


Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 69		SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No. * SR 2025 - * 042 Amendment No. (req. for Amendments *)	
Filing by The Nasdaq Stock Market LLC					
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934					
Initial * <input checked="" type="checkbox"/>		Amendment * <input type="checkbox"/>		Withdrawal <input type="checkbox"/>	
Section 19(b)(2) * <input checked="" type="checkbox"/>		Section 19(b)(3)(A) * <input type="checkbox"/>		Section 19(b)(3)(B) * <input type="checkbox"/>	
Pilot <input type="checkbox"/>		Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	
		Rule			
		<input type="checkbox"/> 19b-4(f)(1)		<input type="checkbox"/> 19b-4(f)(4)	
		<input type="checkbox"/> 19b-4(f)(2)		<input type="checkbox"/> 19b-4(f)(5)	
		<input type="checkbox"/> 19b-4(f)(3)		<input type="checkbox"/> 19b-4(f)(6)	
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/>			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>		
Exhibit 2 Sent As Paper Document <input type="checkbox"/>			Exhibit 3 Sent As Paper Document <input type="checkbox"/>		
<b>Description</b> Provide a brief description of the action (limit 250 characters, required when Initial is checked *). <div>A proposal to list and trade 21Shares SUI ETF</div>					
<b>Contact Information</b> Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action. First Name * Sun Last Name * Kim Title * Senior Associate General Counsel E-mail * Sun.Kim@Nasdaq.com Telephone * (646) 420-7816 Fax					
<b>Signature</b> Pursuant to the requirements of the Securities Exchange of 1934, The Nasdaq Stock Market LLC has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized. Date 05/23/2025 (Title *) By John Zecca EVP and Chief Legal Officer (Name *) <div>NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.</div> <div> Date: 2025.05.23 11:54:24 -04'00'</div>					

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SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

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

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SR-NASDAQ-2025-042 19b-4.docx

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

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

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SR-NASDAQ-2025-042 Exhibit 1.docx

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

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

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

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

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

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Exhibit Sent As Paper Document

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

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

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Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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

**Exhibit 5 - Proposed Rule Text**

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

**Partial Amendment**

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

1. Text of the Proposed Rule Change

(a) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to list and trade shares of 21Shares SUI ETF (the “Trust”) under Nasdaq Rule 5711(d) (“Commodity-Based Trust Shares”). The shares of the Trust are referred to herein as the “Shares.”

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors (the “Board”). Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

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

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

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

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

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

a. Purpose

The Exchange proposes to list and trade the Shares under Nasdaq Rule 5711(d), which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.<sup>3</sup> 21Shares US LLC (the “Sponsor”) is the sponsor of the Trust. Any statements or representations included in this proposal regarding: (a) the description of the reference assets or trust holdings; (b) limitations on the reference assets or trust holdings; (c) dissemination and availability of the reference asset or intraday indicative value; or (d) the applicability of Nasdaq listing rules specified in this proposal shall constitute continued listing standards for the Shares listed on the Exchange.

Overview of the Trust and the Shares

According to the Registration Statement, the Trust is a Delaware statutory trust and will operate pursuant to a trust agreement (the “Trust Agreement”), as amended and/or restated from time to time.<sup>4</sup> CSC Delaware Trust Company, a Delaware trust company, is the Delaware trustee of the Trust (the “Trustee”). The Trust is managed and controlled by 21Shares US LLC (the “Sponsor”). A third party to be appointed by the Sponsor and/or the Trustee will be the administrator of the Trust (the “Administrator”).

The Trust is a passive investment vehicle that does not seek to generate returns beyond tracking the price of SUI tokens (“SUI”), the native token of the Sui Network (as

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<sup>3</sup> 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).

<sup>4</sup> See Registration Statement on Form S-1, dated April 30, 2025 filed with the Commission on behalf of the Trust. The descriptions of the Trust, the Shares, the Pricing Benchmark (as defined below), and Trust’s holdings 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.

defined below). This means the Sponsor does not speculatively sell SUI at times when its price is high or speculatively acquire SUI at low prices in the expectation of future price increases. It also means the Trust will not utilize leverage, derivatives or any similar arrangements in seeking to meet its investment objective. The Trust's investment objective is to seek to track the performance of SUI, as measured by the performance of the CME CF Sui — Dollar Reference Rate — New York Variant (the "Pricing Benchmark"), adjusted for the Trust's expenses and other liabilities. The Pricing Benchmark is calculated by CF Benchmarks Ltd. (the "Benchmark Provider") based on an aggregation of executed trade flow of major SUI trading platforms ("Constituent Exchanges"). The Pricing Benchmark is designed to reflect the performance of SUI in U.S. dollars. In seeking to achieve its investment objective, the Trust will hold SUI and will value its Shares daily based on the Pricing Benchmark. Each of BitGo New York Trust Company, LLC and Coinbase Custody Trust Company, LLC (each a "SUI Custodian") is anticipated to be a SUI custodian for the Trust and will hold all of the Trust's SUI on the Trust's behalf.

When the Trust sells or redeems its Shares, SUI will be transferred into or out of the Trust, as applicable, in exchange for blocks of 10,000 Shares (a "Basket") that are based on the quantity of SUI attributable to each Share of the Trust (net of accrued but unpaid Sponsor fees and any accrued but unpaid extraordinary expenses or liabilities).

Financial firms that are authorized to purchase Shares from or redeem Shares to the Trust (known as "Authorized Participants") purchase Shares by depositing cash in the Trust's account with the Cash Custodian (as defined below). This will cause the Sponsor, on behalf of the Trust, to automatically instruct a designated third party, who is not an

Authorized Participant but who may be an affiliate of an Authorized Participant and with whom the Sponsor has entered into an agreement on behalf of the Trust (a “SUI Counterparty”), to (i) purchase the amount of SUI equivalent in value to the cash deposit amount associated with the order and (ii) deposit the resulting SUI amount in the Trust’s account with the SUI Custodian, resulting in the Transfer Agent crediting the applicable amount of Shares to the Authorized Participant.

When such an Authorized Participant redeems its Shares, the Sponsor, on behalf of the Trust will direct the SUI Custodian to transfer SUI to a SUI Counterparty, who will sell the SUI to be executed at the Pricing Benchmark price used by the Trust to calculate its net asset value (“NAV”), taking into account any spread, commissions, or other trading costs and deposit the cash proceeds of such sale in the Trust’s account with the Cash Custodian for settlement with the Authorized Participant. Any slippage incurred (including, but not limited to, any trading fees, spreads, or commissions), on a cash equivalent basis, will be the responsibility of the Authorized Participant and not of the Trust or Sponsor.

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 SUI as part of the creation or redemption process or otherwise direct the Trust or a SUI Counterparty with respect to purchasing, holding, delivering, or receiving SUI as part of the creation or redemption process.

The SUI Counterparty is a designated third party with whom the Sponsor has entered into an agreement on behalf of the Trust that will deliver, receive or convert to U.S. dollars the SUI related to the Authorized Participant’s creation or redemption order.

The Sponsor performs extensive due diligence as part of its SUI Counterparty selection and onboarding process. As part of this process, the Sponsor assesses SUI Counterparty candidates against various criteria, including those relating to candidates' (1) financials, (2) reputation, (3) settlement history with the Sponsor, and (4) their regulatory oversight. The Trust will create Shares by receiving SUI from a SUI Counterparty that is not the Authorized Participant, and the Trust — not the Authorized Participant — is responsible for selecting the SUI Counterparty to deliver the SUI. Further, the SUI Counterparty will not be acting as an agent of the Authorized Participant with respect to the delivery of the SUI to the Trust or acting at the direction of the Authorized Participant with respect to the delivery of the SUI to the Trust. The SUI Counterparty is not contractually obligated to participate in cash orders for creations or redemptions. The SUI Counterparty reserves the right to refuse or to cancel any pending creation or redemption order at any time before the Sponsor places a purchase order.

According to the Registration Statement, the Trust is not an investment company registered under the Investment Company Act of 1940, as amended (the "1940 Act"), and is not subject to regulation under the 1940 Act. The Trust is not a commodity pool for purposes of the Commodity Exchange Act of 1936, as amended (the "CEA"), and the Sponsor is not subject to regulation by the Commodity Futures Trading Commission (the "CFTC") as a commodity pool operator or a commodity trading advisor.

Neither the Trust, nor the Sponsor, nor the SUI Custodian, nor any other person associated with the Trust will, directly or indirectly, engage in action where any portion of the Trust's SUI is used to earn additional SUI or generate rewards or other income. The Trust will not acquire and will disclaim any incidental right ("IR") or IR asset

received, for example as a result of forks or airdrops, and such assets will not be taken into account for purposes of determining the Trust's NAV.

#### Investment Objective

According to the Registration Statement, the Trust's investment objective is to seek to track the performance of SUI, as measured by the Pricing Benchmark, adjusted for the Trust's expenses and other liabilities. In seeking to achieve its investment objective, the Trust will hold SUI and will value its Shares daily as of 4:00 p.m. ET based on the Pricing Benchmark.

The Trust does not provide investors with direct exposure to SUI, and an investment in the Trust is not a direct investment in SUI. Rather, the Trust provides investors with the opportunity to indirectly access the market for SUI through a traditional brokerage account without the potential barriers to entry or risks involved with holding or transferring SUI directly or acquiring it from a SUI spot market.

#### SUI and the Sui Network

According to the Registration Statement, SUI is a digital asset that is created and transmitted through the operations of the "Sui Network," an online, distributed computing platform that operates on a peer-to-peer basis. The Sui Network is a decentralized blockchain platform designed to support a wide range of applications, particularly in the realm of decentralized finance ("DeFi"), non-fungible tokens ("NFTs"), and other blockchain-based services. The network aims to address scalability and efficiency issues that have plagued earlier blockchain networks like Bitcoin and Ethereum. By leveraging advanced consensus mechanisms and innovative data structures, the Sui Network seeks to provide a more scalable, secure, and user-friendly



environment for developers and users alike. The Sui Network employs a unique consensus algorithm that allows it to process a large number of transactions per second (“TPS”), making it suitable for applications that require high throughput, such as gaming and high-frequency trading.

The Sui Network’s architecture combines continuous monitoring of external blockchains, strategic validator key registrations, and a quadratic stake-based consensus mechanism to facilitate secure and decentralized cross-chain interactions. The Sui Network uses advanced cryptographic techniques to ensure the security and integrity of transactions. The distributed nature of the network makes it resistant to attacks and censorship. The Sui Network is also designed to be highly interoperable with other blockchain networks, allowing assets and data to be easily transferred between SUI and other blockchains, facilitating a more connected and versatile ecosystem.

No single entity owns or operates the Sui Network, the infrastructure of which is collectively maintained by a broad user base. The Sui Network allows people to exchange tokens of value, called SUI, which are recorded on a public transaction ledger known as a blockchain. SUI can be used to pay for transaction fees and network operations, including computational power on the Sui Network, or it can be converted to fiat currencies, such as the U.S. dollar, at rates determined on digital asset trading platforms or in individual end-user-to-end-user transactions under a barter system. Furthermore, the Sui Network was designed to allow users to write and implement smart contracts - that is, general-purpose code that executes on the network and can instruct the transmission of information and value based on a sophisticated set of logical conditions. Using smart contracts, users can create markets, store registries of debts or promises,

represent the ownership of property, move funds in accordance with conditional instructions and create digital assets other than SUI on the Sui Network. Smart contract operations are executed on the Sui blockchain in exchange for payment of SUI. Like the Ethereum network, the Sui Network is one of a number of projects intended to expand blockchain use beyond just a peer-to-peer money system.

The Sui Network primarily uses a delegated proof-of-stake consensus mechanism to incentivize SUI holders to validate transactions. Unlike proof-of-work, in which miners expend computational resources to compete to validate transactions and are rewarded coins in proportion to the amount of computational resources expended, in proof-of-stake, validators risk or “stake” coins to compete to be randomly selected to validate transactions and are rewarded coins in proportion to the amount of coins staked. Any malicious activity, such as disagreeing with the eventual consensus or otherwise violating protocol rules, results in the forfeiture or “slashing” of a portion of the staked coins. Proof-of-stake is viewed as more energy efficient and scalable than proof-of-work and is sometimes referred to as “virtual mining”.

Unlike many other smart contract platforms that batch transaction into blocks, Sui validators individually validate transactions. Sui uses “Narwhal” and “Bullshark” as its memory pool and consensus engines, respectively, which supplement proof-of-stake by allowing transactions performed on the Sui Network to be verified and executed in parallel, rather than sequentially like in prominent blockchains like Bitcoin and Ethereum. Under Narwhal, instead of a proposing validator broadcasting all transactions in a block to the other validators, the proposing validators send references to transactions that other validators have already received in their local memory pools. These memory

pools serve as logs of unprocessed transactions awaiting verification and execution on a blockchain. The transaction data can thus bypass the full consensus process, removing the large data transmission step which often impedes proof-of-stake consensus and introduces latency. Further unlike traditional blockchains, which add transactions in a single, linear sequence, Bullshark uses a structure whereby each transaction points to multiple previous transactions, allowing many transactions to be processed at the same time. The purpose of Narwhal and Bullshark is to increase scalability of a blockchain allowing for parallel processing of transactions and increasing transaction speed.

The SUI token serves four purposes on the Sui Network. First, SUI can be staked within an “epoch” (which is a roughly 24-hour time period) in order to participate in the proof-of-stake mechanism. Second, SUI is the asset denomination needed for paying the “gas fees” to execute transactions or other operations on the Sui Network. Third, SUI can be used as a versatile and liquid asset for various applications including the standard features of money – a unit of account, a medium of exchange, or a store of value – and more complex functionality enabled by smart contracts, interoperability, and composability across the Sui ecosystem. Fourth, and finally, SUI plays an important role in governance by acting as a right to participate in on-chain voting on issues such as protocol upgrades. The total supply of SUI on the Sui Network’s “mainnet” is capped at 10,000,000,000 (ten billion), the supply of which is dependent upon designed unlocking schedules and other circulation variables.

SUI is “stored” on a blockchain and is linked to a unique digital address, or wallet, that is associated with a public key and a private key. The public key is used to generate the address that is available to other users of the Sui Network. The address

serves as the location to which SUI can be transferred and from which SUI can be sent. The private key authorizes the transfer or “spending” of SUI from its associated public address. Ownership of SUI is established by recording on Sui Network’s blockchain the unique address and the amount of SUI held. The wallet thus holds the cryptographic keys associated with SUI, rather than the SUI itself. SUI cannot be transferred by a holder unless that holder provides the private key.

#### Pricing Benchmark

According to the Registration Statement, the net assets of the Trust and its Shares are valued on a daily basis with reference to the Pricing Benchmark, a standardized reference rate published by the Benchmark Provider, which is designed to reflect the performance of SUI in U.S. dollars. The Pricing Benchmark is calculated daily and aggregates the notional value of SUI trading activity across major SUI spot exchanges. The Benchmark Provider is the administrator of the Pricing Benchmark. The Trust also uses the Pricing Benchmark to calculate its NAV, which is the aggregate U.S. dollar value of SUI in the Trust, based on the Pricing Benchmark, less the Trust’s liabilities and expenses. “NAV per Share” is calculated by dividing NAV by the number of Shares currently outstanding.

The Pricing Benchmark was created to facilitate financial products based on SUI and provides a U.S. dollar -denominated reference rate for the spot price of SUI. The Pricing Benchmark leverages real-time prices from multiple Constituent Exchanges to provide a representative spot price.<sup>5</sup> Each constituent exchange is weighted

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<sup>5</sup> As set out in the Registration Statement, a trading venue is eligible as a Constituent Exchange if it offers a market that facilitates the spot trading of the relevant base digital asset against the corresponding quote asset, (the “Relevant Pair”) and makes trade data and order data available

proportionally to its trailing 24-hour liquidity with adjustments for price variance and inactivity.

The Sponsor believes that the use of the Pricing Benchmark is reflective of a reasonable valuation of the average spot price of SUI 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 Pricing Benchmark thereby seeks to ensure that transactions in SUI 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 or benchmark level, as applicable, 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.

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through an Automatic Programming Interface (“API”) with sufficient reliability, detail and timeliness. Furthermore, in the opinion of the Benchmark Provider’s oversight committee, to be a Constituent Exchange, a venue must fulfill the specified criteria, including: (1) the venue’s Relevant Pair spot trading volume for an index must meet the minimum thresholds for it to be admitted as a constituent exchange; (2) the average daily volume the venue would have contributed during the observation window for the Reference Rate of the Relevant Pair exceeds 3% for two consecutive calendar quarters; (3) the venue has policies to ensure fair and transparent market conditions at all times and has processes in place to identify and impede illegal, unfair or manipulative trading practices; (4) the venue complies with applicable law and regulation, including, but not limited to, capital markets regulations, money transmission regulations, client money custody regulations, KYC and AML regulations; (5) the venue does not impose undue barriers to entry or restrictions on market participants, and utilizing the venue does not expose market participants to undue credit risk, operational risk, legal risk or other risks; and (6) the venue cooperates with inquiries and investigations of regulators and the Administrator upon request and must execute data sharing agreements with CME Group. Once admitted, a Constituent Exchange must demonstrate that it continues to fulfill criteria 2 to 5 inclusive. Should the average daily contribution of a Constituent Exchange fall below 3% for any Reference Rate, then the continued inclusion of the venue as a constituent exchange to the Relevant Pair shall be assessed by the oversight committee.

In addition, the Sponsor notes that an oversight function is implemented by the Benchmark Provider in seeking to ensure that the Pricing Benchmark is administered through codified policies for Pricing Benchmark integrity, which include a conflicts of interest policy, a control framework, an accountability framework, and an input data policy. It is also subject to the UK Benchmarks Regulation (“BMR”), compliance with which regulations has been subject to a Limited Assurance Audit under the ISAE 3000 standards of September 12, 2022.

The Sponsor has selected the Pricing Benchmark for its quality and rigor as well as its broad, well-balanced universe, which the Sponsor believes best reflects the market price of SUI.

As of the date of this filing, the Constituent Exchanges included in the Pricing Benchmark that is utilized by the Trust are Kraken and Coinbase. As of May 16, 2025, Coinbase makes up 94.47% of the volume of the Pricing Benchmark, with Kraken holding the remaining 5.3%.

#### Net Asset Value

The Administrator calculates the Trust’s NAV and NAV per Share once each Exchange trading day. The Trust’s NAV per Share is calculated by:

- taking the current market value of its total assets based on the SUI price determined by the Pricing Benchmark;
- subtracting any liabilities; and
- dividing that total by the total number of outstanding Shares.

The NAV for a normal trading day will be released after 4:00 p.m. Eastern Time (“ET”). Trading during the regular market session on the Exchange closes at 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. EST). The pause between 4:00 p.m. ET and 5:30 p.m. ET (or later) provides an opportunity for the Administrator to algorithmically detect, flag, investigate, and correct unusual pricing should it occur. Any such correction could adversely affect the value of the Shares. If the Pricing Benchmark is not available, or if the Sponsor determines in good faith that the Pricing Benchmark does not reflect an accurate SUI price, then the Administrator will determine NAV by reference to the Trust's principal market.<sup>6</sup>

#### Availability of Information and Intraday Indicative Value

In addition to the price transparency of the Index, the Trust will provide information regarding the Trust's SUI 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 per Share; (b) the prior business day's Nasdaq official closing price; (c) calculation of the premium or discount of such Exchange official closing price against such NAV per Share; (d) data in chart form displaying the frequency distribution of discounts and premiums of the Exchange's 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); (e) the prospectus; and (f) other applicable quantitative information. The Trust will also disseminate the Trust's holdings on a daily basis on the Trust's website. Quotation and

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<sup>6</sup> 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.

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

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 the Exchange’s regular market session of 9:30 a.m. to 4:00 p.m. ET (the “Regular Market Session”) to reflect changes in the value of the Trust’s SUI holdings during the trading day. The IIV disseminated during the Regular Market Session should not be viewed as an actual real-time update of the NAV, because NAV per Share is calculated only once at the end of each Exchange trading day based upon the relevant end-of-day values of the Trust’s investments. The IIV will be widely disseminated on a per-Share basis every 15 seconds during the Regular Market Session through the facilities of the relevant securities information processor by market data vendors. In addition, the IIV will be available through online information services, such as Bloomberg and Reuters.

Quotation and last sale information for SUI is disseminated through a variety of major market data vendors. Information related to trading, including price and volume information, in SUI is available from major market data vendors and from the trading platforms on which SUI are traded. The normal trading hours for SUI trading platforms are 24 hours per day, every day of the 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 Nasdaq official closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.



### Creation and Redemption of Shares

According to the Registration Statement, the Trust creates and redeems Shares from time to time, but only in one or more Baskets. Baskets are only made in exchange for delivery to the Trust or the distribution by the Trust of the amount of cash equivalent to the amount of SUI represented by the Baskets being created or redeemed, the amount of which is based on the quantity of SUI attributable to each Share of the Trust (net of accrued but unpaid Sponsor fees and any accrued but unpaid extraordinary expenses or liabilities) being created or redeemed determined as of 4:00 p.m. ET on the day the order to create or redeem Baskets is properly received.

Authorized Participants are the only persons that may place orders to create and redeem Baskets. Authorized Participants must be (1) registered broker-dealers or other securities market participants, such as banks and other financial institutions, which are not required to register as broker-dealers to engage in securities transactions described below, and (2) DTC Participants.

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 SUI as part of the creation or redemption process or otherwise direct the Trust or a SUI Counterparty with respect to purchasing, holding, delivering, or receiving SUI as part of the creation or redemption process.

The SUI Counterparty is a designated third party with whom the Sponsor has entered into an agreement on behalf of the Trust that will deliver, receive or convert to U.S. dollars the SUI related to the Authorized Participant's creation or redemption order. The Sponsor performs extensive due diligence as part of its SUI Counterparty selection

and onboarding process. As part of this process, the Sponsor assesses SUI Counterparty candidates against various criteria, including those relating to candidates' (1) financials, (2) reputation, (3) settlement history with the Sponsor, and (4) their regulatory oversight. The Trust will create Shares by receiving SUI from a SUI Counterparty that is not the Authorized Participant, and the Trust—not the Authorized Participant—is responsible for selecting the SUI Counterparty to deliver the SUI. Further, the SUI Counterparty will not be acting as an agent of the Authorized Participant with respect to the delivery of the SUI to the Trust or acting at the direction of the Authorized Participant with respect to the delivery of the SUI to the Trust.

The Trust will redeem Shares by delivering SUI to a SUI Counterparty that is not the Authorized Participant and the Trust—not the Authorized Participant—is responsible for selecting the SUI Counterparty to receive the SUI. Further, the SUI Counterparty will not be acting as an agent of the Authorized Participant with respect to the receipt of the SUI from the Trust.

Each Authorized Participant will be required to be registered as a broker-dealer under the Exchange Act and a member in good standing with FINRA, or exempt from being or otherwise not required to be licensed as a broker-dealer or a member of FINRA, and will be qualified to act as a broker or dealer in the states or other jurisdictions where the nature of its business so requires. Certain Authorized Participants may also be regulated under federal and state banking laws and regulations. Each Authorized Participant has its own set of rules and procedures, internal controls and information barriers as it determines is appropriate in light of its own regulatory regime.

According to the Registration Statement, on any business day,<sup>7</sup> an Authorized Participant may place an order to create one or more Baskets via a cash transaction. Purchase orders must be placed by 12:00 p.m. ET, the close of regular trading on the Exchange, or another time determined by the Sponsor. The day on which an order is received by the Transfer Agent is considered the purchase order date. The total deposit of cash required is based on the combined NAV of the number of Shares included in the 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 quantity of SUI associated with a Basket for a given day by dividing the number of SUI held by the Trust as of the opening of business on that business day, adjusted for the amount of SUI 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 on that business day, divided by the number of Shares in a Basket.

The procedures by which an Authorized Participant can redeem one or more Baskets mirror the procedures for the creation of Baskets.

The Sponsor will maintain ownership and control of SUI in a manner consistent with good delivery requirements for spot commodity transactions.

#### Applicable Standard

Since 2017, the Commission has 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

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<sup>7</sup> The Registration Statement defines a “business day” as each day other than a day when the Exchange or the New York Stock Exchange is closed for regular trading.

surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.<sup>8</sup> The Commission has also consistently recognized, however, that this is not the *exclusive* means by which a listing exchange for an exchange-traded product (“ETP”) can meet this statutory obligation.<sup>9</sup> An ETP 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 a regulated market of significant size.

The Commission recently issued orders granting approval for proposals to list

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<sup>8</sup> See Securities Exchange Act Release Nos. 78262 (July 8, 2016), 81 FR 78262 (July 14, 2016) (the “Winklevoss Proposal”). The Winklevoss 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”). 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. 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 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 approval order issued related to the first spot gold ETP “was based on an assumption that the currency market and the spot gold market were largely unregulated.” See Winklevoss Order at 37592. As such, the regulated market of significant size test does not require that the spot 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. See Securities Exchange Act No. 99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (Self-Regulatory Organizations; NYSE Arca, Inc.; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units) (the “Spot Bitcoin ETP Approval Order”); 100224 (May 23, 2024), 89 FR 46937 (May 30, 2024) (Self-Regulatory Organizations; NYSE Arca, Inc.; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Shares of Ether-Based Exchange-Traded Products) (the “Spot ETH ETP Approval Order”).

<sup>9</sup> See Winklevoss Order, 83 FR at 37580; see Spot Bitcoin ETP Approval Order, 89 FR at 3009; see Spot ETH ETP Approval Order 89 FR at 46938.

bitcoin- and ether-based commodity trust shares and bitcoin-based, ether-based, and a combination of bitcoin- and ether-based trust issued receipts (these proposed funds are nearly identical to the Trust, but proposed to hold bitcoin and/or ether, respectively, instead of SUI) (“Spot Bitcoin ETPs” and “Spot ETH ETPs”). In both the Spot Bitcoin ETP Approval Order and Spot ETH ETP Approval Order, the Commission found that sufficient “other means” of preventing fraud and manipulation had been demonstrated that justified dispensing with a surveillance-sharing agreement with a market of significant size. Specifically, the Commission found that while the Chicago Mercantile Exchange (“CME”) futures market for both bitcoin and ether were not of “significant size” with respect to the spot market, the Exchange demonstrated that other means could be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the proposals.

As further discussed below, both the Exchange and the Sponsor believe that this proposal and the analysis to be included are sufficient to establish that there are sufficient “other means” of preventing fraud and manipulation that warrant dispensing with the surveillance-sharing agreement with a regulated market of significant size, as was done with both Spot Bitcoin ETPs and Spot ETH ETPs, and that this proposal should be approved.

The Commission has approved numerous series of Trust Issued Receipts,<sup>10</sup>

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<sup>10</sup> Pursuant to Nasdaq Rule 5720(a), the term "Trust Issued Receipt" means a security (a) that is issued by a trust which holds specified securities deposited with the trust; (b) that, when aggregated in some specified minimum number, may be surrendered to the trust by the beneficial owner to receive the securities; and (c) that pays beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities

including Commodity-Based Trust Shares,<sup>11</sup> 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.

As noted above, the Commission has 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.<sup>12</sup> While there is currently no regulated futures market for SUI, the Exchange and Sponsor note that in approving the Spot Bitcoin ETPs, the Commission found that “sufficient ‘other means’ of preventing fraud and manipulation had been demonstrated that justified dispensing with a

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<sup>11</sup> Pursuant to Nasdaq Rule 5711(d)(iv), the term “Commodity-Based Trust Shares” means a security (1) that is issued by a trust that holds (a) a specified commodity deposited with the trust, or (b) a specified commodity and, in addition to such specified commodity, cash; (2) that is issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity and/or cash; and (3) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity and/or cash.

<sup>12</sup> 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

surveillance sharing agreement with a regulated market of significant size.<sup>13</sup> The Exchange and Sponsor believe that this proposal provides for sufficient other means of preventing fraud and manipulation to justify dispensing with a surveillance sharing agreement with a regulated market of significant size.

Over the past two years, U.S. investor exposure to SUI, through digital asset trading platforms, has grown to billions of dollars with a market capitalization greater than \$12 billion as of the date of this filing. The Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to SUI 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; and (iii) providing an alternative to the custody of spot SUI.

The policy concerns that the Exchange Act is designed to address are also otherwise mitigated by the fact that the size of the market for the underlying reference asset (greater than \$12 billion as of the date of this filing) and the nature of the SUI ecosystem reduces its susceptibility to manipulation. The geographically diverse and continuous nature of SUI trading, along with trading volume across multiple venues, makes it difficult and prohibitively costly to manipulate the price of SUI. There are a number of reasons this is the case, including that manipulation of the price on any single

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<sup>13</sup> See Securities Exchange Act Release No. 99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Shares of Bitcoin-Based Commodity-Based Trust Shares and Trust Units). The SEC made substantially similar findings in the approval order for Spot ETH ETPs. See Securities Exchange Act Release No. 100224 (May 23, 2024), 89 FR 46937 (May 30, 2024) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Shares of Ether-Based Exchange-Traded Products).

venue would require manipulation of the global SUI price in order to be effective; SUI's character as a continuously traded digital asset traded without interruption across the world provides constant arbitrage opportunities across all trading venues; and it is unlikely that any one actor could obtain a dominant market share.

Further, the Exchange believes that the fragmentation across SUI trading platforms and adoption of SUI, as displayed through user engagement and trading volumes, and the Sui Network make manipulation of SUI prices through continuous trading activity more difficult. Moreover, the linkage between the SUI markets and the presence of arbitrageurs in those markets means that the manipulation of the price of SUI on any single venue would require manipulation of the global SUI price in order to be effective. Arbitrageurs must have funds distributed across multiple SUI 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 SUI trading platform. As a result, the potential for manipulation on a particular SUI trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences. The Exchange therefore believes that the above considerations can effectively address concerns around potential fraud and manipulation.

#### 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 40,000 Shares 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 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 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 SUI or any SUI 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) and will comply with the requirements of Rule 10A-3 of the Act.

#### Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121,

including without limitation the conditions specified in Nasdaq Rule 4120(a)(9) and (10) and the trading pauses under Nasdaq Rules 4120(a)(11) and (12).

Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the SUI 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 on 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 on which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

In addition, if the Exchange becomes aware that the NAV per Share with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV per Share is available to all market participants.

#### Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. The surveillance program includes real-time patterns for price and volume movements and post-trade surveillance patterns (e.g., spoofing, marking the close, pinging, phishing).

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

The Exchange will require the Trust to represent to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the Intermarket Surveillance Group ("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 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 and NAV 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 SUI, and that the Commission has no jurisdiction over the trading of SUI as a commodity.

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

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>15</sup> 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 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; 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.

As noted above, the Commission has recognized that the "regulated market of significant size" standard is not the only means for satisfying Section 6(b)(5) of the Act, specifically recognizing 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 with the underlying spot market. The Exchange and Sponsor believe that such conditions are present. While there

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<sup>14</sup> 15 U.S.C. 78f(b).

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

is currently no regulated futures market for SUI, in approving the Spot Bitcoin ETPs, the Commission found that “sufficient ‘other means’ of preventing fraud and manipulation had been demonstrated that justified dispensing with a surveillance sharing agreement with a regulated market of significant size.”<sup>16</sup> The Exchange and Sponsor believe that this proposal provides for sufficient other means of preventing fraud and manipulation to justify dispensing with a surveillance sharing agreement with a regulated market of significant size.

Over the past two years, U.S. investor exposure to SUI, through digital asset trading platforms, has grown to billions of dollars with a market capitalization greater than \$12 billion, as of the date of this filing. The Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to SUI 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; and (iii) providing an alternative to the custody of spot SUI.

The policy concerns that the Exchange Act is designed to address are also otherwise mitigated by the fact that the size of the market for the underlying reference asset (greater than \$12 billion, as of the date of this filing) and the nature of the SUI ecosystem reduces its susceptibility to manipulation. The geographically diverse and

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<sup>16</sup> See Securities Exchange Act Release No. 99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Shares of Bitcoin-Based Commodity-Based Trust Shares and Trust Units). The SEC made substantially similar findings in the approval order for Spot ETH ETPs. See Securities Exchange Act Release No. 100224 (May 23, 2024), 89 FR 46937 (May 30, 2024) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Shares of Ether-Based Exchange-Traded Products).

continuous nature of SUI trading, along with trading volume across multiple venues, makes it difficult and prohibitively costly to manipulate the price of SUI. There are a number of reasons this is the case, including that manipulation of the price on any single venue would require manipulation of the global SUI price in order to be effective; SUI's character as a continuously traded digital asset traded without interruption across the world provides constant arbitrage opportunities across all trading venues; and it is unlikely that any one actor could obtain a dominant market share.

Further, the Exchange believes that the fragmentation across SUI trading platforms and adoption of SUI, as displayed through user engagement and trading volumes, and the Sui Network make manipulation of SUI prices through continuous trading activity more difficult. Moreover, the linkage between the SUI markets and the presence of arbitrageurs in those markets means that the manipulation of the price of SUI on any single venue would require manipulation of the global SUI price in order to be effective. Arbitrageurs must have funds distributed across multiple SUI 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 SUI trading platform. As a result, the potential for manipulation on a particular SUI trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences. The Exchange therefore believes that the above considerations can effectively address concerns around potential fraud and manipulation.

The Exchange further believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest in that the Shares will be listed and traded on the Exchange pursuant to the



initial and continued listing criteria set forth in Nasdaq Rule 5711(d). 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. As discussed above, the surveillance program includes real-time patterns for price and volume movements and post-trade surveillance patterns (e.g., spoofing, marking the close, pinging, phishing). Trading of Shares on the Exchange will be subject to the Exchange's surveillance program for derivative products, as well as cross-market surveillances administered by FINRA, on behalf of the Exchange pursuant to a regulatory services agreement, which are also designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

The Exchange will require the Trust to represent to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

The Exchange 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.

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

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of Shares that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change will rather 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.

5. 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.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period for Commission action.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_; File No. SR-NASDAQ-2025-042)

May \_\_, 2025

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of  
Proposed Rule Change to List and Trade Shares of 21Shares SUI ETF

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 23, 2025, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to list and trade shares of 21Shares SUI ETF (the “Trust”) under Nasdaq Rule 5711(d) (“Commodity-Based Trust Shares”). The shares of the Trust are referred to herein as the “Shares.”

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

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

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

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

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

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

1. Purpose

The Exchange proposes to list and trade the Shares under Nasdaq Rule 5711(d), which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.<sup>3</sup> 21Shares US LLC (the "Sponsor") is the sponsor of the Trust. Any statements or representations included in this proposal regarding: (a) the description of the reference assets or trust holdings; (b) limitations on the reference assets or trust holdings; (c) dissemination and availability of the reference asset or intraday indicative value; or (d) the applicability of Nasdaq listing rules specified in this proposal shall constitute continued listing standards for the Shares listed on the Exchange.

Overview of the Trust and the Shares

According to the Registration Statement, the Trust is a Delaware statutory trust and will operate pursuant to a trust agreement (the "Trust Agreement"), as amended and/or restated from time to time.<sup>4</sup> CSC Delaware Trust Company, a Delaware trust

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<sup>3</sup> 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).

<sup>4</sup> See Registration Statement on Form S-1, dated April 30, 2025 filed with the Commission on behalf of the Trust. The descriptions of the Trust, the Shares, the Pricing Benchmark (as defined

company, is the Delaware trustee of the Trust (the “Trustee”). The Trust is managed and controlled by 21Shares US LLC (the “Sponsor”). A third party to be appointed by the Sponsor and/or the Trustee will be the administrator of the Trust (the “Administrator”).

The Trust is a passive investment vehicle that does not seek to generate returns beyond tracking the price of SUI tokens (“SUI”), the native token of the Sui Network (as defined below). This means the Sponsor does not speculatively sell SUI at times when its price is high or speculatively acquire SUI at low prices in the expectation of future price increases. It also means the Trust will not utilize leverage, derivatives or any similar arrangements in seeking to meet its investment objective. The Trust’s investment objective is to seek to track the performance of SUI, as measured by the performance of the CME CF Sui — Dollar Reference Rate — New York Variant (the “Pricing Benchmark”), adjusted for the Trust’s expenses and other liabilities. The Pricing Benchmark is calculated by CF Benchmarks Ltd. (the “Benchmark Provider”) based on an aggregation of executed trade flow of major SUI trading platforms (“Constituent Exchanges”). The Pricing Benchmark is designed to reflect the performance of SUI in U.S. dollars. In seeking to achieve its investment objective, the Trust will hold SUI and will value its Shares daily based on the Pricing Benchmark. Each of BitGo New York Trust Company, LLC and Coinbase Custody Trust Company, LLC (each a “SUI Custodian”) is anticipated to be a SUI custodian for the Trust and will hold all of the Trust’s SUI on the Trust’s behalf.

When the Trust sells or redeems its Shares, SUI will be transferred into or out of

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below), and Trust’s holdings 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.

the Trust, as applicable, in exchange for blocks of 10,000 Shares (a “Basket”) that are based on the quantity of SUI attributable to each Share of the Trust (net of accrued but unpaid Sponsor fees and any accrued but unpaid extraordinary expenses or liabilities).

Financial firms that are authorized to purchase Shares from or redeem Shares to the Trust (known as “Authorized Participants”) purchase Shares by depositing cash in the Trust’s account with the Cash Custodian (as defined below). This will cause the Sponsor, on behalf of the Trust, to automatically instruct a designated third party, who is not an Authorized Participant but who may be an affiliate of an Authorized Participant and with whom the Sponsor has entered into an agreement on behalf of the Trust (a “SUI Counterparty”), to (i) purchase the amount of SUI equivalent in value to the cash deposit amount associated with the order and (ii) deposit the resulting SUI amount in the Trust’s account with the SUI Custodian, resulting in the Transfer Agent crediting the applicable amount of Shares to the Authorized Participant.

When such an Authorized Participant redeems its Shares, the Sponsor, on behalf of the Trust will direct the SUI Custodian to transfer SUI to a SUI Counterparty, who will sell the SUI to be executed at the Pricing Benchmark price used by the Trust to calculate its net asset value (“NAV”), taking into account any spread, commissions, or other trading costs and deposit the cash proceeds of such sale in the Trust’s account with the Cash Custodian for settlement with the Authorized Participant. Any slippage incurred (including, but not limited to, any trading fees, spreads, or commissions), on a cash equivalent basis, will be the responsibility of the Authorized Participant and not of the Trust or Sponsor.

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 SUI as part of the creation or redemption process or otherwise direct the Trust or a SUI Counterparty with respect to purchasing, holding, delivering, or receiving SUI as part of the creation or redemption process.

The SUI Counterparty is a designated third party with whom the Sponsor has entered into an agreement on behalf of the Trust that will deliver, receive or convert to U.S. dollars the SUI related to the Authorized Participant's creation or redemption order. The Sponsor performs extensive due diligence as part of its SUI Counterparty selection and onboarding process. As part of this process, the Sponsor assesses SUI Counterparty candidates against various criteria, including those relating to candidates' (1) financials, (2) reputation, (3) settlement history with the Sponsor, and (4) their regulatory oversight. The Trust will create Shares by receiving SUI from a SUI Counterparty that is not the Authorized Participant, and the Trust — not the Authorized Participant — is responsible for selecting the SUI Counterparty to deliver the SUI. Further, the SUI Counterparty will not be acting as an agent of the Authorized Participant with respect to the delivery of the SUI to the Trust or acting at the direction of the Authorized Participant with respect to the delivery of the SUI to the Trust. The SUI Counterparty is not contractually obligated to participate in cash orders for creations or redemptions. The SUI Counterparty reserves the right to refuse or to cancel any pending creation or redemption order at any time before the Sponsor places a purchase order.

According to the Registration Statement, the Trust is not an investment company registered under the Investment Company Act of 1940, as amended (the "1940 Act"), and is not subject to regulation under the 1940 Act. The Trust is not a commodity pool for



purposes of the Commodity Exchange Act of 1936, as amended (the “CEA”), and the Sponsor is not subject to regulation by the Commodity Futures Trading Commission (the “CFTC”) as a commodity pool operator or a commodity trading advisor.

Neither the Trust, nor the Sponsor, nor the SUI Custodian, nor any other person associated with the Trust will, directly or indirectly, engage in action where any portion of the Trust’s SUI is used to earn additional SUI or generate rewards or other income. The Trust will not acquire and will disclaim any incidental right (“IR”) or IR asset received, for example as a result of forks or airdrops, and such assets will not be taken into account for purposes of determining the Trust’s NAV.

#### Investment Objective

According to the Registration Statement, the Trust’s investment objective is to seek to track the performance of SUI, as measured by the Pricing Benchmark, adjusted for the Trust’s expenses and other liabilities. In seeking to achieve its investment objective, the Trust will hold SUI and will value its Shares daily as of 4:00 p.m. ET based on the Pricing Benchmark.

The Trust does not provide investors with direct exposure to SUI, and an investment in the Trust is not a direct investment in SUI. Rather, the Trust provides investors with the opportunity to indirectly access the market for SUI through a traditional brokerage account without the potential barriers to entry or risks involved with holding or transferring SUI directly or acquiring it from a SUI spot market.

#### SUI and the Sui Network

According to the Registration Statement, SUI is a digital asset that is created and transmitted through the operations of the “Sui Network,” an online, distributed

computing platform that operates on a peer-to-peer basis. The Sui Network is a decentralized blockchain platform designed to support a wide range of applications, particularly in the realm of decentralized finance (“DeFi”), non-fungible tokens (“NFTs”), and other blockchain-based services. The network aims to address scalability and efficiency issues that have plagued earlier blockchain networks like Bitcoin and Ethereum. By leveraging advanced consensus mechanisms and innovative data structures, the Sui Network seeks to provide a more scalable, secure, and user-friendly environment for developers and users alike. The Sui Network employs a unique consensus algorithm that allows it to process a large number of transactions per second (“TPS”), making it suitable for applications that require high throughput, such as gaming and high-frequency trading.

The Sui Network’s architecture combines continuous monitoring of external blockchains, strategic validator key registrations, and a quadratic stake-based consensus mechanism to facilitate secure and decentralized cross-chain interactions. The Sui Network uses advanced cryptographic techniques to ensure the security and integrity of transactions. The distributed nature of the network makes it resistant to attacks and censorship. The Sui Network is also designed to be highly interoperable with other blockchain networks, allowing assets and data to be easily transferred between SUI and other blockchains, facilitating a more connected and versatile ecosystem.

No single entity owns or operates the Sui Network, the infrastructure of which is collectively maintained by a broad user base. The Sui Network allows people to exchange tokens of value, called SUI, which are recorded on a public transaction ledger known as a blockchain. SUI can be used to pay for transaction fees and network

operations, including computational power on the Sui Network, or it can be converted to fiat currencies, such as the U.S. dollar, at rates determined on digital asset trading platforms or in individual end-user-to-end-user transactions under a barter system. Furthermore, the Sui Network was designed to allow users to write and implement smart contracts - that is, general-purpose code that executes on the network and can instruct the transmission of information and value based on a sophisticated set of logical conditions. Using smart contracts, users can create markets, store registries of debts or promises, represent the ownership of property, move funds in accordance with conditional instructions and create digital assets other than SUI on the Sui Network. Smart contract operations are executed on the Sui blockchain in exchange for payment of SUI. Like the Ethereum network, the Sui Network is one of a number of projects intended to expand blockchain use beyond just a peer-to-peer money system.

The Sui Network primarily uses a delegated proof-of-stake consensus mechanism to incentivize SUI holders to validate transactions. Unlike proof-of-work, in which miners expend computational resources to compete to validate transactions and are rewarded coins in proportion to the amount of computational resources expended, in proof-of-stake, validators risk or “stake” coins to compete to be randomly selected to validate transactions and are rewarded coins in proportion to the amount of coins staked. Any malicious activity, such as disagreeing with the eventual consensus or otherwise violating protocol rules, results in the forfeiture or “slashing” of a portion of the staked coins. Proof-of-stake is viewed as more energy efficient and scalable than proof-of-work and is sometimes referred to as “virtual mining”.

Unlike many other smart contract platforms that batch transaction into blocks, Sui

validators individually validate transactions. Sui uses “Narwhal” and “Bullshark” as its memory pool and consensus engines, respectively, which supplement proof-of-stake by allowing transactions performed on the Sui Network to be verified and executed in parallel, rather than sequentially like in prominent blockchains like Bitcoin and Ethereum. Under Narwhal, instead of a proposing validator broadcasting all transactions in a block to the other validators, the proposing validators send references to transactions that other validators have already received in their local memory pools. These memory pools serve as logs of unprocessed transactions awaiting verification and execution on a blockchain. The transaction data can thus bypass the full consensus process, removing the large data transmission step which often impedes proof-of-stake consensus and introduces latency. Further unlike traditional blockchains, which add transactions in a single, linear sequence, Bullshark uses a structure whereby each transaction points to multiple previous transactions, allowing many transactions to be processed at the same time. The purpose of Narwhal and Bullshark is to increase scalability of a blockchain allowing for parallel processing of transactions and increasing transaction speed.

The SUI token serves four purposes on the Sui Network. First, SUI can be staked within an “epoch” (which is a roughly 24-hour time period) in order to participate in the proof-of-stake mechanism. Second, SUI is the asset denomination needed for paying the “gas fees” to execute transactions or other operations on the Sui Network. Third, SUI can be used as a versatile and liquid asset for various applications including the standard features of money – a unit of account, a medium of exchange, or a store of value – and more complex functionality enabled by smart contracts, interoperability, and composability across the Sui ecosystem. Fourth, and finally, SUI plays an important role

in governance by acting as a right to participate in on-chain voting on issues such as protocol upgrades. The total supply of SUI on the Sui Network's "mainnet" is capped at 10,000,000,000 (ten billion), the supply of which is dependent upon designed unlocking schedules and other circulation variables.

SUI is "stored" on a blockchain and is linked to a unique digital address, or wallet, that is associated with a public key and a private key. The public key is used to generate the address that is available to other users of the Sui Network. The address serves as the location to which SUI can be transferred and from which SUI can be sent. The private key authorizes the transfer or "spending" of SUI from its associated public address. Ownership of SUI is established by recording on Sui Network's blockchain the unique address and the amount of SUI held. The wallet thus holds the cryptographic keys associated with SUI, rather than the SUI itself. SUI cannot be transferred by a holder unless that holder provides the private key.

#### Pricing Benchmark

According to the Registration Statement, the net assets of the Trust and its Shares are valued on a daily basis with reference to the Pricing Benchmark, a standardized reference rate published by the Benchmark Provider, which is designed to reflect the performance of SUI in U.S. dollars. The Pricing Benchmark is calculated daily and aggregates the notional value of SUI trading activity across major SUI spot exchanges. The Benchmark Provider is the administrator of the Pricing Benchmark. The Trust also uses the Pricing Benchmark to calculate its NAV, which is the aggregate U.S. dollar value of SUI in the Trust, based on the Pricing Benchmark, less the Trust's liabilities and expenses. "NAV per Share" is calculated by dividing NAV by the number of Shares

currently outstanding.

The Pricing Benchmark was created to facilitate financial products based on SUI and provides a U.S. dollar -denominated reference rate for the spot price of SUI. The Pricing Benchmark leverages real-time prices from multiple Constituent Exchanges to provide a representative spot price.<sup>5</sup> Each constituent exchange is weighted proportionally to its trailing 24-hour liquidity with adjustments for price variance and inactivity.

The Sponsor believes that the use of the Pricing Benchmark is reflective of a reasonable valuation of the average spot price of SUI 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.

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<sup>5</sup> As set out in the Registration Statement, a trading venue is eligible as a Constituent Exchange if it offers a market that facilitates the spot trading of the relevant base digital asset against the corresponding quote asset, (the “Relevant Pair”) and makes trade data and order data available through an Automatic Programming Interface (“API”) with sufficient reliability, detail and timeliness. Furthermore, in the opinion of the Benchmark Provider’s oversight committee, to be a Constituent Exchange, a venue must fulfill the specified criteria, including: (1) the venue’s Relevant Pair spot trading volume for an index must meet the minimum thresholds for it to be admitted as a constituent exchange; (2) the average daily volume the venue would have contributed during the observation window for the Reference Rate of the Relevant Pair exceeds 3% for two consecutive calendar quarters; (3) the venue has policies to ensure fair and transparent market conditions at all times and has processes in place to identify and impede illegal, unfair or manipulative trading practices; (4) the venue complies with applicable law and regulation, including, but not limited to, capital markets regulations, money transmission regulations, client money custody regulations, KYC and AML regulations; (5) the venue does not impose undue barriers to entry or restrictions on market participants, and utilizing the venue does not expose market participants to undue credit risk, operational risk, legal risk or other risks; and (6) the venue cooperates with inquiries and investigations of regulators and the Administrator upon request and must execute data sharing agreements with CME Group. Once admitted, a Constituent Exchange must demonstrate that it continues to fulfill criteria 2 to 5 inclusive. Should the average daily contribution of a Constituent Exchange fall below 3% for any Reference Rate, then the continued inclusion of the venue as a constituent exchange to the Relevant Pair shall be assessed by the oversight committee.

By employing the foregoing steps, the Pricing Benchmark thereby seeks to ensure that transactions in SUI 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 or benchmark level, as applicable, 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.

In addition, the Sponsor notes that an oversight function is implemented by the Benchmark Provider in seeking to ensure that the Pricing Benchmark is administered through codified policies for Pricing Benchmark integrity, which include a conflicts of interest policy, a control framework, an accountability framework, and an input data policy. It is also subject to the UK Benchmarks Regulation (“BMR”), compliance with which regulations has been subject to a Limited Assurance Audit under the ISAE 3000 standards of September 12, 2022.

The Sponsor has selected the Pricing Benchmark for its quality and rigor as well as its broad, well-balanced universe, which the Sponsor believes best reflects the market price of SUI.

As of the date of this filing, the Constituent Exchanges included in the Pricing Benchmark that is utilized by the Trust are Kraken and Coinbase. As of May 16, 2025, Coinbase makes up 94.47% of the volume of the Pricing Benchmark, with Kraken holding the remaining 5.3%.

#### Net Asset Value

The Administrator calculates the Trust’s NAV and NAV per Share once each Exchange trading day. The Trust’s NAV per Share is calculated by:

- taking the current market value of its total assets based on the SUI price determined by the Pricing Benchmark;
- subtracting any liabilities; and
- dividing that total by the total number of outstanding Shares.

The NAV for a normal trading day will be released after 4:00 p.m. Eastern Time (“ET”). Trading during the regular market session on the Exchange closes at 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. EST). The pause between 4:00 p.m. ET and 5:30 p.m. ET (or later) provides an opportunity for the Administrator to algorithmically detect, flag, investigate, and correct unusual pricing should it occur. Any such correction could adversely affect the value of the Shares. If the Pricing Benchmark is not available, or if the Sponsor determines in good faith that the Pricing Benchmark does not reflect an accurate SUI price, then the Administrator will determine NAV by reference to the Trust’s principal market.<sup>6</sup>

#### Availability of Information and Intraday Indicative Value

In addition to the price transparency of the Index, the Trust will provide information regarding the Trust’s SUI 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 per Share; (b) the prior business day’s Nasdaq official closing price; (c) calculation of the premium or discount of such Exchange official closing price against such NAV per Share; (d) data in

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<sup>6</sup> 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.



chart form displaying the frequency distribution of discounts and premiums of the Exchange's 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); (e) the prospectus; and (f) other applicable quantitative information. The Trust will also disseminate the Trust's holdings on a daily basis on the Trust's website. Quotation and last sale information regarding the Shares will be disseminated through the facilities of the relevant securities information processor.

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 the Exchange's regular market session of 9:30 a.m. to 4:00 p.m. ET (the "Regular Market Session") to reflect changes in the value of the Trust's SUI holdings during the trading day. The IIV disseminated during the Regular Market Session should not be viewed as an actual real-time update of the NAV, because NAV per Share is calculated only once at the end of each Exchange trading day based upon the relevant end-of-day values of the Trust's investments. The IIV will be widely disseminated on a per-Share basis every 15 seconds during the Regular Market Session through the facilities of the relevant securities information processor by market data vendors. In addition, the IIV will be available through online information services, such as Bloomberg and Reuters.

Quotation and last sale information for SUI is disseminated through a variety of major market data vendors. Information related to trading, including price and volume information, in SUI is available from major market data vendors and from the trading platforms on which SUI are traded. The normal trading hours for SUI trading platforms are 24 hours per day, every day of the 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 Nasdaq official closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

#### Creation and Redemption of Shares

According to the Registration Statement, the Trust creates and redeems Shares from time to time, but only in one or more Baskets. Baskets are only made in exchange for delivery to the Trust or the distribution by the Trust of the amount of cash equivalent to the amount of SUI represented by the Baskets being created or redeemed, the amount of which is based on the quantity of SUI attributable to each Share of the Trust (net of accrued but unpaid Sponsor fees and any accrued but unpaid extraordinary expenses or liabilities) being created or redeemed determined as of 4:00 p.m. ET on the day the order to create or redeem Baskets is properly received.

Authorized Participants are the only persons that may place orders to create and redeem Baskets. Authorized Participants must be (1) registered broker-dealers or other securities market participants, such as banks and other financial institutions, which are not required to register as broker-dealers to engage in securities transactions described below, and (2) DTC Participants.

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 SUI as part of the creation or redemption

process or otherwise direct the Trust or a SUI Counterparty with respect to purchasing, holding, delivering, or receiving SUI as part of the creation or redemption process.

The SUI Counterparty is a designated third party with whom the Sponsor has entered into an agreement on behalf of the Trust that will deliver, receive or convert to U.S. dollars the SUI related to the Authorized Participant's creation or redemption order. The Sponsor performs extensive due diligence as part of its SUI Counterparty selection and onboarding process. As part of this process, the Sponsor assesses SUI Counterparty candidates against various criteria, including those relating to candidates' (1) financials, (2) reputation, (3) settlement history with the Sponsor, and (4) their regulatory oversight. The Trust will create Shares by receiving SUI from a SUI Counterparty that is not the Authorized Participant, and the Trust—not the Authorized Participant—is responsible for selecting the SUI Counterparty to deliver the SUI. Further, the SUI Counterparty will not be acting as an agent of the Authorized Participant with respect to the delivery of the SUI to the Trust or acting at the direction of the Authorized Participant with respect to the delivery of the SUI to the Trust.

The Trust will redeem Shares by delivering SUI to a SUI Counterparty that is not the Authorized Participant and the Trust—not the Authorized Participant—is responsible for selecting the SUI Counterparty to receive the SUI. Further, the SUI Counterparty will not be acting as an agent of the Authorized Participant with respect to the receipt of the SUI from the Trust.

Each Authorized Participant will be required to be registered as a broker-dealer under the Exchange Act and a member in good standing with FINRA, or exempt from being or otherwise not required to be licensed as a broker-dealer or a member of FINRA,

and will be qualified to act as a broker or dealer in the states or other jurisdictions where the nature of its business so requires. Certain Authorized Participants may also be regulated under federal and state banking laws and regulations. Each Authorized Participant has its own set of rules and procedures, internal controls and information barriers as it determines is appropriate in light of its own regulatory regime.

According to the Registration Statement, on any business day,<sup>7</sup> an Authorized Participant may place an order to create one or more Baskets via a cash transaction. Purchase orders must be placed by 12:00 p.m. ET, the close of regular trading on the Exchange, or another time determined by the Sponsor. The day on which an order is received by the Transfer Agent is considered the purchase order date. The total deposit of cash required is based on the combined NAV of the number of Shares included in the 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 quantity of SUI associated with a Basket for a given day by dividing the number of SUI held by the Trust as of the opening of business on that business day, adjusted for the amount of SUI 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 on that business day, divided by the number of Shares in a Basket.

The procedures by which an Authorized Participant can redeem one or more Baskets mirror the procedures for the creation of Baskets.

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<sup>7</sup> The Registration Statement defines a “business day” as each day other than a day when the Exchange or the New York Stock Exchange is closed for regular trading.

The Sponsor will maintain ownership and control of SUI in a manner consistent with good delivery requirements for spot commodity transactions.

#### Applicable Standard

Since 2017, the Commission has 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.<sup>8</sup> The Commission has also consistently recognized, however, that this is not the *exclusive* means by which a listing exchange for an

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<sup>8</sup> See Securities Exchange Act Release Nos. 78262 (July 8, 2016), 81 FR 78262 (July 14, 2016) (the “Winklevoss Proposal”). The Winklevoss 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”). 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. 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 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 approval order issued related to the first spot gold ETP “was based on an assumption that the currency market and the spot gold market were largely unregulated.” See Winklevoss Order at 37592. As such, the regulated market of significant size test does not require that the spot 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. See Securities Exchange Act No. 99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (Self-Regulatory Organizations; NYSE Arca, Inc.; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units) (the “Spot Bitcoin ETP Approval Order”); 100224 (May 23, 2024), 89 FR 46937 (May 30, 2024) (Self-Regulatory Organizations; NYSE Arca, Inc.; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Shares of Ether-Based Exchange-Traded Products) (the “Spot ETH ETP Approval Order”).

exchange-traded product (“ETP”) can meet this statutory obligation.<sup>9</sup> An ETP 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 a regulated market of significant size.

The Commission recently issued orders granting approval for proposals to list bitcoin- and ether-based commodity trust shares and bitcoin-based, ether-based, and a combination of bitcoin- and ether-based trust issued receipts (these proposed funds are nearly identical to the Trust, but proposed to hold bitcoin and/or ether, respectively, instead of SUI) (“Spot Bitcoin ETPs” and “Spot ETH ETPs”). In both the Spot Bitcoin ETP Approval Order and Spot ETH ETP Approval Order, the Commission found that sufficient “other means” of preventing fraud and manipulation had been demonstrated that justified dispensing with a surveillance-sharing agreement with a market of significant size. Specifically, the Commission found that while the Chicago Mercantile Exchange (“CME”) futures market for both bitcoin and ether were not of “significant size” with respect to the spot market, the Exchange demonstrated that other means could be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the proposals.

As further discussed below, both the Exchange and the Sponsor believe that this proposal and the analysis to be included are sufficient to establish that there are sufficient “other means” of preventing fraud and manipulation that warrant dispensing with the surveillance-sharing agreement with a regulated market of significant size, as was done

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<sup>9</sup> See Winklevoss Order, 83 FR at 37580; see Spot Bitcoin ETP Approval Order, 89 FR at 3009; see Spot ETH ETP Approval Order 89 FR at 46938.

with both Spot Bitcoin ETPs and Spot ETH ETPs, and that this proposal should be approved.

The Commission has approved numerous series of Trust Issued Receipts,<sup>10</sup> including Commodity-Based Trust Shares,<sup>11</sup> 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.

As noted above, the Commission has 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.<sup>12</sup> While there is currently

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<sup>10</sup> Pursuant to Nasdaq Rule 5720(a), the term "Trust Issued Receipt" means a security (a) that is issued by a trust which holds specified securities deposited with the trust; (b) that, when aggregated in some specified minimum number, may be surrendered to the trust by the beneficial owner to receive the securities; and (c) that pays beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities

<sup>11</sup> Pursuant to Nasdaq Rule 5711(d)(iv), the term “Commodity-Based Trust Shares” means a security (1) that is issued by a trust that holds (a) a specified commodity deposited with the trust, or (b) a specified commodity and, in addition to such specified commodity, cash; (2) that is issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity and/or cash; and (3) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity and/or cash.

<sup>12</sup> 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

no regulated futures market for SUI, the Exchange and Sponsor note that in approving the Spot Bitcoin ETPs, the Commission found that “sufficient ‘other means’ of preventing fraud and manipulation had been demonstrated that justified dispensing with a surveillance sharing agreement with a regulated market of significant size.”<sup>13</sup> The Exchange and Sponsor believe that this proposal provides for sufficient other means of preventing fraud and manipulation to justify dispensing with a surveillance sharing agreement with a regulated market of significant size.

Over the past two years, U.S. investor exposure to SUI, through digital asset trading platforms, has grown to billions of dollars with a market capitalization greater than \$12 billion as of the date of this filing. The Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to SUI 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; and (iii) providing an alternative to the custody of spot SUI.

The policy concerns that the Exchange Act is designed to address are also otherwise mitigated by the fact that the size of the market for the underlying reference asset (greater than \$12 billion as of the date of this filing) and the nature of the SUI

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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

<sup>13</sup> See Securities Exchange Act Release No. 99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Shares of Bitcoin-Based Commodity-Based Trust Shares and Trust Units). The SEC made substantially similar findings in the approval order for Spot ETH ETPs. See Securities Exchange Act Release No. 100224 (May 23, 2024), 89 FR 46937 (May 30, 2024) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Shares of Ether-Based Exchange-Traded Products).



ecosystem reduces its susceptibility to manipulation. The geographically diverse and continuous nature of SUI trading, along with trading volume across multiple venues, makes it difficult and prohibitively costly to manipulate the price of SUI. There are a number of reasons this is the case, including that manipulation of the price on any single venue would require manipulation of the global SUI price in order to be effective; SUI's character as a continuously traded digital asset traded without interruption across the world provides constant arbitrage opportunities across all trading venues; and it is unlikely that any one actor could obtain a dominant market share.

Further, the Exchange believes that the fragmentation across SUI trading platforms and adoption of SUI, as displayed through user engagement and trading volumes, and the Sui Network make manipulation of SUI prices through continuous trading activity more difficult. Moreover, the linkage between the SUI markets and the presence of arbitrageurs in those markets means that the manipulation of the price of SUI on any single venue would require manipulation of the global SUI price in order to be effective. Arbitrageurs must have funds distributed across multiple SUI 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 SUI trading platform. As a result, the potential for manipulation on a particular SUI trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences. The Exchange therefore believes that the above

considerations can effectively address concerns around potential fraud and manipulation.

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 40,000 Shares 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 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 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 SUI or any SUI 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) and will comply with the requirements of Rule 10A-3 of the Act.

#### Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including without limitation the conditions specified in Nasdaq Rule 4120(a)(9) and (10) and the trading pauses under Nasdaq Rules 4120(a)(11) and (12).

Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the SUI 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 on 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 on which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

In addition, if the Exchange becomes aware that the NAV per Share with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV per Share is available to all market participants.

### Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. The surveillance program includes real-time patterns for price and volume movements and post-trade surveillance patterns (e.g., spoofing, marking the close, pinging, phishing). Trading of Shares on the Exchange will be subject to the Exchange's surveillance program for derivative products, as well as cross-market surveillances administered by FINRA, on behalf of the Exchange pursuant to a regulatory services agreement, which are also designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

The Exchange will require the Trust to represent to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the Intermarket Surveillance Group ("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 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 and NAV 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 SUI, and that the Commission has no jurisdiction over the trading of SUI as a commodity.

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 its proposal is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>15</sup> 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 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; 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.

As noted above, the Commission has recognized that the "regulated market of

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<sup>14</sup> 15 U.S.C. 78f(b).

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

significant size” standard is not the only means for satisfying Section 6(b)(5) of the Act, specifically recognizing 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 with the underlying spot market. The Exchange and Sponsor believe that such conditions are present. While there is currently no regulated futures market for SUI, in approving the Spot Bitcoin ETPs, the Commission found that “sufficient ‘other means’ of preventing fraud and manipulation had been demonstrated that justified dispensing with a surveillance sharing agreement with a regulated market of significant size.”<sup>16</sup> The Exchange and Sponsor believe that this proposal provides for sufficient other means of preventing fraud and manipulation to justify dispensing with a surveillance sharing agreement with a regulated market of significant size.

Over the past two years, U.S. investor exposure to SUI, through digital asset trading platforms, has grown to billions of dollars with a market capitalization greater than \$12 billion, as of the date of this filing. The Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors with access to SUI 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; and

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<sup>16</sup> See Securities Exchange Act Release No. 99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Shares of Bitcoin-Based Commodity-Based Trust Shares and Trust Units). The SEC made substantially similar findings in the approval order for Spot ETH ETPs. See Securities Exchange Act Release No. 100224 (May 23, 2024), 89 FR 46937 (May 30, 2024) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Shares of Ether-Based Exchange-Traded Products).



(iii) providing an alternative to the custody of spot SUI.

The policy concerns that the Exchange Act is designed to address are also otherwise mitigated by the fact that the size of the market for the underlying reference asset (greater than \$12 billion, as of the date of this filing) and the nature of the SUI ecosystem reduces its susceptibility to manipulation. The geographically diverse and continuous nature of SUI trading, along with trading volume across multiple venues, makes it difficult and prohibitively costly to manipulate the price of SUI. There are a number of reasons this is the case, including that manipulation of the price on any single venue would require manipulation of the global SUI price in order to be effective; SUI's character as a continuously traded digital asset traded without interruption across the world provides constant arbitrage opportunities across all trading venues; and it is unlikely that any one actor could obtain a dominant market share.

Further, the Exchange believes that the fragmentation across SUI trading platforms and adoption of SUI, as displayed through user engagement and trading volumes, and the Sui Network make manipulation of SUI prices through continuous trading activity more difficult. Moreover, the linkage between the SUI markets and the presence of arbitrageurs in those markets means that the manipulation of the price of SUI on any single venue would require manipulation of the global SUI price in order to be effective. Arbitrageurs must have funds distributed across multiple SUI 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 SUI trading platform. As a result, the potential for manipulation on a particular SUI trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any

cross-market pricing differences. The Exchange therefore believes that the above considerations can effectively address concerns around potential fraud and manipulation.

The Exchange further believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria set forth in Nasdaq Rule 5711(d). 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. As discussed above, the surveillance program includes real-time patterns for price and volume movements and post-trade surveillance patterns (e.g., spoofing, marking the close, pinging, phishing). Trading of Shares on the Exchange will be subject to the Exchange's surveillance program for derivative products, as well as cross-market surveillances administered by FINRA, on behalf of the Exchange pursuant to a regulatory services agreement, which are also designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

The Exchange will require the Trust to represent to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information

by its employees.

The Exchange 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.

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

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of Shares that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change will rather 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

No written comments were either solicited or received.

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

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

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-NASDAQ-2025-042 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-NASDAQ-2025-042. 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-NASDAQ-2025-042 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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