SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100224; File Nos. SR-NYSEARCA-2023-70; SR-NYSEARCA-2024-31; SR-NASDAQ-2023-045; SR-CboeBZX-2023-069; SR-CboeBZX-2023-070; SR-CboeBZX-2023-087; SR-CboeBZX-2023-095; SR-CboeBZX-2024-018)

May 23, 2024

Self-Regulatory Organizations; NYSE Arca, Inc.; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Shares of Ether-Based Exchange-Traded Products

I. INTRODUCTION

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")[1] and Rule 19b-4 thereunder ("Rule 19b-4"),[2] each of NYSE Arca, Inc. ("NYSE Arca"), The Nasdaq Stock Market LLC ("Nasdaq"), and Cboe BZX Exchange, Inc. ("BZX", and together with NYSE Arca and Nasdaq, the "Exchanges") filed with the Securities and Exchange Commission ("SEC" or "Commission") proposed rule changes to list and trade shares of the following. NYSE Arca proposes to list and trade shares of (1) the Grayscale Ethereum Trust[3] and (2) the Bitwise Ethereum ETF[4] under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares); Nasdaq proposes to list and trade shares of (3) the iShares Ethereum Trust[5] under Nasdaq Rule 5711(d) (Commodity-Based Trust Shares); and BZX proposes to list and trade

---

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

2 17 CFR 240.19b-4.

3 See Amendment No. 2 to Proposed Rule Change to List and Trade Shares of the Grayscale Ethereum Trust under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) (SR-NYSEARCA-2023-70), filed May 21, 2024, available at https://www.sec.gov/comments/sr-nysearca-2023-70/srnysearca202370-475871-1363474.pdf ("Grayscale Amendment").

4 See Amendment No. 1 to Proposed Rule Change to List and Trade Shares of the Bitwise Ethereum ETF under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) (SR-NYSEARCA-2024-31), filed May 21, 2024, available at https://www.sec.gov/comments/sr-nysearca-2024-31/srnysearca202431-475891-1363514.pdf ("Bitwise Amendment").

5 See Amendment No. 2 to Proposed Rule Change to List and Trade Shares of the iShares Ethereum Trust under Nasdaq Rule 5711(d) (Commodity-Based Trust Shares) (SR-NASDAQ-2023-045), filed May 22, 2024, available at https://www.sec.gov/comments/sr-nasdaq-2023-045/srnasdaq2023045-475851-1363454.pdf ("iShares Amendment").

shares of (4) the VanEck Ethereum Trust,[6] (5) the ARK 21Shares Ethereum ETF,[7] (6) the Invesco Galaxy Ethereum ETF,[8] (7) the Fidelity Ethereum Fund,[9] and (8) the Franklin Ethereum ETF[10] under BZX Rule 14.11(e)(4) (Commodity-Based Trust Shares). Each filing was subject to notice and comment.[11]

Each of the foregoing proposed rule changes, as modified by their respective amendments, is referred to herein as a "Proposal" and collectively as the "Proposals." Each trust (or series of a trust) described in a Proposal is referred to herein as a "Trust" and collectively as

---

6 See Amendment No. 2 to Proposed Rule Change to List and Trade Shares of the VanEck Ethereum Trust under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares (SR-CboeBZX-2023-069), filed May 21, 2024, available at https://www.sec.gov/comments/sr-cboebzx-2023-069/srcboebzx2023069-475811-1363394.pdf ("VanEck Amendment").

7 See Amendment No. 2 to Proposed Rule Change to List and Trade Shares of the ARK 21Shares Ethereum ETF under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares (SR-CboeBZX-2023-070), filed May 21, 2024, available at https://www.sec.gov/comments/sr-cboebzx-2023-070/srcboebzx2023070-475812-1363414.pdf ("ARK Amendment").

8 See Amendment No. 1 to Proposed Rule Change to List and Trade Shares of the Invesco Galaxy Ethereum ETF under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares (SR-CboeBZX-2023-087), filed May 21, 2024, available at https://www.sec.gov/comments/sr-cboebzx-2023-087/srcboebzx2023087-475831-1363395.pdf ("Invesco Amendment").

9 See Amendment No. 2 to Proposed Rule Change to List and Trade Shares of the Fidelity Ethereum Fund under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares (SR-CboeBZX-2023-095), filed May 21, 2024, available at https://www.sec.gov/comments/sr-cboebzx-2023-095/srcboebzx2023095-475791-1363374.pdf ("Fidelity Amendment").

10 See Amendment No. 1 to Proposed Rule Change to List and Trade Shares of the Franklin Ethereum ETF, a Series of the Franklin Ethereum Trust, under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares (SR-CboeBZX-2024-018), filed May 21, 2024, available at https://www.sec.gov/comments/sr-cboebzx-2024-018/srcboebzx2024018-475813-1363434.pdf ("Franklin Amendment").

11 Comments received on SR-NYSEARCA-2023-70 are available at https://www.sec.gov/comments/sr-nysearca-2023-70/srnysearca202370.htm. Comments received on SR-NYSEARCA-2024-31 are available at https://www.sec.gov/comments/sr-nysearca-2024-31/srnysearca202431.htm. Comments received on SR-NASDAQ-2023-045 are available at https://www.sec.gov/comments/sr-nasdaq-2023-045/srnasdaq2023045.htm. Comments received on SR-CboeBZX-2023-069 are available at https://www.sec.gov/comments/sr-cboebzx-2023-069/srcboebzx2023069.htm. Comments received on SR-CboeBZX-2023-070 are available at https://www.sec.gov/comments/sr-cboebzx-2023-070/srcboebzx2023070.htm. Comments received on SR-CboeBZX-2023-087 are available at https://www.sec.gov/comments/sr-cboebzx-2023-087/srcboebzx2023087.htm. Comments received on SR-CboeBZX-2023-095 are available at https://www.sec.gov/comments/sr-cboebzx-2023-095/srcboebzx2023095.htm. Comments received on SR-CboeBZX-2024-018 are available at https://www.sec.gov/comments/sr-cboebzx-2024-018/srcboebzx2024018.htm.

the "Trusts." As described in more detail in the Proposals' respective amended filings,[12] each Proposal seeks to list and trade shares of a Trust that would hold spot ether,[13] in whole or in part.[14] This order approves the Proposals on an accelerated basis.[15]

II. DISCUSSION AND COMMISSION FINDINGS

After careful review, the Commission finds that the Proposals are consistent with the Exchange Act and rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the Commission finds that the Proposals are consistent with Section 6(b)(5) of the Exchange Act,[17] which requires, among other things, that the Exchanges' rules be designed to "prevent fraudulent and manipulative acts and practices" and, "in general, to protect investors and the public interest;" and with Section 11A(a)(1)(C)(iii) of the Exchange Act,[18] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of

---

12 See supra notes 3-10.

13 Ether is a digital asset that is native to, and minted and transferred via, a distributed, open-source protocol used by a peer-to-peer computer network through which transactions are recorded on a public transaction ledger known as "Ethereum." The Ethereum protocol governs the creation of new ether and the cryptographic system that secures and verifies transactions on Ethereum.

14 All of the Trusts propose to hold spot ether. Additionally, all of the Trusts, except the Grayscale Ethereum Trust, propose to hold cash, and some Trusts also propose to hold cash equivalents, as described in their respective amended filings. See Bitwise Amendment at 5; iShares Amendment at 4; VanEck Amendment at 21; ARK Amendment at 20; Invesco Amendment at 22; Fidelity Amendment at 22; Franklin Amendment at 21.

15 See infra Section III.

16 In approving the Proposals, the Commission has considered the Proposals' impacts on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f). See also infra note 61 and accompanying text, discussing comments received regarding the efficiency of spot ether exchange-traded products ("ETPs"). See also Letter from Ryan Posey, dated Mar. 20, 2024, regarding SR-CboeBZX-2023-095 ("Posey Letter") (stating that "[t]he history of [exchange-traded funds] in other asset classes demonstrates how competition drives fees down"). Additionally, a commenter states that the Commission should approve spot ether ETPs, but not all at once, so as not to "delay the innovators in order to allow free-riding copycats a free hand." See Letter from James J. Angel, Georgetown University, dated Apr. 5, 2024, regarding SR-NYSEARCA-2023-70 ("Angel Letter"), at 3-4. The Commission believes that it is appropriate to approve all of the Proposals at the same time in order to foster competition by potentially providing investors with several spot ether-based ETPs from which to choose. The shares of any Trust, however, may not begin trading on its applicable Exchange unless and until its corresponding registration statement becomes effective.

17 15 U.S.C. 78f(b)(5).

18 15 U.S.C. 78k-1(a)(1)(C)(iii).

investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

A. Exchange Act Section 6(b)(5)

When considering proposals to list bitcoin-based commodity trusts and bitcoin-based trust issued receipts, the Commission has explained that one way an exchange that lists bitcoin-based ETPs can meet the obligation under Exchange Act Section 6(b)(5) that its rules be designed to prevent fraudulent and manipulative acts and practices is by demonstrating that the exchange has a comprehensive surveillance-sharing agreement with a regulated market of significant size related to the underlying or reference assets.[19] Such an agreement would assist in detecting and deterring fraud and manipulation related to that underlying asset.

The Commission has also consistently recognized, however, that this is not the *exclusive* means by which an ETP listing exchange can meet this statutory obligation.[20] A listing exchange could, alternatively, demonstrate that "other means to prevent fraudulent and manipulative acts and practices will be sufficient" to justify dispensing with a surveillance-sharing agreement with

---

19 See, e.g., Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units, Securities Exchange Act Release No. 99306 (Jan. 10, 2024), 89 FR 3008 (Jan. 17, 2024) (SR-NYSEARCA-2021-90; SR-NYSEARCA-2023-44; SR-NYSEARCA-2023-58; SR-NASDAQ-2023-016; SR-NASDAQ-2023-019; SR-CboeBZX-2023-028; SR-CboeBZX-2023-038; SR-CboeBZX-2023-040; SR-CboeBZX-2023-042; SR-CboeBZX-2023-044; SR-CboeBZX-2023-072) ("Spot Bitcoin ETP Approval Order"); 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), Securities Exchange Act Release No. 94620 (Apr. 6, 2022), 87 FR 21676 (Apr. 12, 2022) (SR-NYSEARCA-2021-53). The Commission has provided an illustrative definition for "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 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. See 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, 37594 (Aug. 1, 2018) (SR-BatsBZX-2016-30) ("Winklevoss Order").

20 See Winklevoss Order, 83 FR at 37580; Spot Bitcoin ETP Approval Order, 89 FR at 3009.

a regulated market of significant size.[21] Applying this same analytical framework to the spot ether to be held by the Trusts, the Commission finds that sufficient "other means" of preventing fraud and manipulation in this context have been demonstrated.

Each Exchange has a comprehensive surveillance-sharing agreement with the Chicago Mercantile Exchange ("CME") via their common membership in the Intermarket Surveillance Group.[22] This facilitates the sharing of information that is available to the CME through its surveillance of its markets, including its surveillance of the CME ether futures market. Spot ether, however, does not trade on the CME and the CME does not engage in surveillance of spot ether markets. As with the proposals approved in the Spot Bitcoin ETP Approval Order, this raises questions regarding the sufficiency of a surveillance-sharing agreement with the CME in preventing fraud and manipulation when the proposed ETPs hold spot ether.[23] If a would-be manipulator of a spot ether ETP engages in misconduct (such as fraud, manipulation, or other trading abuses) on the CME itself, the CME's surveillance can be reasonably expected to detect such misconduct. But if the would-be manipulator is not transacting on the CME itself, the impacts of its misconduct would not necessarily be surveilled by the CME unless the misconduct also impacts the CME ether futures market. Thus, when assessing the sufficiency of a surveillance-sharing agreement with the CME, it is critical to establish whether, and to what extent, fraud or manipulation that impacts the spot ether market also impacts the CME ether futures market.[24]

---

21 See Spot Bitcoin ETP Approval Order, 89 FR at 3009 (quoting Winklevoss Order, 83 FR at 37580).

22 See id. at 3009.

23 See id.

24 See id.

In the Spot Bitcoin ETP Approval Order, the Commission concluded that having a comprehensive surveillance-sharing agreement with a U.S.-regulated market that, based on evidence from robust correlation analysis, is consistently highly correlated with the ETPs' underlying assets (spot bitcoin) constituted "other means" sufficient to satisfy the Exchange Act Section 6(b)(5) standard.[25] Specifically, given the consistently high correlation between the CME bitcoin futures market and a sample of spot bitcoin markets—confirmed through robust correlation analysis using data at hourly, five-minute, and one-minute intervals—the Commission was able to conclude that fraud or manipulation that impacts prices in spot bitcoin markets would likely similarly impact CME bitcoin futures prices. And because the CME's surveillance can assist in detecting those impacts on CME bitcoin futures prices, the Exchanges' comprehensive surveillance-sharing agreement with the CME can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of those proposals. The Commission indicated that the "robustness" of its correlation analysis rested on the pre-requisites of (1) the correlations being calculated with respect to bitcoin futures that trade on the CME, a U.S. market regulated by the Commodity Futures Trading Commission ("CFTC"), (2) the lengthy sample period of price returns for both the CME bitcoin futures market and the spot bitcoin market, (3) the frequent intra-day trading data in both the CME

---

[25] See id. at 3009-11. To be clear, this does not mean that such U.S.-regulated market is of "significant size" related to the ETP's underlying or reference asset. In particular, the Commission did not conclude in the Spot Bitcoin ETP Approval Order that the CME bitcoin futures market is of "significant size" related to spot bitcoin. See id. at 3010-11 ("[B]ecause the CME's surveillance can assist in detecting those impacts on CME bitcoin futures prices, the Exchanges' comprehensive surveillance-sharing agreement with the CME—a U.S.-regulated market whose bitcoin futures market is consistently highly correlated to spot bitcoin, *albeit not of 'significant size' related to spot bitcoin*—can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the Proposals.") (emphasis added).

bitcoin futures market and the spot bitcoin market over that lengthy sample period, and (4) the consistency of the correlation results throughout the lengthy sample period.[26]

Several of the Proposals and some commenters offered correlation analyses in the ether context. Some Proposals provided correlation results that used data at a daily frequency. For example, the ARK Amendment finds a correlation between the daily returns of CME ether futures and daily returns on certain spot ether trading platforms of more than 99.89%;[27] the VanEck Amendment, Invesco Amendment, and Franklin Amendment find daily correlation of 99.8%;[28] and the iShares Amendment finds a daily correlation of 99.93%.[29] However, as explained in the Spot Bitcoin ETP Approval Order, calculating correlation using only *daily* price observations provides no information on how prices in the two markets are associated—if at all—*throughout* the trading day; and calculating correlation for only the full sample period does not provide evidence of a *consistently* high correlation over time.[30]

The Fidelity Amendment performed rolling 90-day correlations between daily returns of CME ether futures and six spot ether trading platforms and found correlations ranged between 94% and 99.8%.[31] As indicated above, however, calculating correlations using only daily price observations—even on a rolling basis—provides no information on how prices are associated—if at all—*throughout* the trading day. The Fidelity Amendment also examined correlation using

---

26 See id. at 3010 n.38.

27 See ARK Amendment at 14 (using data from Jan. 1, 2022, through Feb. 1, 2024).

28 See VanEck Amendment at 13; Invesco Amendment at 14; Franklin Amendment at 13 (using data from Sept. 1, 2022, through Sept. 1, 2023).

29 See iShares Amendment at 26 (using data from Oct. 13, 2022, through Oct. 13, 2023). Some commenters also assert that ether markets are highly correlated, but the commenters provide no evidence for this assertion. See Letter from Parker Jamieson, dated Mar. 12, 2024, regarding SR-CboeBZX-2023-095 ("Jamieson Letter"); Posey Letter.

30 See Spot Bitcoin ETP Approval Order, 89 FR at 3009 n.30.

31 See Fidelity Amendment at 16 (the filing does not provide the exact range for its data sample, but based on the chart at 16, the range appears to be approximately July 2021 through Jan. 2024).

hourly returns data, and found such correlations for the full sample period to be above 98%.[32] While the filing does not provide rolling correlations using the hourly data, the filing examined the "distribution of hourly returns" and finds that at least 97.9% of the hourly returns of the spot ether platforms and the CME ether futures market are within 50 basis points. The filing stated that "[t]his suggests a high degree of similarity in price movements between the regulated exchange and the spot platforms for most hours."[33]

The use of hourly data, however, provides no indication of how prices move at finer increments. For example, the results provide no indication of whether price movements—including price manipulations—in ether spot markets that persist for only a few minutes or less are likely to be reflected in CME ether futures prices. While the Fidelity Amendment's results may suggest a high degree of similarity in price movements between the CME ether futures market and the spot ether platforms "*for most hours*," the results suggest nothing about the degree of similarity in price movements *for most minutes* within the hours.

Two commenters and one Proposal examined correlation between the CME ether futures market and spot ether trading platforms at hourly, five-minute, and one-minute intervals. The Coinbase Letter used price returns data from March 1, 2021, through January 31, 2024, for the CME ether futures market and the Coinbase platform.[34] This commenter calculated Pearson correlation statistics[35] for the full sample period as well as for rolling three-month segments

---

32 See id. at 17-18.

33 See id. at 18.

34 See Letter from Paul Grewal, Chief Legal Officer, Coinbase Global, Inc., dated Feb. 21, 2024, regarding SR-NYSEARCA-2023-70 ("Coinbase Letter"), at 20-22.

35 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). Correlation should not be interpreted as an indication of a causal relationship or whether one variable leads or lags the other.

within the sample period. The commenter's correlation results for the full sample period are 99.3% using data at an hourly interval, 96.2% using data at a five-minute interval, and 84.7% using data at a one-minute interval.[36] The commenter states that these results "show an even greater correlation than what was reported by the Commission" in the Spot Bitcoin ETP Approval Order with respect to the CME bitcoin futures market and spot bitcoin trading platforms.[37] The commenter also sought to replicate the same correlation analysis of the bitcoin market that the Commission performed for the Spot Bitcoin ETP Approval Order. The commenter's replication results also found greater correlation than what was reported in the Spot Bitcoin ETP Approval Order.[38]

The CF Benchmarks Letters used price returns data from February 2, 2022, through February 2, 2024, for the CME ether futures market and the Coinbase, Kraken, and LMAX Digital platforms.[39] This commenter also calculated Pearson correlation statistics for its full sample period as well as for rolling three-month segments within that sample period. This commenter's correlation results for the full sample period are no less than 98.0% using data at an hourly interval, 91.5% using data at a five-minute interval, and 84.9% using data at a one-minute interval.[40] The commenter states that these results are "on the whole stronger" than those that the Commission reported for the bitcoin market in the Spot Bitcoin ETP Approval Order.[41]

---

36 See Coinbase Letter at 21. The Coinbase Letter's rolling correlation results ranged between 98.1% and 99.7% using data at an hourly interval, 93.8% and 97.1% using data at a five-minute interval, and 80.4% and 88% using data at a one-minute interval.

37 See id.

38 See id.

39 See Letters from CF Benchmarks, dated Mar. 22, 2024, regarding SR-CboeBZX-2024-018, and dated Apr. 11, 2024, regarding SR-NASDAQ-2023-045 ("CF Benchmarks Letters"), at 5-6.

40 See id. at 6. The CF Benchmarks Letters' rolling correlation results ranged between 96.1% and 99.4% using data at an hourly interval, 81.3% and 94.7% using data at a five-minute interval, and 81.0% and 88.1% using data at a one-minute interval.

41 See id. at 6.

The Bitwise Amendment used price returns data from August 1, 2021, through March 20, 2024, for the CME ether futures market and the Coinbase and Kraken platforms.[42] This filing also calculated Pearson correlation statistics for its full sample period as well as for rolling three-month segments within that sample period. This filing's correlation results for the full sample period are no less than 98.6% using data at an hourly interval, 90.0% using data at a five-minute interval, and 70.9% using data at a one-minute interval.[43]

The Commission undertook to verify the Bitwise Amendment's and these two commenters' correlation results for certain spot ether markets. For robust[44] results, the Commission used stationary time series of price returns data at hourly, five-minute, and one-minute intervals for the spot ETH/USD trading pair on Coinbase and Kraken, as well as for the closest-to-maturity CME ether futures contract, over a similarly lengthy sample period (October 1, 2021, through March 29, 2024).[45] Pearson correlation statistics were calculated for the full sample period as well as for rolling three-month segments within the sample period. The Commission's correlation analysis utilized frequent intra-day trading data over the lengthy

---

42 See Bitwise Amendment at 18-19.

43 See id. The Bitwise Amendment's rolling correlation results ranged between 95.7% and 99.3% using data at an hourly interval, 86.8% and 92.9% using data at a five-minute interval, and 65.0% and 79.5% using data at a one-minute interval.

44 See also infra note 49.

45 Data were sourced from the CME via the SEC's Market Information Data Analytics System ("MIDAS") for the closest-to-maturity CME ether futures contract price and from Kaiko for the ETH/USD prices on Coinbase and Kraken. The MIDAS CME ether futures data are limited to the 3:00am – 5:00pm ET, Monday through Friday, trading hours. All data sets used in the Commission's analysis are publicly available (although some require subscriptions). One-minute, five-minute, and hourly price *level* time series were created using the last trade price over the given interval for the spot ETH/USD pairs and the closest-to-maturity CME ether futures contract. For those time intervals during which there were no trades in the closest-to-maturity CME ether futures contracts or spot ether, the last trade price for the closest-to-maturity CME ether futures contract (or last trade price for spot ether, as applicable) was used as the price for such time interval. Each price *level* time series was then log differenced to create price *returns* time series. The stationarity of each price *returns* time series was confirmed through Augmented Dickey-Fuller tests.

sample period on this subset of spot ether platforms[46] and—crucially—on the CME ether futures market as well.[47]

The results of the Commission's analysis confirm that the CME ether futures market has been consistently highly correlated with this subset of the spot ether market throughout the past 2.5 years. The correlation between the CME ether futures market and this subset of spot ether platforms for the full sample period is no less than 96.2 percent using data at an hourly interval, 85.7 percent using data at a five-minute interval, and 67.1 percent using data at a one-minute interval. The rolling three-month correlation results range between 86.4 and 98.4 percent using data at an hourly interval, 75.8 and 90.2 percent using data at a five-minute interval, and 58.6 and 75.9 percent using data at a one-minute interval.

---

46 The spot ether market is a 24-hour, global marketplace. However, due to the unregulated and fragmented nature of the spot ether market, there are no authoritative published figures for spot ether trading. Nonetheless, multiple sources of pricing information for the spot ether market are available 24 hours per day on public websites and through subscription services. See, e.g., Grayscale Amendment at 46 (stating that real-time price and volume data for ether is available by subscription from Reuters and Bloomberg).

47 The CME ether futures market, which is regulated by the CFTC, has developed since its inception in February 2021 into an active market, growing from $64.3 million in average monthly open interest in February 2021 to $965.6 million in average monthly open interest in April 2024 (source: Refinitiv). Real-time trade information, including prices, for the CME ether futures market is made available through CME at: https://www.cmegroup.com/markets/cryptocurrencies/ether/ether.quotes.html#venue=globex and https://www.cmegroup.com/markets/cryptocurrencies/ether/micro-ether.quotes.html#venue=globex. But see infra note 49.

Full-Sample and Post-Merge Correlations between Certain Spot Ether Markets and the CME Ether Futures Market (MIDAS and Kaiko Data)

	Coinbase			Kraken		
	Hourly	5 Minutes	1 Minute	Hourly	5 Minutes	1 Minute
Full Sample: October 1, 2021, through March 29, 2024	96.2	85.7	67.1	96.3	86.5	69.0
Rolling Three-Month Correlations Over the Full Sample Period:						
Maximum	98.4	90.1	74.5	98.4	90.2	75.9
Minimum	86.4	75.8	58.6	86.6	77.1	61.6
The Commission also examined correlation between the CME ether futures market and the Coinbase and Kraken spot ether trading platforms at hourly, five-minute, and one-minute intervals, using the same data sources and methodology (see note 45), for the period after the Ethereum Network changed from a Proof-of-Work to a Proof-of-Stake consensus mechanism in September 2022 ("post-Merge"). The results indicate that correlation has been similarly high and consistent during just the post-Merge period.						
Post-Merge Sample: September 16, 2022, through March 29, 2024	94.1	84.1	68.0	94.1	85.0	69.9
Rolling Three-Month Correlations Over the Post-Merge Sample:						
Maximum	98.4	88.3	73.1	98.4	89.3	75.9
Minimum	86.4	75.8	61.0	86.6	77.1	62.8

The Commission further examined correlation between the CME ether futures market and the Coinbase and Kraken spot ether trading platforms at hourly, five-minute, and one-minute intervals in a recent month, March 2024, sourcing CME ether futures market data from Refinitiv.[48] The results indicate similar correlation: no less than 97.6 percent using data at an

[48] Data were sourced from Refinitiv for the closest-to-maturity CME ether futures contract price and from Kaiko for the ETH/USD prices on Coinbase and Kraken. The Refinitiv CME ether futures data cover the CME's full 23 trading hours. All data sets used in the Commission's analysis are publicly available (although some require subscriptions). The Commission used the same methodology as summarized in note 45 above.

hourly interval, 86.0 percent using data at a five-minute interval, and 62.5 percent using data at a one-minute interval.

Correlations between Certain Spot Ether Markets and the CME Ether Futures Market (Refinitiv and Kaiko Data)

	Coinbase			Kraken		
	Hourly	5 Minutes	1 Minute	Hourly	5 Minutes	1 Minute
March 2024	97.6	86.0	62.5	97.7	87.5	67.0

The results of the Commission's robust correlation analysis[49] provide empirical evidence that prices generally move in close (although not perfect) alignment between the spot ether market and the CME ether futures market.[50] As such, based on the record before the Commission and the correlation analyses in the record, including the Commission's own analysis, the Commission is able to conclude that fraud or manipulation that impacts prices in spot ether markets would likely similarly impact CME ether futures prices. And because the CME's surveillance can assist in detecting those impacts on CME ether futures prices, the Exchanges'

---

49 The robustness of the Commission's correlation analysis rests on the pre-requisites of (1) the correlations being calculated with respect to ether futures that trade on *the CME*, a U.S. market regulated by the CFTC, (2) the lengthy sample period of price returns for both the CME ether futures market and the spot ether market, (3) the frequent intra-day trading data in both the CME ether futures market and the spot ether market over that lengthy sample period, and (4) the consistency of the correlation results throughout the lengthy sample period. The relatively low frequency of trading in CME ether futures, however, makes condition (3) particularly difficult to assess. Over the Commission's full sample period from October 1, 2021, through March 29, 2024, using MIDAS data (see note 45 above), front-month CME ether futures traded on average only 3.05 times per minute, and did not trade during 47% of the one-minute intervals. For comparison, over this same sample, front-month CME bitcoin futures traded on average 5.11 times per minute, and did not trade during 37% of the one-minute intervals. As explained in note 45 above, the Commission (1) used prior prices for the 47% of minutes during which front-month CME ether futures did not trade, which likely affected the correlation results. Alternatively, the Commission could have (2) dropped this 47% of minutes from the sample, but this also likely would have affected the correlation results. As the portion of no-trade minutes increases, the correlation results from both methodologies (1) and (2) become increasingly unreliable, because a larger and larger percentage of data is either dropped altogether (methodology (2)) or estimated with prior prices, potentially from distant past time intervals (methodology (1)). Consequently, with respect to future proposed spot ETPs, if trading on the regulated market is even less frequent, it may be more difficult to use correlation analysis to establish the sufficiency of a surveillance-sharing agreement with the regulated market.

50 Correlation should not be interpreted as an indicator of a causal relationship or whether one variable leads or lags the other.

comprehensive surveillance-sharing agreement with the CME—a U.S.-regulated market whose ether futures market is consistently highly correlated to spot ether, albeit not of "significant size" related to spot ether—can be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the Proposals.[51]

B. Exchange Act Section 11A(a)(1)(C)(iii)

Each Proposal sets forth aspects of its proposed ETP, including the availability of pricing information, transparency of portfolio holdings, and types of surveillance procedures, that are consistent with other ETPs that the Commission has approved.[52] This includes commitments regarding: the availability via the relevant securities information processor of quotation and last-sale information for the shares of each Trust; the availability on the websites of each Trust of

---

51 One commenter argues that the Commission's use of correlation as a basis for approval is "problematic" because (1) it relies on a subset of spot markets which may not be representative of the entirety of the spot markets worldwide; (2) the fact that prices between the spot market and the CME futures market "generally move in close alignment does not account for the times when the prices are not aligned," and thus "the entire premise that price correlation leads to reliable detection of manipulation is fatally flawed;" and (3) "the fact that two variables are correlated in the past does not mean they will continue to be correlated in the future." See Letter from Dennis M. Kelleher, Co-Founder, President, and CEO, and Stephen W. Hall, Legal Director and Securities Specialist, Better Markets, Inc., dated Jan. 12, 2024, regarding SR-CboeBZX-2023-070 and SR-CboeBZX-2023-069 ("Better Markets Letter 1"), at 6-7. Regarding (1), the Commission selected the spot ether trading platforms of Coinbase and Kraken because these platforms have the largest volume of ETH/USD spot trading; whereas on other platforms, ETH trading typically occurs through so-called "stablecoins" and thus has prices that may be affected by USD/stablecoin rate fluctuations. Regarding (3), the Commission assessed the consistency of correlation over the full sample period through rolling 90-day correlations. The Commission does not detect any trends in the rolling correlations that would lead it to expect that the correlation would not be similarly high in the future. Both the post-Merge correlations and the March 2024 correlations using Refinitiv data indicate that correlations have recently been similar to the full sample period. Regarding (2), the Commission does not consider the use of correlation analysis in the context of the Proposals to be "fatally flawed." However, the Commission agrees that the *lower* the frequency of trading in the CME futures market, the *greater* the risk that a price movement in spot markets would not be similarly reflected in a price movement in the CME futures market, notwithstanding seemingly high correlation results. For this reason, the Commission has explained that *robust* correlation analysis requires, among others, that there be *frequent* intra-day trading data in the CME futures market (see Spot Bitcoin ETP Approval Order, 89 FR at 3010 n.38).

52 See, e.g., Spot Bitcoin ETP Approval Order, 89 FR at 3011; Securities Exchange Act Release No. 61220 (Dec. 22, 2009), 74 FR 68895 (Dec. 29, 2009) (SR-NYSEARCA-2009-94) (Order Granting Approval of Proposed Rule Change Relating To Listing and Trading Shares of the ETFS Palladium Trust); Securities Exchange Act Release No. 94518 (Mar. 25, 2022), 87 FR 18837 (Mar. 31, 2022) (SR-NYSEARCA-2021-65) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the Sprott ESG Gold ETF Under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares)).

certain information related to the Trusts' intra-day indicative values ("IIV") and net asset values; the dissemination of IIV by one or more major market data vendors, updated every 15 seconds throughout the Exchanges' regular trading hours; the Exchanges' surveillance procedures and ability to obtain information regarding trading in the shares of the Trusts; the conditions under which the Exchanges would implement trading halts and suspensions; and the requirements of registered market makers in the shares of each Trust.[53] In addition, in each Proposal, the applicable Exchange deems the shares of the applicable Trust to be equity securities, thus rendering trading in such shares subject to that Exchange's existing rules governing the trading of equity securities.[54] Further, the applicable listing rules of each Exchange require that all statements and representations made in its filing regarding, among others, the description of the applicable Trust's holdings, limitations on such holdings, and the applicability of that Exchange's listing rules specified in the filing, will constitute continued listing requirements.[55] Moreover, each Proposal states that: its issuer has represented to the applicable Exchange that it will advise that Exchange of any failure to comply with the applicable continued listing requirements; pursuant to obligations under Section 19(g)(1) of the Exchange Act, that Exchange will monitor for compliance with the continued listing requirements; and if the applicable Trust

---

53 See ARK Amendment at 28-30, 33-39; Bitwise Amendment at 19-23; Fidelity Amendment at 25-28, 31-37; Franklin Amendment at 25-28, 30-36; Grayscale Amendment at 45-49; Invesco Amendment at 25-27, 30-36; iShares Amendment at 12-16, 34-41; VanEck Amendment at 25-28, 30-36.

54 See ARK Amendment at 36; Bitwise Amendment at 21; Fidelity Amendment at 34; Franklin Amendment at 34; Grayscale Amendment at 46; Invesco Amendment at 33; iShares Amendment at 37; VanEck Amendment at 34.

55 See Nasdaq Rule 5711(d)(iii); NYSE Arca Rule 8.201-E(e)(2)(vii); BZX Rule 14.11(a).

is not in compliance with the applicable listing requirements, that Exchange will commence delisting procedures.[56]

The Commission therefore finds that the Proposals, as with other ETPs that the Commission has approved,[57] are reasonably designed to promote fair disclosure of information that may be necessary to price the shares of the Trusts appropriately, to prevent trading when a reasonable degree of transparency cannot be assured, to safeguard material non-public information relating to the Trusts' portfolios, and to ensure fair and orderly markets for the shares of the Trusts.

C. Other comments

One commenter asserts that the Commission should approve the Proposals because CME ether futures exchange-traded funds ("ETFs") registered under the Investment Company Act of 1940 ("1940 Act") are already trading on national securities exchanges "and possess much more potential for manipulation of the underlying asset."[58] Another commenter states that the Commission should approve the Proposals because "[t]here is no difference between the [spot bitcoin ETP] approval and the [spot ether ETPs] at this point."[59]

The Commission has considered and, for the reasons described above, is approving the Proposals on their own merits and under the standards applicable to them; namely, the standards provided by Section 6(b)(5) and Section 11A(a)(1)(C)(iii) of the Exchange Act.[60] As described above, based on the record before the Commission and the Commission's own correlation

---

56 See ARK Amendment at 38; Bitwise Amendment at 23; Fidelity Amendment at 36; Franklin Amendment at 35; Grayscale Amendment at 49; Invesco Amendment at 35; iShares Amendment at 33; VanEck Amendment at 35.

57 See supra note 52.

58 See Letter from Patrick Turley, dated Apr. 3, 2024, regarding SR-NASDAQ-2023-045 ("Turley Letter").

59 See Jamieson Letter.

60 15 U.S.C. 78f(b)(5); 15 U.S.C. 78k-1(a)(1)(C)(iii).

analysis, the Commission concludes that fraud or manipulation that impacts prices in spot ether markets would likely similarly impact CME ether futures prices, such that a surveillance-sharing agreement with the CME can be reasonably expected to assist in surveilling for fraud and manipulation that may impact the proposed spot ether ETPs.

Some commenters state that the Commission should approve the Proposals for a variety of investor protection reasons, including that spot ether ETPs would be a less costly and more efficient,[61] more convenient and secure,[62] and more regulated[63] way to gain exposure to spot ether. The Exchanges make similar investor protection arguments in support of approval.[64]

Another commenter disagrees that the ETP investment vehicle would protect investors, stating that the value of an investment in a spot ether ETP would be subject to the same risks of fraud and manipulation in the spot ether market as holding ether directly, and that ETPs are not subject to the Commission's examination authority, custody requirements, or conflicts of interest rules of ETFs registered under the 1940 Act.[65] This commenter further states that any purported

---

61 See, e.g., Posey Letter; Letter from William Entriken, dated Oct. 31, 2023, regarding SR-NYSEARCA-2023-70; Letter from Brent Wickenheiser, dated Apr. 3, 2024, regarding SR-NYSEARCA-2023-70 ("Wickenheiser Letter"); Letter from Dirk Hooley, dated Apr. 3, 2024, regarding SR-NYSEARCA-2023-70; Letter from Kevin Thompson, dated Apr. 3, 2024, regarding SR-NASDAQ-2023-045 ("Thompson Letter").

62 See, e.g., Posey Letter; Wickenheiser Letter; Thompson Letter; Turley Letter; Letter from Anonymous, dated Apr. 3, 2024, regarding SR-CboeBZX-2023-095; Letter from Anonymous, dated Apr. 5, 2024, regarding SR-NASDAQ-2023-045.

63 See, e.g., Posey Letter; Thompson Letter; Angel Letter at 7-8.

64 See, e.g., ARK Amendment at 8-13; iShares Amendment at 18-20, 33-34; Bitwise Amendment at 17. However, another commenter states that the Commission should approve the Proposals because "when it comes to crypto, things happen so fast that there is no legitimate protection possible." See Letter from El Norro, dated Dec. 1, 2023, regarding SR-CboeBZX-2023-095 ("Norro Letter").

65 See Better Markets Letter 1 at 4. While many of the Trusts use "ETF" or "Fund" in their names, none is registered under the 1940 Act.

investor protections from an ETP compared to an "even-worse over-the-counter market" do not neutralize concerns about fraud and manipulation.[66]

This commenter also states that the price volatility of ether means that spot ether ETPs would threaten retail investors by exposing them to an unstable asset.[67] The commenter further states that approving spot ether ETPs "would threaten not just investors but also the broader financial system" by "further entangl[ing] the crypto industry with traditional finance and aggravat[ing]" risks similar to risks that the commenter claims are posed by spot bitcoin ETPs, such as bitcoin price volatility and dislocations between the price of a spot bitcoin ETP and bitcoin that can "cause stress for institutions heavily exposed to" or reliant on spot bitcoin ETPs.[68]

The Commission has considered these potential benefits and concerns in the broader context of whether the Proposals meet the applicable requirements of the Exchange Act,[69] including the requirement in Section 6(b)(5)[70] that the Exchanges' rules be designed to "prevent fraudulent and manipulative acts and practices." For the reasons described above, the Commission has determined that the Proposals meet such requirements.

The Commission also finds that the Proposals are consistent with the Section 6(b)(5) requirement that the Exchanges' rules be designed to protect investors and the public interest because, in addition to the factors discussed in Section II.A and II.B above, existing rules and

---

66 See id. See also Letter from Senator Jack Reed and Senator Laphonza Butler, dated Mar. 11, 2024. But see Letter from Representatives French Hill, Josh Gottheimer, Tom Emmer, Wiley Nickel, and Mike Flood, dated May 22, 2024.

67 See Letter from Benjamin L. Schiffrin, Director of Securities Policy, Better Markets, Inc., dated May 15, 2024, regarding SR-CboeBZX-2023-069 and SR-CboeBZX-2023-070 ("Better Markets Letter 2"), at 4-7.

68 See id. at 8. The commenter, however, provided no data on financial institutions' exposure to spot bitcoin ETPs or likely exposure to spot ether ETPs.

69 See also Winklevoss Order, 83 FR at 37602.

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

standards of conduct would apply to recommending and advising investments in the shares of the Trusts. For example, when broker-dealers recommend ETPs to retail customers, Regulation Best Interest ("Reg BI") would apply.[71] Reg BI requires broker-dealers to, among other things, exercise reasonable diligence, care, and skill when making a recommendation to a retail customer to: (1) understand potential risks, rewards, and costs associated with the recommendation and have a reasonable basis to believe that the recommendation could be in the best interest of at least some retail customers; and (2) have a reasonable basis to believe the recommendation is in the best interest of a particular retail customer based on that retail customer's investment profile.[72] In addition, investment advisers have a fiduciary duty under the 1940 Act comprised of a duty of care and a duty of loyalty. These obligations require the adviser to act in the best interest of its client and not subordinate its client's interest to its own.[73]

Some commenters contend that the Commission should disapprove the Proposals because the nature of ether and the Ethereum Network makes them inherently susceptible to fraud and manipulation.[74] Other commenters argue that the nature of ether and the Ethereum Network

---

71 Exchange Act rule 15*l*-1(a).

72 Exchange Act rules 15*l*-1(a)(2)(ii)(A) and (B). Separately, under Reg BI's Conflict of Interest Obligation, broker-dealers must establish, maintain, and enforce written policies and procedures reasonably designed to, among other things, identify and disclose or eliminate all conflicts of interest associated with a recommendation and mitigate conflicts of interest at the associated person level. See Exchange Act rules 15*l*-1(a)(2)(iii)(A) and (B). To the extent that broker-dealers recommend ETPs to customers who are not retail customers covered by Reg BI, FINRA Rule 2111 requires, in part, that a member broker-dealer or associated person "have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the [broker-dealer] or associated person to ascertain the customer's investment profile."

73 See Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Investment Advisers Act Release No. 5248 (June 5, 2019), 84 FR 33669 (July 12, 2019), at 33671; Investment Company Act Release No. 34084 (Nov. 2, 2020), 85 FR 83162 (Dec. 21, 2020), at 83217 (discussing the best interest standard of conduct for broker-dealers and the fiduciary obligations of investment advisers in the context of all ETPs).

74 See, e.g., Better Markets Letter 1 at 3 (asserting that relays are responsible for adding blocks of transactions to the Ethereum Blockchain, and recently one infrastructure provider exited the network, which left "only

makes them inherently resistant to fraud and manipulation.[75] The Commission acknowledges commenters' concerns regarding fraud and manipulation. Pursuant to Section 19(b)(2) of the Exchange Act, however, the Commission must approve a proposed rule change filed by a national securities exchange if it finds that the proposed rule change is consistent with the

four other major relay players to handle most Ethereum blocks and raises concern of potential problems, ranging from censorship of transactions to stealing of other key operators' profits"; that in addition to relays, the Ethereum Network is run by "parties called builders, which compile most transactions into blocks, and validators, which order blocks into a blockchain," but that both "builder and validator functions are dominated by a handful of participants"; and that "[a] validator controlling 34% could potentially falsify transactions" and one validator currently controls 32.3% of validator power and four builders account for the majority of blocks built); Letter from Robert, dated Apr. 23, 2024, regarding CboeBZX-2023-095 (stating that proof-of-stake is centralizing because as the "pile of [validators'] ether token increases, so does their ability to capture control over the network"; and that "the founding entities never relinquished control over the network" despite the Ethereum Foundation's "deceptive affinity marketing" to the contrary); Letter from Brandon, dated Apr. 4, 2024, regarding SR-NYSEARCA-2023-70 ("Control of the network will inevitably centralize … because only the largest holders are the ones rewarded with new coins"; and "the entire [Ethereum Blockchain] can be manipulated by the foundation, such as after the DAO attack where the chain was rolled back by the organization"); Letter from James Keeton, dated Apr. 3, 2024, regarding SR-NASDAQ-2023-045 ("[T]he merge to proof of stake in 2022 solidified the lack of decentralization of this blockchain"); Letter from Tyler Mazun, dated Mar. 5, 2024, regarding SR-NASDAQ-2023-045 ("Proof of stake is just another mechanism for more increased centralization and control over the network by the biggest stakers."); Letter from Luther, dated Apr. 3, 2024, regarding SR-NASDAQ-2023-045 ("The Ethereum [F]oundation is the centralized entity that controls the protocol … [T]hey regularly push out hard forks to their centralized node infrastructure to make protocol changes. In a truly decentralized system this would not be possible.").

[75] See, e.g., Coinbase Letter at 2 (asserting that the technological and operational security mechanisms inherent in the Ethereum Blockchain significantly limit ether's susceptibility to fraud and manipulation); Letter from Laura Brookover, Matt Corva, and William C. Hughes, Consensys Software Inc., dated Mar. 29, 2024, regarding SR-NASDAQ-2023-045, SR-CboeBZX-2023-087, and SR-CboeBZX-2023-095 ("Consensys Letter"), at 2-7 (arguing that Ethereum's proof-of-stake consensus mechanism "has several built-in protections providing additional security against fraud and manipulation," including: its block finality model provides increased reliability and integrity; the division of labor between two groups of block validators, proposers and attesters, "serves as a check and balance against error and manipulation;" the cost to an attacker group of obtaining the percentage of Ethereum nodes required to compromise the network is greater than for the Bitcoin Network; and the "slashing" that "penalizes validators who violate protocol rules by docking their stakes … serves as both a punitive measure and a deterrent." This commenter also states that the "active and sizable developer community" enhances Ethereum's resilience against attacks; the redundancy afforded by independent open source software clients means that "network integrity is maintained even if one software client fails due to a bug or malicious exploit;" and the "inherent transparency" of Ethereum's public protocol development "forms a significant barrier to fraud and manipulation at the protocol level."); Letter from Chris McCullough, dated Apr. 3, 2024, regarding SR-NASDAQ-2023-045 (citing unspecified "advanced safeguards inherent in Ethereum's design"); Letter from Anonymous, dated Mar. 24, 2024, regarding SR-NASDAQ-2023-045 ("Anonymous Letter"), at 4 (arguing that the decentralization of ether software clients "helps mitigate the risks posed by bugs, although some concentration is still observed in a few clients"); Letter from Nathan Yang, dated Apr. 7, 2024, regarding SR-NYSEARCA-2024-31.

applicable requirements of the Exchange Act.[76] For the reasons described above, the Commission finds that the Proposals satisfy the requirements of the Exchange Act, including the requirement in Section 6(b)(5)[77] that the Exchanges' rules be designed to "prevent fraudulent and manipulative acts and practices."

Commenters also address, among other things: investor demand for spot ether ETPs;[78] environmental considerations of Ethereum's proof-of-stake consensus mechanism;[79] whether to permit a Trust to stake its ether;[80] and the potential disadvantage from Commission disapproval of spot ether ETPs to U.S. innovation[81] and to U.S. investors compared to those in other countries.[82] Ultimately, however, for the reasons described above, the Commission is approving the Proposals because it finds that the Proposals satisfy the requirements of the Exchange Act, including the requirement in Section 6(b)(5)[83] that the Exchanges' rules be designed to "prevent fraudulent and manipulative acts and practices."

---

76 See Exchange Act Section 19(b)(2)(C), 15 U.S.C. 78s(b)(2)(C). The Commission does not apply a "cannot be manipulated" standard; rather, the Commission examines whether a proposal meets the requirements of the Exchange Act. See, e.g., Winklevoss Order, 83 FR at 37582. The Commission does not understand the Exchange Act to require that a particular product or market be immune from manipulation. Rather, the inquiry into whether the rules of an exchange are designed to prevent fraudulent and manipulative acts and practices and, in general, to protect investors and the public interest, has long focused on the mechanisms in place for the detection and deterrence of fraud and manipulation.

77 15 U.S.C. 78f(b)(5).

78 See, e.g., Jamieson Letter; Letter from John, dated Apr. 4, 2024, regarding SR-CboeBZX-2023-095 ("John Letter"); Letter from Johanes Swenberg, dated Apr. 3, 2024, regarding SR-CboeBZX-2023-095; Letter from Shaun Cumby, dated Apr. 3, 2024, regarding SR-NASDAQ-2023-045.

79 See, e.g., Anonymous Letter at 2; Consensys Letter at 6; John Letter; Letter from Brett, dated Apr. 4, 2024, regarding SR-NASDAQ-2023-045.

80 See, e.g., Better Markets Letter 2 at 7-8; Anonymous Letter at 3; Turley Letter. The Proposals under consideration by the Commission in this order do not contemplate staking of the Trusts' ether. Accordingly, the relative benefits or drawbacks of staking are outside the scope of this order. Any future proposal of a Trust to, directly or indirectly, engage in action where any portion of the Trust's ether becomes subject to the Ethereum proof-of-stake validation or is used to earn additional ether or generate income or other earnings would require the applicable Exchange to submit a proposed rule change under Rule 19b-4.

81 See, e.g., Turley Letter.

82 See, e.g., Norro Letter.

83 15 U.S.C. 78f(b)(5).

III. ACCELERATED APPROVAL OF THE PROPOSALS

The Commission finds good cause to approve the Proposals prior to the 30th day after the date of publication of notice of the Exchanges' amended filings[84] in the Federal Register. The amended filings clarified the descriptions of the Trusts; further described the terms of the Trusts; and conformed various representations in the amended filings to the applicable Exchange's listing standards and to representations that the Exchanges have made for other ETPs that the Commission has approved.[85] These changes do not raise any novel regulatory issues. Further, the changes assist the Commission in evaluating the Proposals and in determining that they are consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, as discussed above. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,[86] to approve the Proposals on an accelerated basis.

IV. CONCLUSION

This approval order is based on all of the Exchanges' representations and descriptions in their respective amended filings, which the Commission has carefully evaluated as discussed above.[87] For the reasons set forth above, including the Commission's correlation analysis, the Commission finds, pursuant to Section 19(b)(2) of the Exchange Act,[88] that the Proposals are

---

84 See supra notes 3-10.

85 See also supra Section II.B.

86 15 U.S.C. 78s(b)(2).

87 See supra notes 3-10. In addition, the shares of the Trusts in SR-NYSEARCA-2023-70 and NYSEARCA-2024-31 must comply with the requirements of NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) to be listed and traded on NYSE Arca on an initial and continuing basis; the shares of the Trust in SR-NASDAQ-2023-045 must comply with the requirements of Nasdaq Rule 5711(d) (Commodity-Based Trust Shares) to be listed and traded on Nasdaq on an initial and continuing basis; and the shares of the Trusts in SR-CboeBZX-2023-069, SR-CboeBZX-2023-070, SR-CboeBZX-2023-087, SR-CboeBZX-2023-095, and SR-CboeBZX-2024-018 must comply with the requirements of BZX Rule 14.11(e)(4) (Commodity-Based Trust Shares) to be listed and traded on BZX on an initial and continuing basis.

88 15 U.S.C. 78s(b)(2).

consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) and Section 11A(a)(1)(C)(iii) of the Exchange Act.[89]

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,[90] that the Proposals (SR-NYSEARCA-2023-70; SR-NYSEARCA-2024-31; SR-NASDAQ-2023-045; SR-CboeBZX-2023-069; SR-CboeBZX-2023-070; SR-CboeBZX-2023-087; SR-CboeBZX-2023-095; SR-CboeBZX-2024-018) be, and hereby are, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[91]

J. Matthew DeLesDernier,

Deputy Secretary.

89 15 U.S.C. 78f(b)(5); 15 U.S.C. 78k-1(a)(1)(C)(iii).

90 15 U.S.C. 78s(b)(2).

91 17 CFR 200.30-3(a)(12).