that the spot bitcoin market be regulated in order for the Commission to approve this proposal, and precedent makes clear that an underlying market for a spot commodity or currency being a regulated market would actually be an exception to the norm. These largely unregulated currency and commodity markets do not provide the same protections as the markets that are subject to the Commission's oversight, but the Commission has consistently looked to surveillance sharing agreements with the underlying futures market in order to determine whether such products were consistent with the Act. With this in mind, the Chicago Mercantile Exchange (''CME'') bitcoin futures (''Bitcoin Futures'') market is the proper market to consider in determining whether there is a related regulated market of significant size.

Further to this point, the Exchange notes that the Commission has approved proposals related to the listing and trading of funds that would primarily hold CME Bitcoin Futures that are registered under the Securities Act of 1933.[15] In the Teucrium Approval, the Commission found the CME Bitcoin Futures market to be a regulated market of significant size as it relates to CME Bitcoin Futures, an odd tautological truth that is also inconsistent with prior disapproval orders for ETPs that would hold actual bitcoin instead of derivatives contracts (''Spot Bitcoin ETPs'') that use the exact same pricing methodology as the CME Bitcoin Futures. As further discussed below, both the Exchange and the Sponsor believe that this proposal and the included analysis are sufficient to establish that the CME Bitcoin Futures market represents a regulated market of significant size as it relates both to the CME Bitcoin Futures market and to the spot bitcoin market and that this proposal should be approved.

Finally, as discussed in greater detail below, by using professional custodians and other service providers, the Trust provides investors interested in

[14] *See* Winklevoss Order at 37592.

[15] *See* Exchange Act Release No. 94620 (April 6, 2022), 87 FR 21676 (April 12, 2022) (the ''Teucrium Approval'') and 94853 (May 5, 2022) (collectively, with the Teucrium Approval, the ''Bitcoin Futures Approvals'').

exposure to bitcoin with important protections that are not always available to investors that invest directly in bitcoin, including protection against insolvency, cyber attacks, and other risks. If U.S. investors had access to vehicles such as the Trust for their bitcoin investments, instead of directing their bitcoin investments into loosely regulated offshore vehicles (such as loosely regulated centralized trading platforms that have since faced bankruptcy proceedings or other insolvencies), then countless investors would have protected their principal investments in bitcoin and thus benefited.

Background

Bitcoin is a digital asset based on the decentralized, open source protocol of the peer-to-peer computer network launched in 2009 that governs the creation, movement, and ownership of bitcoin and hosts the public ledger, or ''blockchain,'' on which all bitcoin transactions are recorded (the ''Bitcoin Network'' or ''Bitcoin''). The decentralized nature of the Bitcoin Network allows parties to transact directly with one another based on cryptographic proof instead of relying on a trusted third party. The protocol also lays out the rate of issuance of new bitcoin within the Bitcoin Network, a rate that is reduced by half approximately every four years with an eventual hard cap of 21 million. It's generally understood that the combination of these two features—a systemic hard cap of 21 million bitcoin and the ability to transact trustlessly with anyone connected to the Bitcoin Network—gives bitcoin its value. The first rule filing proposing to list an ETP to provide exposure to bitcoin in the U.S. was submitted by the Exchange on June 30, 2016.[16] At that time, blockchain technology, and digital assets that utilized it, were relatively new to the broader public. The market cap of all bitcoin in existence at that time was approximately $10 billion. No registered offering of digital asset securities or shares in an investment vehicle with exposure to bitcoin or any other cryptocurrency had yet been conducted, and the regulated infrastructure for conducting a digital asset securities offering had not begun to develop.[17] Similarly, regulated U.S. bitcoin futures contracts did not exist. The CFTC had determined that bitcoin is a commodity,[18] but had not engaged in significant enforcement actions in the space. The New York Department of Financial Services (''NYDFS'') adopted its final ''BitLicense'' regulatory framework in 2015, but had only approved four entities to engage in activities relating to virtual currencies (whether through granting a BitLicense or a limited-purpose trust charter) as of June 30, 2016.[19] While the first over-the-counter bitcoin fund launched in 2013, public trading was limited and the fund had only $60 million in assets.[20] There were very few, if any, traditional financial institutions engaged in the space, whether through investment or providing services to digital asset companies. In January 2018, the Staff of the Commission noted in a letter to the Investment Company Institute (''ICI'') and Securities Industry and Financial Markets Association (''SIFMA'') that it was not aware, at that time, of a single custodian providing fund custodial services for digital assets.[21] Fast forward to today and the digital assets financial ecosystem, including bitcoin, has progressed significantly. The development of a regulated market for digital asset securities has significantly evolved, with market participants having conducted registered public offerings of both digital asset securities [22] and shares in investment vehicles holding bitcoin futures.[23] Additionally, licensed and regulated service providers have emerged to provide fund custodial services for digital assets, among other services, including the Bitcoin Custodian. For example, in February 2023, the Commission proposed to amend Rule 206(4)–2 under the Advisers Act of 1940 (the ''custody rule'') to expand the scope beyond client funds and securities to include all crypto assets, among other assets; [24] in May 2021, the Staff of the Commission released a statement permitting open-end mutual funds to invest in cash-settled bitcoin futures; in December 2020, the Commission adopted a conditional no-action position permitting certain special purpose broker-dealers to custody digital asset securities under Rule 15c3–3 under the Exchange Act (the ''Custody Statement''); [25] in September 2020, the Staff of the Commission released a no-action letter permitting certain broker-dealers to operate a non-custodial Alternative Trading System (''ATS'') for digital asset securities, subject to specified conditions; [26] in October 2019, the Staff of the Commission granted temporary relief from the clearing agency registration requirement to an entity seeking to establish a securities clearance and settlement system based on distributed ledger technology,[27] and multiple transfer agents who provide services for digital asset securities registered with the Commission.[28]

[16] *See* Winklevoss Order.

[17] Digital assets that are securities under U.S. law are referred to throughout this proposal as ''digital asset securities.'' All other digital assets, including bitcoin, are referred to interchangeably as ''cryptocurrencies'' or ''virtual currencies.'' The term ''digital assets'' refers to all digital assets, including both digital asset securities and cryptocurrencies, together.

[18] *See* ''In the Matter of Coinflip, Inc.'' (''Coinflip'') (CFTC Docket 15–29 (September 17, 2015)) (order instituting proceedings pursuant to sections 6(c) and 6(d) of the CEA, making findings and imposing remedial sanctions), in which the CFTC stated: ''Section 1a(9) of the CEA defines 'commodity' to include, among other things, 'all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.' 7 U.S.C. 1a(9). The definition of a 'commodity' is broad. *See, e.g., Board of Trade of City of Chicago* v. *SEC,* 677 F. 2d 1137, 1142 (7th Cir. 1982). Bitcoin and other virtual currencies are encompassed in the definition and properly defined as commodities.''

[19] A list of virtual currency businesses that are entities regulated by the NYDFS is available on the NYDFS website. *See https://www.dfs.ny.gov/apps_and_licensing/virtual_currency_businesses/regulated_entities.*

[20] Data as of March 31, 2016 according to publicly available filings. *See* Bitcoin Investment Trust Form S–1, dated May 27, 2016, available: *https://www.sec.gov/Archives/edgar/data/1588489/000095012316017801/filename1.htm.*

[21] *See* letter from Dalia Blass, Director, Division of Investment Management, U.S. Securities and Exchange Commission to Paul Schott Stevens, President & CEO, Investment Company Institute and Timothy W. Cameron, Asset Management Group—Head, Securities Industry and Financial Markets Association (January 18, 2018), *available at https://www.sec.gov/divisions/investment/noaction/2018/cryptocurrency-011818.htm.*

[22] *See* Prospectus supplement filed pursuant to Rule 424(b)(1) for INX Tokens (Registration No. 333–233363), *available at: https://www.sec.gov/Archives/edgar/data/1725882/000121390020023202/ea125858-424b1_inxlimited.htm.*

[23] *See* Prospectus filed by Stone Ridge Trust VI on behalf of NYDIG Bitcoin Strategy Fund Registration, *available at: https://www.sec.gov/Archives/edgar/data/1764894/000119312519309942/d693146d497.htm.*

[24] *See* Investment Advisers Act Release No. 6240 88 FR 14672 (March 9, 2023) (Safeguarding Advisory Client Assets).

[25] *See* Securities Exchange Act Release No. 90788, 86 FR 11627 (February 26, 2021) (File Number S7–25–20) (Custody of Digital Asset Securities by Special Purpose Broker-Dealers).

[26] *See* letter from Elizabeth Baird, Deputy Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Kris Dailey, Vice President, Risk Oversight & Operational Regulation, Financial Industry Regulatory Authority (September 25, 2020), *available at: https://www.sec.gov/divisions/marketreg/mr-noaction/2020/finra-ats-role-in-settlement-of-digital-asset-security-trades-09252020.pdf.*

[27] *See* letter from Jeffrey S. Mooney, Associate Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Charles G. Cascarilla & Daniel M. Burstein, Paxos Trust Company, LLC (October 28, 2019), *available at: https://www.sec.gov/divisions/marketreg/mr-noaction/2019/paxos-trust-company-102819-17a.pdf.*

[28] *See, e.g.,* Form TA–1/A filed by Tokensoft Transfer Agent LLC (CIK: 0001794142) on January

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Outside the Commission's purview, the regulatory landscape has changed significantly since 2016, and cryptocurrency markets have grown and evolved as well. The market for bitcoin is approximately 100 times larger, having at one point reached a market cap of over $1 trillion.[29] According to the CME Bitcoin Futures Report, from February 13, 2023 through March 27, 2023, CFTC regulated bitcoin futures represented between $750 million and $3.2 billion in notional trading volume on CME Bitcoin Futures on a daily basis.[30] Open interest was over $1.4 billion for the entirety of the period and at one point was over $2 billion. ETPs that primarily hold CME Bitcoin Futures have raised over $1 billion dollars in assets. The CFTC has exercised its regulatory jurisdiction in bringing a number of enforcement actions related to bitcoin and against trading platforms that offer cryptocurrency trading.[31] As of February 14, 2023, the NYDFS has granted no fewer than thirty-four BitLicenses,[32] including to established public payment companies like PayPal Holdings, Inc. and Square, Inc., and limited purpose trust charters to entities providing cryptocurrency custody services. In addition, the Treasury's Office of Foreign Assets Control (''OFAC'') has brought enforcement actions over apparent violations of the sanctions laws in connection with the provision of wallet management services for digital assets.[33]

In addition to the regulatory developments laid out above, more traditional financial market participants become more active in cryptocurrency: large insurance companies, asset managers, university endowments, pension funds, and even historically bitcoin skeptical fund managers have allocated to bitcoin. As noted in the Financial Stability Oversight Council (''FSOC'') Report on Digital Asset Financial Stability Risks and Regulation, ''[i]ndustry surveys suggest that the scale of these investments grew quickly during the boom in crypto-asset markets through late 2021. In June 2022, PwC estimated that the number of crypto-specialist hedge funds was more than 300 globally, with $4.1 billion in assets under management. In addition, in a survey PwC found that 38 percent of surveyed traditional hedge funds were currently investing in 'digital assets,' compared to 21 percent the year prior.'' [34] The largest over-the-counter bitcoin fund previously filed a Form 10 registration statement, which the Staff of the Commission reviewed and which took effect automatically, and is now a reporting company.[35] Established companies like Tesla, Inc., MicroStrategy Incorporated, and Square, Inc., among others, have announced substantial investments in bitcoin in amounts as large as $1.5 billion (Tesla) and $425 million (MicroStrategy). The foregoing examples demonstrate that bitcoin has gained mainstream usage and recognition.

Despite these developments, access for U.S. retail investors to gain exposure to bitcoin via a transparent and U.S. regulated, U.S. exchange-traded vehicle remains limited. Instead current options include: (i) facing the counter-party risk, legal uncertainty, technical risk, and complexity associated with accessing spot bitcoin; (ii) over-the-counter bitcoin funds (''OTC Bitcoin Funds'') with high management fees and potentially volatile premiums and discounts; [36] (iii) purchasing shares of operating companies that they believe will provide proxy exposure to bitcoin with limited disclosure about the associated risks; [37] or (iv) purchasing Bitcoin Futures exchange-traded funds (''ETFs''), as defined below, which represent a sub-optimal structure for

8, 2021, *available at: https://www.sec.gov/Archives/edgar/data/1794142/000179414219000001/xslFTA1X01/primary_doc.xml.*

[29] As of December 1, 2021, the total market cap of all bitcoin in circulation was approximately $1.08 trillion.

[30] Data sourced from the CME Bitcoin Futures Report: 30 March 2023, *available at: https://www.cmegroup.com/markets/cryptocurrencies/bitcoin/bitcoin.volume.htm.*

[31] The CFTC's annual report for Fiscal Year 2022 (which ended on September 30, 2022) noted that the CFTC completed the fiscal year with 18 enforcement filings related to digital assets. ''Digital asset actions included manipulation, a $1.7 billion fraudulent scheme, and a decentralized autonomous organization (DAO) failing to register as a SEF or FCM or to seek DCM designation.'' *See* CFTC FY 2022 Agency Financial Report, *available at: https://www.cftc.gov/media/7941/2022afr/download.* Additionally, the CFTC filed on March 27, 2023, a civil enforcement action against the owner/operators of the Binance centralized digital asset trading platform, which is one of the largest bitcoin derivative exchanges. *See* CFTC Release No. 8680–23 (March 27, 2023), *available at: https://www.cftc.gov/PressRoom/PressReleases/8680-23.*

[32] *See https://www.dfs.ny.gov/virtual_currency_businesses.*

[33] *See* U.S. Department of the Treasury Enforcement Release: ''OFAC Enters Into $98,830 Settlement with BitGo, Inc. for Apparent Violations of Multiple Sanctions Programs Related to Digital Currency Transactions'' (December 30, 2020) *available at: https://home.treasury.gov/system/files/126/20201230_bitgo.pdf. See also* U.S. Department of the Treasury Enforcement Release: ''Treasury Announces Two Enforcement Actions for over $24M and $29M Against Virtual Currency Exchange, Bittrex, Inc.'' (October 11, 2022) *available at: https://home.treasury.gov/news/press-releases/jy1006. See also* U.S. Department of Treasure Enforcement Release ''OFAC Settles with Virtual Currency Exchange Kraken for $362,158.70 Related to Apparent Violations of the Iranian Transactions and Sanctions Regulations'' (November 28, 2022) *available at: https://home.treasury.gov/system/files/126/20221128_kraken.pdf.*

[34] *See* the FSOC ''Report on Digital Asset Financial Stability Risks and Regulation 2022'' (October 3, 2022) (at footnote 26) at *https://home.treasury.gov/system/files/261/FSOC-Digital-Assets-Report-2022.pdf.*

[35] *See* Letter from Division of Corporation Finance, Office of Real Estate & Construction to Barry E. Silbert, Chief Executive Officer, Grayscale Bitcoin Trust (January 31, 2020) *https://www.sec.gov/Archives/edgar/data/1588489/000000000020000953/filename1.pdf.*

[36] The premium and discount for OTC Bitcoin Funds is known to move rapidly. For example, over the period of 12/21/20 to 1/21/21, the premium for the largest OTC Bitcoin Fund went from 40.18% to 2.79%. While the price of bitcoin appreciated significantly during this period and NAV per share increased by 41.25%, the price per share increased by only 3.58%. This means that investors are buying shares of a fund that experiences significant volatility in its premium and discount outside of the fluctuations in price of the underlying asset. Even operating within the normal premium and discount range, it's possible for an investor to buy shares of an OTC Bitcoin Fund only to have those shares quickly lose 10% or more in dollar value excluding any movement of the price of bitcoin. That is to say—the price of bitcoin could have stayed exactly the same from market close on one day to market open the next, yet the value of the shares held by the investor decreased only because of the fluctuation of the premium. As more investment vehicles, including mutual funds and ETFs, seek to gain exposure to bitcoin, the easiest option for a buy and hold strategy for such vehicles is often an OTC Bitcoin Fund, meaning that even investors that do not directly buy OTC Bitcoin Funds can be disadvantaged by extreme premiums (or discounts) and premium volatility.

[37] A number of operating companies engaged in unrelated businesses—such as Tesla (a car manufacturer) and MicroStrategy (an enterprise software company)—have announced investments as large as $5.3 billion in bitcoin. Without access to bitcoin exchange-traded products, retail investors seeking investment exposure to bitcoin may end up purchasing shares in these companies in order to gain the exposure to bitcoin that they seek. In fact, mainstream financial news networks have written a number of articles providing investors with guidance for obtaining bitcoin exposure through publicly traded companies (such as MicroStrategy, Tesla, and bitcoin mining companies, among others) instead of dealing with the complications associated with buying spot bitcoin in the absence of a bitcoin ETP. See *e.g.,* ''7 public companies with exposure to bitcoin'' (February 8, 2021) available at: *https://finance.yahoo.com/news/7-public-companieswith-exposure-to-bitcoin-154201525.html;* and ''Want to get in the crypto trade without holding bitcoin yourself? Here are some investing ideas'' (February 19, 2021) available at: *https://www.cnbc.com/2021/02/19/ways-to-invest-in-bitcoin-without-holding-the-cryptocurrencyyourself-.html.* Such operating companies, however, are imperfect bitcoin proxies and provide investors with partial bitcoin exposure paired with a host of additional risks associated with whichever operating company they decide to purchase. Additionally, the disclosures provided by such operating companies with respect to risks relating to their bitcoin holdings are generally substantially smaller than the registration statement of a bitcoin ETP, including the Registration Statement, typically amounting to a few sentences of narrative description and a handful of risk factors. In other words, investors seeking bitcoin exposure through publicly traded companies are gaining only partial exposure to bitcoin and are not fully benefitting from the risk disclosures and associated investor protections that come from the securities registration process.

long-term investors that will cost them significant amounts of money every year compared to Spot Bitcoin ETPs, as further discussed below. Meanwhile, investors in many other countries, including Canada and Brazil, are able to use more traditional exchange listed and traded products (including ETFs holding physical bitcoin) to gain exposure to bitcoin. Similarly, investors in Switzerland and across Europe have access to ETPs which trade on regulated exchanges and provide exposure to a broad array of spot crypto assets. U.S. investors, by contrast, are left with fewer and more risky means of getting bitcoin exposure, as described above.[38]

To this point, the lack of a Spot Bitcoin ETP exposes U.S. investor assets to significant risk because investors that would otherwise seek crypto asset exposure through a Spot Bitcoin ETP are forced to find alternative exposure through generally riskier means. For instance, many U.S. investors that held their digital assets in accounts at FTX,[39] Celsius Network LLC,[40] BlockFi Inc.[41] and Voyager Digital Holdings, Inc.[42] have become unsecured creditors in the insolvencies of those entities. If a Spot Bitcoin ETP was available, it is likely that at least a portion of the billions of dollars tied up in those proceedings would still reside in the brokerage accounts of U.S. investors, having instead been invested in a transparent, regulated, and well-understood structure—a Spot Bitcoin ETP. To this point, approval of a Spot Bitcoin ETP would represent a major win for the protection of U.S. investors in the crypto asset space. As further described below, the Trust, like all other series of Commodity-Based Trust Shares, is designed to protect investors against the risk of losses through fraud and insolvency that arise by holding digital assets, including bitcoin, on centralized platforms.

Additionally, investors in other countries, specifically Canada, generally pay lower fees than U.S. retail investors that invest in OTC Bitcoin Funds due to the fee pressure that results from increased competition among available bitcoin investment options. Without an approved and regulated Spot Bitcoin ETP in the U.S. as a viable alternative, U.S. investors could seek to purchase shares of non-U.S. bitcoin vehicles in order to get access to bitcoin exposure. Given the separate regulatory regime and the potential difficulties associated with any international litigation, such an arrangement would create more risk exposure for U.S. investors than they would otherwise have with a U.S. exchange listed ETP. In addition to the benefits to U.S. investors articulated throughout this proposal, approving this proposal (and others like it) would provide U.S. ETFs and mutual funds with a U.S.-listed and regulated product to provide such access rather than relying on either flawed products or products listed and primarily regulated in other countries.

Bitcoin Futures ETFs

The Exchange and Sponsor applaud the Commission for allowing the launch of ETFs registered under the Investment Company Act of 1940, as amended (the ''1940 Act'') and the Bitcoin Futures Approvals that provide exposure to bitcoin primarily through CME Bitcoin Futures (''Bitcoin Futures ETFs''). Allowing such products to list and trade is a productive first step in providing U.S. investors and traders with transparent, exchange-listed tools for expressing a view on bitcoin. The Bitcoin Futures Approvals, however, have created a logical inconsistency in the application of the standard the Commission applies when considering Bitcoin ETP proposals.

As discussed further below, the standard applicable to Bitcoin ETPs is whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size in the underlying asset. Previous disapproval orders have made clear that a market that constitutes a regulated market of significant size is generally a futures and/or options market based on the underlying reference asset rather than the spot commodity markets, which are often unregulated.[43] Leaving aside the analysis of that standard until later in this proposal,[44] the Exchange believes that the following rationale the Commission applied to a Bitcoin Futures ETF should result in the Commission approving this and other Spot Bitcoin ETP proposals:

> The CME ''comprehensively surveils futures market conditions and price movements on a real-time and ongoing basis in order to detect and prevent price distortions, including price distortions caused by manipulative efforts.'' Thus, the CME's surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts, whether that attempt is made by directly trading on the CME bitcoin futures market or indirectly by trading outside of the CME bitcoin futures market. As such, when the CME shares its surveillance information with Arca, the information would assist in detecting and deterring fraudulent or manipulative misconduct related to the non-cash assets held by the proposed ETP.[45]

CME Bitcoin Futures pricing is based on pricing from spot bitcoin markets. The statement from the Teucrium Approval that ''CME's surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts . . . indirectly by trading outside of the CME bitcoin futures market,'' makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of CME Bitcoin Futures. This was further acknowledged in the ''Grayscale lawsuit''[46] when Judge Rao stated ''. . . the Commission in the Teucrium order recognizes that the futures prices are influenced by the spot prices, and the Commission concludes in approving futures ETPs that any fraud on the spot market can be adequately addressed by the fact that the futures market is a regulated one . . .'' The Exchange agrees with the Commission on this point and notes that the pricing mechanism applicable to the

[38] The Exchange notes that the list of countries above is not exhaustive and that securities regulators in a number of additional countries have either approved or otherwise allowed the listing and trading of Spot Bitcoin ETPs.

[39] *See* FTX Trading Ltd., et al., Case No. 22–11068.

[40] *See* Celsius Network LLC, et al., Case No. 22–10964.

[41] *See* BlockFi Inc., Case No. 22–19361.

[42] *See* Voyager Digital Holdings, Inc., et al., Case No. 22–10943.

[43] *See* Winklevoss Order at 37593, specifically footnote 202, which includes the language from numerous approval orders for which the underlying futures markets formed the basis for approving series of ETPs that hold physical metals, including gold, silver, palladium, platinum, and precious metals more broadly; and 37600, specifically where the Commission provides that ''when the spot market is unregulated—the requirement of preventing fraudulent and manipulative acts may possibly be satisfied by showing that the ETP listing market has entered into a surveillance-sharing agreement with a regulated market of significant size in derivatives related to the underlying asset.'' As noted above, the Exchange believes that these citations are particularly helpful in making clear that the spot market for a spot commodity ETP need not be ''regulated'' in order for a spot commodity ETP to be approved by the Commission, and in fact that it's been the common historical practice of the Commission to rely on such derivatives markets as the regulated market of significant size because such spot commodities markets are largely unregulated.

[44] As further outlined below, both the Exchange and the Sponsor believe that the Bitcoin Futures market represents a regulated market of significant size and that this proposal and others like it should be approved on this basis.

[45] *See* Teucrium Approval at 21679.

[46] Grayscale Investments, LLC v. Securities and Exchange Commission, et al., Case No. 22–1142.

Shares is similar to that of the CME Bitcoin Futures.

The structure of Bitcoin Futures ETFs provides negative outcomes for buy and hold investors as compared to a Spot Bitcoin ETP.[47] Specifically, the cost of rolling CME Bitcoin Futures contracts will cause the Bitcoin Futures ETFs to lag the performance of bitcoin itself and would cost U.S. investors significant amounts of money on an annual basis compared to Spot Bitcoin ETPs. Such rolling costs would not be required for Spot Bitcoin ETPs that hold bitcoin. Further, Bitcoin Futures ETFs could potentially hit CME position limits, which would force a Bitcoin Futures ETF to invest in non-futures assets for bitcoin exposure and cause potential investor confusion and lack of certainty about what such Bitcoin Futures ETFs are actually holding to try to get exposure to bitcoin, not to mention completely changing the risk profile associated with such an ETF. While Bitcoin Futures ETFs represent a useful trading tool, they are clearly a sub-optimal structure for U.S. investors that are looking for long-term exposure to bitcoin that will, based on the calculations above, unnecessarily cost U.S. investors significant amounts of money every year compared to Spot Bitcoin ETPs and the Exchange believes that any proposal to list and trade a Spot Bitcoin ETP should be reviewed by the Commission with this important investor protection context in mind.

Based on the foregoing, the Exchange and Sponsor believe that any objective review of the proposals to list Spot Bitcoin ETPs compared to the Bitcoin Futures ETFs and the Bitcoin Futures Approvals would lead to the conclusion that Spot Bitcoin ETPs should be available to U.S. investors and, as such, this proposal and other comparable proposals to list and trade Spot Bitcoin ETPs should be approved by the Commission. Stated simply, U.S. investors will continue to lose significant amounts of money from holding Bitcoin Futures ETFs as compared to Spot Bitcoin ETPs, losses which could be prevented by the Commission approving Spot Bitcoin ETPs. Additionally, any concerns related to preventing fraudulent and manipulative acts and practices related to Spot Bitcoin ETPs would apply equally to the spot markets underlying the futures contracts held by a Bitcoin Futures ETF. Both the Exchange and Sponsor believe that the CME Bitcoin Futures market is a regulated market of significant size and that such manipulation concerns are mitigated, as described extensively below. After allowing and approving the listing and trading of Bitcoin Futures ETFs that hold primarily CME Bitcoin Futures, however, the only consistent outcome would be approving Spot Bitcoin ETPs on the basis that the CME Bitcoin Futures market is a regulated market of significant size.

Given the current landscape, approving this proposal (and others like it) and allowing Spot Bitcoin ETPs to be listed and traded alongside Bitcoin Futures ETFs would establish a consistent regulatory approach, provide U.S. investors with choice in product structures for bitcoin exposure, and offer flexibility in the means of gaining exposure to bitcoin through transparent, regulated, U.S. exchange-listed vehicles.

Bitcoin Futures

CME began offering trading in Bitcoin Futures in 2017. Each contract represents five bitcoin and is based on the CME CF Bitcoin Reference Rate.[48] The contracts trade and settle like other cash-settled commodity futures contracts. Nearly every measurable metric related to Bitcoin Futures has generally trended up since launch, although certain notional volume calculations have decreased roughly in line with the decrease in the price of bitcoin. For example, there were 143,215 Bitcoin Futures contracts traded in April 2023 (approximately $20.7 billion) compared to 193,182 ($5 billion), 104,713 ($3.9 billion), 118,714 ($42.7 billion), and 111,964 ($23.2 billion) contracts traded in April 2019, April 2020, April 2021, and April 2022, respectively.[49]

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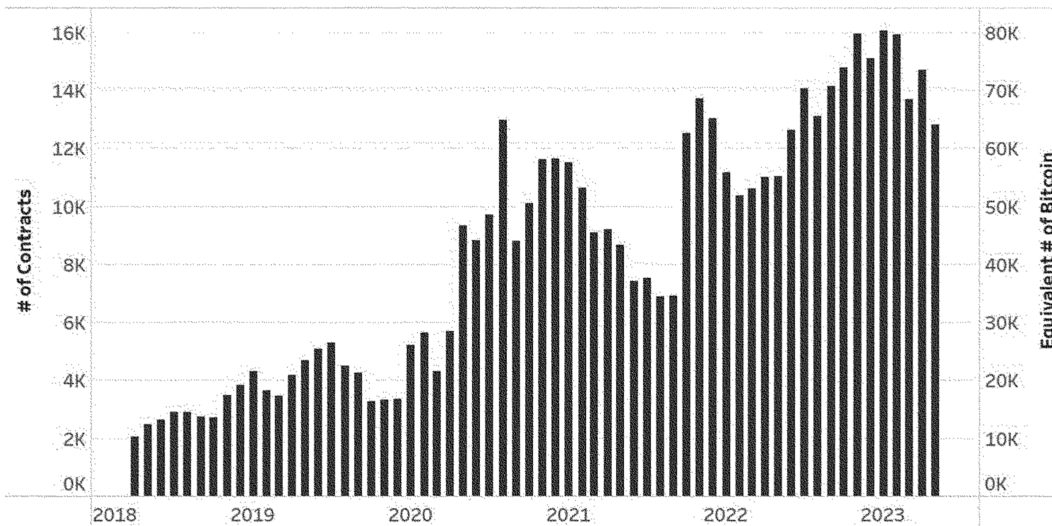
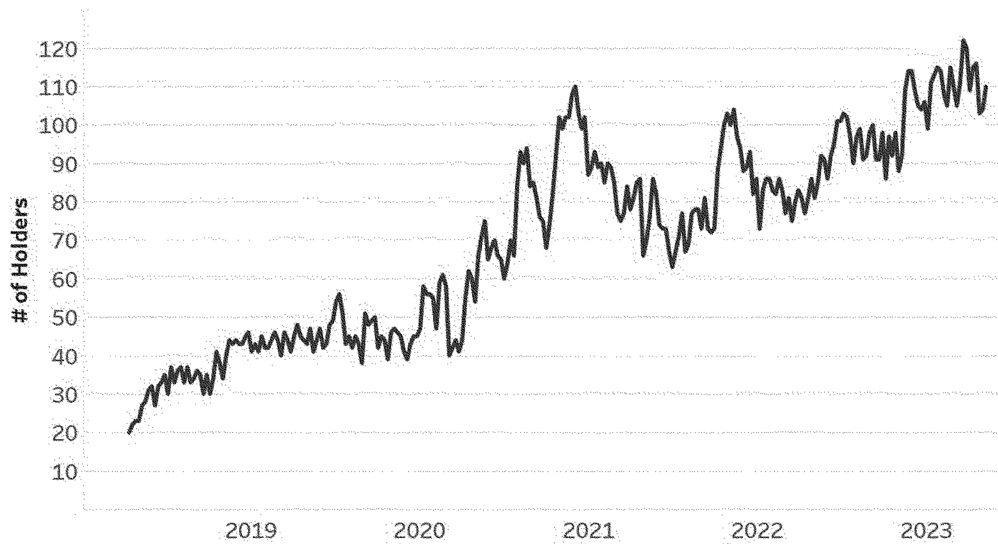


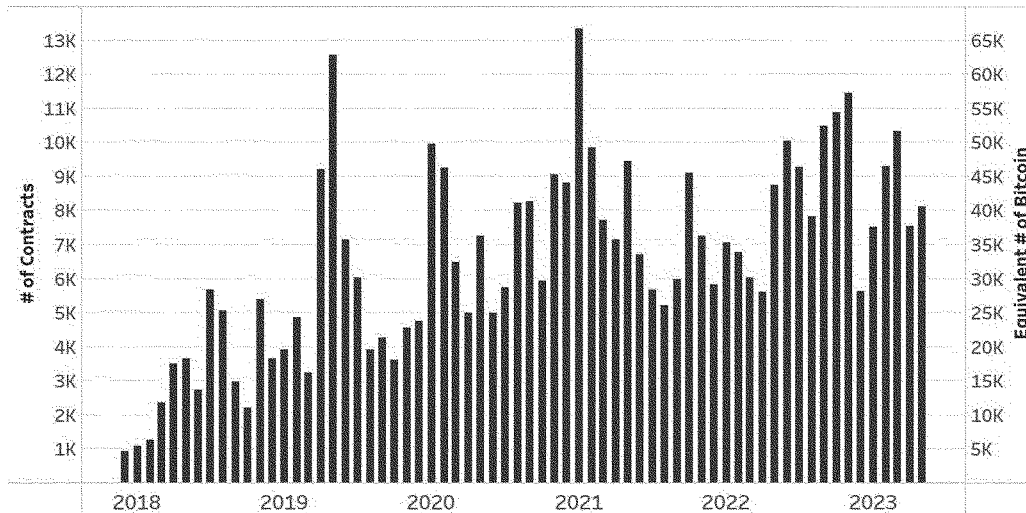
[47] *See e.g.,* ''Bitcoin ETF's Success Could Come at Fundholders' Expense,'' Wall Street Journal (October 24, 2021), available at: *https://www.wsj.com/articles/bitcoin-etfs-success-could-come-at-fundholders-expense-11635080580;* ''Physical Bitcoin ETF Prospects Accelerate,'' *ETF.com* (October 25, 2021), available at: *https://www.etf.com/sections/blog/physical-bitcoin-etf-prospects-shine?nopaging=1&__cf_chl_jschl_tk__=pmd_JsK.fjXz9eAQW9zol0qpzhXDrrlpIVdoCloLXbLjl44-1635476946-0-gqNtZGzNApCjcnBszQql.*

[48] The CME CF Bitcoin Reference Rate is based on a publicly available calculation methodology based on pricing sourced from several crypto trading platforms and trading platforms, including Bitstamp, Coinbase, Gemini, itBit, Kraken, and LMAX Digital.

[49] Source: CME, Yahoo Finance 4/30/23.

The number of large open interest holders [50] and unique accounts trading Bitcoin Futures have both increased, even in the face of heightened Bitcoin price volatility.





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The Sponsor further believes that publicly available research, including research done as part of rule filings proposing to list and trade shares of Spot Bitcoin ETPs, corroborates the overall trend outlined above and supports the thesis that the Bitcoin Futures pricing leads the spot market and, thus, a person attempting to manipulate the Shares would also have to trade on that market to manipulate the ETP. Specifically, the Sponsor believes that such research indicates that bitcoin futures lead the bitcoin spot market in price formation.[51]

[50] A large open interest holder in Bitcoin Futures is an entity that holds at least 25 contracts, which is the equivalent of 125 bitcoin. At a price of approximately $29,268.81 per bitcoin on 4/30/2023, more than 100 firms had outstanding positions of greater than $3.65 million in Bitcoin Futures.

[51] *See* Exchange Act Releases No. 94080 (January 27, 2022), 87 FR 5527 (April 12, 2022) (specifically ''Amendment No. 1 to the Proposed Rule Change To List and Trade Shares of the Wise Origin Bitcoin Trust Under BZX Rule 14.11(3)(4), Commodity-Based Trust Shares''); 94982 (May 25, 2022), 87 FR 33250 (June 1, 2022); 94844 (May 4, 2022), 87 FR 28043 (May 10, 2022); and 93445 (October 28, 2021), 86 FR 60695 (November 3, 2021). *See also* Hu, Y., Hou, Y. and Oxley, L. (2019). ''What role do futures markets play in Bitcoin pricing? Causality, cointegration and price discovery from a time-varying perspective'' (available at: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7481826/*). This academic research paper concludes that ''There exist no episodes where the Bitcoin spot markets dominates the price discovery processes with regard to Bitcoin futures. This points to a conclusion that the price formation originates solely in the Bitcoin futures market. We can, therefore, conclude that the Bitcoin futures markets dominate the dynamic price discovery process based upon time-varying information share measures. Overall, price discovery seems to occur in the Bitcoin futures markets rather than the underlying spot market based upon a time-varying perspective.''

Section 6(b)(5) and the Applicable Standards

The Commission has approved numerous series of Trust Issued Receipts,[52] including Commodity-Based Trust Shares,[53] to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices;[54] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act and that this filing sufficiently demonstrates that the CME Bitcoin Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place[55] with a regulated market of significant size. Both the Exchange and CME are members of the Intermarket Surveillance Group (''ISG'').[56] The only remaining issue to be addressed is whether the Bitcoin Futures market constitutes a market of significant size, which both the Exchange and the Sponsor believe that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[57]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying section 6(b)(5) of the act, specifically providing 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.[58]

(a) Manipulation of the ETP

According to the research and analysis presented above, the Bitcoin Futures market is the leading market for bitcoin price formation. Where Bitcoin Futures lead the price in the spot market such that a potential manipulator of the bitcoin spot market (beyond just the constituents of the Reference Rate[59]) would have to participate in the Bitcoin Futures market, it follows that a potential manipulator of the Shares would similarly have to transact in the Bitcoin Futures market because the Reference Rate is based on spot prices.

(b) Predominant Influence on Prices in Spot and Bitcoin Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices in the Bitcoin Futures market or spot market for a number of reasons, including the significant volume in the Bitcoin Futures market, the size of bitcoin's market cap, and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid.

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

The Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present.

(ii) Designed To Protect Investors and the Public Interest

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past several years, U.S. investor exposure to bitcoin through OTC Bitcoin Funds has grown into the tens of billions of dollars, including through Bitcoin

[52] *See* Exchange Rule 14.11(f).

[53] Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

[54] As the Exchange has stated in a number of other public documents, it continues to believe that bitcoin is resistant to price manipulation and that ''other means to prevent fraudulent and manipulative acts and practices'' exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin. The fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging. To the extent that there are bitcoin trading platforms engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, such pricing does not normally impact prices on other trading platform because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin trading platform or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

[55] As previously articulated by the Commission, ''The standard requires such surveillance-sharing agreements since ''they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.'' The Commission has historically held that joint membership in the Intermarket Surveillance Group (''ISG'') constitutes such a surveillance sharing agreement. *See* Securities Exchange Act Release No. 88284 (February 26, 2020), 85 FR 12595 (March 3, 2020) (SR–NYSEArca–2019–39) (the ''Wilshire Phoenix Disapproval'').

[56] For a list of the current members and affiliate members of ISG, *see www.isgportal.com*.

[57] *See* Wilshire Phoenix Disapproval.

[58] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a 'cannot be manipulated' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.'' *Id.* at 37582.

[59] As further described below, the ''Reference Rate'' for the Fund is the CME CF Bitcoin Reference Rate—New York Variant.

Futures ETFs. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors through roll costs for Bitcoin Futures ETFs and premium/discount volatility and management fees for OTC Bitcoin Funds. The Exchange believes that the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, such concerns are now outweighed by investor protection concerns. As such, the Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to bitcoin in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks and costs associated with investing in Bitcoin Futures ETFs and operating companies that are imperfect proxies for bitcoin exposure; and (iv) providing an alternative to custodying spot bitcoin.

WisdomTree Bitcoin Fund

Delaware Trust Company is the trustee (''Trustee''). State Street Bank and Trust Company will serve as the Trust's administrator (the ''Administrator''), transfer agent (''Transfer Agent'') and cash custodian (the ''Cash Custodian''). The Bitcoin Custodian will be responsible for safekeeping of the Trust's bitcoin.

According to the Registration Statement, each Share will represent a fractional undivided beneficial interest in the Trust. The Trust's assets will only consist of bitcoin, cash, and cash equivalents.[60]

According to the Registration Statement, the Trust is neither an investment company registered under the Investment Company Act of 1940, as amended,[61] nor a commodity pool for purposes of the Commodity Exchange Act (''CEA''), and neither the Trust nor the Sponsor is subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the Shares.

When the Trust sells or redeems its Shares, it will do so in cash transactions in blocks of 5,000 Shares (a ''Creation Basket'') at the Trust's net asset value (''NAV''). A third party will use cash to buy and deliver bitcoin to create Shares or withdraw and sell bitcoin for cash to redeem Shares, on behalf of the Trust. Authorized participants will deliver, or facilitate the delivery of, cash to the Trust's account with the Cash Custodian in exchange for Shares when they purchase Shares, and the Trust, through the Cash Custodian, will deliver cash to such authorized participants when they redeem Shares with the Trust. Authorized participants may then offer Shares to the public at prices that depend on various factors, including the supply and demand for Shares, the value of the Trust's assets, and market conditions at the time of a transaction. Shareholders who buy or sell Shares during the day from their broker may do so at a premium or discount relative to the NAV of the Shares of the Trust.

Investment Objective

According to the Registration Statement and as further described below, the investment objective of the Trust is to gain exposure to the price of bitcoin, less expenses and liabilities of the Trust's operations. In seeking to achieve its investment objective, the Trust will hold bitcoin. The Trust will value its Shares daily based on the value of bitcoin as reflected by the CME CF Bitcoin Reference Rate—New York Variant (the ''Reference Rate''), which is an independently calculated value based on an aggregation of executed trade flow of major bitcoin spot trading platforms. The Reference Rate currently uses substantially the same methodology as the CME CF Bitcoin Reference Rate (''BRR''), including utilizing the same bitcoin trading platforms, which is the underlying rate to determine settlement of CME bitcoin futures contracts, except that the Reference Rate is calculated as of 4 p.m. Eastern time, whereas the BRR is calculated as of 4 p.m. London time. The Trust will process all creations and redemptions in cash transactions with authorized participants. The Trust is not actively managed.

The Reference Rate

As described in the Registration Statement, the Trust will use the Reference Rate to calculate the Trust's NAV. The Trust will determine the bitcoin Reference Rate price and value its Shares daily based on the value of bitcoin as reflected by the Reference Rate. The Reference Rate is calculated daily and aggregates the notional value of bitcoin trading activity across major bitcoin spot trading platforms. The Reference Rate currently uses substantially the same methodology as the CME CF Bitcoin Reference Rate (''BRR''), including utilizing the same constituent bitcoin trading platforms, which is the underlying rate to determine settlement of CME Bitcoin Futures contracts, except that the Reference Rate is calculated and has certain underlying data calculations as of 4 p.m. ET, whereas the BRR is calculated and has certain underlying data calculations as of 4 p.m. London time. The administrator of the Reference Rate is CF Benchmarks Ltd. (the ''Reference Rate Provider''). The Trust also uses the bitcoin Reference Rate price to calculate its bitcoin holdings, which is the aggregate U.S. Dollar value of bitcoins in the Trust, based on the bitcoin Reference Rate price, and cash and cash equivalents in the Trust, less its liabilities and expenses.

The Reference Rate was created to facilitate financial products based on bitcoin. It serves as a once-a-day benchmark rate of the U.S. dollar price of bitcoin (USD/BTC), calculated as of 4 p.m. ET. The Reference Rate, which has been calculated and published since February 28, 2022, aggregates the trade flow of several bitcoin trading platforms, during an observation window between 3:00 p.m. and 4:00 p.m. ET into the U.S. dollar price of one bitcoin at 4:00 p.m. ET. Specifically, the Reference Rate is calculated based on the ''Relevant Transactions'' (as defined below) of all of its constituent bitcoin trading platforms, which are currently Coinbase, Bitstamp, Kraken, itBit, LMAX Digital and Gemini (the ''Constituent Platforms''), as follows:

- All Relevant Transactions are added to a joint list, recording the time of execution, trade price and size for each transaction.
- The list is partitioned by timestamp into 12 equally-sized time intervals of 5 (five) minute length.
- For each partition separately, the volume-weighted median trade price is calculated from the trade prices and sizes of all Relevant Transactions, *i.e.,* across all Constituent Platforms. A volume-weighted median differs from a standard median in that a weighting factor, in this case trade size, is factored into the calculation.
- The Reference Rate is then determined by the equally-weighted average of the volume weighted medians of all partitions.

Description of the Reference Rate, Reference Rate Construction and Maintenance

The Reference Rate does not include any futures prices in its methodology. A ''Relevant Transaction'' is any cryptocurrency versus U.S. dollar spot trade that occurs during the observation window between 3:00 p.m. and 4:00

[60] Cash equivalents are short-term instruments with maturities of less than 3 months.

[61] 15 U.S.C. 80a–1.

p.m. ET on a Constituent Platform in the BTC/USD pair that is reported and disseminated by a Constituent Platform through its publicly available Application Programming Interface (''API'') and observed by the Reference Rate Provider.

An oversight function is implemented by the Reference Rate Provider in seeking to ensure that the Reference Rate is administered through the Reference Rate Provider's codified policies for Reference Rate integrity.

Reference Rate data and the description of the Reference Rate are based on information made publicly available by the Reference Rate Provider on its website at *https://www.cfbenchmarks.com.*

Net Asset Value

NAV means the total assets of the Trust (which includes all bitcoin and cash and cash equivalent holdings) less total liabilities of the Trust, each determined on the basis of generally accepted accounting principles. The Administrator will determine the NAV of the Trust on each day that the Exchange is open for regular trading, as promptly as practical after 4:00 p.m. EST. The NAV of the Trust is the aggregate value of the Trust's assets less its estimated accrued but unpaid liabilities (which include accrued expenses). In determining the Trust's NAV, the Administrator values the bitcoin held by the Trust based on the price set by the Reference Rate as of 4:00 p.m. EST. The Administrator also determines the NAV per Share.

The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. In the event the Reference Rate was not available or determined by the Sponsor to not be reliable, the Sponsor would ''fair value'' the Trust's bitcoin holdings.[62]

Availability of Information

In addition to the price transparency of the Reference Rate, the Trust will provide information regarding the Trust's bitcoin holdings as well as additional data regarding the Trust. 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; (b) the BZX Official Closing Price[63] in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The Trust will also disseminate its holdings on a daily basis on its website. The aforementioned information will be published as of the close of business and available on the Sponsor's website at *www.wisdomtree.com/investments.*

The Intraday Indicative Value (''IIV'') will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust's bitcoin holdings during the trading day. The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be calculated by using the prior day's closing NAV per Share of the Trust as a base and updating that value throughout the trading day to reflect changes in the most recently reported price level of the CME CF Bitcoin Real Time Index (''BRTI''), as reported by Bloomberg, L.P. or another reporting service. The Trust will provide an IIV per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. Eastern time). The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours through the facilities of the consolidated tape association (CTA) and Consolidated Quotation System (CQS) high speed lines. In addition, the IIV will be available through on-line information services such as Bloomberg and Reuters.

The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours.

As noted above, the Reference Rate is calculated daily and aggregates the notional value of bitcoin trading activity across major bitcoin spot trading platforms. Reference Rate data, the Reference Rate value, and the description of the Reference Rate are based on information made publicly available by the Reference Rate Provider on its website at *https://www.cfbenchmarks.com.*

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the trading platforms on which bitcoin are traded. Depth of book information is also available from bitcoin trading platforms. The normal trading hours for bitcoin trading 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. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA'').

The Bitcoin Custodian

The Bitcoin Custodian carefully considers the design of the physical, operational and cryptographic systems for secure storage of the Trust's private keys in an effort to lower the risk of loss or theft. The Bitcoin Custodian utilizes a variety of security measures to ensure that private keys necessary to transfer digital assets remain uncompromised and that the Trust maintains exclusive ownership of its assets. The operational procedures of the Bitcoin Custodian are reviewed by third-party advisors with specific expertise in physical security. The devices that store the keys will never be connected to the internet or any other public or private distributed network—this is colloquially known as ''cold storage.'' Only specific individuals are authorized to participate in the custody process, and no individual acting alone will be able to access or use any of the private keys. In addition, no combination of the executive officers of the Sponsor or the investment professionals managing the Trust, acting alone or together, will be able to access or use any of the private keys that hold the Trust's bitcoin.

Creation and Redemption of Shares

When the Trust sells or redeems its Shares, it will do so in cash transactions in blocks of 5,000 Shares that are based on the quantity of bitcoin attributable to each Share of the Trust (*e.g.,* a Creation

[62] Any alternative method to determining the NAV will only be employed on an ad hoc basis. Any permanent to change to the calculation of the NAV would require a proposed rule change under Rule 19b–4.

[63] As defined in Rule 11.23(a)(3), the term ''BZX Official Closing Price'' shall mean the price disseminated to the consolidated tape as the market center closing trade.

Basket) at the Trust's NAV. According to the Registration Statement, on any business day, an authorized participant may place an order to create one or more Creation Baskets. Purchase orders must be placed by 4:00 p.m. Eastern Time (or such earlier order cut-off time as disclosed in the Prospectus), or the close of regular trading on the Exchange, whichever is earlier. The day on which an order is received is considered the purchase order date.

The total deposit of cash required is an amount of cash sufficient to purchase such amount of bitcoin, the amount of which is equal to the combined NAV of the number of Shares included in the Creation Baskets being created determined as of 4:00 ET on the date the order to purchase is properly received. The Administrator determines the required deposit for a given day by dividing the number of bitcoin held by the Trust as of the opening of business on that business day, adjusted for the amount of bitcoin constituting estimated accrued but unpaid fees and expenses of the Trust as of the opening of business on that business day, by the quotient of the number of Shares outstanding at the opening of business divided by the number of Shares in a Creation Unit. For example, assume the total bitcoin held by the Trust less any estimated accrued but unpaid fees and expenses is 10,000 bitcoin and the total number of Shares outstanding is 100,000. The Administrator would determine the required deposit as follows:

$$\frac{1{,}000\ BTC}{\left(\frac{10{,}000\ Shares}{5{,}000}\right)} = 500\ BTC\ per\ Creation\ Basket$$

Total deposited cash as described in the example above would be 5,000 multiplied by the price of bitcoin.

The authorized participants will deliver only cash to create shares and will receive only cash when redeeming shares. Further, authorized participants will not directly or indirectly purchase, hold, deliver, or receive bitcoin 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 bitcoin as part of the creation or redemption process.

The Trust will create shares by receiving bitcoin 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 bitcoin. Further, the third party will not be acting as an agent of the authorized participant with respect to the delivery of the bitcoin to the Trust or acting at the direction of the authorized participant with respect to the delivery of the bitcoin to the Trust. The Trust will redeem shares by delivering bitcoin 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 bitcoin. Further, the third party will not be acting as an agent of the authorized participant with respect to the receipt of the bitcoin from the Trust or acting at the direction of the authorized participant with respect to the receipt of the bitcoin from the Trust.

The procedures by which an authorized participant can redeem one or more Creation Baskets mirror the procedures for the creation of Creation Baskets. A third party, that is unaffiliated with the Trust and the Sponsor, will use cash to buy and deliver bitcoin to create Shares or withdraw and sell bitcoin for cash to redeem Shares, on behalf of the Trust.

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

Rule 14.11(e)(4)—Commodity-Based Trust Shares

The Shares will be subject to BZX Rule 14.11(e)(4), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. With respect to application of Rule 10A–3 [64] under the Act, the Trust relies on the exception contained in Rule 10A–3(c)(7).[65] A minimum of 50,000 Shares will be outstanding at the commencement of listing on the Exchange. The Exchange will obtain a representation that the NAV will be calculated daily and the NAV and information about the assets of the Trust will be made available to all market participants at the same time. The Exchange notes that, as defined in Rule 14.11(e)(4)(C)(i), the Shares will be: (a) issued by a trust that holds (1) a specified commodity [66] deposited with the trust, or (2) a specified commodity and, in addition to such specified commodity, cash; (b) 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 (c) 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.

Upon termination of the Trust, the Shares will be removed from listing. The Trustee, Delaware Trust Company, is a trust company having substantial capital and surplus and the experience and facilities for handling corporate trust business, as required under Rule 14.11(e)(4)(E)(iv)(a) and that no change will be made to the trustee without prior notice to and approval of the Exchange. The Exchange also notes that, pursuant to Rule 14.11(e)(4)(F), 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 Trust in connection with issuance of Commodity-Based Trust Shares; 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. Finally, as required in Rule 14.11(e)(4)(G), the Exchange notes that any registered market maker (''Market Maker'') in the Shares must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any

[64] 17 CFR 240.10A–3.

[65] 17 CFR 240.10A–3(c)(7).

[66] For purposes of Rule 14.11(e)(4), the term commodity takes on the definition of the term as provided in the Commodity Exchange Act. As noted above, the CFTC has opined that Bitcoin is a commodity as defined in section 1a(9) of the Commodity Exchange Act. *See* Coinflip.

other related commodity derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule. In addition to the existing obligations under Exchange rules regarding the production of books and records (see, *e.g.,* Rule 4.2), the registered Market Maker in Commodity-Based Trust Shares 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 derivatives, as may be requested by the Exchange.

The Exchange is able to obtain information regarding trading in the Shares and the underlying bitcoin, Bitcoin Futures contracts, options on Bitcoin Futures, or any other bitcoin 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 organization 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 organizations of which such subsidiary or affiliate is a member.

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 BZX Rule 11.18. 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 bitcoin underlying the Shares; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(e)(4)(E)(ii), which sets forth circumstances under which trading in the Shares may be halted.

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

In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. BZX will allow trading in the Shares during all trading sessions on the Exchange. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a) the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01 where the price is greater than $1.00 per share or $0.0001 where the price is less than $1.00 per share. The Shares of the Trust will conform to the initial and continued listing criteria set forth in BZX Rule 14.11(e)(4).

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and Bitcoin Futures 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 Bitcoin Futures from such markets and other entities.[67] The Exchange may obtain information regarding trading in the Shares and Bitcoin Futures via ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

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

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares 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 or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (i) the procedures for the creation and redemption of Baskets (and that the Shares are not individually redeemable); (ii) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (iii) how information regarding the IIV and the Trust's NAV are disseminated; (iv) the risks involved in trading the Shares outside of Regular Trading Hours[68] when an updated IIV will not be calculated or publicly disseminated; (v) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to

[67] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.*

[68] Regular Trading Hours is the time between 9:30 a.m. and 4:00 p.m. Eastern time.

or concurrently with the confirmation of a transaction; and (vi) trading information. The Information Circular will also reference the fact that there is no regulated source of last sale information regarding bitcoin, that the Commission has no jurisdiction over the trading of bitcoin as a commodity, and that the CFTC has regulatory jurisdiction over the trading of Bitcoin Futures contracts and options on Bitcoin Futures contracts.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Shares. Members purchasing the Shares for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

2. Statutory Basis

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

The Commission has approved numerous series of Trust Issued Receipts, including Commodity-Based Trust Shares, to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; [71] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act and that this filing sufficiently demonstrates that the CME Bitcoin Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place [72] with a regulated market of significant size. Both the Exchange and CME are members of ISG. The only remaining issue to be addressed is whether the Bitcoin Futures market constitutes a market of significant size, which both the Exchange and the Sponsor believe that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[73]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying section 6(b)(5) of the act, specifically providing 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.[74]

(a) Manipulation of the ETP

According to the research and analysis presented above, the Bitcoin Futures market is the leading market for bitcoin price formation. Where Bitcoin Futures lead the price in the spot market such that a potential manipulator of the bitcoin spot market (beyond just the constituents of the Reference Rate) would have to participate in the Bitcoin Futures market, it follows that a potential manipulator of the Shares would similarly have to transact in the Bitcoin Futures market because the Reference Rate is based on spot prices. As such, the Exchange believes that part (a) of the significant market test outlined above is satisfied and that common membership in ISG between the Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the Shares.

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

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

[71] As the Exchange has stated in a number of other public documents, it continues to believe that bitcoin is resistant to price manipulation and that ''other means to prevent fraudulent and manipulative acts and practices'' exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin. The fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging. To the extent that there are bitcoin trading platforms engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, such pricing does not normally impact prices on other trading platform because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin trading platform or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

[72] As previously articulated by the Commission, ''The standard requires such surveillance-sharing agreements since ''they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.'' The Commission has historically held that joint membership in the ISG constitutes such a surveillance sharing agreement. *See* Wilshire Phoenix Disapproval).

[73] *Id.*

[74] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a 'cannot be manipulated' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.'' *Id.* at 37582.

(b) Predominant Influence on Prices in Spot and Bitcoin Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force on prices in the Bitcoin Futures market or spot market for a number of reasons, including the significant volume in the Bitcoin Futures market, the size of bitcoin's market cap, and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid.

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present.

(ii) Designed To Protect Investors and the Public Interest

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past several years, U.S. investor exposure to bitcoin through OTC Bitcoin Funds has grown into the tens of billions of dollars, including through Bitcoin Futures ETFs. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors through roll costs for Bitcoin Futures ETFs and premium/discount volatility and management fees for OTC Bitcoin Funds. The Exchange believes that the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, such concerns are now outweighed by investor protection concerns. As such, the Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to bitcoin in a regulated and transparent exchange-traded vehicle that would act to limit risk to U.S. investors by: (i) reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks and costs associated with investing in Bitcoin Futures ETFs and operating companies that are imperfect proxies for bitcoin exposure; and (iv) providing an alternative to custodying spot bitcoin.

Commodity-Based Trust Shares

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in Exchange Rule 14.11(e)(4). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares 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 or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and listed bitcoin derivatives via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

Availability of Information

The Exchange also believes that the proposal promotes market transparency in that a large amount of information is currently available about bitcoin and will be available regarding the Trust and the Shares.

In addition to the price transparency of the Reference Rate, the Trust will provide information regarding the Trust's bitcoin holdings as well as additional data regarding the Trust. 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; (b) the BZX Official Closing Price [75] in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The Trust will also disseminate its holdings on a daily basis on its website. The aforementioned information will be published as of the close of business and available on the Sponsor's website at *www.wisdomtree.com/investments.*

The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust's bitcoin holdings during the trading day. The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be calculated by using the prior day's closing NAV per Share of the Trust as a base and updating that value throughout the trading day to reflect changes in the most recently reported price level of the CME CF Bitcoin Real Time Index (''BRTI''), as reported by Bloomberg, L.P. or another reporting service. The Trust will provide an IIV per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. Eastern time). The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours through the facilities of the consolidated tape association (CTA) and Consolidated Quotation System (CQS) high speed lines. In addition, the IIV will be available through on-line information services such as Bloomberg and Reuters.

The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours.

As noted above, the Reference Rate is calculated daily and aggregates the notional value of bitcoin trading activity across major bitcoin spot trading platforms. Reference Rate data, the Reference Rate value, and the description of the Reference Rate are based on information made publicly available by the Reference Rate Provider on its website at *https://www.cfbenchmarks.com.*

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters, as well as the Reference Rate. Information relating to trading, including price and volume

[75] As defined in Rule 11.23(a)(3), the term ''BZX Official Closing Price'' shall mean the price disseminated to the consolidated tape as the market center closing trade.

information, in bitcoin is available from major market data vendors and from the trading platforms on which bitcoin are traded. Depth of book information is also available from bitcoin trading platforms. The normal trading hours for bitcoin trading 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. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA.

In sum, the Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act, that this filing sufficiently demonstrates that the CME Bitcoin Futures market represents a regulated market of significant size, and that on the whole the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by investor protection issues that would be resolved by approving this proposal.

The Exchange believes that the proposal is, in particular, designed to protect investors and the public interest. The investor protection issues for U.S. investors has grown significantly over the last several years, through roll costs for Bitcoin Futures ETFs and premium/discount volatility and management fees for OTC Bitcoin Funds. As discussed throughout, this growth investor protection concerns need to be reevaluated and rebalanced with the prevention of fraudulent and manipulative acts and practices concerns that previous disapproval orders have relied upon. Finally, the Exchange notes that in addition to all of the arguments herein which it believes sufficiently establish the CME Bitcoin Futures market as a regulated market of significant size, it is logically inconsistent to find that the CME Bitcoin Futures market is a significant market as it relates to the CME Bitcoin Futures market, but not a significant market as it relates to the bitcoin spot market for the numerous reasons laid out above.

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

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

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

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

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

III. Solicitation of Comments

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

Electronic Comments

• Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
• Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBZX–2023–042 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–CboeBZX–2023–042. 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–CboeBZX–2023–042 and should be submitted on or before February 2, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[76]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–00502 Filed 1–11–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99291; File No. SR–NYSEARCA–2023–58]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 to a Proposed Rule Change To List and Trade Shares of the Hashdex Bitcoin ETF Under NYSE Arca Rule 8.500–E (Trust Units)

January 8, 2024.

On September 22, 2023, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the Hashdex Bitcoin ETF (f/k/a Hashdex Bitcoin Futures ETF) under NYSE Arca Rule 8.500–E (Trust Units). The proposed rule change was published for comment in the **Federal Register** on October 3, 2023.[3] On November 15, 2023, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to

[76] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 98564 (Sept. 27, 2023), 88 FR 68188. Comments on the proposed rule change are available at: *https://www.sec.gov/comments/sr-nysearca-2023-58/srnysearca202358.htm.*

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

disapprove the proposed rule change.[5] On November 28, 2023, the Commission instituted proceedings to determine whether to disapprove the proposed rule change.[6] On January 5, 2024, the Exchange filed Amendment No. 1 to the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. Amendment No. 1 amended and replaced the proposed rule change in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

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

The Exchange proposes list and trade shares of the Hashdex Bitcoin ETF under NYSE Arca Rule 8.500–E (''Trust Units''). This Amendment No. 1 to SR–NYSEARCA–2023–58 replaces SR–NYSEARCA–2023–58 as originally filed and supersedes such filing in its entirety. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of the Hashdex Bitcoin ETF (the ''Fund'') under NYSE Arca Rule 8.500–E.

The Commission previously approved the listing and trading of shares of the Teucrium Bitcoin Futures Fund (the ''Predecessor Fund'') [7] pursuant to NYSE Arca Rule 8.200–E, Commentary .02.[8] The Predecessor Fund's name was subsequently changed to the Hashdex Bitcoin Futures ETF pursuant to an April 18, 2022 amendment to the Predecessor Fund's registration statement.[9] In connection with the launch of the Predecessor Fund, Tidal Investments LLC (f/k/a Toroso Investments LLC, the ''Sponsor''),[10] Teucrium Trading, LLC (the ''Prior Sponsor''), and Hashdex Asset Management, Ltd. (''Hashdex'') entered into an agreement pursuant to which the Fund would be the successor and surviving entity from a merger into the Fund of the Predecessor Fund (which is a series of the Predecessor Trust sponsored by the Prior Sponsor).[11]

On August 25, 2023, the Trust on behalf of the Fund, submitted a confidential draft registration statement (the ''Draft Registration Statement'') on Form S–1 (File No. 377–06858) to change the Fund's name to the Hashdex Bitcoin ETF and to modify the Fund's investment objective and strategy, as further discussed below.[12] On December 22, 2023, the Trust, on behalf of the Fund, filed publicly a registration statement on Form S–1 (File No. 333–276254) (the ''Registration Statement''), which supersedes and replaces the Draft Registration Statement.[13]

The Fund is a series of the Trust, a Delaware statutory trust. The Fund is managed and controlled by the Sponsor and administered by Tidal ETF Services LLC (the ''Administrator''). The Sponsor is registered as a commodity pool operator (''CPO'') and a commodity trading adviser with the Commodity Futures Trading Commission (''CFTC'') and is a member of the National Futures Association (''NFA'').

U.S. Bancorp Fund Services, LLC (doing business as U.S. Bank Global

[5] *See* Securities Exchange Act Release No. 98947, 88 FR 81171 (Nov. 21, 2023).

[6] *See* Securities Exchange Act Release No. 99031, 88 FR 84021 (Dec. 1, 2023).

[7] The Predecessor Fund is a series of the Teucrium Commodity Trust (the ''Predecessor Trust''). The Commission has noticed for immediate effectiveness a separate proposed rule change relating to the transfer of management and control of the Fund from the Predecessor Trust to the Tidal Commodities Trust I (the ''Trust''). *See* Securities Exchange Act Release No. 99164 (December 13, 2023), 88 FR 87825 (December 19, 2023) (SR–NYSEARCA–2023–84) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Make Changes to Certain Representations Relating to the Hashdex Bitcoin Futures Fund).

[8] *See* Securities Exchange Act Release No. 34–94620 (April 6, 2022), 87 FR 21676 (April 12, 2022) (SR–NYSEArca–2021–53) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the Teucrium Bitcoin Futures Fund Under NYSE Arca Rule 8.200–E, Commentary .02 (Trust Issued Receipts)) (the ''Approval Order''). The representations herein supersede and replace the representations in the Exchange's prior rule filing relating to the Teucrium Bitcoin Futures Fund and Partial Amendment No. 2 thereto. *See* Securities Exchange Act Release No. 92573 (August 5, 2021), 86 FR 44062 (August 11, 2021) (SR–NYSEArca–2021–53) (Notice of Filing of a Proposed Rule Change To List and Trade Shares of Teucrium Bitcoin Futures Fund Under NYSE Arca Rule 8.200–E) and Partial Amendment No. 2, *available at: https://www.sec.gov/comments/sr-nysearca-2021-53/srnysearca202153-20118884-271701.pdf.*

[9] On April 18, 2022, Teucrium Commodity Trust filed with the Commission Pre-Effective Amendment No. 2 to the registration statement on Form S–1 under the Securities Act of 1933 (the ''Securities Act'') (File No. 333–256339) changing the name of the Fund from Teucrium Bitcoin Futures Fund to Hashdex Bitcoin Futures ETF.

[10] The Sponsor is not registered as a broker-dealer or affiliated with a broker-dealer. In the event that (a) the Sponsor becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new sponsor or sub-adviser is registered as a broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or personnel of the broker-dealer affiliate, as applicable, regarding access to information concerning the composition of and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

[11] On July 21, 2023, the Trust, on behalf of the Fund, filed with the Commission a registration statement on Form S–1 under the Securities Act (File No. 333–2773364), as amended by a Pre-Effective Amendment No. 1 filed with the Commission on November 2, 2023 (''Form S–1''), for the continuous offering and sale of the Fund's Shares. On October 31, 2023, the Trust filed with the Commission a separate registration statement on Form S–4 (File No. 333–275227) (''Form S–4'') under the Securities Act to register 50,004 shares of the Fund, which was issued in exchange for the outstanding shares of the Predecessor Fund (the ''Reorganization''). The Reorganization closed on January 3, 2024. The offering and sale of Fund Shares pursuant to the Form S–1 and the Form S–4 and the trading in such Shares commenced with the closing of the Reorganization, at which time the registration statements on the Form S–1 and the Form S–4 were declared effective.

[12] The Trust, on behalf of the Fund, submitted an Amendment No. 1 to the Registration Statement on November 14, 2023 (''DRS Amendment''). The Jumpstart Our Business Startups Act (the ''JOBS Act''), enacted on April 5, 2012, added Section 6(e) to the Securities Act. Section 6(e) of the Securities Act provides that an ''emerging growth company'' may confidentially submit to the Commission a draft registration statement for confidential, non-public review by the Commission staff prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed not later than 15 days before the date on which the issuer conducts a road show, as such term is defined in Securities Act Rule 433(h)(4). An emerging growth company is defined in Section 2(a)(19) of the Securities Act as an issuer with less than $1,000,000,000 total annual gross revenues during its most recently completed fiscal year. The Trust meets the definition of an emerging growth company and consequently submitted its Draft Registration Statement and DRS Amendment to the Commission on a confidential basis.

[13] A Pre-Effective Amendment No. 1 to the Registration Statement was filed on December 26, 2023 (the ''Amendment''). The Amendment was an exhibit-only filing to provide the Fund's executed bitcoin custodian agreement. The Draft Registration Statement and the DRS Amendment have been made accessible as public filings. The Registration Statement is not yet effective, and the Shares will not trade on the Exchange under the prospectus contained in the Registration Statement until such time that the Registration Statement is effective.

Fund Services) is the sub-administrator, registrar, and transfer agent for the Fund (''Sub-Administrator'' or ''Transfer Agent''). U.S. Bank, N.A. will hold the Fund's cash and/or cash equivalents [14] (''Cash Custodian''). BitGo Trust Company, Inc. will keep custody of all the Fund's bitcoin as the ''Bitcoin Custodian.'' [15]

The Fund's Investment Objective and Strategy

According to the Registration Statement, the investment objective of the Fund is to have the daily changes in the net asset value (''NAV'') of the Shares reflect the daily changes in the price of its benchmark, less expenses from the Fund's operations, by investing in both bitcoin and bitcoin futures contracts traded on the Chicago Mercantile Exchange, Inc. (''CME'').[16] In doing so, the Sponsor expects that the Fund will provide investors with bitcoin exposure that is more resistant to fraud and manipulative practices than comparable products that seek to rely on unregulated trading platforms.[17] In particular, to avoid any exposure to potential manipulation from actors operating on unregulated trading platforms, although the Fund will hold spot bitcoin, the Fund's NAV will be calculated using a spot bitcoin price derived from the price of CME Bitcoin Futures Contracts (as defined below), and the Fund expects to purchase and sell bitcoin exclusively via Exchange for Physical (''EFP'') transactions on the CME's bitcoin futures market (the ''CME Bitcoin Futures Market'').[18] The Fund will not trade or otherwise rely on information or services from unregulated spot bitcoin trading platforms, but will instead buy CME Bitcoin Futures Contracts with the purpose of using them to acquire physical bitcoin through EFP transactions on the regulated CME Bitcoin Futures Market.

According to the Registration Statement, CME offers two bitcoin futures contracts, one contract representing five (5) bitcoins (''BTC Contract'') and another contract representing one-tenth of one (0.10) bitcoin (''MBT Contract'').[19] Each BTC Contract and MBT Contract settles daily to the BTC Contract volume-weighted average price (''VWAP'') of all trades that occur between 2:59 p.m. and 3:00 p.m., Central Time, the settlement period, rounded to the nearest tradable tick. BTC Contracts and MBT Contracts each expire on the last Friday of the contract month, and the final settlement value for each contract is based on the CME CF Bitcoin Reference Rate (''CME CF BRR'').[20]

BTC Contracts and MBT Contracts each trade six consecutive monthly contracts plus two additional December contract months (if the 6 consecutive months include December, only one additional December contract month is listed). Because BTC Contracts and MBT Contracts are exchange-listed, they allow investors to gain exposure to bitcoin without having to hold the underlying cryptocurrency.

The Fund's benchmark, as referenced above, is the Nasdaq Bitcoin Reference Price—Settlement (the ''NQBTCS'' or ''Benchmark''),[21] which ultimately tracks the price of bitcoin. The Sponsor believes that the spot price performance of bitcoin is best measured through the use of a reputable index provided by an established index provider and has selected the NQBTCS as a trustworthy benchmark of bitcoin pricing.

The Sponsor will employ a passive investment strategy that is intended to track the changes in the Benchmark regardless of whether the Benchmark goes up or goes down, meaning that the Sponsor will not try to ''beat'' the Benchmark. In order to track the Benchmark as closely as possible, the Fund will aim to maximize its investment in bitcoin.

The Fund will gain exposure to physical bitcoin by buying CME Bitcoin Futures Contracts for the primary purpose of using such CME Bitcoin Futures Contracts to acquire physical bitcoin through EFP transactions on the regulated CME Bitcoin Futures Market. The Fund may maintain CME Bitcoin Futures Contracts positions (with related cash reserves to meet applicable margin requirements) if the Sponsor deems it necessary to meet the Fund's liquidity needs for the cash payment of Share redemption settlements and of other applicable expenses borne by the Fund. The Fund will also maintain cash balances or invest in cash equivalents to the extent it is unable to purchase CME Bitcoin Futures Contracts with available cash.

If there are no Share redemption orders or currently due Fund-payable expenses and assuming that the Fund is able to utilize all available cash to purchase CME Bitcoin Futures Contracts, the Fund's portfolio is expected to be composed of at least 95% in bitcoin and up to 5% in cash, cash equivalents, and/or CME Bitcoin Futures Contracts.

The Sponsor expects that the Fund's average daily tracking error against the Benchmark will be less than 10% over any period of 30 trading days. The Fund's passive investment strategy is designed to allow investors to purchase and sell the Shares for the purpose of investing in bitcoin, whether to hedge the risk of losses in their bitcoin-related transactions or gain price exposure to the bitcoin market.

The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. That is, given its passive investment strategy, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2Xs, 3Xs, –2Xs, and –3Xs) of the Fund's Benchmark.

The Fund's Benchmark

According to the Sponsor, the Fund will use the Benchmark as a reference to track and measure its performance compared to the price performance of spot bitcoin. The Fund will not use the Benchmark for valuation purposes when calculating the Fund's NAV.[22]

[14] ''Cash equivalents'' include short-term treasury bills (90 days or less to maturity), money market funds, and demand deposit accounts. The Fund does not hold, invest in, or trade in digital assets that are linked to any fiat currency (*i.e.,* stablecoins).

[15] The Fund may, in the future, engage additional custodians for its bitcoin, each of whom may be referred to as a Bitcoin Custodian.

[16] Consistent with the Approval Order, the Fund currently only invests in BTC Contracts and MBT Contracts (as defined below) and in cash and cash equivalents.

[17] As used in this filing, ''unregulated trading platforms'' refers to trading venues whose trading rules are not subject to regulatory review or approval by the SEC, CFTC or other federal regulator, whose trading operations are not subject to regulatory examination, and that are not required by law to have anti-manipulation practices that federal securities or commodities regulation would require. *See, e.g.,* Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To List and Trade Shares of the Winklevoss Bitcoin Trust, Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 at 37597 (August 1, 2018) (SR–BatsBZX–2016–30) (the ''Winklevoss Order'') (describing lack of regulatory oversight for Gemini trading platform).

[18] The Fund's futures-based spot pricing methodology and use of EFP transactions are explained in greater detail below in ''Futures-Based Spot Price'' and ''EFP Transactions,'' respectively.

[19] BTC Contracts began trading on the CME Globex trading platform on December 15, 2017, and are cash-settled in U.S. dollars. MBT Contracts began trading on the CME Globex trading platform on May 3, 2021, under the ticker symbol ''MBT'' and are also cash-settled in U.S. dollars. For purposes of this filing, BTC Contracts and MBT Contracts may also be referred to, individually or collectively, as ''CME Bitcoin Futures Contracts.''

[20] The CME CF BRR aggregates the trade flow of major bitcoin spot platforms during a specific calculation window into a once-a-day reference rate of the U.S. dollar price of bitcoin.

[21] *See https://indexes.nasdaqomx.com/Index/Overview/NQBTCS.*

[22] As further explained below, the Administrator will employ a methodology based on the settlement

Continued

According to the Sponsor, the NQBTCS is designed to allow institutional investors to track the price of bitcoin by applying a rigorous methodology to trade data captured from cryptocurrency trading platforms that meet the eligibility criteria of the Nasdaq Crypto Index (''NCI''). The NQBTCS is calculated once every trading day by applying a publicly available rules-based pricing methodology to a diverse collection of pricing sources to provide an institutional-grade reference price for bitcoin.[23] The NQBTCS 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 NQBTCS settlement value is the Time Weighted Average Price (''TWAP'') calculated across the VWAPs for each minute in the settlement price window, which is between 2:50:00 and 3:00:00 p.m. New York time. 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.

According to the Sponsor, the NQBTCS 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: abnormal price penalties, abnormal volatility penalties, and abnormal volume penalties. These penalties are defined as adjustment factors to the weight of information from each trading platform that contributes pricing information based on the deviation of a trading platform's price, volatility, or volume from the median across all trading platforms. For example, if a core trading platform's price is 2.5 standard deviations away from the median price, its price penalty factor will be a ½.5 multiplier.

Finally, as a means of achieving the highest degrees of confidence in the reported volume, data is sourced only from ''core trading platforms'' that are screened, selected, and approved by the Nasdaq Crypto Index Oversight Committee (the ''NCIOC''). Core trading platforms must:

(1) Have strong forking controls;
(2) Have effective anti-money laundering controls;
(3) Have a reliable and transparent application programming interface that provides real-time and historical trading data;
(4) Charge fees for trading and structure trading incentives that do not interfere with the forces of supply and demand;
(5) Be licensed by a public independent governing body;
(6) Include surveillance for manipulative trading practices and erroneous transactions;
(7) Evidence a robust IT infrastructure;
(8) Demonstrate active capacity management;[24]
(9) Evidence cooperation with regulators and law enforcement; and
(10) Have a minimum market representation for trading volume.[25]

Additionally, the NCIOC conducts further diligence to assess a trading platform's eligibility and will consider additional criteria such as the trading platform's organizational and ownership structure, security history, and reputation. The list of existing core trading platforms will be recertified by the NCIOC at a minimum on an annual basis.

The Sponsor believes that the NQBTCS is a suitable Benchmark for the Fund for several reasons. First, it would provide reliable pricing for purposes of tracking the actual performance of bitcoin. Second, it is administered by a reputable index administrator that is not affiliated with the Sponsor or Fund,[26] which provides assurances of accountability and independence. Finally, the NQBTCS methodology is designed to resist potential price manipulation from unregulated bitcoin markets by applying the following safeguards:

(1) Strict eligibility criteria for the NCI core trading platforms from which the NQBTCS data is drawn;
(2) A diverse collection of trustworthy pricing sources to provide an institutional-grade reference price for bitcoin; and
(3) The use of adjustment factors to mitigate against the impact of any anomalous trading activity.

Futures-Based Spot Price

For purposes of calculating the Fund's NAV, the value of the bitcoin held by the Fund will be determined by the Administrator in good faith based on a ''Futures-Based Spot Price'' or ''FBSP'' methodology.[27] The Sponsor has selected this pricing approach to value the Fund's bitcoin because it insulates the calculation of the NAV of the Fund from data from unregulated bitcoin trading platforms.

According to the Sponsor, the FBSP methodology allows for the estimation of the spot price of bitcoin by utilizing only market data related to BTC Contracts[28] traded on the CME Bitcoin Futures Market (specifically, settlement prices and time to maturity for such futures contracts). The Administrator is thus able to calculate the Fund's NAV (as further described in ''Net Asset Value'' below) without relying on market data from unregulated bitcoin trading platforms. The Administrator will apply the FBSP methodology to estimate the price of spot bitcoin daily by using the daily settlement prices of BTC Contracts.

According to the Sponsor, the FBSP methodology is based on well-established academic research,[29]

prices of the CME Bitcoin Futures Contracts to determine the price of the Fund's spot bitcoin holdings for NAV calculation. The Sponsor believes that this approach enables the Fund to effectively track the Benchmark while also mitigating risks to investors stemming from exposure to unregulated trading platforms and the prices derived from them.

[23] *See https://indexes.nasdaqomx.com/docs/methodology_NCI.pdf.*

[24] According to NCI's methodology, to demonstrate active capacity management, core trading platforms must demonstrate that their platform's technical infrastructure is designed in such a way that it is capable of accommodating a sudden, significant increase in trade volume without impacting system functionality. *See id.* at 4.

[25] According to NCI's methodology, to compute a trading platform's market size, the NCIOC sums the U.S. Dollar (''USD'') volume of all eligible digital asset—USD pairs for the month of August each year. A core trading platform must have at least 0.05% of the total volume in eligible trading platforms. *See id.*

[26] 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 NQBTCS 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. NQBTCS is administered and governed by the NCIOC in accordance with the publicly available NCI methodology. The NCIOC oversees all aspects of the administration of the NQBTCS, including the defined processes and controls for the selection and monitoring of third parties such as the core trading platforms and core custodians (see ''Custody of Bitcoin,'' *infra*), as well as the validation and reconciliation of index calculations and pricing data. The NCIOC 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.

[27] The FBSP is based on extensive academic research on forward yield curves and is further described in the Fund's Registration Statement.

[28] For the calculation of FBSP, the Administrator considers all listed BTC Contracts that have a daily settlement price published by the CME Bitcoin Futures Market on a given date. The Sponsor notes that, although BTC and MBT Contracts have the same settlement prices, the Administrator will only consider BTC Contracts when calculating the FBSP.

[29] *See, e.g.,* Nelson, Charles R., and Andrew F. Siegel, ''Parsimonious modeling of yield curves.''

particularly on the topic of term structure of interest rates. As discussed below, the Sponsor has tested the reliability of FBSP-derived prices by comparing them to historical samples of various benchmarks for the prices of physical bitcoin. The Sponsor believes that the FBSP-derived prices very closely adhere to such benchmarks and that the FBSP methodology can fairly price bitcoin while seeking to protect the Fund's NAV from short-term distortions that may arise due to fraud or manipulation attempts by bad actors trading on unregulated trading platforms.

The calculations underlying the FBSP methodology utilize well-understood and simple-to-implement mathematical and statistical techniques, such as multivariate linear regressions and arithmetic operations. The detailed methodology is described in the Fund's Registration Statement and will also be published on the Fund's website (*https://hashdex-etfs.com/*), along with all inputs necessary to replicate the calculation. In the event of any modifications to the FBSP methodology, the Fund will issue a press release notifying the investing public of such change and the date of the change's effectiveness, which press release will be filed with the Commission under a current report on Form 8–K by the Fund, and, with respect changes to the FBSP methodology as described in this filing, file a proposed rule change under Section 19(b) with the Commission.

The FBSP methodology involves calculating a parametric forward curve [30] into prevailing prices for actual BTC Contracts. The parametric forward curve can then be used to derive the spot price of bitcoin by calculating the price to the point of immediate settlement (*i.e.,* setting the BTC Contracts' time to maturity to zero). This process results in a set of calculated weights that are applied to the price of each actual BTC Contract included in the forward curve. The weights are calculated daily and are dependent solely on the number of calendar days until maturity of each active BTC Contract.[31] The spot price for bitcoin derived from FBSP is, in turn, calculated by multiplying each price by its applicable weight and then summing all terms:

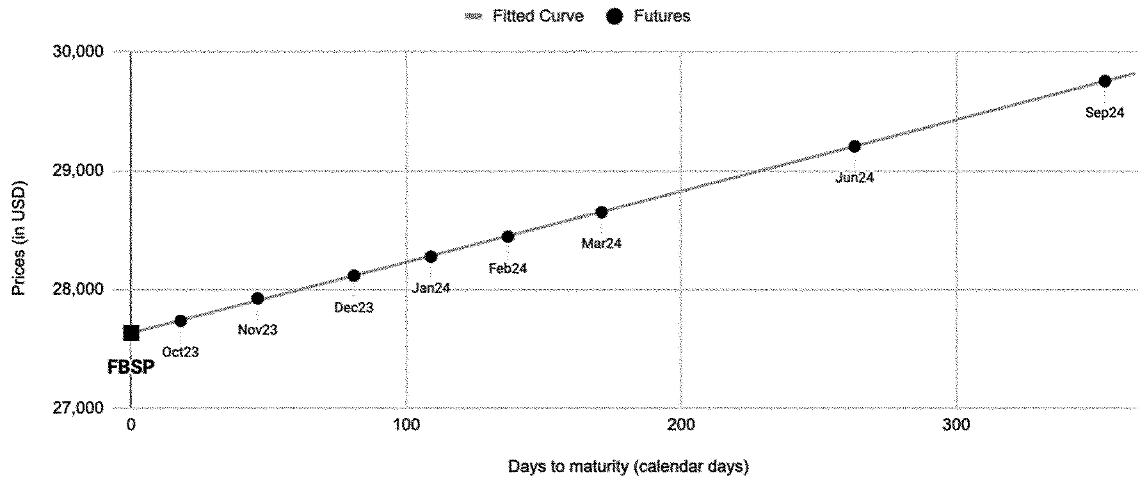
$$FBSP = \Sigma W_i * SP_i$$

where

W_i is the weight and

SP_i is the settlement price of each BTC Contract.

The chart below visually illustrates the CME Bitcoin Futures Market's forward curve and how the FBSP is determined for a specific date (October 9, 2023). Each dot represents the settlement price of a specific CME Bitcoin Futures Contract. The line represents the calculated (fitted) forward curve. The dots align closely with the fitted curve line, meaning that the curve accurately tracks the settlement prices of the BTC Contracts. The square is a point on the curve corresponding to a zero-day maturity, representing the spot price for bitcoin for that date.



The table below demonstrates the FBSP calculation for the same specific day.

FBSP ON 10/09/2023

Future	Weight (W) (%)	Settlement price (SP)	Productivity (W x SP)
Oct23	122.10	$27,735.00	$33,864.44
Nov23	−0.70	27,925.00	−$195.48

Journal of Business (1987), available at: *https://www.researchgate.net/publication/24103017_Parsimonious_Modeling_of_Yield_Curves;* Svensson, Lars E.O., "Estimating and Interpreting Forward Interest Rates: Sweden 1992–1994." (September 1994), IMF Working Paper No. 94/114, available at: *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=883856.*

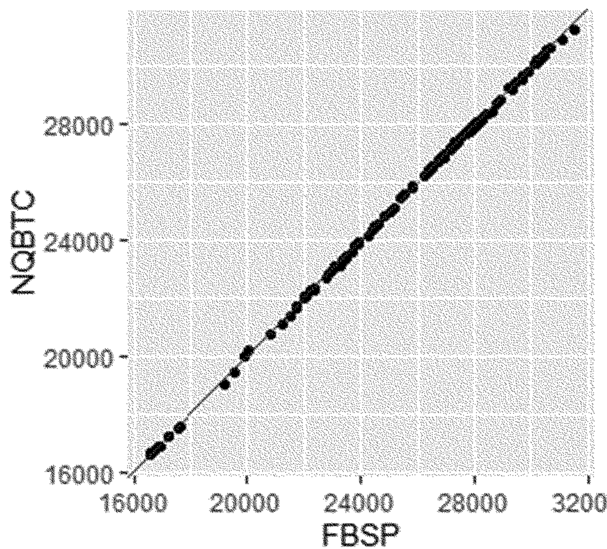
[30] The forward curve of bitcoin futures contracts is the plot of the prices of individual futures contracts against their respective time to maturity. A parametric forward curve is a mathematical function that produces a price for a futures contract for any maturity, which can be used to generate a theoretical estimate of a futures price for a maturity that does not have contracts negotiated, including a spot price, by setting the time to maturity to zero.

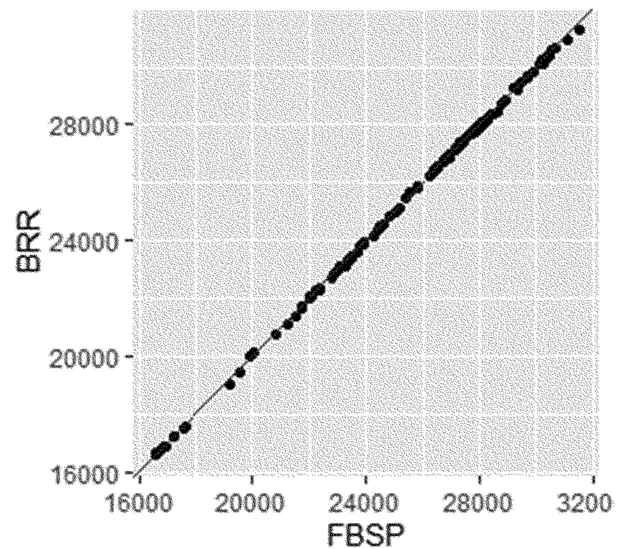
[31] The Sponsor will make these weights publicly available on the Fund's website daily, such that any third party can replicate the calculation.

FBSP ON 10/09/2023—Continued

Future	Weight (W) (%)	Settlement price (SP)	Productivity (W x SP)
Dec23	−6.70	28,115.00	−$1,883.71
Jan24	−5.9	28,275.00	−$1,668.23
Feb24	−4.90	28,445.00	−$1,393.81
Mar24	−3.70	28,650.00	−$1,060.05
Jun24	−1.50	29,205.00	−$438.08
Sep24	−0.30	29,755.00	−$89.27
Dec24	0.50	30,305.00	$151.53
Mar25	1.10	30,860.00	$339.46
FBSP			$27,626.82
NQBTC			$27,619.94
Divergence (%)			0.02%

Using data available on Bloomberg on July 10, 2023, the Sponsor compared FBSP to NQBTCS and CME CF BRR from December 27, 2022 to July 7, 2023 and concluded that FBSP tracks both indexes with satisfactory accuracy. The following charts show a direct comparison between those two benchmark values and FBSP:





In the above charts, each point indicates one day, and their proximity to the line shows how similar FBSP is to each of NQBTCS and CME CF BRR. The correlations between FBSP and each of NQBTCS and CME CF BRR exceed 99.9%, and the mean absolute percentage divergences are 21 basis points (''bps,'' where 1bp = 0.01%) and 22bps, respectively, while the median absolute percentage divergences are 18bps and 17bps, respectively.

The Sponsor believes that this data strongly suggests that FBSP is a suitable choice for NAV calculation purposes.

Mitigation of Manipulation Risks Through Use of the FBSP for NAV Calculation

While the Commission has raised valid concerns about the potential influence of unregulated bitcoin markets on the daily settlement price of the CME Bitcoin Futures Market, the Sponsor believes that the proposed use of FBSP to calculate the value of the bitcoin held by the Fund for purposes of NAV calculation provides a significant and sufficient degree of insulation from such influences, for the following reasons:

1. *Regulated market influence:* The daily settlement price of CME Bitcoin Futures Contracts, which is the basis for the NAV calculation of both futures contracts and bitcoin holdings of the Fund, is primarily influenced by trading activity within the regulated futures market itself. This market is subject to stringent oversight and surveillance mechanisms designed to detect and deter manipulative and fraudulent practices, thus significantly limiting the possible influence of unregulated bitcoin markets on the daily settlement price.

2. *High liquidity and volume:* The CME Bitcoin Futures Market is characterized by high liquidity and trading volume, such that any attempt to influence the price calculated by the FBSP through trading activity in other, unregulated bitcoin markets would require a significant amount of capital and coordination. The Sponsor thus believes that any such manipulation attempts would be readily detectable by the CME's market surveillance.

3. *Complex pricing methodology:* The NAV calculation methodology is comprehensive and accounts for both the tenor and final settlement price of each futures contract. In addition, the FBSP method used in the NAV calculation process incorporates all maturities of BTC Contracts, which exhibit a robust price relationship among themselves. As a result, attempting to manipulate these prices in a coordinated manner to generate a substantial impact on NAV would be very challenging for potential manipulators and likely financially

unfeasible. The Sponsor thus believes that the complexity of the methodology provides an additional layer of protection against manipulation, as it would be extremely difficult for a manipulator to influence all these factors in a coordinated way to impact the Fund's NAV without leaving a detectable trail that would alert market surveillance.

4. *Focus on near-term contracts:* The FBSP methodology gives more importance to futures contracts that are due for settlement in the near term because such contracts are more heavily traded, and their prices are more reliable indicators of the current spot price of bitcoin. The Sponsor believes that the methodology's focus on near-term contracts further reduces the potential for manipulation, as these contracts are less susceptible to manipulation due to their higher trading volumes and liquidity.

As detailed above, the Sponsor's proposed investment strategy ensures that no unregulated spot bitcoin trading platform could be considered a ''market of relevant size'' in relation to the Fund, given that the Fund does not rely on any information or services coming from unregulated markets. All of the Fund's operations, including the purchase and sale of bitcoin and its NAV determination, rely on CME Bitcoin Futures Contracts on the CME Bitcoin Futures Market. Thus, all of the Fund's transactions, whether in CME Bitcoin Futures Contracts or physical bitcoin, are registered and monitored on a regulated exchange, providing an additional layer of security and transparency. Because any attempt to manipulate the Fund would require significant trading on the CME Bitcoin Futures Market, and not on any unregulated bitcoin trading platform, there is significantly reduced potential for manipulation and fraud, further protecting investors and maintaining the integrity of the market.

The Sponsor also believes that it is highly unlikely that a person attempting to manipulate the NAV of the Fund could do so successfully by trading on unregulated spot and derivatives markets. Because of direct arbitrage, it is reasonable to assume that the ETP's market price (in the secondary market) would closely adhere to the Fund's Indicative Fund Value (''IFV''),[32] given that APs can always create and redeem shares of the Fund hedging with a basket of CME Bitcoin Futures Contracts and the value of the creation basket is determined based on the NAV of the Fund, which in turn is calculated using the FBSP method based on such basket of CME Bitcoin Futures Contracts. Consequently, the likelihood that a potential manipulator of the ETP could succeed by exclusively trading in unregulated bitcoin markets would depend on how much the prices in these markets have an impact over CME Bitcoin Futures Contracts prices. The likelihood that a potential manipulator would undertake such an effort is also low when considering the financial burden of manipulating the unregulated markets and the overall expected profitability of any such manipulation.

To further assess such likelihood, the Sponsor carried out the following analysis to investigate the relationship between prices from relevant unregulated bitcoin markets and the prices of CME Bitcoin Futures Contracts, to assess the impact that a manipulation on those markets would have on the CME Bitcoin Futures Market. The Sponsor collected one-minute bars data between January 18, 2023 and July 26, 2023 [33] of prices for the nearest CME Bitcoin Futures Contract (''Nearest CME Futures'') and the following alternative bitcoin prices (''ABP''): (1) bitcoin (in USD) on each of NQBTCS's core trading platforms,[34] (2) bitcoin (in Tether stablecoin (USDT)), and (3) BTCUSDT USDs-Margined Perpetuals on Binance. For each day and each ABP, a simple regression model was estimated with one-minute Nearest CME Futures log-returns as the dependent variable, and two independent variables: (1) the log Nearest CME Futures closing price of the previous minute (as a control variable) and (2) the difference between the ABP log return and the Nearest CME Futures log return in the previous minute (as the variable of interest).

The estimated coefficients associated with the variable of interest are a measure of the expected response from the Nearest CME Futures (as measured by its returns) to a divergence between its own return information and the one from ABP in the near past (one-minute lagged returns). Such divergences are expected to occur in cases of manipulation. A higher coefficient (closer to one) would indicate that Nearest CME Futures are more sensitive to and strongly influenced by the divergence, while a lower coefficient (closer to zero) would suggest that Nearest CME Futures are less responsive and not significantly influenced by the information coming from ABP. The Sponsor believes that these coefficients can be considered a conservative estimate of the real impact that manipulation in an ABP would have over the Nearest CME Futures price because the estimates are calculated under normal circumstances rather than under a manipulative attack, in which some other indicators, such as abnormal volume and volatility, would warn market participants and undermine their perception of the attacked ABP as a reliable price reference.

The results of the Sponsor's analysis are summarized in the table below: [35]

	Estimated Parameters				Market Depth	
ABP	Average	1st Decile	Median	9th Decile	+2% Depth	-2% Depth
Coinbase (spot USD)	0.39	0.21	0.41	0.53	$10,317,109	$17,320,315
Binance (spot USDT)	0.36	0.15	0.38	0.52	$17,523,531	$42,136,404
Kraken (spot USD)	0.22	0.03	0.23	0.40	$28,189,731	$30,375,259
Bitstamp (spot USD)	0.17	0.03	0.18	0.33	$5,083,934	$4,831,827
Gemini (spot USD)	0.15	-0.01	0.16	0.30		
ItBit (spot USD)	0.08	-0.07	0.07	0.23		
Binance (perpetual USDT)	0.01	-0.07	0.00	0.09		

[32] The IFV, as further discussed in the ''Indicative Fund Value'' section below, is based on the prior day's closing NAV per Share and updated to reflect changes in the Fund's holdings value during the trading day.

[33] This date range represents days with intraday data available on Bloomberg as of July 27, 2023. Days with less than 40 observations for a given ABP were excluded from the analysis of such ABP.

[34] The core trading platforms as of December 31, 2023 were BitStamp, Coinbase, Gemini, itBit, and Kraken.

[35] The market depth information was obtained from CoinMarketCap on July 19, 2023. The ABPs with blank cells in this table were not included in the July 19, 2023 snapshot.

The Sponsor's analysis suggests that the influence of ABP over the Nearest CME Futures prices is relatively low. For instance, if a would-be manipulator chose to attack Coinbase, which is an ABP with higher coefficients and thus higher potential to impact Nearest CME Futures, the average coefficient of 0.39 means that in order to manipulate Nearest CME Futures prices by 1%, the would-be manipulator would have to distort Coinbase prices by more than 2.5% (*i.e.,* 1% divided by 0.39) on average. To be successful with 90% confidence (1st Decile), this manipulator would have to distort Coinbase prices by more than 4.7% (1% divided by 0.21). The Sponsor believes that its analysis supports that, even considering these conservative estimates, indirect manipulation would be extremely inefficient.

The market depth columns in the above table indicate that substantial financial resources, running into tens of millions of dollars, are present on both sides of the order book for the most influential ABPs (even without including hidden orders, bots, and arbitrageurs that effectively enhance liquidity). The considerable financial commitment that would be required makes the manipulation of these prices an expensive endeavor.

The Sponsor believes that its analysis demonstrates that the low efficiency of attempts to manipulate ABPs, coupled with the significant cost involved in influencing impactful ABPs, makes potential manipulation of spot bitcoin markets an unattractive proposition, and that it is therefore highly unlikely that a potential manipulator of the ETP could succeed by exclusively trading in unregulated bitcoin markets. The combination of the high costs and the inefficiencies associated with manipulation makes it a daunting and unprofitable venture.

The Sponsor acknowledges the potential for influence from trades settled in unregulated bitcoin markets. However, the Sponsor believes that the NAV calculation methodology, coupled with the inherent characteristics of the CME Bitcoin Futures Market, provides a significant degree of protection against such influence being deliberately used to manipulate the Fund's market price or NAV. The Sponsor believes that any such attempt at manipulation very likely would be detected by CME market surveillance.

EFP Transactions

According to the Sponsor, an EFP transaction, also known as an Exchange for Related Position (''EFRP'') transaction,[36] is a type of trade that is available for most CME futures contracts. An EFP trade is a composite transaction that involves the opening of a position in the futures market and the execution of an inverse trade in the underlying physical asset. An EFP trade closes with a physical delivery against a cash settlement.

Because EFP trades require the parties to the transaction to simultaneously trade the futures and the physical legs of the transaction, the futures leg of an EFP trade is not executed at the CME's central limit order book. Rather, an EFP is a CME-regulated, bilaterally negotiated block trade, in which both parties engage in both legs of the composite transaction.

According to the Sponsor, the Fund seeks to use EFP transactions to gain exposure to spot bitcoin for the following reasons:

(1) EFP transactions are reported through the CME Bitcoin Futures Market, which is a regulated market and the relevant regulated market for the Fund for the purposes of the test specified in the Winklevoss Order.

(2) EFP transactions are subject to the CME's market surveillance program, which helps deter and investigate fraudulent and manipulative misconduct.

(3) EFP transactions will allow the Fund to gain efficient and regular exposure to physical bitcoin without relying on unregulated bitcoin markets for any purpose, including its creation and redemption processes.

When the Sponsor intends to increase the Fund's bitcoin holdings, the Fund will participate in an EFP transaction to sell futures contracts and buy physical bitcoin, while the liquidity provider (''LP'') participating in such transaction will buy futures contracts and sell physical bitcoin.[37] Similarly, when the Sponsor seeks to decrease the Fund's bitcoin holdings, the Fund will participate in an EFP transaction to buy futures contracts and sell physical bitcoin, while the LP on the other side of the transaction will sell futures contracts and buy physical bitcoin.

The most well-established means for buying and selling physical bitcoin in large quantities is through the use of simple cash-for-asset OTC transactions with an LP, such as several market makers active in U.S. capital markets. The Sponsor believes that a key benefit of EFP transactions is that they allow for an OTC transaction to be conducted under the regulatory oversight of the CME.

According to the Sponsor, the Fund will exclusively use CME Bitcoin Futures Market's EFP transactions to purchase and sell its physical bitcoin. Therefore, all trading of the Fund's non-cash (or cash equivalents) assets (*i.e.,* CME Bitcoin Futures Contracts and physical bitcoin) will take place through the CME Bitcoin Futures Market, and the CME Bitcoin Futures Market will be the relevant regulated market for the Fund. Because NYSE Arca and CME are both members of the Intermarket Surveillance Group (''ISG''), information shared by CME with NYSE Arca can be used to assist in detecting and deterring fraudulent or manipulative misconduct.

EFP Transactions Through the CME Bitcoin Futures Market

All EFP trades have two legs: a futures leg and a physical leg. In the futures leg of an EFP Transaction through the CME Bitcoin Futures Market, party A sells CME Bitcoin Futures Contracts to party B for a given price.[38] In the physical leg of the same transaction, party A buys physical bitcoins sold by party B by delivering cash consideration for those bitcoins to party B.

When two parties agree to perform a CME Bitcoin Futures Market EFP trade,[39] they must agree on the following terms:

(1) The contract (maturity) that will be used in the futures leg of the trade;

(2) The number of futures contracts in the futures leg of the trade;

(3) The price of the futures contract in the futures leg of the trade;

[36] *See https://www.cmegroup.com/clearing/operations-and-deliveries/accepted-trade-types/efp-efr-eoo-trades.html.* The terms ''EFP'' and ''EFRP'' are used interchangeably for purposes of this filing.

[37] The LPs with which the Fund will engage in bitcoin transactions are third parties that are not affiliated with the Fund and Sponsor and are not acting as agents of the Fund, Sponsor, or AP, and all transactions will be done on an arms-length basis. There is no contractual relationship between the Fund, the Sponsor, or the LP. When seeking to sell bitcoin on behalf of the Fund, the Sponsor will seek to sell bitcoin at commercially reasonable prices and terms to any of the approved LPs. Once agreed upon, the transaction will generally occur on an ''over-the-counter'' basis.

[38] In practice, both parties will simply enter open futures positions on the CME Bitcoin Futures Market (party A will open a short position and party B will open a long position). Both positions will have the exact same size and will be opened at the same price. The CME allows EFP transactions to be executed at a mutually agreed price, but it requires that such price be commercially reasonable. CME's EFRP rules establish that if prices deviate excessively from prevailing market levels, counterparties to the trade may be required to demonstrate that such deviant prices are indeed legitimate. *See* CME Rule 538.F; note 44, *infra.*

[39] *See https://www.cmegroup.com/education/articles-and-reports/bitcoin-futures-exchange-for-physical-transactions.html.*

(4) The quantity of physical bitcoins in the physical leg of the trade (where the amount of bitcoin traded must be approximately equivalent to the notional amount of the futures contracts traded); [40]

(5) The basis spread,[41] which is used to determine the price per bitcoin for the cash payment in the physical leg of the EFP trade.

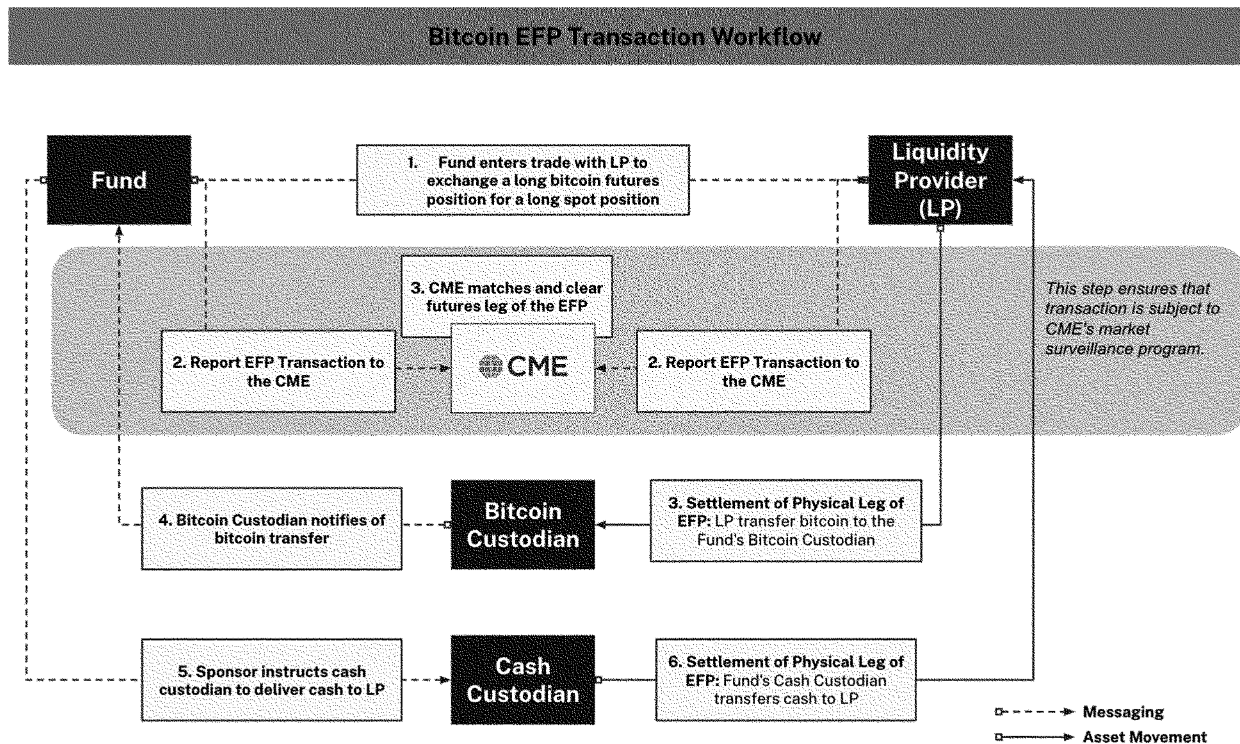
After both parties agree to the terms of an EFP trade, they report the trade details to the CME. The futures leg of the EFP transaction is cleared by CME Clearing. The two parties to the EFP trade are responsible for bilaterally clearing the physical leg of the transaction.

The Fund's Use of EFP Transactions

According to the Sponsor, the Fund will, under normal market conditions, frequently increase or decrease its holdings of physical bitcoin as Shares are created and redeemed. As noted above, the Fund will acquire and dispose of physical bitcoin only through EFP transactions through the CME Bitcoin Futures Market, which take place under the regulatory oversight of the CME, a CFTC-regulated market.

Pursuant to the Fund's investment objectives, when the Sponsor decides to increase or decrease its holdings of physical bitcoin, it will cause the Fund to execute an EFP trade with an LP. The Fund and the LP will simultaneously exchange a futures position for a corresponding, economically offsetting position in physical bitcoin.

The diagram below illustrates the steps in the execution of a typical EFP trade by the Fund to acquire spot bitcoin in exchange for CME Bitcoin Futures Contracts.



To provide a more concrete example of an EFP transaction that the Fund would undertake to acquire spot bitcoin, assume that the Fund needs to buy 50 bitcoins in exchange for 10 units of the next maturity of BTC Contracts.[42] The Sponsor will select [43] an LP that it believes will provide the best execution opportunity for the proposed EFP trade. The LP will provide bid/ask quotes for the EFP transaction as a basis spread against the settlement price of the BTC Contract to determine the price of the physical bitcoin that will be exchanged in the physical leg of the EFP. Then, assume that the Sponsor determines that the best option for the Fund is a bid of +25 bps. Assuming that the daily settlement price of the relevant BTC Contract was $26,060, the price for the physical leg of the EFP transaction agreed upon by the Fund and the LP is $25,995.01. Upon completion of the EFP transaction, the Fund and the LP will have different positions, but the same financial exposure:

• Before the transaction, the Fund was long 10 BTC Contracts; after the transaction, it has converted this exposure into 50 physical bitcoins.

[40] In practice, the quantity of bitcoins in both the futures leg and in the physical leg of a CME Bitcoin Futures Market EFP trade are likely to be exactly the same.

[41] "Basis spread" refers to the difference in price between two related financial instruments. In the context of an EFP transaction, the basis spread is the difference between the futures contract price and the spot price of the underlying bitcoin. This spread is crucial in determining the amount of cash payment in the physical leg of the EFP transaction, essentially setting the price per bitcoin based on the prevailing market conditions in the futures and spot markets.

[42] As detailed above, one BTC Contract represents five bitcoins.

[43] As described in the Fund's Registration Statement, the Sponsor will conduct a Request-for-Quote auction with one or more previously identified LPs to determine the best price on the requested quantity for the proposed EFP transaction. The LPs of the Fund are screened, selected, and approved by the Sponsor and should satisfy, at minimum, the following criteria: (1) Be licensed as a Money Service Business by the Financial Crimes Enforcement Network; (2) Registered with the CFTC and a member of the NFA or otherwise comply with applicable CFTC requirements governing eligibility to transact in bitcoin EFPs; (3) Have anti-money laundering and combating the financing of terrorism policies in place and be compliant with Financial Action Task Force guidance; (4) Have cybersecurity, disaster recovery and business continuity, and third-party service provider management policies.

• Before the transaction, the LP had 50 bitcoins; after the transaction, it holds an equivalent position long in 10 BTC Contracts.

The table below illustrates the steps in this EFP transaction:

Steps	LP	Fund
1. Starting point	50 bitcoin	10 BTC Contracts.
2. EFP transaction is negotiated between the LP and the Fund	The LP and the Fund agree to terms of the EFP, namely: • Fund sells/LP buys 10 BTC Contracts at $26,000. • Fund buys/LP sells 50 bitcoins at $25,995.01 (basis spread of +25bps).	
3. LP sends bitcoin to the Fund	−50 bitcoins	+50 bitcoins.
4. The EFP transaction is reported to CME and the LP assumes the long position in 10 BTC Contracts.	+10 BTC Contracts	−10 BTC Contracts.
5. Final position	10 BTC Contracts	50 bitcoins.

EFP transactions must be submitted to the CME ''as soon as possible, but no later than the end of the business day on which the EFRP was executed.'' [44] The relevant terms reported to the CME are: [45]

(1) The type of the EFRP (which, for the Fund, will be the CME Bitcoin Futures Market EFP);

(2) The date and time of the trade (*i.e.,* the time when agreement was reached on the prices and quantities of the transaction);

(3) The price and quantity of the CME contract (which, for the Fund, will be the CME Bitcoin Futures Contracts); and

(4) The price and quantity of the corresponding related position (which, for the Fund, will be physical bitcoin).

Mitigation of Manipulation Risks Through Use of EFP Transactions

The Sponsor believes that EFP transactions help protect against fraud and manipulation because they allow exchanges that share surveillance information with CME to investigate suspicious behavior by market participants. In addition, the Sponsor believes that regulatory requirements pursuant to CME Rule 538 [46] pertaining to EFP transactions significantly increase the likelihood that fraud and manipulation will be detected and deterred. These regulatory requirements include:

• *Pricing of EFPs:* Section 538.F (''Prices and Price Increments'') states that while parties to an EFP transaction have discretion to mutually agree on a price, EFPs ''may not be priced to facilitate the transfer of funds between parties for any purpose other than as the consequence of legitimate commercial activity.'' [47]

• *Reporting:* Section 538.I (''Submission to the Clearing House'') states that parties engaging in an EFP transaction must report each transaction to CME Clearing within the time period and manner specified by the CME.[48] EFP transaction volumes are also required to be reported to the CME with the daily large trader positions by each clearing member, omnibus account, and foreign broker.

• *Recordkeeping:* Section 538.H (''Recordkeeping'') states that ''parties to an [EFP] transaction must maintain all records relevant to the [futures] contract and the related position transaction.'' [49]

The FAQs relating to CME Rule 538 also state that parties to an EFRP, along with their clearing members, are subject to CME jurisdiction and may be required to produce records and cooperate fully with any investigation.[50]

The Sponsor believes that EFP transactions between the Fund and an LP to trade physical bitcoin are significantly less susceptible to fraud or manipulation because they are subject to a range of CME regulatory requirements regarding pricing, reporting, surveillance, and recordkeeping, as discussed above. Further, EFP transactions are entered into only by CFTC-regulated futures commission merchants and occur through the CME Bitcoin Futures Market, which is a CFTC-regulated market with processes in place to prevent market manipulation, including the monitoring of transaction prices and the investigation of potential manipulations.

According to the Sponsor, the ability of participants to undertake EFP transactions is determined exclusively by the liquidity of the CME Bitcoin Futures Market and by the liquidity of OTC markets for physical bitcoin, both of which are sufficiently large. The Sponsor understands that a significant number of LPs are prepared to execute bitcoin EFP transactions. The CME's website lists at least 15 LPs that have agreed to be listed as contacts for clients interested in executing block trades and EFP transactions.[51] The Sponsor has consulted with several such LPs and believes that those LPs could provide enough liquidity to support the Fund's demand for bitcoin when it incorporates physical bitcoin into its strategy. The Sponsor notes that several such LPs already have an ongoing commercial relationship with the Sponsor and/or Hashdex and are active participants in trading the CME Bitcoin Futures Markets, bitcoin, and bitcoin ETPs worldwide.

The Bitcoin and Bitcoin Futures Markets

According to the Registration Statement, bitcoin is a digital asset that serves as the unit of account on an open-source, decentralized, peer-to-peer

[44] *See https://www.cmegroup.com/rulebook/files/cme-group-Rule-538.pdf* at FAQ 23.

[45] *See id.* at FAQs 23, 24; Section 538.I.

[46] *See https://www.cmegroup.com/rulebook/files/cme-group-Rule-538.pdf.*

[47] EFRPs ''may not be priced off-market for the purpose of shifting substantial sums of cash from one party to another, to allocate gains and losses between the futures or options on futures and the cash or OTC derivative components of the EFRP, to evade taxes, to circumvent financial controls by disguising a firm's financial condition, or to accomplish some other unlawful purpose'' and ''EFRPs executed at off-market prices are more likely to be reviewed by Market Regulation to determine the purpose for the pricing.'' *See id.* at FAQ 11.

[48] *See id.* at FAQs 23, 24; Section 538.I.

[49] The types of records that must be maintained by parties to an EFP include: (1) All order tickets, trade blotters, emails, instant messages, telephone recordings or other records related to the order placement, negotiation, execution and/or confirmation of the EFRP. (2) All cash confirmations and signed contracts corresponding to the cash or derivative component of the EFRP. The documentation must contain all of the relevant terms of the transaction and counterparty information. (3) Third party proof of payment evidencing settlement and documentation representing the transfer of ownership of the commodity. (4) Futures account statement reflecting confirmation of the EFRP. (5) Records reflecting the booking of the cash or derivative transaction in the firm's internal bookkeeping systems. *See id.* at FAQ 19.

[50] *See id.* at FAQ 20.

[51] A list of the LPs is available at: *https://www.cmegroup.com/trading/bitcoin-brokers-and-block-liquidity-providers.html.*

computer network. It may be used to pay for goods and services, stored for future use, or converted to government-backed currency. As of the date of this prospectus, the adoption of bitcoin for these purposes has been limited. The value of bitcoin is not backed by any government, corporation, or other identified body.

The value of bitcoin depends on its supply (which is limited), and demand for bitcoin in the markets for exchange that have been organized to facilitate the trading of bitcoin. By design, the supply of bitcoin is intentionally limited to 21 million bitcoins. According to the Registration Statement, there are approximately 19 million bitcoins in circulation.

Bitcoin is maintained on a decentralized, open source, peer-to-peer computer network, the ''Bitcoin Network.'' No single entity owns or operates the Bitcoin Network. The Bitcoin Network is accessed through software and governs bitcoin's creation and movement. The source code for the Bitcoin Network, often referred to as the ''Bitcoin Protocol,'' is open-source, and anyone can contribute to its development.

The infrastructure of the Bitcoin Network is collectively maintained by various participants in the Bitcoin Network, which include miners, developers, and users. Miners validate transactions and provide security to the network, and are currently compensated for that service in bitcoin. Developers maintain and contribute updates to the Bitcoin Protocol. Users access the Bitcoin Network using open-source software. Anyone can be a user, developer, or miner.

Bitcoin is ''stored'' on a digital transaction ledger commonly known as a ''blockchain.'' A blockchain is a distributed database that is continuously updated and reconciled among certain users and is protected by cryptography. The bitcoin blockchain contains a complete record and history for each bitcoin transaction. New bitcoins are created through a process called ''mining.'' Miners use specialized computer software and hardware to solve a highly complex mathematical problem presented by the bitcoin Protocol. The first miner to successfully solve the problem is permitted to add a block of transactions to the bitcoin blockchain. The new block is then confirmed through acceptance by a majority of users who maintain versions of the blockchain on their individual computers. Miners that successfully add a block to the bitcoin blockchain are automatically rewarded with a fixed amount of bitcoin for their effort plus any transaction fees paid by transferors whose transactions are recorded in the block. This reward system is the means by which new bitcoin enters circulation and is the mechanism by which versions of the blockchain held by users on a decentralized network are kept in consensus.

The Bitcoin Protocol is an open-source project with no official company or group in control, and anyone can review the underlying code. There are, however, a number of individual developers that regularly contribute to a specific distribution of the bitcoin software known as the ''Bitcoin Core.'' Developers of the Bitcoin Core loosely oversee the development of the source code. There are many other compatible versions of the bitcoin software, but Bitcoin Core is the most widely adopted and currently provides the de facto standard for the Bitcoin Protocol. The core developers are able to access, and can alter, the Bitcoin Network source code and, as a result, they are responsible for quasi-official releases of updates and other changes to the Bitcoin Network's source code. However, because bitcoin has no central authority, the release of updates to the Bitcoin Network's source code by the core developers does not guarantee that the updates will be automatically adopted by the other purchasers. Users and miners must accept any changes made to the source code by downloading the proposed modification and that modification is effective only with respect to those bitcoin users and miners who choose to download it. As a practical matter, a modification to the source code becomes part of the Bitcoin Network only if it is accepted by purchasers that collectively have a majority of the processing power on the Bitcoin Network. If a modification is accepted by only a percentage of users and miners, a division will occur such that one network will run the pre-modification source code and the other network will run the modified source code. Such a division is known as a ''fork.''

The Sponsor notes that individual users, institutional investors and investment funds that want to provide exposure to bitcoin by investing directly in bitcoin, and therefore must transact in bitcoin, must use the Bitcoin Network to download specialized software referred to as a ''bitcoin wallet.'' This wallet may be used to send and receive bitcoin through users' unique ''bitcoin addresses.'' The amount of bitcoin associated with each bitcoin address, as well as each bitcoin transaction to or from such address, is captured on the blockchain. Bitcoin transactions are secured by cryptography known as public-private key cryptography, represented by the bitcoin addresses and digital signature in a transaction's data file. Each Bitcoin Network address, or wallet, is associated with a unique ''public key'' and ''private key'' pair, both of which are lengthy alphanumeric codes, derived together and possessing a unique relationship. The private key is a secret and must be kept in accordance with appropriate controls and procedures to ensure it is used only for legitimate and intended transactions. If an unauthorized third person learns of a user's private key, that third person could forge the user's digital signature and send the user's bitcoin to any arbitrary bitcoin address, thereby stealing the user's bitcoin. Similarly, if a user loses his private key and cannot restore such access (*e.g.,* through a backup), the user may permanently lose access to the bitcoin contained in the associated address.

The first rule filing proposing to list an exchange-traded product (''ETP'') to provide exposure to bitcoin in the U.S. was submitted by the Cboe BZX Exchange, Inc. on June 30, 2016.[52] At that time, blockchain technology, and digital assets that utilized it, were relatively new to the broader public. The market cap of all bitcoin in existence at that time was approximately $10 billion. No registered offering of digital asset securities or shares in an investment vehicle with exposure to bitcoin or any other cryptocurrency had yet been conducted, and the regulated infrastructure for conducting a digital asset securities offering had not begun to develop.[53] Similarly, regulated U.S. bitcoin futures contracts did not exist. The CFTC had determined that bitcoin is a commodity,[54] but had not engaged in significant enforcement actions in the space. The New York Department of

[52] *See* Winklevoss Order.

[53] Digital assets that are securities under U.S. law are referred to throughout this proposal as ''digital asset securities.'' All other digital assets, including bitcoin, are referred to interchangeably as ''cryptocurrencies'' or ''virtual currencies.'' The term ''digital assets'' refers to all digital assets, including both digital asset securities and cryptocurrencies, together.

[54] *See* ''In the Matter of Coinflip, Inc.'' (''Coinflip'') (CFTC Docket 15–29 (September 17, 2015)) (order instituting proceedings pursuant to Sections 6(c) and 6(d) of the CEA, making findings and imposing remedial sanctions), in which the CFTC stated: ''Section 1a(9) of the CEA defines 'commodity' to include, among other things, 'all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.' 7 U.S.C. 1a(9). The definition of a 'commodity' is broad. *See, e.g., Board of Trade of City of Chicago* v. *SEC,* 677 F.2d 1137, 1142 (7th Cir. 1982). Bitcoin and other virtual currencies are encompassed in the definition and properly defined as commodities.''

Financial Services (''NYDFS'') adopted its final BitLicense regulatory framework in 2015, but had only approved four entities to engage in activities relating to virtual currencies (whether through granting a BitLicense or a limited-purpose trust charter) as of June 30, 2016.[55] While the first over-the-counter bitcoin fund launched in 2013, public trading was limited and the fund had only $60 million in assets.[56] There were very few, if any, traditional financial institutions engaged in the space, whether through investment or providing services to digital asset companies. In January 2018, the Staff of the Commission noted in a letter to the Investment Company Institute and SIFMA that it was not aware, at that time, of a single custodian providing fund custodial services for digital assets.[57]

The digital assets financial ecosystem, including bitcoin, has progressed and matured significantly. The development of a regulated market for digital asset securities has significantly evolved, with market participants having conducted registered public offerings of both digital asset securities[58] and shares in investment vehicles holding bitcoin futures.[59] Additionally, licensed and regulated service providers have emerged to provide fund custodial services for digital assets, among other services. For example, in December 2020, the Commission issued a statement permitting certain special purpose broker-dealers to custody digital asset securities under Rule 15c3–3 under the Act.[60] In September 2020, the Staff of the Commission released a no-action letter permitting certain broker-dealers to operate a non-custodial Alternative Trading System (''ATS'') for digital asset securities, subject to specified conditions.[61] In October 2019, the Staff of the Commission granted temporary relief from the clearing agency registration requirement to an entity seeking to establish a securities clearance and settlement system based on distributed ledger technology;[62] and multiple transfer agents who provide services for digital asset securities have registered with the Commission.[63]'

As noted above, CME began offering trading in BTC Contracts in 2017, and in MBT Contracts in 2021. Each of the contracts' final cash settlement is based on the CME CF BRR.[64] The contracts trade and settle like other cash-settled commodity futures contracts. According to the Sponsor, trading in CME Bitcoin Futures Contracts has increased significantly in recent years, in particular with respect to BTC Contracts. Nearly every measurable metric related to BTC Contracts has trended consistently up since launch and/or accelerated upward in the past year, as the market recovered some of the ground lost since falling from the all-time high activity levels of end 2021. This general upward trend in trading volume and open interest is captured in the following chart.

[55] A list of virtual currency businesses that are entities regulated by the NYDFS is available on the NYDFS website. *See https://www.dfs.ny.gov/virtual_currency_businesses#:~:text=A%20business%20must%20obtain%20a,business%20in%20New%20York%20State.*

[56] *See* Bitcoin Investment Trust Form S–1, dated May 27, 2016, *available at: https://www.sec.gov/Archives/edgar/data/1588489/000095012316017801/filename1.htm* (data as of March 31, 2016 according to publicly available filings).

[57] *See* Letter from Dalia Blass, Director, Division of Investment Management, U.S. Securities and Exchange Commission to Paul Schott Stevens, President & CEO, Investment Company Institute and Timothy W. Cameron, Asset Management Group—Head, Securities Industry and Financial Markets Association (January 18, 2018), *available at: https://www.sec.gov/divisions/investment/noaction/2018/cryptocurrency-011818.htm.*

[58] *See* Prospectus Supplement filed pursuant to Rule 424(b)(1) for INX Tokens (Registration No. 333–233363), *available at: https://www.sec.gov/Archives/edgar/data/1725882/000121390020023202/ea125858-424b1_inxlimited.htm.*

[59] *See* Prospectus filed by Stone Ridge Trust VI on behalf of NYDIG Bitcoin Strategy Fund Registration, *available at: https://www.sec.gov/Archives/edgar/data/1764894/000119312519309942/d693146d497.htm.*

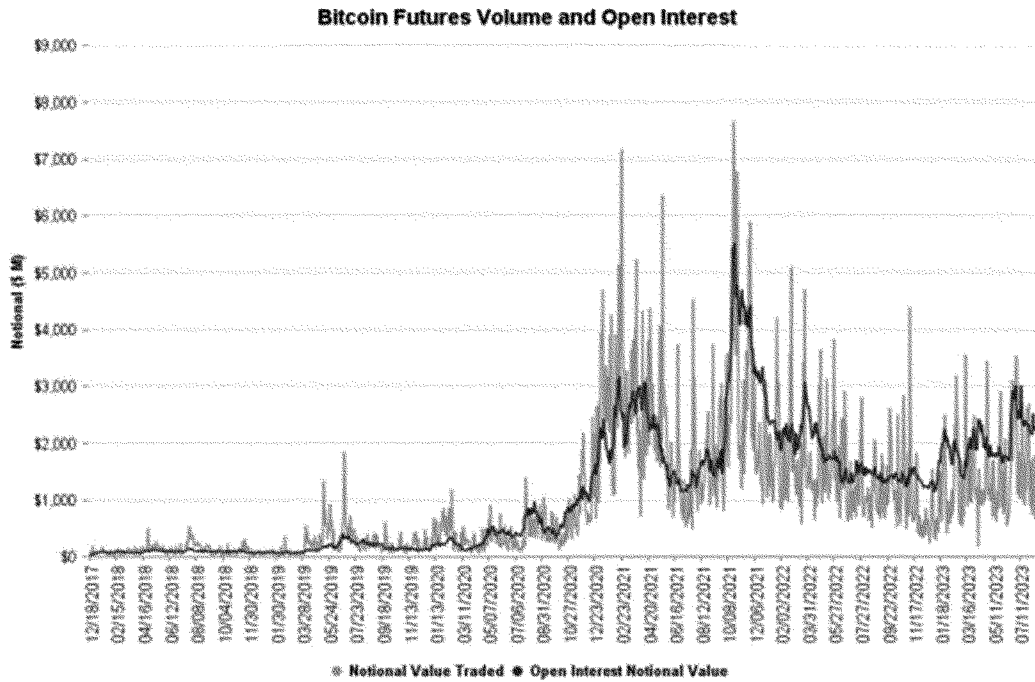
[60] *See* Securities Exchange Act Release No. 90788, 86 FR 11627 (February 26, 2021) (File Number S7–25–20) (Custody of Digital Asset Securities by Special Purpose Broker-Dealers).

[61] *See* Letter from Elizabeth Baird, Deputy Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Kris Dailey, Vice President, Risk Oversight & Operational Regulation, Financial Industry Regulatory Authority (September 25, 2020), *available at: https://www.sec.gov/divisions/marketreg/mr-noaction/2020/finra-ats-role-in-settlement-of-digital-asset-security-trades-09252020.pdf.*

[62] *See* Letter from Jeffrey S. Mooney, Associate Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Charles G. Cascarilla & Daniel M. Burstein, Paxos Trust Company, LLC (October 28, 2019), *available at: https://www.sec.gov/divisions/marketreg/mr-noaction/2019/paxos-trust-company-102819-17a.pdf.*

[63] *See, e.g.,* Form TA–1/A filed by Tokensoft Transfer Agent LLC (CIK: 0001794142) on January 8, 2021, *available at: https://www.sec.gov/Archives/edgar/data/1794142/000179414219000001/xslFTA1X01/primary_doc.xml.*

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



Similarly, the number of large open interest holders [65] has continued to increase even as the price of bitcoin has risen, as have the number of unique accounts trading CME Bitcoin Futures Contracts.

As it pertains specifically to the CME Bitcoin Futures Contracts (those in which the Fund will invest), the statistics are equally as profound. The following table sets forth the approximate daily notional average volume for the CME Bitcoin Futures Contracts, followed by the daily average volume for all of the CME Bitcoin Futures Contracts, the first to expire and the second to expire. With a daily notional average volume of $1.4 billion in 2023, trading volume in CME Bitcoin Futures Contracts is almost six times the 2019 volume and almost three times the volume in 2020. In addition, despite the bear market, the trading volume in 2023 has been resilient and slightly increasing compared to 2022.

	Daily notional average volume for CME bitcoin futures contracts (in $)	Average daily volume for CME bitcoin futures contracts	First-to-expire CME bitcoin futures contract	Second-to-expire CME bitcoin futures contract
2019	$242 million	6,365	5,400	700
2020	$523 million	8,782	7,100	1,300
2021	$2,379 million	10,035	7,300	2,100
2022	$1,426 million	10,735	8,200	2,100
2023	$1,413 million	10,775	8,400	1,900

Note: The 2023 data is for the period ending on August 31, 2023. Source: CME; Bloomberg.

Developments in the Bitcoin and Bitcoin Futures Markets

The regulatory landscape for bitcoin and bitcoin markets has changed significantly since 2016. The market for bitcoin grew approximately 100 times larger through 2021, reaching a market cap of $1.3 trillion at its all-time high. Although bitcoin's market cap is down to $500 billion (as of September 7, 2023), its market cap is greater than companies [66] such as Visa, Inc., Exxon Mobil Corporation, Walmart, Inc., and JP Morgan Chase & Co. The number of verified users at Coinbase, the largest U.S.-based bitcoin trading platform, has grown to over 110 million at the end of 2022, compared to 43 million at the end of 2020.[67] CFTC-regulated bitcoin futures represented approximately $42 billion in notional trading on the CME Bitcoin Futures Market in August 2023, compared to $3.9 billion, $28 billion, $60 billion, and $20 billion in total trading in December 2019, December 2020, December 2021, and December 2022 respectively. CFTC-regulated bitcoin futures represented $2.2 billion in open interest in August 2023, compared to $115 million, $1.29 billion, $3.27 billion, and $1.31 billion in December 2019, December 2020, December 2021, and December 2022 respectively.[68] The CFTC has exercised

[65] A large open interest holder in BTC Contracts is an entity that holds at least 25 contracts, which is the equivalent of 125 bitcoin. At a price of approximately $26,025 per bitcoin on 9/7/23, more than 110 firms had outstanding positions of greater than $3.25 million in BTC Contracts. Source: *https://www.theblock.co/data/crypto-markets/cme-cots/large-open-interest-holders-of-cme-bitcoin-futures.*

[66] *See https://coinmarketcap.com/largest-companies/.*

[67] *See* Coinbase 2022 10–K, *available at: https://s27.q4cdn.com/397450999/files/doc_financials/2022/q4/86fe25e0-342b-40fa-aacc-ea04faf322cb.pdf.*

[68] All statistics and charts included in this proposal with respect to the CME Bitcoin Futures

Continued

its regulatory jurisdiction in bringing a number of enforcement actions related to bitcoin and against trading platforms that offer cryptocurrency trading.[69] The U.S. Office of the Comptroller of the Currency (the ''OCC'') has made clear that federally-chartered banks are able to provide custody services for cryptocurrencies and other digital assets.[70] NYDFS has granted no fewer than thirty BitLicenses, including to established public payment companies like PayPal Holdings, Inc. and Square, Inc., and limited purpose trust charters to entities providing cryptocurrency custody services. The U.S. Treasury Financial Crimes Enforcement Network (''FinCEN'') has released extensive guidance regarding the applicability of the Bank Secrecy Act (''BSA'') and implementing regulations to virtual currency businesses,[71] and has proposed rules imposing requirements on entities subject to the BSA that are specific to the technological context of virtual currencies.[72] In addition, the Treasury's Office of Foreign Assets Control (''OFAC'') has brought enforcement actions over apparent violations of the sanctions laws in connection with the provision of wallet management services for digital assets.[73]

In addition to the regulatory developments noted above, more traditional financial market participants appear to be embracing cryptocurrency: large insurance companies,[74] investment banks,[75] asset managers,[76] credit card companies,[77] university endowments,[78] pension funds,[79] and even historically bitcoin skeptical fund managers [80] are allocating to bitcoin. The largest over-the-counter bitcoin fund previously filed a Form 10 registration statement, which the Staff of the Commission reviewed and which took effect automatically, and is now a reporting company.[81] Established companies like Tesla, Inc.,[82] MicroStrategy Incorporated,[83] and Square, Inc.,[84] among others, have recently announced substantial investments in bitcoin in amounts as large as $1.5 billion (Tesla) and $425 million (MicroStrategy).

The Sponsor maintains that despite these developments, access for U.S. retail investors to gain exposure to bitcoin via a transparent and regulated exchange-traded vehicle remains limited. As investors and advisors increasingly utilize ETPs to manage diversified portfolios (including equities, fixed income securities, commodities, and currencies) quickly, easily, relatively inexpensively, tax-efficiently, and without having to hold directly any of the underlying assets; options for bitcoin exposure for U.S. investors remain limited to: (i) investing in over-the-counter bitcoin funds (''OTC Bitcoin Funds'') that are subject to high premium/discount volatility (and high management fees) to the advantage of more sophisticated investors that are able to purchase shares at NAV directly with the issuing trust; (ii) investing in CFTC-regulated bitcoin futures exchange-traded funds (''ETFs'') that are subject to higher complexity and costs due to need for rolling the futures contracts; (iii) facing the technical risk, complexity, and generally high fees associated with buying and storing bitcoin directly; or (iv) purchasing shares of operating companies that they believe will provide proxy exposure to bitcoin with limited disclosure about the associated risks. Meanwhile, investors in many other countries, including Canada, are able to use more traditional exchange listed and traded products to gain exposure to bitcoin.[85]

Market are sourced from *https://www.cmegroup.com/trading/bitcoin-futures.html.* In addition, as further discussed below, the Sponsor believes the CME Bitcoin Futures Market represents a regulated market of significant size for purposes of addressing the Commission's concerns about potential manipulation of the bitcoin market.

[69] The CFTC's annual report for Fiscal Year 2020 (which ended on September 30, 2020) noted that the CFTC ''continued to aggressively prosecute misconduct involving digital assets that fit within the CEA's definition of commodity'' and ''brought a record setting seven cases involving digital assets.'' *See* CFTC FY2020 Division of Enforcement Annual Report, *available at: https://www.cftc.gov/media/5321/DOE_FY2020_AnnualReport_120120/download.* Additionally, the CFTC filed on October 1, 2020, a civil enforcement action against the owner/operators of the BitMEX trading platform, which was one of the largest bitcoin derivative trading platforms. *See* CFTC Release No. 8270–20 (October1, 2020), *available at: https://www.cftc.gov/PressRoom/PressReleases/8270-20.*

[70] *See* OCC News Release 2021–2 (January 4, 2021), *available at: https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-2.html.*

[71] *See* FinCEN Guidance FIN–2019–G001 (May 9, 2019) (Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies), *available at: https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf.*

[72] *See* U.S. Department of the Treasury Press Release: ''The Financial Crimes Enforcement Network Proposes Rule Aimed at Closing Anti-Money Laundering Regulatory Gaps for Certain Convertible Virtual Currency and Digital Asset Transactions'' (December 18, 2020), *available at: https://home.treasury.gov/news/press-releases/sm1216.*

[73] *See* U.S. Department of the Treasury Enforcement Release: ''OFAC Enters Into $98,830 Settlement with BitGo, Inc. for Apparent Violations of Multiple Sanctions Programs Related to Digital Currency Transactions'' (December 30,2020), *available at: https://home.treasury.gov/system/files/126/20201230_bitgo.pdf.*

[74] On December 10, 2020, Massachusetts Mutual Life Insurance Company (MassMutual) announced that it had purchased $100 million in bitcoin for its general investment account. *See* MassMutual Press Release ''Institutional Bitcoin provider NYDIG announces minority stake purchase by MassMutual'' (December 10, 2020), *available at: https://www.massmutual.com/about-us/news-and-press-releases/press-releases/2020/12/institutional-bitcoin-provider-nydig-announces-minority-stake-purchase-by-massmutual.*

[75] *See, e.g.,* ''Morgan Stanley to Offer Rich Clients Access to Bitcoin Funds'' (March 17, 2021) *available at: https://www.bloomberg.com/news/articles/2021-03-17/morgan-stanley-to-offer-rich-clients-access-to-bitcoin-funds.*

[76] *See, e.g.,* ''BlackRock's Rick Rieder says the world's largest asset manager has 'started to dabble' in Bitcoin'' (February 17, 2021), *available at: https://www.cnbc.com/2021/02/17/blackrock-has-started-to-dabble-in-bitcoin-says-rick-r ieder.html* and ''Guggenheim's Scott Minerd Says Bitcoin Should Be Worth $400,000'' (December 16, 2020), *available at: https://www.bloomberg.com/news/articles/2020-12-16/guggenheim-s-scott- minerd-says- bitcoin-should-be-worth-400-000.*

[77] *See, e.g.,* ''Visa Moves to Allow Payment Settlements Using Cryptocurrency'' (March 29, 2021), *available at: https://www.reuters.com/business/autos-transportation/exclusive-visa-moves-allow-payment-settlements-using-cryptocurrency-2021-03-29/.*

[78] *See, e.g.,* ''Harvard and Yale Endowments Among Those Reportedly Buying Crypto'' (January 25, 2021), *available at: https://www.bloomberg.com/news/articles/2021-01-26/harvard-and-yale-endowments-among-those-reportedly-buying-crypto.*

[79] *See, e.g.,* ''Virginia Police Department Reveals Why its Pension Fund is Betting on Bitcoin'' (February 14, 2019), *available at: https://finance.yahoo.com/news/virginia-police-department-reveals-why-194558505.html.*

[80] *See, e.g.,* ''Bridgewater: Our Thoughts on Bitcoin'' (January 28, 2021) *available at: https://www.bridgewater.com/research-and-insights/our-thoughts-on-bitcoin* and ''Paul Tudor Jones says he likes bitcoin even more now, rally still in the 'first inning''' (October 22, 2020), *available at: https://www.cnbc.com/2020/10/22/-paul-tudor-jones-says-he-likes-bitcoin-even-more-now-rally-still-in-the-first-inning.html.*

[81] *See* Letter from Division of Corporation Finance, Office of Real Estate & Construction to Barry E. Silbert, Chief Executive Officer, Grayscale Bitcoin Trust (January 31, 2020), *available at: https://www.sec.gov/Archives/edgar/data/1588489/000000000020000953/filename1.pdf.*

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

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

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

[85] Securities regulators in a number of other countries have either approved or otherwise allowed the listing and trading of bitcoin ETPs. Specifically, these funds (with their respective approximate AUMs as of April 14, 2021) include the Purpose Bitcoin ETF ($993,000,000), VanEck Vectors Bitcoin ETN ($209,000,000), WisdomTree Bitcoin ETP ($407,000,000), Bitcoin Tracker One ($1,380,000,000), BTCetc Bitcoin ETP ($1,410,000,000), 21Shares Bitcoin ETP ($362,000,000), 21Shares Bitcoin Suisse ETP ($30,000,000), CoinShares Physical Bitcoin ETP ($396,000,000).

For example, the Purpose Bitcoin ETF, a retail physical bitcoin ETP launched in Canada, reportedly reached $421.8 million in assets under management (''AUM'') in two days, and has achieved $993 million in assets as of April 14, 2021, demonstrating the demand for a North American market listed bitcoin ETP. The Sponsor believes that the demand for the Purpose Bitcoin ETF is driven primarily by investors' desire to have a regulated and accessible means of exposure to. The Purpose Bitcoin ETF also offers a class of units that is U.S. dollar bitcoin denominated, which could appeal to U.S. investors. Without an approved bitcoin ETP in the U.S. as a viable alternative, the Sponsor believes U.S. investors will seek to purchase these shares in order to get access to bitcoin exposure, leaving them without the protections of U.S. securities laws. Given the separate regulatory regime and the potential difficulties associated with any international litigation, such an arrangement would create more risk exposure for U.S. investors than they would otherwise have with a U.S. exchange listed ETP. With the addition of more bitcoin ETPs in non-U.S. jurisdictions expected to grow, the Sponsor anticipates that such risks will only continue to grow.

In addition, several funds registered under the Investment Company Act of 1940 (the ''1940 Act'') have effective registration statements that contemplate bitcoin exposure through a variety of means, including through investments in bitcoin futures contracts[86] and through OTC Bitcoin Funds.[87] In previous statements, the Staff of the Commission has acknowledged how such funds can satisfy their concerns regarding custody, valuation, and manipulation.[88] The funds that have already invested in bitcoin instruments have no reported issues regarding custody, valuation, or manipulation of the instruments held by these funds. While these funds do offer investors some means of exposure to bitcoin, the Sponsor believes the current offerings fall short of giving investors an accessible, regulated product that provides concentrated exposure to bitcoin and bitcoin prices.

Unregulated Exposure to Bitcoin and Investor Protection Concerns

The Sponsor notes that U.S. investor exposure to bitcoin through OTC Bitcoin Funds and other unregulated means has grown into the tens of billions of dollars. With that growth, so too has grown the potential risk to U.S. investors. Investor protection concerns persist, as OTC Bitcoin Funds and other unregulated means of exposure to bitcoin continue to attract investors despite the approval of bitcoin futures-based ETPs by the Commission. The Sponsor appreciates the Commission's previously articulated concerns about potential manipulation when an ETP holds actual bitcoin and believes that the Fund represents an opportunity for U.S. investors to gain price exposure to CME Bitcoin Futures Contracts and bitcoin in a regulated and transparent exchange-traded vehicle that mitigates those concerns through the use of CME Bitcoin Futures Contracts, applying futures-based pricing for spot bitcoin, and limiting the Fund's exposure to spot bitcoin to the CFTC-regulated EFP market. The Sponsor believes that the structure of the Fund accordingly limits risks by: (i) reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks associated with investing in operating companies that are imperfect proxies for bitcoin exposure; and (iv) avoiding regulatory concerns regarding valuation posed by ETFs and ETPs that invest directly in bitcoin rather than in CME Bitcoin Futures Contracts or bitcoin via EFP transactions on the regulated CME Bitcoin Futures Market, a CFTC-regulated exchange that meets regulatory standards that are not met by spot bitcoin trading platforms.

Custody of Bitcoin

According to the Registration Statement, institutional purchasers of bitcoin, including other bitcoin funds that provide exposure to bitcoin by investing directly in bitcoin, generally maintain their bitcoin account with a bitcoin custodian. Bitcoin custodians are financial institutions that have implemented a series of specialized security precautions, including holding bitcoin in ''cold storage,'' to try to ensure the safety of an account holder's bitcoin. These bitcoin custodians must carefully consider the design of the physical, operational, and cryptographic systems for secure storage of private keys in an effort to lower the risk of loss or theft, and many use a multi-factor security system under which actions by multiple individuals working together are required to access the private keys necessary to transfer such digital assets and ensure exclusive ownership.

The Fund's Bitcoin Custodian(s) will hold the Fund's bitcoin acquired via EFP transactions through the CME Bitcoin Futures Market and will be responsible for maintaining custody of the Fund's bitcoin assets.

The Fund's Bitcoin Custodian(s) must satisfy, at least, the ''core custodian'' requirements set forth by the NCIOC in the NCI methodology, including:[89]

1. Provide custody accounts whose holders are the legal beneficiaries of the assets held in the account. In case of bankruptcy or insolvency of a Bitcoin Custodian, creditors or the estate should have no rights to the Fund's assets.

2. Offer segregated accounts and store the Fund's bitcoin in separated individual accounts and not in omnibus accounts. The Fund's bitcoin will be held in segregated wallets and not commingled with the Bitcoin Custodian's or other customer assets.

3. Generate account-segregated private keys for digital assets using high entropy random number generation methods and employ advanced security practices.

4. Utilize technology for storing private keys in offline digital vaults and apply secure processes, such as private key segmentation, multi-signature authorization, and geographic distribution of stored assets, to limit access to private keys. The Bitcoin Custodian will use security technology for storing private keys aiming to avoid theft or misappropriation of assets due to online attacks, collusion of agents managing the storage services, or any other threat.

5. Have a comprehensive risk management policy and formalized framework of managing operational and custody risks, including a disaster recovery program that ensures continuity of operations in the event of a system failure. The Bitcoin Custodian will have a business continuity plan to help ensure continued access to the Fund's assets.

6. Have an insurance policy that covers, at least partially, risks such as the loss of Fund assets held in cold storage, including from employee collusion or fraud, physical loss including theft, damage of key material, security breach or hack, and fraudulent transfer.

7. Comply with higher standards of government oversight, external audits,

[86] *See, e.g.,* Stone Ridge Trust VI (File No. 333–234055); BlackRock Global Allocation Fund, Inc. (File No. 33–22462); and BlackRock Funds V (File No. 333–224371).

[87] *See, e.g.,* Amplify Transformational Data Sharing ETF (File No. 333–207937); and ARK Innovation ETF (File No. 333–191019).

[88] *See* Dalia Blass, ''Keynote Address—2019 ICI Securities Law Developments Conference'' (December 3, 2019), *available at: https://www.sec.gov/news/speech/blass-keynote-address-2019-ici-securities-law-developments-conference.*

[89] *See https://indexes.nasdaqomx.com/docs/methodology_nci.pdf.*

and security to safekeep asset ownership. The Bitcoin Custodian must be licensed or registered as a custodian by a reputable and independent governing body (*e.g.,* the New York State Department of Financial Services, or other state, national or international regulators), as can be ascertained by certain public data sources.

8. Provide third-party audit reports at least annually on operational and security processes. These audits may be completed by having a Systems and Organizational Control certification issued and are intended to provide reasonable assurance that the Bitcoin Custodian's operational processes and private key management controls are in accordance with the expected standards.

The Sponsor will cause the Trust to maintain ownership and control of the Fund's bitcoin in a manner consistent with good delivery requirements for spot commodity transactions.

The Structure and Operation of the Fund Satisfies Commission Requirements for Bitcoin-Based Exchange Traded Products

The Sponsor believes that the Fund's holding a combination of CME Bitcoin Futures Contracts, bitcoin, and cash could significantly mitigate the risk of market manipulation while still providing the market with a regulated product that tracks the actual price of bitcoin, creating a secure way for U.S. investors to gain exposure to bitcoin without having to rely on unregulated products, offshore regulated products, or indirect strategies such as investing in publicly traded companies that hold bitcoin.

In determining whether to approve listing and trading of new ETPs, the Commission conducts a thorough analysis to ensure the proposal is consistent with Section 6(b)(5) of the Act. Section 6(b)(5) of the Act mandates that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest. With respect to ETPs, the Commission often considers how the listing exchange would access necessary information to detect and deter market manipulation, illegal trading, and other abuses, which listing exchanges may accomplish by entering into a comprehensive surveillance-sharing agreement with other entities, such as the markets trading the ETP's underlying assets. Historically, for commodity-trust ETPs, there has always been at least one regulated market of significant size for trading futures on the underlying commodity—whether gold, silver, platinum, palladium, or copper. Then, the listing exchange would enter into surveillance-sharing agreements with, or hold ISG membership in common with, that regulated market.[90]

In the context of bitcoin, CME Bitcoin Futures Market is currently the only regulated market in the U.S.

The Commission has previously interpreted the terms ''significant market'' and ''market of significant size'' to include a market (or group of markets) where:

(1) There is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, such that a surveillance-sharing agreement would assist the ETP listing market in detecting and deterring misconduct; and

(2) It is unlikely that trading in the ETP would be the predominant influence on prices in that market.[91]

With respect to the first prong of the Commission's interpretation, the Commission has previously explained that the lead/lag relationship between the bitcoin futures market and the spot market is central to understanding this first prong. With respect to the second prong, the Commission's prior analysis has focused on the potential size and liquidity of the ETP compared to the size and liquidity of the market.

The Commission recognized in the Approval Order that ''the CME is a 'significant market' related to CME bitcoin futures contracts,'' and thus that the Exchange has entered into the requisite surveillance-sharing agreement with respect to its CME Bitcoin Futures Contracts holdings.[92] However, there is still a lack of consensus on whether the CME is of ''significant size'' in relation to the spot bitcoin market based on the test historically applied by the Commission.

Interrelationship Between the CME Bitcoin Futures Market and the Fund

The Commission has previously stated that ''the interpretation of the term market of significant size depends on the interrelationship between the market with which the listing exchange has a surveillance-sharing agreement and the proposed ETP.'' [93] The Sponsor intends to adopt an innovative approach to mitigate the risks of fraud and manipulation that are unique to the Fund. The core principle of this approach would be to structure the operation of the Fund such that the regulated market of significant size in relation to the Fund is the CME Bitcoin Futures Market because the Fund trades all of its non-cash assets through the CME Bitcoin Futures Market. Therefore, the Sponsor's strategy aims to establish a comprehensive interrelationship between the CME and the Fund so that the CME Bitcoin Futures Market is the market of significant size in relation to the Fund. The Sponsor notes that, although the Fund may, as proposed, hold bitcoin, it does not rely on any pricing or other information or services from unregulated bitcoin spot bitcoin trading platforms. Therefore, no spot bitcoin trading platform could be considered a ''market of relevant size'' in relation to the Fund.

The Sponsor has designed the Fund to have four novel features that underscore its significant interrelationship with the CME Bitcoin Futures Market:

1. Investment strategy: The Fund will only hold bitcoin, CME Bitcoin Futures Contracts, and cash and cash equivalents. Accordingly, the CME Bitcoin Futures Market is the only market on which the Fund's non-cash assets would trade and is therefore the ''significant market'' in relation to the Fund, as proposed.

2. Futures-based pricing for spot bitcoin: The price determination for bitcoin holdings in the NAV calculation will be derived from the CME's bitcoin futures curve.[94] As a result, the price of bitcoin holdings will depend solely on bitcoin futures settlement prices on the CME Bitcoin Futures Market and will not depend directly on price information from unregulated spot

[90] *See* Winklevoss Order; Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the Bitwise Bitcoin ETF Trust Under NYSE Arca Rule 8.201–E, Securities Exchange Act Release No. 87267 (Oct. 9, 2019), 84 FR 55382 at 55383, 55410 (Oct. 16, 2019) (SR–NYSEArca–2019–01) (the ''Bitwise Order''); Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, to Amend NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares) and to List and Trade Shares of the United States Bitcoin and Treasury Investment Trust Under NYSE Arca Rule 8.201–E, Securities Exchange Act Release No. 88284 (February 26, 2020), 85 FR 12595 at 12609 (March 3, 2020) (SR–NYSEArca–2019–39) (the ''Wilshire Phoenix Order'').

[91] *See, e.g.,* Winklevoss Order, 83 FR at 37594. The Commission further noted that ''[t]here could be other types of ''significant markets'' and ''markets of significant size,'' but this definition is an example that will provide guidance to market participants.'' *Id.*

[92] *See* Approval Order, 87 FR at 21678 and further discussion at 21678–81.

[93] *See* Securities Exchange Act Release No. 95180 (June 29, 2022), 87 FR 40299 at 40312 (July 6, 2022) (SR–NYSEArca–2021–90) (Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Shares of Grayscale Bitcoin Trust Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares)).

[94] The ''futures curve'' is a representation of the relationship between futures contract prices and their respective expiration dates.

bitcoin markets (as further discussed below).

3. Physical bitcoin purchases through the CME Bitcoin Futures Market: The Fund will solely use the CME Bitcoin Futures Market's EFP transactions to acquire and dispose of bitcoin, instead of transactions on unregulated spot bitcoin trading platforms. Accordingly, the only non-cash assets held by the Fund (CME Bitcoin Futures Contracts and bitcoin obtained from EFP transactions) would be traded, reported, and cleared through the CME Bitcoin Futures Market, such that CME and NYSE Arca can share information pursuant to their common ISG membership to detect and deter fraudulent or manipulative misconduct related to those assets.

4. Creations and redemptions: The Fund will use cash creations and redemptions [95] to deter intraday Share price manipulation that could originate from in-kind creation or redemption from bitcoin sourced in unregulated spot markets. Investment in bitcoin thus would not be directly related to creation/redemptions, but would instead be adjusted dynamically based on target portfolio exposure.[96] Trading for bitcoin could thus be accomplished in smaller sizes and at unpredictable times, reducing the risk of manipulation in the creation or redemption processes.

The Sponsor believes that these features of the Fund are designed to provide a robust framework for mitigating the risks of market manipulation, thereby protecting investors and maintaining the integrity of the market. The Sponsor further believes that, given these features of the Fund, the CME Bitcoin Futures Market should be considered the regulated market of significant size in relation to the Fund.

The Sponsor further believes that the proposed novel approach is in line with the first prong of the Commission's interpretation of the definition of ''regulated market of significant size'' as to the CME Bitcoin Futures Market because (i) the CME Bitcoin Futures Market is the only market where the Fund trades its non-cash assets,[97] and (ii) there is a reasonable likelihood that a person attempting to manipulate the Fund would also have to trade on the CME Bitcoin Futures Market to successfully manipulate the ETP (and, accordingly, CME's common ISG membership would aid NYSE Arca in detecting and deterring potential misconduct).

The Sponsor has designed its approach so that any attempt to manipulate the Fund would require trading on the CME Bitcoin Futures Market, for the following reasons:

1. Futures-based pricing for spot bitcoin: The price of the Fund's bitcoin holdings would be determined based on settlement prices of CME Bitcoin Futures Contracts for purposes of calculating NAV (as explained in the discussion of FBSP above). Accordingly, any attempt to manipulate the price of the Fund would require influencing the futures curve on the CME Bitcoin Futures Market because the spot price (which could be a target for manipulation) does not directly influence the price of the Fund. There is thus a direct lead/lag relationship in which CME Bitcoin Futures Market prices lead both the spot price used by the Fund to determine its NAV and the Fund's market price.

2. *Spot bitcoin operations via EFP transaction through the CME Bitcoin Futures Market:* Because the Fund's bitcoin operations would take place via CME Bitcoin Futures Market EFP transactions, any attempt to manipulate the Fund's transactions in bitcoin holdings would require the would-be manipulator to trade on the CME Bitcoin Futures Market. Accordingly, any potential manipulation of the Fund would require extensive operations on the heavily regulated CME Bitcoin Futures Market.

3. *Cash creations and redemptions:* The Fund's use of cash creations and redemptions also reduces the potential for manipulation through the creation and redemption processes by eliminating the direct arbitrage between unregulated spot markets and the Fund's market price. Any significant creation or redemption activity aimed at manipulating the Fund would likely influence the CME Bitcoin Futures Market, given that the cash received in the creation is used to buy CME Bitcoin Futures Contracts and the cash generated for redemption distribution comes from the sale of CME Bitcoin Futures Contracts.

Given these factors, the Sponsor believes that the common membership of NYSE Arca and CME in the ISG would be an effective tool in assisting NYSE Arca in detecting and deterring potential misconduct. The exchanges' ability to share information would provide the Exchange with access to relevant trading data from the CME Bitcoin Futures Market, which is intrinsically linked to the Fund, allowing for appropriate oversight and facilitating the ability to identify and investigate any suspicious trading activity.

The Approval Order stated that the CME ''comprehensively surveils futures market conditions and price movements on a real-time and ongoing basis in order to detect and prevent price distortions, including price distortions caused by manipulative efforts'' and that the ''CME's surveillance can reasonably be relied upon to capture the effects on the CME [Bitcoin Futures Market] caused by a person attempting to manipulate the [Fund] by manipulating the price of CME Bitcoin Futures Contracts, whether that attempt is made by directly trading on the CME [Bitcoin Futures Market] or indirectly by trading outside of the CME [Bitcoin Futures Market].'' [98] The Commission further noted in the Approval Order that, as a result, ''when the CME shares its surveillance information with [NYSE] Arca, the information would assist in detecting and deterring fraudulent or manipulative misconduct related to the non-cash assets held by the [Fund].'' [99] The Sponsor further believes that, consistent with the Approval Order, CME surveillance can be relied upon to capture any possible manipulation of the CME Bitcoin Futures Market, even when the attempt is made indirectly by trading outside the CME Bitcoin Futures Market in unregulated markets.[100]

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[95] In a cash creation/redemption format, the Authorized Participant delivers cash to the Fund instead of bitcoin. The Fund's creation and redemption processes are further discussed below.

[96] The portfolio's exposure to bitcoin will be dynamic because the Sponsor will assess market conditions (*e.g.,* expected level of creation and redemption based on historic trends, the futures curve, market liquidity and volatility) in allocating the Fund's portfolio among the assets that it may hold (bitcoin, CME Bitcoin Futures Contracts, cash and cash equivalents). The Sponsor will manage the Fund to minimize transaction costs related to the conversion between CME Bitcoin Futures Contracts and bitcoin that would be necessary to process redemptions. The Sponsor will generally aim to maximize the allocation to bitcoin to better track the Fund's Benchmark.

[97] In the Approval Order, the Commission stated that if the proposed ''significant'' regulated market (in this case, the CME Bitcoin Futures Market) with which the listing exchange has a surveillance-sharing agreement is the same market on which the ETP trades its non-cash assets, then (i) it is unnecessary for the listing exchange to establish a reasonable likelihood that the would-be manipulator would have to trade on said listing exchange to manipulate the proposed ETP (thereby satisfying the first prong of the Commission's standard for ''market of significant size''), and (ii) it is unnecessary to establish a ''lead-lag'' relationship between said listing exchange and other markets. 87 FR at 21679 n. 47 & 21680.

[98] *See* Approval Order, 87 FR at 21679.

[99] *Id.*

[100] *See id.* (''The Commission agrees with [NYSE] Arca that the CME [Bitcoin Futures Market], as a CFTC-regulated futures exchange, has 'the requisite oversight, controls, and regulatory scrutiny necessary to maintain, promote, and effectuate fair and transparent trading of its listed products,

Continued

The Sponsor also believes that it is unlikely that trading in the Fund would be the predominant influence on prices on the CME Bitcoin Futures Market. The Approval Order noted that it was unlikely that trading in the Fund would be the predominant influence on price in the CME Bitcoin Futures Market,[101] and the Sponsor believes that the addition of bitcoin to the Fund's holdings, using EFP transactions through the CME Bitcoin Futures Market, does not significantly alter the influence of the Fund's trading on the CME Bitcoin Futures Market, for the following reasons:

1. *The Fund's limited influence over the market:* As the Commission noted in the Approval Order,[102] the Commission observed no disruption to the CME Bitcoin Futures Market or evidence that the Fund exerted a dominant influence on CME bitcoin futures prices. The Sponsor therefore believes that it is very unlikely that the Fund's trading, even with the addition of bitcoin to its holdings, would become the predominant influence on the futures market.

2. *Spot bitcoin would be purchased using market-neutral EFP transactions:* The bitcoin in the Fund's portfolio would be purchased by exchanging an equivalent CME Bitcoin Futures Contracts position using EFP transactions through the CME Bitcoin Futures Market. The Fund's bitcoin trading would thus be directly linked to the futures market and would not introduce a new, independent variable that could significantly influence the futures market. Indeed, because both sides of the trade track the same benchmark, an EFP is market-neutral, and, as such, the pricing of an EFP is quoted in terms of the basis between the price of the futures contract and the level of the underlying index.[103]

3. *The Fund's investment strategy reduces recurrent trading activity and price pressure on the CME Bitcoin Futures Market as compared to a fund that only holds CME Bitcoin Futures Contracts:* Because the Fund will also hold bitcoin, the Sponsor believes that CME Bitcoin Futures Contracts rollover operations would be reduced, as would the trading activity on the CME Bitcoin Futures Market that occurs as a CME Bitcoin Futures Contract nears expiration, thereby significantly reducing its influence on the CME Bitcoin Futures Market.

The Sponsor therefore believes that the proposed addition of bitcoin to the Fund's holdings would not significantly alter the influence of the Fund's trading on the CME Bitcoin Futures Market and that the proposed design of the Fund's investment strategy would instead result in potential impact on the CME Bitcoin Futures Market that is the same or less than that of the previous investment strategy (as represented in the Approval Order).

The Sponsor notes that, as of April 2021 and as noted in the Fund's original proposal to list and trade its Shares on the Exchange, the CME Bitcoin Futures Market was already showing a significant increase in size, as per the table below:[104]

CME BITCOIN FUTURES MARKET		
	February 26, 2020	April 7, 2021
Trading Volume	$433 million	$4,321 million
Open Interest	$238 million	$2,582 million

The Sponsor notes that growth of the CME Bitcoin Futures Market at that time coincided with similar growth in the bitcoin spot market. Moreover, the market for Bitcoin futures was and still is rapidly approaching the size of markets for other commodity interests, including interests in metals, agricultural, and petroleum products.

Accordingly, as the CME Bitcoin Futures Market continues to develop and more closely resemble other commodity futures markets, the Sponsor believes that it is reasonable to expect that the relationship between the bitcoin futures market and bitcoin spot market will behave similarly to other future/spot market relationships, where the spot market may have no relationship to the futures market (although the current proposal does not depend on such similarity).

In addition, in the time since the Approval Order was issued, there has been significant growth in bitcoin futures in terms of trading volumes, as reflected in the table below:

including the BTC Contracts and MBT Contracts.' As [NYSE] Arca states, as a Designated Contracts Market ('DCM'), the CME [Bitcoin Futures Market] 'comprehensively surveils futures market conditions and price movements on a realtime and ongoing basis in order to detect and prevent price distortions, including price distortions caused by manipulative efforts.' Thus the CME's surveillance can reasonably be relied upon to capture the effects on the CME [Bitcoin Futures Market] caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME [Bitcoin Futures Contracts], whether that attempt is made by directly trading on the CME [Bitcoin Futures Market] or indirectly by trading outside of the CME [Bitcoin Futures Market]. As such, when the CME shares its surveillance information with [NYSE] Arca, the information would assist in detecting and deterring fraudulent or manipulative misconduct related to the non-cash assets held by the proposed ETP'') (internal citations omitted).

[101] *See id.* at 21680.

[102] *See id.* at 21681.

[103] According to the Fund's registration statement and as discussed above, the Fund uses EFP transactions to efficiently transition its bitcoin exposure from a physical to a futures position within a regulated environment.

[104] *See* Securities Exchange Act Release No. 92573 (August 5, 2021), 86 FR 44062 at 44073 (August 11, 2021) (SR–NYSEArca–2021–53) (Notice of Filing of a Proposed Rule Change To List and Trade Shares of Teucrium Bitcoin Futures Fund Under NYSE Arca Rule 8.200–E).

CME BITCOIN FUTURES MARKET		
	April 6, 2022	June 30, 2023
Trading Volume	$1,692 million	$3,473 million
Open Interest	$2,529 million	$2,800 million

The Sponsor also notes that in the same period during which CME Bitcoin Futures Market open interest remained at roughly at the same level, trading volume and open interest of unregulated bitcoin futures markets had a significant drawdown: [105]

UNREGULATED BITCOIN FUTURES MARKETS			
	April 7, 2021	April 6, 2022	June 30, 2023
Trading Volume	$68,333 million	$37,333 million	$29,693 million
Open Interest	$20,420 million	$13,980 million	$11,630 million

Furthermore, the Sponsor notes that in the same period the trading volume of spot bitcoin also fell significantly:

SPOT BITCOIN			
	April 7, 2021	April 6, 2022	June 1, 2023
Trading Volume	$698,000 million	$297,000 million	$116,000 million

The Sponsor believes that the data above suggests an increase in market appetite for regulated products (*e.g.,* CME Bitcoin Futures Contracts) vis-a-vis a significant decrease in interest for unregulated products (*e.g.,* unregulated futures and spot bitcoin).

The Sponsor further believes that an analysis of the data presented above indicates that the CME Bitcoin Futures Market managed to maintain its open interest level despite the price volatility that bitcoin experienced in 2022, demonstrating its resilience and that it is sufficiently developed such that it is unlikely that trading in the Fund would be the predominant influence on its prices.

The Sponsor further notes that the Commission stated in the Approval Order ''that the CME [Bitcoin Futures Market] has sufficiently developed to support ETPs seeking exposure to bitcoin by holding CME Bitcoin Futures Contracts.'' [106] The Sponsor believes that the CME Bitcoin Futures Market is also sufficiently developed to support ETPs that seek exposure to Bitcoin by holding a mix of CME Bitcoin Futures Contracts and bitcoin through the use of EFP transactions that are traded, reported, and cleared through the CME Bitcoin Futures Market and whose conditions and prices are subject to CME oversight.

Creations and Redemptions

According to the Sponsor (and as discussed further below), the Fund uses cash creations and redemptions.[107] An AP delivers cash to the Fund instead of bitcoin or CME Bitcoin Futures Contracts in the creation process. An AP receives cash instead of bitcoin or CME Bitcoin Futures Contracts in the redemption process. The cash received during the creation process is then used by the Sponsor to purchase CME Bitcoin Futures Contracts with an aggregate market value that approximates the amount of cash received upon the

[105] Data in this table is sourced from: *https://www.theblock.co/data/crypto-markets/futures.* Trading volume data for bitcoin futures in unregulated markets was only available on a monthly frequency. Therefore, the trading volume figures displayed in the table are approximations derived from the daily average trading volumes reported for their respective months.

[106] *See* Approval Order, 87 FR at 21681.

[107] In a cash creation/redemption mechanism, APs create or redeem shares of the ETP using cash instead of the underlying assets. This contrasts with in-kind creation/redemption, where APs use a basket of the ETP's underlying assets for these transactions. In cash creation/redemption, APs provide or receive an equivalent cash value based on the NAV of the ETP's shares.

creation. During a redemption transaction, the reverse process is used, where the Sponsor sells CME Bitcoin Futures Contracts with an aggregate market value that approximates the amount of cash to be paid upon the redemption. On a daily basis, the Sponsor will analyze the current portfolio allocation of the Fund between bitcoin and CME Bitcoin Futures Contracts and, based on market conditions, may decide to engage in an EFP transaction through the CME Bitcoin Futures Market to buy or sell bitcoin for the equivalent position in CME Bitcoin Futures Contracts.

The Sponsor believes that the Fund's use of cash creations and redemptions protects against manipulation in the creation and redemption process and of the Fund's market price from trading in unregulated spot markets. Investment in bitcoin will not be directly related to creation or redemption of Shares such that trades can be performed in smaller sizes and at unpredictable times, reducing the risk of creation or redemption manipulation.

Specifically, the Sponsor believes that cash creations and redemptions serve as a deterrent to manipulation in several ways:

1. Decoupling from spot market: By using cash instead of bitcoin for creations and redemptions, the Fund's operations are decoupled from the unregulated spot market. The creation and redemption process does not directly influence the unregulated spot market or vice versa, thereby reducing the potential for manipulation through this process.

2. Unpredictable trading times: The Fund's investment in spot bitcoin is not directly related to creations or redemptions. As a result, trading can be done in smaller sizes and at unpredictable times, making it harder for potential manipulators to time their actions.

3. Reduced impact of large trades: By effecting creations and redemptions in cash, large trades that could potentially influence the unregulated spot market are mitigated. Instead, these trades are absorbed in the CME Bitcoin Futures Market, which is sufficiently liquid and, as a regulated market that is a member of ISG, can reasonably be relied upon to assist the Exchange in detecting and deterring fraudulent or manipulative misconduct.

4. Reduced influence from unregulated spot bitcoin trading platforms: In-kind creation may create a direct relationship between the Fund's market price and prices on offshore unregulated trading platforms such as Binance and others by arbitrage, because an AP could buy or sell bitcoin from such markets and receive or deliver bitcoin from the Fund through the creation or redemption process. With creations and redemptions in cash, however, that arbitrage cannot be executed without transacting on the CME Bitcoin Futures Market. Thus, the Sponsor believes that, by removing a direct causal relationship between unregulated markets and the Fund's market price, it is unlikely that a person attempting to manipulate the ETP would be reasonably successful by trading only on unregulated spot bitcoin trading platforms. A would-be manipulator would have to transact on the CME Bitcoin Futures Market, such that NYSE Arca's common ISG membership with CME would assist NYSE Arca in detecting and deterring misconduct.

The Sponsor believes that the Fund's creation and redemption process is designed to minimize the potential for market manipulation, thereby protecting investors and maintaining the integrity of the markets.

Settlement of CME Bitcoin Futures Contracts

According to the Registration Statement, each BTC Contract and MBT Contract settles daily to the BTC Contract VWAP of all trades that occur between 2:59 p.m. and 3:00 p.m. Central Time, the settlement period, rounded to the nearest tradable tick.[108]

BTC Contracts and MBT Contracts each expire on the last Friday of the contract month and are settled with cash. The final settlement value is based on the CME CF BRR at 4:00 p.m. London time on the expiration day of the futures contract.

As proposed, the Fund will rollover its soon to expire CME Bitcoin Futures Contracts to extend the expiration or maturity of its position forward by closing the initial contract holdings and opening a new longer-term contract holding for the same underlying asset at the then-current market price. The Fund does not intend to hold any bitcoin futures positions into cash settlement.

Net Asset Value

According to the Registration Statement, the Fund's NAV per Share will be calculated by taking the current market value of its total assets, subtracting any liabilities, and dividing that total by the number of Shares.

The Administrator of the Fund will calculate the NAV once each trading day, as of the earlier of the close of the New York Stock Exchange or 4:00 p.m. Eastern Time (''E.T.'').

According to the Registration Statement, to determine the value of CME Bitcoin Futures Contracts, the Fund's Administrator will use the CME Bitcoin Futures Contract settlement price on the exchange on which the contract is traded, except that the ''fair value'' of CME Bitcoin Futures Contracts (as described in more detail below) may be used when CME Bitcoin Futures Contracts close at their price fluctuation limit for the day. The Fund's Administrator will determine the value of Fund investments as of the earlier of the close of the New York Stock Exchange or 4:00 p.m. E.T. The Fund's NAV will include any unrealized profit or loss on open CME Bitcoin Futures Contracts and any other credit or debit accruing to the Fund but unpaid or not received by the Fund.

According to the Registration Statement, the fair value of the Fund's holdings will be determined by the Fund's Sponsor in good faith and in a manner that assesses the future bitcoin market value based on a consideration of all available facts and all available information on the valuation date. When a CME Bitcoin Futures Contract has closed at its price fluctuation limit, the fair value determination will attempt to estimate the price at which such CME Bitcoin Futures Contract would be trading in the absence of the price fluctuation limit (either above such limit when an upward limit has been reached or below such limit when a downward limit has been reached). Typically, this estimate will be made primarily by reference to exchange traded instruments at 4:00 p.m. E.T. on settlement day. The fair value of BTC Contracts and MBT Contracts may not

[108] VWAP is calculated based first on Tier 1 (if there are trades during the settlement period); then Tier 2 (if there are no trades during the settlement period); and then Tier 3 (in the absence of any trade activity or bid/ask in a given contract month during the current trading day, as follows: *Tier 1:* Each contract month settles to its VWAP of all trades that occur between 14:59:00 and 15:00:00 CT, the settlement period, rounded to the nearest tradable tick. If the VWAP is exactly in the middle of two tradable ticks, then the settlement will be the tradable price that is closer to the contract's prior day settlement price. *Tier 2:* If no trades occur on CME Globex between 14:59:00 and 15:00:00 CT, the settlement period, then the last trade (or the contract's settlement price from the previous day in the absence of a last trade price) is used to determine whether to settle to the bid or the ask during this period. a. If the last trade price is outside of the bid/ask spread, then the contract month settles to the nearest bid or ask price. b. If the last trade price is within the bid/ask spread, or if a bid/ask spread is not available, then the contract month settles to the last trade price. *Tier 3:* In the absence of any trade activity or bid/ask in a given contract month during the current trading day, the daily settlement price will be determined by applying the net change from the preceding contract month to the given contract month's prior daily settlement price.

reflect such security's market value or the amount that the Fund might reasonably expect to receive for the BTC Contracts and MBT Contracts upon its current sale.

According to the Registration Statement and as discussed above, the value of spot bitcoin held by the Fund would be determined by the Administrator, when calculating the Fund's NAV, via the FBSP methodology. As discussed above, the FBSP methodology allows for the determination of a spot price of bitcoin that utilizes market data exclusively from CME Bitcoin Futures Contracts and does not rely on market data obtained from unregulated bitcoin markets to determine the value of bitcoin held by the Fund.

Indicative Fund Value

According to the Registration Statement, in order to provide updated information relating to the Fund for use by investors and market professionals, ICE Data Indices, LLC will calculate an updated IFV. The IFV will be calculated by using the prior day's closing NAV per Share of the Fund as a base and will be updated throughout the core trading session of 9:30 a.m. E.T. to 4:00 p.m. E.T. (the ''Core Trading Session'') to reflect changes in the value of the Fund's holdings during the trading day. For purposes of calculating the IFV, the Fund's spot bitcoin holdings will be priced using a real time version of the Benchmark, the Nasdaq Bitcoin Reference Price—Real Time (''NQBTC–RT''),[109] and the Fund's CME Bitcoin Futures Contracts holdings will be priced using the most recent trading price for each contract.

The IFV will be disseminated on a per Share basis every 15 seconds during the Exchange's Core Trading Session and be widely disseminated by one or more major market data vendors during the Exchange's Core Trading Session.[110]

Creation and Redemption of Shares

According to the Registration Statement, the Shares issued by the Fund may only be purchased by APs and only in blocks of 10,000 Shares called ''Creation Baskets.'' The amount of the purchase payment for a Creation Basket is equal to the total NAV of Shares in the Creation Basket. Similarly, only APs may redeem Shares and only in blocks of 10,000 Shares called ''Redemption Baskets.'' The amount of the redemption proceeds for a Redemption Basket is equal to the total NAV of Shares in the Redemption Basket. The purchase price for Creation Baskets and the redemption price for Redemption Baskets are the actual NAV calculated at the end of the business day when a request for a purchase or redemption is received by the Fund. Shares of the Fund will be created and redeemed in cash.[111]

APs will be the only persons that may place orders to create and redeem Creation Baskets. APs must be (1) either registered broker-dealers or other securities market participants, such as banks and other financial institutions, that are not required to register as broker-dealers to engage in securities transactions, and (2) Depository Trust Company (''DTC'') participants. An AP is an entity that has entered into an Authorized Participant agreement with the Sponsor.

An AP delivers cash to the Fund in the creation process, and an AP receives cash in the redemption process.[112] The cash delivered or received during the creation or redemption process is then used by the Sponsor to purchase or sell CME Bitcoin Futures Contracts with an aggregate market value that approximates the amount of cash received or paid upon the creation or redemption. On a daily basis, the Sponsor will analyze the current portfolio allocation of the Fund between bitcoin and CME Bitcoin Futures Contracts and decide whether to engage in an EFP transaction through the CME Bitcoin Futures Market to buy or sell bitcoin for the equivalent position in CME Bitcoin Futures Contracts.

Creation Procedures

According to the Registration Statement, on any ''Business Day,'' an AP may place an order with the Fund's Transfer Agent to create one or more Creation Baskets. For purposes of processing both purchase and redemption orders, a ''Business Day'' means any day other than a day when the CME Bitcoin Futures Market or the New York Stock Exchange is closed for regular trading. Purchase orders for Creation Baskets must be placed by 3:00 p.m. EST or one hour prior to the close of trading on the New York Stock Exchange, whichever is earlier. The day on which the distributor(s) engaged by the Sponsor receives a valid purchase order is referred to as the purchase order date. If the purchase order is received after the applicable cut-off time, the purchase order date will be the next Business Day. Purchase orders are irrevocable.

By placing a purchase order, an AP agrees to deposit cash with the Cash Custodian.

Determination of Required Deposits

According to the Registration Statement, the total deposit required to create each basket (''Creation Basket Deposit'') is an amount of cash and/or cash equivalents in the same proportion to the total assets of the Fund (net of estimated accrued but unpaid fees, expenses and other liabilities) on the purchase order date as the proportion of the number of Shares to be created under the purchase order to the total

[109] The ''Nasdaq Bitcoin Reference Price—Real Time'' or ''NQBTC–RT'' is the real-time version of the Benchmark and is calculated every second throughout a 24-hour trading day, seven days per week, using published, real-time bid and ask quotes for bitcoin on the NQBTCS core trading platforms. *See https://indexes.nasdaqomx.com/docs/methodology_nci.pdf.*

[110] Several major market data vendors display and/or make widely available IFVs taken from the Consolidated Tape Association (''CTA'') or other data feeds.

[111] The Sponsor notes that Shares of the Fund will only be created and redeemed in cash because of regulatory and other concerns surrounding the ability of broker-dealers, such as the APs, to have custody and/or control over non-security digital assets, such as bitcoin. In 2019, Commission Staff noted that a digital asset security that does not meet the definition of a ''security'' under the Securities Investor Protection Act (''SIPA'') would likely not receive protection under SIPA in the event of the failure of a carrying broker-dealer (thus leaving holders of those digital asset securities with only unsecured general creditor claims against the broker-dealer's estate). *See* SEC Division of Trading and Markets, FINRA Office of General Counsel, Joint Staff Statement on Broker-Dealer Custody of Digital Asset Securities (July 8, 2019), *https://www.sec.gov/news/public-statement/joint-staff-statement-broker-dealer-custody-digital-asset-securities.* The Staff also noted that uncertainty regarding when and whether a broker-dealer holds a digital asset security in its possession or control creates greater risk for customers that their securities will not be able to be returned in the event of a broker-dealer failure. *See id.* The Staff concluded that these concerns were likely to be inconsistent with the expectations of persons who would use a broker-dealer to custody their digital asset securities. In light of these concerns, the creation and redemption and processes of the Fund have been structured so that APs are not required to take custody of, or have control over, bitcoin at any stage.

[112] The APs will deliver only cash to create Shares and will receive only cash when redeeming Shares. Further, APs will not directly or indirectly purchase, hold, deliver, or receive bitcoin 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 bitcoin as part of the creation or redemption process. To the extent applicable, the Fund will create shares by receiving bitcoin from a third party that is not the AP and the Fund—not the AP—is responsible for selecting the third party to deliver the bitcoin. Further, the third party will not be acting as an agent of the AP with respect to the delivery of the bitcoin to the trust or acting at the direction of the AP with respect to the delivery of the bitcoin to the Fund. The Fund will redeem shares by delivering bitcoin to a third party that is not the AP and the Fund—not the AP—is responsible for selecting the third party to receive the bitcoin. Further, the third party will not be acting as an agent of the AP with respect to the receipt of the bitcoin from the Fund or acting at the direction of the AP with respect to the receipt of the bitcoin from the Fund.

number of Shares outstanding on the purchase order date. The Sponsor determines, directly in its sole discretion or in consultation with the Cash Custodian and the Sub-Administrator, the requirements for cash and/or cash equivalents, including the remaining maturities of the cash equivalents, which may be included in deposits to create baskets. If cash equivalents are to be included in a Creation Basket Deposit for orders placed on a given business day, the Sub-Administrator will publish an estimate of the Creation Basket Deposit requirements at the beginning of such day.

Delivery of Required Deposits

According to the Registration Statement, an AP who places a purchase order is responsible for transferring to the Fund's account with the Cash Custodian the required amount of cash and cash equivalents by the end of the next business day following the purchase order date or by the end of such later business day, not to exceed three business days after the purchase order date, as agreed to between the AP and the Cash Custodian when the purchase order is placed (the ''Purchase Settlement Date''). Upon receipt of the deposit amount, the Cash Custodian directs DTC to credit the number of baskets ordered to the AP's DTC account on the Purchase Settlement Date. Because orders to purchase baskets must be placed by 3:00 p.m. E.T., but the total payment required to create a basket during the continuous offering period will not be determined until 4:00 p.m. E.T. on the date the purchase order is received, APs will not know the total amount of the payment required to create a basket at the time they submit an irrevocable purchase order for the basket. The Fund's NAV and the total amount of the payment required to create a basket could rise or fall substantially between the time an irrevocable purchase order is submitted and the time the amount of the purchase price in respect thereof is determined.

Suspension and Rejection of Purchase Orders

According to the Registration Statement, the Sponsor has the discretion to suspend purchase orders or delay their settlement in specific situations. These situations may include (1) exchange closures or trading restrictions, (2) emergencies affecting the handling of cash equivalents, (3) shareholder protection needs, (4) potential price limit restrictions on CME Bitcoin Futures Contracts, or (5) circumstances in which it would not be in the best interest of the Fund or its investors to accept purchase orders. Purchase orders must conform to the criteria outlined in the AP agreement and be for whole baskets. The Sponsor may suspend orders that do not meet these criteria. The Sponsor, acting by itself or through the distributor or Transfer Agent, may reject a purchase order or a Creation Basket Deposit if: (a) it determines that, due to position limits or otherwise, investment alternatives that will enable the Fund to meet its investment objective are not available or practicable at that time; (b) it determines that the purchase order or the Creation Basket Deposit is not in proper form; (c) it believes that acceptance of the purchase order or the Creation Basket Deposit would have adverse tax consequences to the Fund or its investors; (d) the acceptance or receipt of the Creation Basket Deposit would, in the opinion of counsel to the Sponsor, be unlawful; (e) circumstances outside the control of the Sponsor make it, for all practical purposes, not feasible to process creations of baskets; (f) there is a possibility that any or all of the CME Bitcoin Futures Contracts of the Fund from which the NAV of the Fund is calculated will be priced at a dynamic price limit restriction; [113] or (g) if, in the sole discretion of the Sponsor, the execution of such an order would not be in the best interest of the Fund or its investors.

Redemption Procedures

According to the Registration Statement, the procedures by which an AP can redeem one or more Redemption Baskets will mirror the procedures for the creation of Creation Baskets. On any Business Day, an AP may place an order with the Transfer Agent to redeem one or more Redemption Baskets.

The redemption procedures allow APs to redeem Redemption Baskets. Individual shareholders may not redeem directly from the Fund. By placing a redemption order, an AP agrees to deliver the Redemption Baskets to be redeemed through DTC's book entry system to the Fund by the end of the next Business Day following the effective date of the redemption order or by the end of such later business day (''Redemption Settlement Date'').

Determination of Redemption Distribution

According to the Registration Statement, the redemption distribution from the Fund will consist of an amount of cash and/or cash equivalents that is in the same proportion to the total assets of the Fund on the date that the order to redeem is properly received as the number of Shares to be redeemed under the redemption order is in proportion to the total number of Shares outstanding on the date the order is received.

Delivery of Redemption Distribution

The redemption distribution due from a Fund will be delivered to the AP on the Redemption Settlement Date if the Fund's DTC account has been credited with the baskets to be redeemed. If the Fund's DTC account has not been credited with all of the baskets to be redeemed by the end of such date, the redemption distribution will be delivered to the extent of whole baskets received. Any remainder of the redemption distribution will be delivered on the next business day after the Redemption Settlement Date to the extent of remaining whole baskets received. Pursuant to information from the Sponsor, the Cash Custodian will also be authorized to deliver the redemption distribution notwithstanding that the baskets to be redeemed are not credited to the Fund's DTC account by 12:00 p.m. E.T. on the Redemption Settlement Date if the AP has collateralized its obligation to deliver the baskets through DTC's book-entry system on such terms as the Sponsor may from time to time determine.

Availability of Information

The NAV for the Fund's Shares will be calculated and disseminated daily and will be made available to all market participants at the same time. The intraday, closing prices, and settlement prices of the CME Bitcoin Futures Contracts will be readily available from the CME website, automated quotation systems, published or other public sources, or major market data vendors. 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

[113] The CME imposes a maximum permitted price range for futures contracts in each trading session on its futures markets. When markets reach their price limits, the CME may temporarily halt trading until such price limits can be expanded, remain price limited, or suspend trading for the day, based on relevant regulatory provisions. CME Bitcoin Futures Contracts, like other futures contracts on the CME, are subject to price limits on a dynamic basis. At the commencement of each trading day, CME Bitcoin Futures Contracts are assigned a price limit variant, which equals a percentage of the prior day's settlement price, or a price deemed appropriate by the CME. During the trading day, the price limit variant is applied in rolling 60-minute look-back periods to establish dynamic lower and upper price fluctuation limits. Price limits for CME Bitcoin Futures Contracts are published at *https://www.cmegroup.com/trading/price-limits.html#cryptocurrencies.*

previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Real-time data for CME Bitcoin Futures Contracts will be available by subscription through on-line information services. ICE Futures U.S. and CME also provide delayed futures and options on futures information on current and past trading sessions and market news free of charge on their respective websites. The specific contract specifications for CME Bitcoin Futures Contracts will also be available on such websites, as well as other financial informational sources. The spot price of bitcoin is available on a 24-hour basis from major market data vendors, including Bloomberg and Reuters. Information relating to trading, including price and volume information, in bitcoin will be available from major market data vendors and from the trading platforms on which bitcoin is traded. EFP transaction volumes are reported daily, by instrument, on the CME website.[114]

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. Quotation information for cash equivalents and commodity futures may be obtained from brokers and dealers who make markets in such instruments. Intra-day price and closing price level information for the Benchmark will be available from major market data vendors. The real-time version of the Benchmark value, NQBTC–RT, will be disseminated once every 15 seconds during the Core Trading Session. The Benchmark components and methodology will be made publicly available. The IFV will be available through on-line information services.

In addition, the Fund's website, *https://hashdex-etfs.com/,* will display the applicable end of day closing NAV. The daily holdings of the Fund will be available on the Fund's website. The Fund's website will also include a form of the prospectus for the Fund that may be downloaded. The website will include the Shares' ticker and CUSIP information along with additional quantitative information updated on a daily basis, including: (1) the prior Business Day's reported NAV and closing price and a calculation of the premium and discount of the closing price or mid-point of the bid/ask spread at the time of NAV calculation (the ''Bid/Ask Price'') against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters. The website disclosure of portfolio holdings will be made daily and will include, as applicable, (i) the name, quantity, price, and market value of the Fund's holdings, (ii) the counterparty to and value of forward contracts and any other financial instruments tracking the Benchmark, and (iii) the total cash and cash equivalents held in the Fund's portfolio, if applicable.

The Fund's website will be publicly available at the time of the public offering of the Shares and accessible at no charge.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[115] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the CME Bitcoin Futures Market[116] and in the securities and/or the financial instruments composing the daily disclosed portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

The Exchange may halt trading during the day in which an interruption to the dissemination of the IFV or the value of the Benchmark occurs. The real-time version of the Benchmark value (NQBTC–RT) will be disseminated once every 15 seconds during the Core Trading Session. The Benchmark components and methodology will be made publicly available. If the interruption to the dissemination of the IFV, or to the value of the Benchmark persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Trading Rules

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

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.500–E. The trading of the Shares will be subject to NYSE Arca Rule 8.500E(f), which sets forth certain restrictions on Equity Trading Permit Holders (''ETP Holders'') acting as registered market makers in Trust Units to facilitate surveillance. Pursuant to NYSE Arca Rule 8.500–E(f), an ETP Holder acting as a registered market maker in Trust Units must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the market maker may have or over which it may exercise investment discretion. No market maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a market maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule. In addition to the existing obligations under Exchange rules regarding the production of books and records, the ETP Holder acting as a market maker in Trust Units 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

[114] Pricing information for EFP transactions in CME Bitcoin Futures Contracts is reported to the CME Bitcoin Futures Market but is not publicly available.

[115] *See* NYSE Arca Rule 7.12–E.

[116] The Sponsor believes that, under normal market conditions, interruptions or trading halts in individual spot bitcoin markets are unlikely to impact trading in the Shares unless trading in the CME Bitcoin Futures Market is also impacted.

derivatives, as may be requested by the Exchange.

For initial and continued listing as proposed herein, the Fund will be in compliance with Rule 10A–3 under the Act, and the Trust will rely on the exception contained in Rule 10A–3(c)(7).[117] A minimum of 50,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

Surveillance

The Exchange represents that trading in the Shares of the Fund will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[118] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

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

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and the Fund's holdings 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 the Fund's holdings from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the Fund's holdings from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance-sharing agreement (''CSSA''). The Exchange is also able to obtain information regarding trading in the Shares, the underlying bitcoin, CME Bitcoin Futures Contracts, options on bitcoin futures, or any other bitcoin derivative through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market. The Exchange can obtain market surveillance information, including customer identity information, with respect to transactions (including transactions in futures contracts) occurring on US futures exchanges, which are members of the ISG. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Under NYSE Arca Rule 8.500–E(f), an ETP Holder acting as a registered market maker in the Shares is required to provide the Exchange with information relating to its trading in the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives. Commentary .04 of NYSE Arca Rule 11.3–E requires an ETP Holder acting as a registered market maker, and its affiliates, in the Shares to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares). As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder. To the extent the Exchange may be found to lack jurisdiction over a subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts, the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

CME Bitcoin Futures Contracts held by the Fund will be listed on an exchange that is a member of the ISG or is a market with which the Exchange has a CSSA.[119]

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

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

Information Bulletin

Prior to the commencement of trading of the Shares, the Exchange will inform its ETP Holders in an information bulletin (''Information Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) the risks involved in trading the Shares during the Early and Late Trading Sessions when an updated IFV will not be calculated or publicly disseminated; (2) the procedures for purchases and redemptions of Shares in Creation Baskets and Redemption Baskets (and that Shares are not individually redeemable); (3) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (4) how information regarding the IFV is disseminated; (5) how information regarding portfolio holdings is disseminated; (6) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (7) trading information.

In addition, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. The Exchange notes that investors purchasing Shares directly from the Fund will receive a prospectus. ETP Holders purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Bulletin will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under

[117] *See* Rule 10A–3(c)(7), 17 CFR 240.10A–3(c)(7) (stating that a listed issuer is not subject to the requirements of Rule 10A–3 if the issuer is organized as an unincorporated association that does not have a board of directors and the activities of the issuer are limited to passively owning or holding securities or other assets on behalf of or for the benefit of the holders of the listed securities).

[118] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[119] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Fund may trade on markets that are members of ISG or with which the Exchange has in place a CSSA.

the Act. In addition, the Information Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement.

The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding bitcoin, that the Commission has no jurisdiction over the trading of Bitcoin as a commodity, and that the CFTC has regulatory jurisdiction over the trading of bitcoin futures contracts and options on bitcoin futures contracts.

The Information Bulletin will also disclose the trading hours of the Shares and that the NAV for the Shares will be calculated after 4:00 p.m. E.T. each trading day. The Information Bulletin will disclose that information about the Shares will be publicly available on the Fund's website.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [120] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest because it reflects the Fund's proposed investment strategy, through which the Fund would seek to achieve its investment objectives by investing in both CME Bitcoin Futures Contracts and bitcoin, in addition to being able to hold part of its net assets in cash. The Exchange believes that the Fund's strategy of holding a mix of bitcoin, CME Bitcoin Futures Contracts, and cash would remove impediments to and perfect the mechanism of a free market and protect investors and the public interest, offering investors exposure to bitcoin without relying on unregulated products or markets. The Exchange also believes that the Sponsor has designed the Fund to include features intended to provide a robust framework for mitigating the risks of market manipulation, such as its proposed use of futures-based pricing for bitcoin in calculating the Fund's NAV, EFP transactions through the CME Bitcoin Futures Market to acquire and dispose of bitcoin, and cash creations and redemptions, which would remove impediments to and perfect the mechanism of a free and open market and promote the protection of investors and the public interest. Finally, the Exchange believes that, given these features of the Fund, the CME Bitcoin Futures Market should be considered the regulated market of significant size in relation to the Fund and that there is a reasonable likelihood that a person attempting to manipulate the Fund would also have to trade on the CME Bitcoin Futures Market to do so, such that information shared between CME and NYSE Arca pursuant their common ISG membership would aid NYSE Arca in detecting and deterring potential misconduct, and that it is unlikely that trading in the Fund would be the predominant influence on the CME Bitcoin Futures Market.

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 would be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.500–E. 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 the Fund's holdings 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 the Fund's holdings from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the Fund's holdings from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. The Exchange is also able to obtain information regarding trading in the Shares and the Fund's holdings through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market. The Exchange can obtain market surveillance information, including customer identity information, with respect to transactions (including transactions in CME Bitcoin Futures Contracts) occurring on US futures exchanges, which are members of the ISG. The intraday, closing prices, and settlement prices of CME Bitcoin Futures Contracts and bitcoin will be readily available from the applicable futures exchange websites, automated quotation systems, published or other public sources, or major market data vendors website or on-line information services. 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.

Real-time data for CME Bitcoin Futures Contracts will be available by subscription from on-line information services. ICE Futures U.S. and CME also provide delayed futures information on current and past trading sessions and market news free of charge on the Fund's website. The specific contract specifications for CME Bitcoin Futures Contracts will also be available on such websites, as well as other financial informational sources. The spot price of bitcoin is available on a 24-hour basis from major market data vendors, including Bloomberg and Reuters. Information relating to trading, including price and volume information, in bitcoin will be available from major market data vendors and from the trading platforms on which bitcoin is traded. EFP transaction volumes are reported daily, by instrument, on the CME website. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The IFV will be disseminated on a per Share basis every 15 seconds during the Exchange's Core Trading Session and be widely disseminated by one or more major market data vendors during the NYSE Arca Core Trading Session. The Fund's website will also include a form of the prospectus for the Fund that may be downloaded. The website will include the Share's ticker and CUSIP information along with additional quantitative information updated on a daily basis, including, for the Fund: (1) the prior business day's reported NAV and closing price and a calculation of the premium and discount of the closing price or mid-point of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters. The website disclosure of portfolio holdings will be made daily and will include, as applicable, (i) the name, quantity, price, and market value of CME Bitcoin Futures Contracts, (ii) the counterparty to and value of forward contracts, and

[120] 15 U.S.C. 78f(b)(5).

(iii) other financial instruments, if any, and the characteristics of such instruments and cash equivalents, and amount of cash held in the Fund's portfolio, if applicable.

Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in BTC and/or MBT Contracts and the securities and/or the financial instruments composing the daily disclosed portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

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

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of the Shares, which are Trust Units based on bitcoin 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 solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEARCA–2023–58 on the subject line.

Paper Comments

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

All submissions should refer to file number SR–NYSEARCA–2023–58. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEARCA–2023–58 and should be submitted on or before February 2, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[121]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–00498 Filed 1–11–24; 8:45 am]

BILLING CODE 8011–01–P

[121] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20014 and #20015; RHODE ISLAND Disaster Number RI–20000]

Presidential Declaration of a Major Disaster for the State of Rhode Island

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Rhode Island (FEMA–4753–DR), dated 01/07/2024.

Incident: Severe Storms, Flooding, and Tornadoes.

Incident Period: 09/10/2023 through 09/13/2023.

DATES: Issued on 01/07/2024.

Physical Loan Application Deadline Date: 03/07/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 10/07/2024.

ADDRESSES: Visit the MySBA Loan Portal at *https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 01/07/2024, applications for disaster loans may be submitted online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans):
Providence.

Contiguous Counties (Economic Injury Loans Only):
Rhode Island: Bristol, Kent
Connecticut: Windham
Massachusetts: Worcester, Norfolk, Bristol

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.000
Homeowners without Credit Available Elsewhere	2.500
Businesses with Credit Available Elsewhere	8.000

	Percent
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 200146 and for economic injury is 200150.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024–00568 Filed 1–11–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[License No. 03/03–0257]

Multiplier Capital, LP; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under section 309 of the Small Business Investment Act of 1958, as amended, and 13 CFR 107.1900 of the Code of Federal Regulations to function as a small business investment company under the Small Business Investment Company license number 03/03–0257 issued to Multiplier Capital, LP said license is hereby declared null and void.

Bailey Devries,

Associate Administrator, Office of Investment and Innovation, United States Small Business Administration.

[FR Doc. 2024–00521 Filed 1–11–24; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20058 and #20059; KANSAS Disaster Number KS–20000]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Kansas

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Kansas (FEMA–4747–DR), dated 10/26/2023.

Incident: Severe Storms, Straight-line Winds, Tornadoes, and Flooding.

Incident Period: 07/14/2023 through 07/21/2023.

DATES: Issued on 12/19/2023.

Physical Loan Application Deadline Date: 12/26/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 07/26/2024.

ADDRESSES: Visit the MySBA Loan Portal at *https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Kansas, dated 10/26/2023, is hereby amended to include the following area listed below as adversely affected by the disaster. Applications for disaster loans may be submitted online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

Primary Counties: Phillips.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024–00569 Filed 1–11–24; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 12305]

Notice of Charter Renewal of the Advisory Committee on International Postal and Delivery Services (IPODS)

SUMMARY: This notice announces the renewal of the charter of the Advisory Committee on International Postal and Delivery Services (IPODS).

FOR FURTHER INFORMATION CONTACT: Mr. Stuart Smith, Chief, International Postal Affairs, in the Office of Specialized and Technical Agencies (IO/STA), Bureau of International Organization Affairs, U.S. Department of State, at tel. (202) 663–3017, by email at *SmithSM7@state.gov* or by mail at IO/STA, L409 (SA1); Department of State, 2401 E Street NW, Washington, DC 20037.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the 2006 Postal Accountability and Enhancement Act (Pub. L. 109–435) and the Federal Advisory Committee Act (Pub. L. 92–463), the Committee's charter has been extended until December 20, 2025.

The Department of State uses the IPODS Committee to remain informed of the interests of users and providers of international postal and delivery services. The Assistant Secretary of State for International Organization Affairs appoints members of the committee, including representatives of the Department of Commerce, the Department of Homeland Security, the Office of the United States Trade Representative, the Postal Regulatory Commission, the Military Postal Service Agency, and the United States Postal Service.

(Authority: 5 U.S.C. 1001 *et seq.* and 5 U.S.C. 552)

Stuart M. Smith,

Designated Federal Officer, Advisory Committee on International Postal and Delivery Services, Department of State.

[FR Doc. 2024–00482 Filed 1–11–24; 8:45 am]

BILLING CODE P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36748]

Pioneer Rail & Transport of Hawthorne, Fla., a Division of Pioneer Storage Company of Florida, LLC—Operation Exemption—Line in Hawthorne, Fla.

Pioneer Rail & Transport of Hawthorne, Fla., a Division of Pioneer Storage Company of Florida, LLC (PRTF), a noncarrier, has filed a verified notice of exemption pursuant to 49 CFR 1150.31 to operate 5,569 feet of existing railroad trackage inside an existing industrial facility in Hawthorne, Fla. (the Line). The Line contains one milepost, described as S705, Hawthorne, Fla.

According to the verified notice, PRTF currently operates the Line as private track as part of its industrial facility. PRTF states that it plans to convert the Line from private track to a common carrier line of railroad and to provide common carrier switching services for the owner of the facility as well as other customers located or to be located within the facility. PRTF also states that it anticipates entering into an

interchange agreement with CSX Transportation, Inc.

This transaction is related to a concurrently filed verified notice of exemption in *James K. Perry & W. Stinson Dean—Continuance in Control Exemption—Pioneer Rail & Transload of Hawthorne, Florida, a Division of Pioneer Storage Co. of Florida, LLC,* Docket No. FD 36751, in which James K. Perry and W. Stinson Dean, noncarriers, seek to continue in control (by majority ownership) of PRTF, through their ownership of Pioneer Storage Company of Florida, LLC (PSCF), a noncarrier, upon PRTF becoming a common carrier.

PRTF certifies that its annual projected revenues as a result of the transaction will not exceed those that would qualify it as a Class III carrier and will not exceed $5 million. PRTF also states that the operation agreement does not impose any interchange commitments on PRTF's operations.

The earliest this transaction may be consummated is January 27, 2024, the effective date of the exemption.[1]

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than January 19, 2024 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36748, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on PRTF's representative, Renner Jantz, Legal Counsel, Pioneer Rail & Transload of Hawthorne, Fla., a Division of Pioneer Storage Company of Florida, LLC, 223 Gordon Chapel Rd., Hawthorne, FL 32640.

According to PRTF, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov*.

Decided: January 9, 2024.

[1] Although PRTF filed its verified notice of exemption on December 21, 2023, this transaction cannot be consummated until the related continuance in control authority in Docket No. FD 36751 becomes effective.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2024–00571 Filed 1–11–24; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36751; Docket No. FD 36752]

James K. Perry and W. Stinson Dean—Continuance in Control Exemption—Pioneer Rail and Transload of Hawthorne, Fla. and Pioneer Rail and Transload of El Reno, Okla.

James K. Perry and W. Stinson Dean (Pioneer Owners), noncarriers, have filed verified notices of exemption under 49 CFR 1180.2(d)(2) to continue in control (by majority ownership) of Pioneer Rail and Transload of Hawthorne, Fla. (PRTF), and Pioneer Rail and Transload of El Reno, Okla. (PRTO), through their ownership of Pioneer Storage Company of Florida, LLC (PSCF), and Pioneer Storage Company LLC (PSCO) respectively, both noncarriers, when PRTF and PRTO become common carriers.[1]

These transactions are related to two concurrently filed verified notices of exemption in *Pioneer Rail & Transport of Hawthorne, Fla., a Division of Pioneer Storage Company of Florida, LLC—Operation Exemption—Line in Hawthorne, Fla.,* FD 36748, and *Pioneer Rail & Transport of El Reno, Okla., a Division of Pioneer Storage Company, LLC—Operation Exemption—Line in El Reno, Okla.,* FD 36749. In those proceedings, PRTF seeks to operate over 5,569 feet of existing railroad track in Hawthorne, Fla., and PRTO seeks to operate over 8,530 feet of existing railroad track in El Reno, Okla. According to the verified notice, the Pioneer Owners currently have indirect control of PRTO through their ownership of PSCO and currently have indirect control of PRTF through their ownership of PSCF.

The notices indicate that (1) the lines PRTF and PRTO will operate do not connect with one another and there are no other railroads in the Pioneer Owners' corporate family; (2) the continuance in control of PRTF and PRTF is not part of a series of anticipated transactions that would connect the lines with any other carriers in the Pioneer Owners' corporate family; and (3) the proposed transactions do not involve a Class I rail carrier. Therefore, this transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2).

[1] These proceedings are not consolidated. A single decision is being issued for administrative convenience.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. However, 49 U.S.C. 11326(c) does not provide for labor protection for transactions under 49 U.S.C. 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all of the carriers involved are Class III rail carriers.

The earliest these transactions may be consummated is January 27, 2024, the effective date of the exemptions (30 days after the verified notices were filed). If the verified notices contain false or misleading information, the exemptions are void ab initio. Petitions to revoke the exemptions under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemptions. Petitions to stay must be filed no later than January 19, 2024.

All pleadings, referring to Docket No. FD 36751 and/or Docket No. FD 36752, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Pioneer Owners' counsel, Renner Jantz, Pioneer Rail & Transload of El Reno, OK, a Division of Pioneer Storage Company, LLC, 1200 N Grand Ave., El Reno, OK 73036.

According to the Pioneer Owners, this action is excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b)(1).

Board decisions and notices are available at *www.stb.gov.*

Decided: January 9, 2024.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2024–00574 Filed 1–11–24; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36749]

Pioneer Rail & Transload Transport of El Reno, Okla., a Division of Pioneer Storage Company, LLC—Operation Exemption—Line in El Reno, Okla.

Pioneer Rail & Transport of El Reno, Okla., a Division of Pioneer Storage Company, LLC (PRTO), a noncarrier, has filed a verified notice of exemption pursuant to 49 CFR 1150.31 to operate 8,530 feet of existing railroad trackage inside an existing industrial facility in El Reno, Okla. (the Line). The Line contains one milepost, described as 514.5, Oklahoma City, Okla.

According to the verified notice, PRTO currently operates the Line as private track as part of its industrial facility. PRTO states that it plans to convert the Line from private track to a common carrier line of railroad and to provide common carrier switching services for the owner of the facility as well as other customers located or to be located within the facility. PRTO also states that it anticipates entering into an interchange agreement with Union Pacific Railroad Company.

This transaction is related to a concurrently filed verified notice of exemption in *James K. Perry and W. Stinson Dean—Continuance in Control Exemption—Pioneer Rail and Transload of El Reno, Oklahoma, a Division of Pioneer Storage Co. LLC,* Docket No. FD 36752, in which James K. Perry and W. Stinson Dean, noncarriers, seek to continue in control (by majority ownership) of PRTO, through their ownership of Pioneer Storage Company LLC (PSCO), a noncarrier, upon PRTO becoming a common carrier.

PRTO certifies that its annual projected revenues as a result of the transaction will not exceed those that would qualify it as a Class III carrier and will not exceed $5 million. PRTO also states that the operation agreement does not impose any interchange commitments on PRTO's operations.

The earliest this transaction may be consummated is January 27, 2024, the effective date of the exemption.[1]

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than January 19, 2024 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36749, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on PRTO's representative, Renner Jantz, Legal Counsel, Pioneer Rail & Transload of El Reno, Okla., a Division of Pioneer Storage Company, LLC, 1200 N Grand Ave., El Reno, OK 73036.

According to PRTO, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov*.

Decided: January 9, 2024.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2024–00572 Filed 1–11–24; 8:45 am]

BILLING CODE 4915–01–P

[1] Although PRTO filed its verified notice of exemption on December 21, 2023, this transaction cannot be consummated until the related continuance in control authority in Docket No. FD 36752 becomes effective.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability, Notice of Public Comment Period and Request for Comment on the Draft Environmental Assessment in Support of the Application for a Supersonic Flight Waiver for Boom Technology XB–1 Supersonic Test Flights

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of availability, notice of public comment period and request for comment.

SUMMARY: This Environmental Assessment (EA) has been prepared to satisfy National Environmental Policy Act (NEPA) requirements (authorization to operate at supersonic speeds). This EA addresses the environmental impacts of proposed supersonic operations within the pre-existing supersonic corridors, as well as the effects of the associated landing and takeoff (LTO) operations at Mojave Air and Space Port. The proposed supersonic flight operations evaluated in this EA would consist of a limited number of test flights (10–20 supersonic tests of the XB–1 and its chase aircraft) occurring within a one-year duration.

DATES: Comments must be submitted to *9-APL-AEE-NEPA-Comments@faa.gov* and received on or before February 2, 2024.

ADDRESSES:

Mail: Comments should be mailed to Ms. Michon Washington at 800 Independence Avenue SW, Suite 900W, Washington, DC 20591. Comments may also be submitted electronically to *9-APL-AEE-NEPA-Comments@faa.gov.*

FOR FURTHER INFORMATION CONTACT: For EA questions contact Ms. Michon Washington, Environmental Protection Specialist, Federal Aviation Administration, 800 Independence Avenue SW, Suite 900W, Washington, DC 20591; phone (202) 267–9310; email *michon.washington@faa.gov.* For Special Flight Authorization or noise questions, contact Mr. Sandy Liu, General Engineer, Federal Aviation Administration, 800 Independence Avenue SW, Suite 900W, Washington, DC 20591; phone (202) 267–4748; email *Sandy.Liu@faa.gov.* The Environmental Assessment can be electronically accessed at *https://www.faa.gov/about/office_org/headquarters_offices/apl/aee/env_policy/sfa_supersonic.*

SUPPLEMENTARY INFORMATION: The FAA is evaluating BOOM's request for a Special Flight Authorization (SFA) waiver under 14 CFR 91.817–818 (''Special flight authorization to exceed Mach 1'') that restricts civilian supersonic operations over land in the U.S. Boom plans to operate XB–1 from Mojave Air and Space Port (MHV) subsonically, and only fly supersonically within pre-existing supersonic corridors; thus, Boom is requesting this waiver for limited supersonic flight operations within the confines of the pre-existing supersonic corridors within the R–2508 Airspace Complex that are used for daily military aircraft supersonic testing. The Environmental Assessment complies with Federal, Aviation Administration (FAA) Order 1050.1F *Environmental Impacts: Policies and Procedures* and its accompanying Desk Reference as well as U.S. Department of Transportation Order 5610.1C *Procedures for Considering Environmental Impacts.*

The FAA encourages all interested parties to provide comments concerning the scope and content of the Draft PEA. Before including your address, phone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While

you can ask the FAA in your comment to withhold from public review your personal identifying information, the FAA cannot guarantee that we will be able to do so.

Issued in Washington, DC, on: January 9, 2024.

Donald S. Scata Jr,

Deputy Director (A), Office of Environment and Energy, Office of Policy, International Affairs and Environment.

[FR Doc. 2024–00575 Filed 1–11–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0004]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: SARABI (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 12, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0004 by any one of the following methods:

• *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0004 and follow the instructions for submitting comments.

• *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0004, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION:

—As described in the application, the intended service of the vessel SARABI is:

—*Intended Commercial Use of Vessel:* Requester intends to use for passenger sailing trips.

—*Geographic Region Including Base of Operations:* California. Base of Operations: San Francisco, CA.

—*Vessel Length and Type:* 53′ Catamaran.

The complete application is available for review identified in the DOT docket as MARAD 2024–0004 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0004 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–00541 Filed 1–11–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0002]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: WANDERLUST (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 12, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0002 by any one of the following methods:

• *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0002 and follow the instructions for submitting comments.

• *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0002, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel WANDERLUST is:

—*Intended Commercial Use of Vessel:* Requester intends to use boat for passenger transport.

—*Geographic Region Including Base of Operations:* Florida. Base of Operations: Miami, FL.

—*Vessel Length and Type:* 37′ Motor Yacht.

The complete application is available for review identified in the DOT docket as MARAD 2024–0002 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0002 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–00542 Filed 1–11–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0005]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: RAYNE CHECK (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 12, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0005 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0005 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0005, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel RAYNE CHECK is:

—*Intended Commercial Use of Vessel:* Requester intends to use sportfishing charters.
—*Geographic Region Including Base of Operations:* Florida. Base of Operations: Miami Beach, FL.
—*Vessel Length and Type:* 65′ Sportfish.

The complete application is available for review identified in the DOT docket as MARAD 2024–0005 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0005 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–00540 Filed 1–11–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0003]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: MAS PURA VIDA (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before February 12, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0003 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0003 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0003, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel MAS PURA VIDA is:

—*Intended Commercial Use of Vessel:* Requester intends to use for charters.
—*Geographic Region Including Base of Operations:* Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, California, Oregon, Washington. Base of Operations: Montauk, NY.
—*Vessel Length and Type:* 72.3′ Motor Yacht.

The complete application is available for review identified in the DOT docket as MARAD 2024–0003 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0003 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–00539 Filed 1–11–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2018–0109 and NHTSA–2018–0074; Notice 2]

Consolidated Glass & Mirror, LLC, Denial of Petitions for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petitions.

SUMMARY: Consolidated Glass & Mirror, LLC (CGM), a subsidiary of Guardian Industries Corporation (Guardian), has determined that certain laminated glass parts do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 205, *Glazing Materials.* CGM filed two separate noncompliance reports dated December 14, 2018, and April 15, 2020, and petitioned NHTSA on December 20, 2018 and May 23, 2018, respectively, for decisions that the subject noncompliances are inconsequential as it relates to motor vehicle safety. This document announces the denial of the petitions.

FOR FURTHER INFORMATION CONTACT: Jack Chern, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), (202) 366–0661, *Jack.Chern@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Overview

CGM determined that certain laminated glass parts do not fully comply with paragraph S6 of FMVSS No. 205, *Glazing Materials* (49 CFR 571.205). On May 23, 2018, CGM petitioned NHTSA for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance,* without initially filing a noncompliance report. NHTSA prompted CGM to file the required noncompliance report and Guardian, on behalf of CGM, did so on April 15, 2020, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

Guardian, on behalf of CGM, also filed a noncompliance report on December 14, 2018, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* CGM petitioned NHTSA on December 20, 2018, for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

Notice of receipt of CGM's petitions was published with a 30-day public comment period, on November 10, 2020, in the **Federal Register** (85 FR 71712). No comments were received. To view the petitions and all supporting documents log onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Then follow the online search instructions to locate docket numbers ''NHTSA–2018–0109'' and ''NHTSA–2018–0074.''

II. Equipment Involved

Approximately 223 laminated windshields manufactured on March 8, 2018, and shipped to IC Corp Tulsa Bus Plant for installation into Navistar buses are potentially involved with the noncompliance report dated December 14, 2018.

Approximately 1,390 bus door windowpanes, manufactured between November 1, 2017, and March 29, 2018, are potentially involved with the noncompliant report dated April 15, 2020. The windowpanes were sold to Vapor Bus for use in the fabrication of bus doors. Vapor Bus subsequently shipped the bus doors to Nova Bus for installation in their buses.

III. Noncompliance

Guardian explained that the noncompliance is that the markings on the subject laminated glass panes do not fully meet the requirements specified in paragraph S6 of FMVSS No. 205. Specifically, the laminated windshields shipped to IC Corp Tulsa Bus Plant were marked AS–2, when they should have been marked AS–1, and the laminated bus door windowpanes sold to Nova Bus were marked AS–S, when they should have been marked AS–2.

IV. Rule Requirements

Paragraph S6 of FMVSS No. 205 includes the requirements relevant to these petitions. A manufacturer or distributor who cuts a section of glazing material, to which FMVSS No. 205 applies, for use in a motor vehicle or camper, must correctly mark that material in accordance with section 7 of ANSI/SAE Z26.1–1996.

V. Summary of CGM's Petitions

The following views and arguments presented in this section, ''V. Summary of CGM's Petitions,'' are the views and arguments provided by CGM and do not reflect the views of the Agency. The petitioner describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petitions, CGM submits the following reasoning:

1. CGM explains that the laminated glass parts are affixed with the Guardian trademark, the correct DOT manufacturer's code mark that NHTSA assigned to the manufacturer, and the model number that was assigned by the manufacturer of the safety glazing material. The manufacturer can use the model number to identify the type of construction of the glazing material.

2. CGM claims that although the laminated glass parts are affixed with the misprinted AS numbers, the glass construction from which the laminated glass parts were fabricated is in full compliance with the technical requirements that 49 CFR 571.205 as it currently applies to laminated glass for use in a motor vehicle. CGM believes the misprinted AS numbers do not affect the safety of the laminated glass parts.

3. Despite the misprinted AS numbers being affixed to the laminated glass parts, CGM states that the correct parts were sold and shipped to Navistar and Nova Bus for use as windscreens and door windows.

4. CGM believes that the subject noncompliance could not result in the wrong part being used in an OEM application, given that the part would be ordered by its unique part number and not the model number. Furthermore, CGM says the parts are also easily traceable back to Guardian via their unique DOT manufacturer's code mark.

Guardian concluded by contending that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petitions to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

VI. NHTSA's Analysis

1. General Principles

Congress passed the National Traffic and Motor Vehicle Safety Act of 1966 (the Safety Act) with the express purpose of reducing motor vehicle accidents, deaths, injuries, and property damage. 49 U.S.C. 30101. To this end, the Safety Act empowers the Secretary of Transportation to establish and enforce mandatory FMVSS, pursuant to 49 U.S.C. 30111. The Secretary has delegated this authority to NHTSA. 49 CFR 1.95.

NHTSA adopts an FMVSS only after the Agency has determined that the performance requirements are objective, practicable, and meet the need for motor vehicle safety. *See* 49 U.S.C. 30111(a). Thus, there is a general presumption that the failure of a motor vehicle or item of motor vehicle equipment to comply with an FMVSS increases the risk to motor vehicle safety beyond the level deemed appropriate by NHTSA through the rulemaking process. To protect the public from such risks, manufacturers whose products fail to

comply with an FMVSS are normally required to conduct a safety recall under which they must notify owners, purchasers, and dealers of the noncompliance and provide a free remedy. 49 U.S.C. 30118–30120. However, Congress has recognized that, under some limited circumstances, a noncompliance could be ''inconsequential'' to motor vehicle safety. It, therefore, established a procedure under which NHTSA may consider whether it is appropriate to exempt a manufacturer from its notification and remedy (*i.e.,* recall) obligations. 49 U.S.C. 30118(d) and 30120(h). The Agency's regulations governing the filing and consideration of petitions for inconsequentiality exemptions are set forth in 49 CFR part 556.

Under the Safety Act and part 556, inconsequentiality exemptions may be granted only in response to a petition from a manufacturer, and then only after notice in the **Federal Register** and an opportunity for interested members of the public to present information, views, and arguments on the petition. In addition to considering public comments, the Agency will draw upon its own understanding of safety-related systems and its experience in deciding the merits of a petition. An absence of opposing argument and data from the public does not require NHTSA to grant a manufacturer's petition.

Neither the Safety Act nor part 556 defines the term ''inconsequential.'' The Agency determines whether a particular noncompliance is inconsequential to motor vehicle safety based upon the specific facts before it in a particular petition. An important issue to consider in determining inconsequentiality is the safety risk to individuals who experience the type of event against which the recall would otherwise protect.[1] NHTSA also does not consider the absence of complaints or injuries to show that the issue is inconsequential to motor vehicle safety. ''Most importantly, the absence of a complaint does not mean there have not been any safety issues, nor does it mean that there will not be safety issues in the future.'' [2]

2. NHTSA's Response to the Petitioner's Arguments

The purpose of FMVSS No. 205 is to reduce injuries resulting from impact to glazing surfaces, to ensure a necessary degree of transparency in motor vehicle windows for driver visibility, and to minimize the possibility of occupants being thrown through the vehicle windows in collisions.

NHTSA has reviewed documentation provided by Guardian, on which Guardian bases its certification of the affected laminated windshields and laminated door windowpanes. This documentation shows the product met the safety performance requirements of the standard based on the intended design of the product. NHTSA also analyzed whether the documentation shows that the product met the safety performance requirements of the affected windshields and door windowpanes based on how they are labeled and used.

There is a safety-related purpose for every required marking on motor vehicles or items of motor vehicle equipment. The Agency also has a long-standing position that an incorrect marking reduces the safety effectiveness. The required markings are an assuring indication to the Agency and to consumers, including secondhand vehicle owners, that the item of equipment is certified to the applicable Federal requirements and provides the required minimum level of safety protection. *See* 49 CFR 571.205, S6. The vehicle owners (including firsthand and secondhand vehicle owners) might go to the original vehicle manufacturer and glazing supplier to obtain replacement parts when the affected glazing needs to be replaced. However, it is also likely that many vehicle owners will instead purchase replacement parts from aftermarket suppliers and rely on the marking suggested on the glazing, which will trigger safety-related concerns if the vehicle owners replace the glazing solely based on the incorrect marking suggested on the glazing. The Agency believes it is important to inform all vehicle owners, including firsthand and secondhand vehicle owners, what the proper specifications are for replacement products.

Guardian stated that the laminated windshields shipped to IC Corp Tulsa Bus Plant were marked as AS–2 when they should have been marked as AS–1. Because the affected windshield is marked as AS–2, consumers might replace the windshield according to the suggested AS–2 marking. Importantly, AS–2 laminated glazing is not permitted to be installed as a vehicle windshield because the test requirements for AS–2 are not as comprehensive as for AS–1. For example, the test requirements for certifying AS–1 laminated glazing require additional tests relating to deviation, distortion, and penetration resistance of the glazing, which are not required for certifying AS–2 laminated glazing. Therefore, the potential consequence to vehicle owners, especially for secondhand vehicle owners, to replace the windshield with an AS–2 laminated glazing is high and unsafe.

Guardian also stated that the laminated bus door windowpanes sold to Nova Bus were marked as AS–S when they should have been marked as AS–2. There is no ''AS–S'' marking as specified in the FMVSS No. 205 standard. Vehicle owners, especially secondhand vehicle owners, will be confused as to which AS-marked glazing they need as a replacement part when they need to replace their windowpane.

Moreover, it is highly possible for consumers to mis-read the ''AS–S'' marking as an ''AS–5'' marking because of the physical similarity of the printed characters ''S'' and ''5.'' Replacing an AS–2 windowpane with an AS–5 glazing is not permitted because AS–5 glazing should only be used for installation in locations at levels not requisite for driving visibility. Conversely, an AS–2 marked glazing is required in locations at levels requisite for driving visibility. Consequently, using an AS–5 glazing as a replacement part poses a risk to motor vehicle safety because it would impair the bus driver's ability to see clearly.

In summary, the petitioner's noncompliant markings are not inconsequential to motor vehicle safety due to the possibility that vehicle owners may purchase incorrect and unsafe replacement parts for their vehicles.

VII. NHTSA's Decision

In consideration of the foregoing, NHTSA has decided that Guardian has not met its burden of persuasion that the subject FMVSS No. 205 noncompliance in the affected vehicles is inconsequential to motor vehicle safety. Accordingly, Guardian's petitions are hereby denied, and Guardian is consequently obligated to provide notification of and free remedy for that

[1] *See Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

[2] *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 21663, 21666 (Apr. 12, 2016).

noncompliance under 49 U.S.C. 30118 and 30120.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Eileen Sullivan,

Associate Administrator for Enforcement.

[FR Doc. 2024–00391 Filed 1–11–24; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket ID Number: DOT–OST–2014–0031 BTS Paperwork Reduction Notice]

Agency Information Collection; Activity Under OMB Review; Report of Extension of Credit to Political Candidates—Form 183

AGENCY: Office of the Assistant Secretary for Research and Technology (OST–R), Bureau of Transportation Statistics (BTS), Department of Transportation.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need and usefulness of BTS collecting reports from air carriers on the aggregated indebtedness balance of a political candidate or party for Federal office. The reports are required when the aggregated indebtedness is over $5,000 on the last day of a month.

DATES: Written comments should be submitted by March 12, 2024.

ADDRESSES: You may submit comments identified by DOT Docket ID Number DOT–OST–2014–0031 and the associated OMB approval #2138–0016 by any of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Mail: Docket Services: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Fax: 202–366–3383.

Instructions: Identify docket number, DOT–OST–2014–0031, at the beginning of your comments, and send two copies. To receive confirmation that DOT received your comments, include a self-addressed stamped postcard. Internet users may access all comments received by DOT at *http://www.regulations.gov.* All comments are posted electronically without charge or edits, including any personal information provided.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Jeff Gorham, Office of Airline Information, RTS–42, Bureau of Transportation Statistics, 1200 New Jersey Avenue Street SE, Washington, DC 20590–0001, (202) 366–4406.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2138–0016.

Title: Report of Extension of Credit to Political Candidates—Form 183, 14 CFR part 374a.

Form No.: 183.

Type of Review: Extension of a currently approved collection.

Respondents: Certificated air carriers.

Number of Respondents: 2 (Monthly Average).

Number of Responses: 24.

Estimated Time per Response: 1 hour.

Total Annual Burden: 24 hours.

Needs and Uses: The Department uses this form as the means to fulfill its obligation under the Federal Election Campaign Act of 1971 (the Act). The Act's legislative history indicates that one of its statutory goals is to prevent candidates for Federal political office from incurring large amounts of unsecured debt with regulated transportation companies (*e.g.,* airlines). This information collection allows the Department to monitor and disclose the amount of unsecured credit extended by airlines to candidates for Federal office. All certificated air carriers are required to submit this information.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Issued in Washington, DC, on January 9, 2024.

William Chadwick, Jr.,

Director, Office of Airline Information, Bureau of Transportation Statistics.

[FR Doc. 2024–00566 Filed 1–11–24; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket ID Number: DOT–OST–2014–0031 BTS Paperwork Reduction Notice]

Agency Information Collection; Activity Under OMB Review; Submission of Audit Reports—Part 248

AGENCY: Office of the Assistant Secretary for Research and Technology (OST–R), Bureau of Transportation Statistics (BTS), Department of Transportation.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of BTS requiring U.S. large certificated air carriers to submit a true and complete copy of its annual audit that is made by an independent public accountant. If a carrier does not have an annual audit, the carrier must file a statement that no audit has been performed. Comments are requested concerning whether the audit reports are needed by BTS and DOT; BTS accurately estimated the reporting burden; there are other ways to enhance the quality, utility and clarity of the information collected; and there are ways to minimize reporting burden, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted by March 12, 2024.

ADDRESSES: You may submit comments identified by DOT Docket ID Number DOT–OST–2014–0031 and the associated OMB approval #2138–0004 by any of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Mail: Docket Services: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Fax: 202–366–3383.

Instructions: Identify docket number, DOT–OST–2014–0031, at the beginning of your comments, and send two copies. To receive confirmation that DOT received your comments, include a self-addressed stamped postcard. Internet users may access all comments received by DOT at *http://www.regulations.gov.* All comments are posted electronically without charge or edits, including any personal information provided.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* or the street address listed above. Follow the online instructions for accessing the dockets.

Electronic Access

You may access comments received for this notice at *http://www.regulations.gov,* by searching docket DOT–OST–2014–0031.

FOR FURTHER INFORMATION CONTACT: *Jeff.gorham@dot.gov,* Office of Airline Information, RTS–42, Room E34, Bureau of Transportation Statistics, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 or by phone at 202 366–4406.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 2138–0004.

Title: Submission of Audit Reports—Part 248.

Form No.: None.

Type of Review: Extension of a currently approved collection.

Respondents: Large certificated air carriers.

Number of Respondents: 71.

Number of Responses: 71.

Total Annual Burden: 36 hours.

Needs and Uses: BTS collects independent audited financial reports from U.S. certificated air carriers. Carriers not having an annual audit must file a statement that no such audit has been performed. In lieu of the audit report, BTS will accept the annual report submitted to the stockholders. The audited reports are needed by the Department of Transportation as (1) a means to monitor an air carrier's continuing fitness to operate, (2) reference material used by analysts in examining foreign route cases (3) reference material used by analyst in examining proposed mergers, acquisitions and consolidations, (4) a means whereby BTS sends a copy of the report to the International Civil Aviation Organization (ICAO) in fulfillment of a United States treaty obligation, and (5) corroboration of a carrier's Form 41 filings.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Issued in Washington, DC, on January 9, 2024.

William Chadwick, Jr.,

Director, Office of Airline Information, Bureau of Transportation Statistics.

[FR Doc. 2024–00567 Filed 1–11–24; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF VETERANS AFFAIRS

Scoping Notice for Preparation of a Programmatic Environmental Assessment for the State Veterans Homes Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs is preparing a programmatic environmental assessment (PEA) in accordance with the regulations implementing the procedural provisions of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations, and VA's NEPA Implementing Regulations.

DATES: Comments must be received on or before February 12, 2024.

ADDRESSES: Comments must be submitted through *www.regulations.gov.* Except as noted in this section, comments received before the close of the comment period will be available at *www.regulations.gov* for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on *www.regulations.gov* as soon as possible after they have been received. VA will not post on *regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm the individual. VA encourages individuals not to submit duplicative comments; however, we will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered.

FOR FURTHER INFORMATION CONTACT: Mr. Jason Sturm, Environmental Engineer, Office of Construction & Facilities Management (003C2), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington DC 20420, 224–628–1946 (this is not a toll-free number), *Jason.Sturm@va.gov.* Reference ''State Veterans Homes PEA'' in your correspondence.

SUPPLEMENTARY INFORMATION: The VA State Veterans Homes Construction Grant Program is a partnership between VA and the states by which VA provides full or partial grants to a state for construction, renovation, or repair of state-owned and operated nursing homes, domiciliaries, and/or adult day health care facilities. The PEA will evaluate VA's proposed Action to issue grants through the VA State Veterans Homes Construction Grant Program to its state partners for construction, renovation, or repair of State Veterans Homes facilities in all 50 States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, and Tribal Lands. The PEA aims to provide a streamlined NEPA compliance process for future VA State Veterans Homes Construction Grant Program grants involving construction, renovation, and repair projects that would result in less than significant environmental impacts.

This notice initiates the scoping process for the PEA and invites the public, government agencies, and other interested persons and organizations to provide comments on the scope of

issues for analysis, input on potential alternatives, or information/analyses relevant to the proposed action.

Use of the PEA would decrease the time and cost associated with having to prepare stand-alone NEPA documentation for those future VA State Veterans Homes Construction Grant Program projects that would meet the conditions of the PEA. VA would complete additional NEPA compliance as required on projects outside the parameters of the PEA.

The grant program assists in providing eligible Veterans and their families high- quality, long-term domiciliary, nursing, adult day health, and hospital care services in a comfortable setting. The proposed action is needed to provide sufficient capacity to meet the increasing health care needs of eligible Veterans.

The PEA will evaluate the potential direct and indirect impacts on the human environment from the proposed action and alternatives. VA anticipates releasing the Draft PEA for a 30-day public review and comment period later in CY 2024. VA will notify stakeholders via email/mail, publish a notice of availability of the Draft PEA in the **Federal Register**, and solicit comments at that time. Once the Draft PEA is released it will be available for review via the VA website: *www.cfm.va.gov/environmental/.*

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on January 4, 2024, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2024–00576 Filed 1–11–24; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0856]

Agency Information Collection Activity: Authorization To Disclose Personal Information to a Third Party

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 12, 2024.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0856'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0856'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Authorization to Disclose Personal Information to a Third Party VA Form 29–0975 and Authorization to Disclose Personal Information to a Third Party VA Form 29–0975e (DocuSign Version).

OMB Control Number: 2900–0856.

Type of Review: Extension of a currently approved collection.

Abstract: This form will be used by the Department of Veterans Affairs Insurance Center (VAIC) to enable a third party to act on behalf of the insured Veteran/beneficiary. Many of our customers are of advanced age or suffer from limiting disabilities and need assistance from a third party to conduct their affairs. The information collected provides an optional service and is not required to receive insurance benefits.

Affected Public: Individuals and households.

Estimated Annual Burden: 100 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,200.

By direction of the Secretary.

Dorothy Glasgow,

VA PRA Clearance Officer (Alt), Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–00494 Filed 1–11–24; 8:45 am]

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Federal Register

Vol. 89, No. 9

Friday, January 12, 2024

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Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6050**

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FEDERAL REGISTER PAGES AND DATE, JANUARY

1–222 2
223–436 3
437–696 4
697–858 5
859–1024 8
1025–1438 9
1439–1786 10
1787–2110 11
2111–2480 12

CFR PARTS AFFECTED DURING JANUARY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

Proposed Rules:
Chapter XVI 714

3 CFR

Proclamations:
9705 (amended by Proc. 10691) 227
10689 1
10690 223
10691 227
10692 437
10693 443
10694 445
10695 447
Administrative Orders:
Presidential Determinations:
No. 2024–03 of December 27, 2023 3

5 CFR

2634 1439
2636 1439

7 CFR

1207 859
Proposed Rules:
989 2178
3560 892

10 CFR

2 ....2111, 2112
13 2112
20 5
207 1025
218 1025
429 1025
431 1025
490 1025
501 1025
601 1025
612 864
810 1025
820 1025
824 1025
851 1025
1013 1025
1017 1025
1050 1025
Proposed Rules:
50 895
52 895

11 CFR

1 196
4 196
5 196
6 196
100 196
102 196
103 196
104 196
105 196
106 196
108 196
109 196
110 196
111 ....196, 697
112 196
113 5
114 196
116 196
200 196
201 196
300 196
9003 196
9004 196
9007 196
9032 196
9033 196
9034 196
9035 196
9036 196
9038 196
9039 196

12 CFR

19 872
109 872
263 2114
622 2116
747 1441
1083 1787
1411 1445

14 CFR

21 2118
25 2126
39 ....14, 17, 21, 23, 233, 235, 237, 240, 242, 244, 246, 248, 251, 253, 256, 258, 1030
71 ....1789, 1790, 1792, 1793, 1795, 1797, 1799, 1800, 1801
95 261
97 ....1803, 1804
Proposed Rules:
21 37
39 ....1038, 1847, 1849
71 ....1851, 1854

16 CFR

1 1445
463 590
Proposed Rules:
1 286
312 2034
464 38

17 CFR

Proposed Rules:
39 286

18 CFR

250 1806
381 1033
385 1806

19 CFR

12 1808

20 CFR

655 1810
702 1810
725 1810
726 1810

21 CFR

Proposed Rules:
73 1856
172 1857
173 1857
1301 308

22 CFR

35 700
103 700
127 700
138 700

24 CFR

Proposed Rules:
91 1746
570 1746
1003 1746

26 CFR

1 2127
Proposed Rules:
1 ..... 39, 1858, 2182
53 1042
301 1858

27 CFR

Proposed Rules:
9 ..... 716, 721, 726, 730

28 CFR

16 1447
Proposed Rules:
35 2183

29 CFR

5 1810
500 1810
501 1810
503 1810
570 1810
578 1810
579 1810
780 1638
788 1638
795 1638
801 1810
810 1810
825 1810
1903 1810
1952 702
4071 2132
4302 2132

30 CFR

100 1810
948 2133
Proposed Rules:
285 309
585 309

31 CFR

501 2139
510 2139
535 2139
536 2139
539 2139
541 2139
542 2139
544 2139
546 2139
547 2139
548 2139
549 2139
551 2139
552 2139
553 2139
555 2139
558 2139
560 2139
561 2139
566 2139
570 2139
576 2139
578 2139
583 2139
584 2139
588 2139
589 2139
590 2139
592 2139
594 2139
597 2139
598 2139

32 CFR

269 2144

33 CFR

165 ..... 449, 1457

34 CFR

Proposed Rules:
75 1982
76 1982
77 1982
79 1982
299 1982

37 CFR

384 267
Proposed Rules:
201 311
202 311

38 CFR

17 1034
36 1458
42 1458

39 CFR

233 1460
273 1460

40 CFR

9 1822
52 ..... 874, 1461
55 451
147 703
721 1822
Proposed Rules:
52 ..... 39, 178, 1479, 1482
70 1150
71 1150
131 896

41 CFR

50–104 1810
105–170 ..... 1810, 1832
171–201 1810

42 CFR

Proposed Rules:
136 896

43 CFR

2 2147
Proposed Rules:
2 1505
11 733

45 CFR

88 2078
170 1192
171 1192

46 CFR

506 1464
520 25

47 CFR

1 ..... 1465, 2148, 2151
4 1465
15 874
54 ..... 1833, 1834
64 269
73 1466
Proposed Rules:
1 1859
25 740
76 740

48 CFR

538 2172
Proposed Rules:
2 1043
3 1043
9 1043
22 1043
23 1043
25 1043
33 1043
52 1043

49 CFR

384 712
386 712
831 1035
1022 2174
Proposed Rules:
350 2195
365 2195
367 1053
385 2195
386 2195
387 2195
395 2195
571 830

50 CFR

223 126
226 126
622 ..... 271, 276
635 278
648 ..... 34, 284, 891, 1036
679 2176
Proposed Rules:
217 504

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List December 28, 2023

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