



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ALAMEDA RESEARCH LTD.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. _____
	)	
GRAYSCALE INVESTMENTS, LLC,	)	
DIGITAL CURRENCY GROUP, INC.,	)	
MICHAEL SONNENSHEIN, and	)	
BARRY SILBERT,	)	
	)	
Defendants.	)	

**VERIFIED COMPLAINT**

Plaintiff Alameda Research Ltd. (“Plaintiff” or “Alameda”), a debtor in possession that has filed a petition for relief under chapter 11 of the United States Bankruptcy Code, by and through its undersigned attorneys, brings this Verified Complaint against Defendants Grayscale Investments, LLC (“Grayscale”), Digital Currency Group, Inc. (“DCG”), Michael Sonnenshein, and Barry Silbert (collectively “Defendants”), and alleges as follows:

**NATURE OF THE CASE**

1. This action arises out of Defendants’ brazen abuse of their control over nearly \$19 billion of digital assets held in two trusts to enrich themselves at the expense of trust shareholders. Due to Defendants’ malfeasance and refusal to allow redemptions, the only way for shareholders to exit their investments is by selling

their shares in the trusts in the secondary market, where shares are trading at a fraction of their proportionate interest in trust assets. Meanwhile, with investor capital trapped, Defendants have siphoned off over a billion dollars in fee income over the last two years alone. As a significant trust shareholder, Alameda brings this action for the benefit of its chapter 11 bankruptcy estate to recover the hundreds of millions of dollars in harm that it is suffering at Defendants' hands. Remedying the harm to the Alameda debtor will also unlock approximately \$9 billion or more in value for over one million other trust shareholders, many of whom are small retail investors that Defendants are continuing to exploit.

2. The Grayscale Bitcoin Trust (the "Bitcoin Trust") and Grayscale Ethereum Trust (the "Ethereum Trust" and, together, the "Trusts"), are two Delaware statutory trusts that Grayscale formed and manages for the ostensible purpose of permitting investors to mimic investments in Bitcoin or Ether, without being burdened by the complexities of holding digital assets themselves. The Trusts were designed to accomplish this goal by issuing shares to investors that are backed by a proportional interest in the Trusts' portfolios, which are comprised entirely of Bitcoin (for the Bitcoin Trust) and Ether (for the Ethereum Trust). As the sponsor of the Trusts, Grayscale compensates itself with an annual "Sponsor's Fee" calculated as a percentage of the net asset value in the Trusts. The Sponsor's Fee

that Grayscale has pocketed at the expense of the Trusts' shareholders has historically been 2% for the Bitcoin Trust and 2.5% for the Ethereum Trust.

3. The fundamental investment objective for each of the Trusts is for the value of issued shares to reflect the value of the Trusts' Bitcoin and Ether holdings. In this respect, the Trusts are similar to other "tracking funds" that allow investors to gain exposure to commodities or other assets through investment in the fund rather than the underlying commodity or assets themselves. These products appeal to investors because they provide exposure to types of assets—such as gold, the entire S&P 500 index, or digital currencies—that are difficult to invest in directly.

4. For years, the Trusts proved to be very popular investments, especially among retail investors seeking to capitalize on the appreciation of Bitcoin and Ether. For much of their history, this popularity resulted in shares of the Trusts being in such demand that they traded in the secondary market at prices reflecting a premium to the value of Bitcoin and Ether in the Trusts' portfolios. Exploiting this pricing premium, Grayscale rapidly grew the Trusts through repeated issuances of new shares backed by ever-expanding portfolios. By the end of 2020, the Bitcoin Trust had grown to hold approximately 3.3% of the world's Bitcoin while the Ethereum Trust had grown to hold approximately 2.6% of the world's Ether. And, as Grayscale intended, its Sponsor's Fees grew exponentially with this increase in the Trusts' holdings, hitting nearly \$110 million in 2020.

5. Starting in February 2021, the market for the Trusts started to change. As competing products emerged with more favorable fee structures, demand for the Trusts waned and their shares began trading at a discount to the value of the Trusts' assets. Over the ensuing two years, that discount has widened to about 50%—meaning the shares are trading at a price that is roughly half the value of the Bitcoin and Ether that are backing them. Today, that discount equates to a loss in market capitalization of over \$6 billion for investors in the Bitcoin Trust (which presently holds about \$14 billion in Bitcoin) and nearly \$3 billion for investors in the Ethereum Trust (which presently holds about \$5 billion in Ether). For the Alameda debtor alone, the discount equates to a loss in the market value of its holdings in the Trusts of over \$250 million.

6. The Trusts have a built-in mechanism to eliminate this discount. Under the Trust Agreements,<sup>1</sup> Grayscale can authorize share redemptions through which

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<sup>1</sup> The term “Trust Agreement” as used herein refers to the currently operative Bitcoin Trust agreement. The Bitcoin Trust agreement that Grayscale contends to be currently operative is the Fifth Amended and Restated Trust Agreement, dated September 12, 2018 (the “Fifth Amended Bitcoin Trust Agreement”), which is attached as Exhibit 1 hereto. However, as explained in Section III *infra*, due to Grayscale’s failure to obtain contractually required authorizations for certain amendments, the actual currently operative Bitcoin Trust agreement is the Third Amended and Restated Trust Agreement, dated January 1, 2016 (the “Third Amended Bitcoin Trust Agreement”), which is attached as Exhibit 2 hereto. For consistency and clarity, citations herein to provisions of the “Trust Agreement” reference the provisions and language used in the Fifth Amended Bitcoin Trust Agreement. In almost all instances, the Trust Agreement provisions cited herein are  
(footnote continued)

Trust investors could exchange their Bitcoin Trust or Ethereum Trust shares for their corresponding interest in the underlying Bitcoin or Ether. By allowing these redemption transactions, the Trusts can effectively tether the price of the Trusts' shares to the value of the assets backing them, because shares trading below net asset value will be purchased by arbitrageurs who will then exchange those shares for their full, proportionate value in digital assets. As for the impact of Grayscale's excessive fee structure on the Trusts' shareholders, the Trust Agreements included a fix for that, too. They require that Grayscale monitor the Trusts' fee structures and negotiate competitive rates.

7. Yet, possessed by self-interest, Defendants have shamelessly operated the Trusts solely to maximize their own fee income, without regard to the impact on the Trusts' investors. Through this disloyal campaign of greed, Defendants have secured over a billion dollars of fees for themselves while driving the trading prices of the Trusts' shares almost nine billion dollars below their intrinsic value. All of

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materially identical in relevant respects to provisions in the Third Amended Bitcoin Trust Agreement (though section numbers may differ). Where there are substantive differences between the versions of the agreements—notably in respect of redemptions—they are noted and discussed. Similarly, the term “Trust Agreements” refers to the Trust Agreement together with the currently operative Ethereum Trust agreement, the Amended and Restated Trust Agreement, dated July 3, 2018 (itself the “Ethereum Trust Agreement”), which is attached as Exhibit 3 hereto. Likewise, while the section numbering may differ, the Trust Agreement provisions cited herein are materially identical in relevant respects to provisions in the Ethereum Trust Agreement, unless otherwise indicated.

this conduct is in flagrant breach of Defendants' contractual and fiduciary duties to Alameda and other trust investors.

8. *First*, Grayscale has breached its obligations by failing to reduce the fees it charges to the Trusts' shareholders to commercially competitive levels. The Trust Agreements require Grayscale to "[m]onitor all fees charged to the Trust" in order to ensure that they are at "competitive rates" and, "if necessary, to renegotiate the fee structure to obtain such rates." The fees that Grayscale has been charging are well in excess of "competitive rates." Indeed, over the last two years alone, Grayscale has usuriously charged over ***\$1.3 billion*** to "manage" the Trusts' affairs. This amount, which is taken from the pockets of the Trusts' shareholders, is wildly incommensurate with the minimal services that Grayscale provides to the Trusts and many multiples higher than what other managers charge to perform similar functions.

9. *Second*, Defendants have breached their obligations by failing to permit investors to redeem their shares for the corresponding amounts of Bitcoin or Ether that back those shares. Such a redemption program would immediately eliminate the current market discount and is required by numerous obligations under the Trust Agreements, including the requirement that Grayscale do everything "necessary to carry out the purposes of the Trust," one of which is providing for "redemptions of Shares" where permissible. While Defendants have publicly contended that

regulations preclude implementation of a redemption program under current circumstances, that is a false pretense. As Defendants have recently been forced to admit, Regulation M under the federal securities laws provides regulatory approval to implement redemptions in precisely the current context where there is no ongoing share creation (as there has not been for either Trust for over two years). Defendants' true motivation in refusing redemptions is to artificially hold their investors' assets hostage so as to protect Grayscale's Sponsor's Fees, which would be diminished by investor redemptions that reduce the size of the Trusts.

10. Defendants' failure to adjust Grayscale's fees to competitive rates and implement a redemption program places them in flagrant breach of multiple provisions of the Trust Agreements, the implied covenant of good faith and fair dealing, and their fiduciary duties to the Trusts' beneficiaries. The Alameda debtor brings this lawsuit seeking damages and to secure an injunction requiring Grayscale to reduce its fees and offer redemptions and thereby remedy the harm that Alameda and over a million other shareholders have suffered and continue to suffer as a result of Defendants' self-dealing.

### **PARTIES**

11. Plaintiff Alameda Research Ltd. is a corporate entity organized under the laws of the British Virgin Islands and a shareholder in both of the Trusts. As detailed further herein, Alameda and numerous of its affiliates (the "FTX Debtors")

are in chapter 11 bankruptcy proceedings in the United States Bankruptcy Court for the District of Delaware before Judge John Dorsey. While Alameda was previously part of the cryptocurrency hedge fund and trading enterprise infamously managed by Sam Bankman-Fried, it is today a chapter 11 debtor in possession managed by an independent CEO and board of directors, acting for the benefit of the FTX Debtors' customers and other creditors, pursuant to the Bankruptcy Code and under the jurisdiction of the Bankruptcy Court.

12. Defendant Grayscale is a limited liability company organized under the laws of the State of Delaware. As detailed further herein, Grayscale established and acts as Sponsor for the Trusts.

13. Non-party Grayscale Bitcoin Trust is a Delaware statutory trust established by Grayscale on September 13, 2013 to hold Bitcoin, issue shares to certain authorized investors, and redeem those shares in certain circumstances as explained more fully below. Shares of the Bitcoin Trust are traded under the ticker symbol "GBTC."

14. Non-party Grayscale Ethereum Trust is a Delaware statutory trust established by Grayscale on December 13, 2017 to hold Ether, issue shares to certain authorized investors, and redeem those shares in certain circumstances as explained



more fully below. Shares of the Ethereum Trust are traded under the ticker symbol “ETHE.”<sup>2</sup>

15. Defendant DCG is an investment corporation organized under the laws of the State of Delaware and the parent company of Grayscale. Grayscale describes DCG as sitting “at the epicenter of the blockchain industry.” Among other roles, DCG wholly owns and is the sole member of Grayscale and owns non-party Genesis Global Trading, Inc. (“Genesis”). Genesis is a broker-dealer that served, until recently, as the sole “Participant” permitted to engage in creation or redemption transactions for the Trusts.

16. Defendant Michael Sonnenshein is an individual who, on information and belief, is a domiciliary of Connecticut. Mr. Sonnenshein has been employed by Grayscale for nearly a decade. He was Managing Director of Grayscale from 2018 to January 2021 and, since January 2021, has acted as Grayscale’s Chief Executive Officer.

17. Defendant Barry Silbert is an individual who, on information and belief, is a domiciliary of Connecticut. Mr. Silbert is the founder and current Chairman of the Board of Grayscale and was its Chief Executive Officer until

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<sup>2</sup> Typically and herein the word “Ethereum” is used to refer to the blockchain on which the digital asset “Ether” is the native currency. Grayscale, however, from time to time uses the word “Ethereum” to refer to the digital asset Ether, including in the name of the Ethereum Trust.

January 2021. He is also the founder and current Chief Executive Officer of DCG and the founder of non-party Genesis.

### **JURISDICTION AND VENUE**

18. Because Plaintiff asserts equitable claims and seeks equitable remedies, this Court has subject matter jurisdiction under 10 *Del. C.* §§ 341 and 342 as Plaintiff has no adequate remedy at law. This Court further has jurisdiction over this matter pursuant to 12 *Del. C.* § 3804(g). This Court has subject matter jurisdiction over Plaintiff's claims for declaratory relief pursuant to 10 *Del. C.* § 6501. Ancillary jurisdiction over Plaintiff's remaining claims is proper because all of Plaintiff's claims arise out of the same controversy.

19. Personal jurisdiction over Defendants is proper. Grayscale is a Delaware limited liability company and DCG is a Delaware corporation. Mr. Sonnenshein is the CEO of Grayscale, and this Court may exercise personal jurisdiction over him pursuant to 6 *Del. C.* § 18-109(a). Mr. Silbert is the CEO of DCG, the Chairman of the Board of Grayscale, and the former CEO of Grayscale, and this Court may exercise personal jurisdiction over him pursuant to 6 *Del. C.* § 18-109(a) and 10 *Del. C.* § 3114(b).

## FACTS

### **I. IN A PERVERSION OF THE TRUST AGREEMENTS, GRAYSCALE CREATES A PERPETUAL ONE-WAY FEE MACHINE**

#### **A. Grayscale Creates The Trusts To Offer Tradeable Shares That Track The Price Of Bitcoin And Ether**

20. In 2013, when the Bitcoin Trust was founded, investors seeking exposure to Bitcoin and other cryptocurrencies faced a variety of logistical and regulatory hurdles. Acquiring and maintaining custody over Bitcoin involved unique challenges, and the legal status of digital assets remained uncertain.

21. Grayscale established the Bitcoin Trust to address these barriers. Its straightforward idea was to offer investors economic exposure to Bitcoin while sparing them the custody and legal difficulties attendant to direct ownership. Unlike Bitcoin itself, Bitcoin Trust shares can be held directly in brokerage and retirement accounts, or investors can secure indirect exposure to trust shares through mutual funds and exchange traded funds (“ETFs”). In 2017, Grayscale founded the Ethereum Trust to serve the same purpose with respect to Ether, the second-most popular cryptocurrency.

22. From the Bitcoin Trust’s inception, Grayscale has repeatedly represented to existing and prospective shareholders that the fundamental investment objective of the Trust “is for the Shares to reflect the performance of the value of [B]itcoin.” Likewise, from the Ethereum Trust’s inception, Grayscale has repeatedly represented to existing and prospective shareholders that “[t]he Trust’s

investment objective is for the Shares (based on [Ether] per share) to reflect the value of [Ether] held by the trust[.]” In other words, the market cap value of all the Bitcoin Trust’s shares should track the market value of the Bitcoin Trust’s Bitcoin holdings, the Trust’s net asset value (“NAV”). Similarly, the Ethereum Trust’s market cap value was intended to track the market value of the trust’s Ether holdings.

23. The Trusts use a simple model to pursue this objective. Unlike a hedge fund or other investment vehicle that employs professionals to identify and cultivate investments, the Trusts are not actively managed. Instead, they are set up as Delaware statutory trusts designed to do only three things: accept Bitcoin or Ether for shares, hold Bitcoin or Ether as passive investments, and accept shares for Bitcoin or Ether. Trust Agreements § 1.5. Each share the Trusts issue represents a fractional interest in the respective Trust corpus. The Trusts grow when Bitcoin or Ether are deposited in exchange for shares—a “creation” transaction—and shrink when shares are deposited in exchange for Bitcoin or Ether—a “redemption” transaction. Once created, shares are sold on the secondary market to both retail and institutional investors.

24. The management structure of the Trusts has remained relatively constant since inception. The Trusts have a Trustee (Delaware Trust Company), but the Trustee has delegated functionally all of its obligations and responsibilities to

each Trust to a “Sponsor,”<sup>3</sup> which is and always has been Grayscale. Trust Agreements § 2.2 (“the duty and authority to manage the affairs of the Trust is vested in the Sponsor”). The Trustees are thus mere figureheads that have assigned all responsibility for managing the Trusts’ affairs to Grayscale. Trust Agreements § 6.1 (vesting authority to manage Trust in Sponsor).

25. The Sponsor’s role is to oversee the Trusts, carry out the Trusts’ purposes for the benefit of shareholders, and protect Trust shareholders’ rights. The Trust Agreements charge the Sponsor with certain general responsibilities, including:

- Managing the Trusts as is “necessary to carry out the purposes of the Trust[s],” Section 6.3(a);
- Always acting “with integrity and good faith” and exercising “due diligence in all activities relating to the Trust[s] and in resolving conflicts of interest[,]” Section 6.3(j);
- Fiduciary responsibility for the “safekeeping and use of the Trust Estate[s],” Section 6.3(h); and
- Not employing “the Trust Estate[s] in any manner except for the benefit of the Trust[s],” including not using the Trust Estates “for the exclusive benefit of the Sponsor[,]” Section 6.3(i).

26. The Trust Agreements also charge the Sponsor with taking certain specific actions including, as also discussed further herein:

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<sup>3</sup> Unless otherwise indicated, the term “Sponsor” as used herein means Grayscale as Sponsor of both Trusts.

- Executing and filing all documents and doing “any and all other things as may be appropriate” for the “qualification and operation of the Trust[s] and for the conduct of its affairs[,]” Section 6.3(b);<sup>4</sup> and
- Monitoring the fees that service providers charge the Trusts and renegotiating contracts, if necessary, to ensure that services are provided “at competitive rates and are the best price and services available under the circumstances,” Section 6.3(g).

27. Beyond these charges, the Sponsor’s day-to-day managerial responsibilities are minimal relative to the role of typical investment fund managers. The Trust Agreements direct the Sponsor to engage service providers such as accountants and attorneys, as well as a Custodian charged with the safekeeping of the assets held in the Trusts. Trust Agreements §§ 6.2, 6.3. The Trusts’ present Custodian is third party Coinbase Custody Trust Company, LLC. But the Sponsor has no responsibility for allocating, trading, or investing the Trusts’ assets, all of which enter the Trusts in the form of Bitcoin and Ether, and at all times remain invested in Bitcoin and Ether.

28. In exchange for its limited management responsibilities, Grayscale arranged for the Sponsor of the Bitcoin Trust (*i.e.*, itself) to receive a fee that accrues daily at an annual rate of 2.0% (the “Sponsor’s Fee”),<sup>5</sup> and is taken from the

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<sup>4</sup> Section 6.3(b) of the Third Amended Trust Agreement is nearly identical, referring to the Trust’s “business” rather than its “affairs.”

<sup>5</sup> Unless otherwise indicated, the term “Sponsor’s Fee” as used herein refers to the 2.0% fee charged by Grayscale on the Bitcoin Trust, and the term “Sponsor’s Fees” refers collectively to the Sponsor’s Fee and the 2.5% fee charged by Grayscale to the Ethereum Trust.

shareholders monthly. Trust Agreement § 6.8(a)(i). For the Ethereum Trust, that fee is 2.5%. Ethereum Trust Agreement § 6.8(a)(i). Importantly, the Sponsor's Fees are calculated based on the market value of each Trust's *assets* (*i.e.*, the value of the Bitcoin or Ether held by the trust), regardless of the market value of the shares. *Id.* Thus, Grayscale has strong incentives to maximize the amount of assets in the Trusts. In the halcyon days of 2021, when Bitcoin reached over \$60,000 per token, Grayscale earned fee income from shareholders worth nearly \$620 million in exchange for its limited oversight responsibilities. All told, over the past two years, Grayscale has earned more than \$1.3 billion for managing the Trusts, and even more for managing twelve other single-digital-asset trusts that it runs in parallel.

29. Given the Trusts' lack of active management, the Trust Agreements provide for two mechanisms that can work to ensure that the Trusts' share prices actually track the value of the Trusts' asset holdings as intended: share creation and redemption. Share creations, which involve depositing Bitcoin or Ether in the Trusts in exchange for shares, can help regulate excessive market premiums. Conversely, share redemptions, which involve delivering shares to the Trusts in exchange for Bitcoin or Ether, can help regulate any excessive market discounts. Indeed, the Trust Agreements identify the primary two "purposes of the Trust" as being "to accept Bitcoin [or Ether] for subscriptions of Shares" and "to distribute Bitcoin [or Ether] (or cash from the sale of Bitcoin [or Ether]) upon redemption of Shares" when

permissible. Trust Agreements § 1.5(a). Without such mechanisms, temporary differences in the supply-and-demand dynamics of the shares on the one hand and the underlying asset on the other would become entrenched, distorting the Trusts' share prices away from the value of their claims on the Trust corpuses.

**B. Grayscale Lures Retail Investors Into The Trusts And Continues The Expansion Of Its Portfolio**

30. Incentivized by its NAV-based Sponsor's Fees, Grayscale has worked tirelessly over the years to increase the size of the Trusts' shareholder base.

31. In May 2015, the Bitcoin Trust succeeded in listing its shares on the over-the-counter interdealer quotation system OTCQX Best Marketplace. This marked a significant step forward in the public availability of Trust shares by enabling investors—including retail investors—to “easily trade” with the “diverse network of broker-dealers that provide liquidity and execution services” on OTCQX through “the broker of their choice.”

32. Fortunately for Grayscale, the share price exhibited a persistent premium to the NAV from 2015 until early 2021, which meant there was demand only for creation transactions which allowed the Trust to grow rapidly. The Bitcoin Trust consequently doubled in size from 2014 to 2019.

33. In 2019 and 2020, to further enlarge the Trusts and increase its fees, Grayscale financed an aggressive mass marketing campaign to extoll the Trusts' virtues to potential investors. Grayscale's campaign “#DropGold” sought to



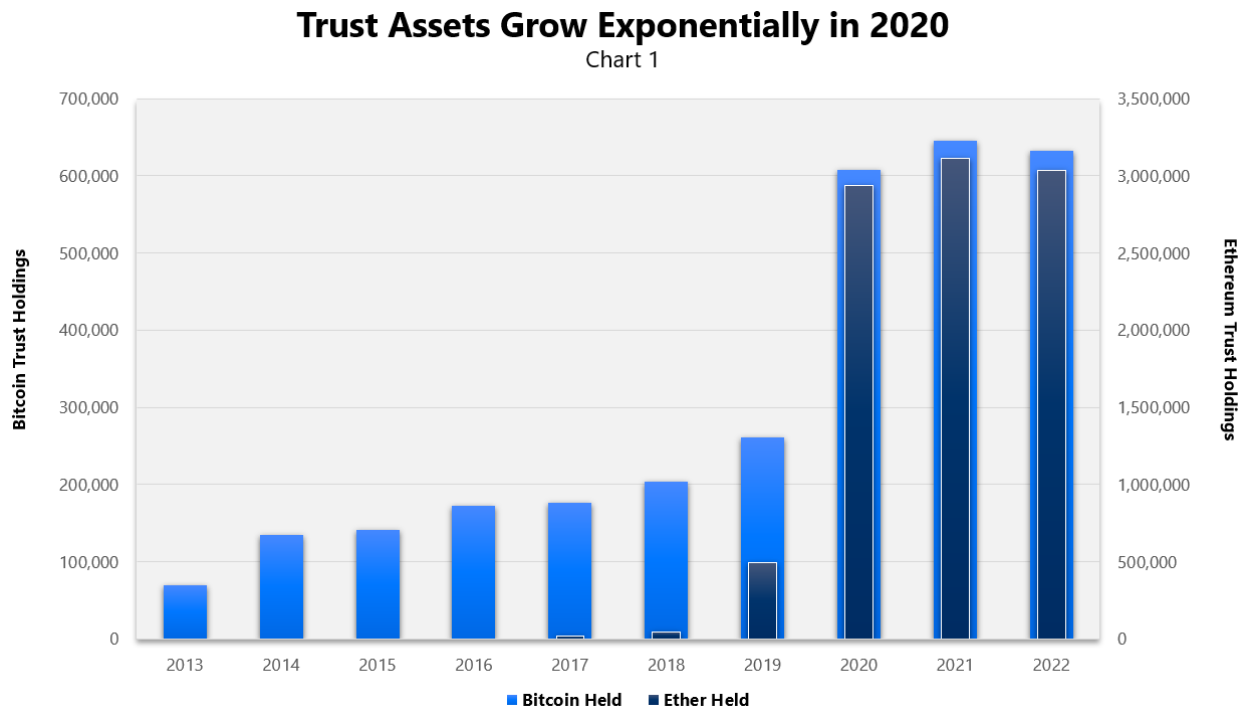
convince gold investors that Bitcoin was a superior store of value and hedge against inflation. Sonnenshein declared that Grayscale was “going after a narrative around gold being where investors should go when markets turn south” and “highlighting the absurdity of gold.” Grayscale also represented that reallocating investments from gold to Bitcoin could create “an annualized return that was over 5% higher than that of a pure gold allocation, with lower volatility.”

34. Grayscale’s advertising blitz also swept the airwaves with TV commercials aimed at capturing a share of the pandemic-era retail investment frenzy. A 30-second commercial implied that digital assets were the next evolution in the history of money, and that it was time for investors to “go digital; go Grayscale.” Another 42-second commercial asked investors “Why did you invest in gold? Are you living in the past? . . . Digital currencies like bitcoin are the future . . . and unlike gold, they actually have utility. Leave the pack behind: it’s time to drop gold.”

35. None of these advertisements disclosed that Bitcoin Trust shares had persistently traded at a premium of more than 10% to NAV, meaning that retail purchasers who saw Grayscale’s ads and bought shares on the secondary market paid a significant premium for the fractional interest in the Bitcoin Trust’s Bitcoin holdings that the shares represented. Amidst a wave of growing enthusiasm for Bitcoin and other digital assets, demand for the Bitcoin Trust’s shares on the

secondary market remained strong enough for the premium to persist into early 2021.

36. By the end of the first quarter of 2021, the Bitcoin Trust held an astounding 654,600 Bitcoins—nearly one-and-a-half times the number it held on January 1, 2020. As of December 31, 2022, the Bitcoin Trust held fully 3.3% of all Bitcoin in the world. Chart 1 below shows the dramatic growth in the size of the Bitcoin Trust over time. Grayscale, meanwhile, benefitted by earning ever-higher Sponsor’s Fees from the expanded asset base.



37. Nor was the Bitcoin Trust Grayscale’s only pandemic-era cash cow. From 2013 to 2016, the price of Bitcoin was below \$1,000. In 2017, the price rose exponentially, reaching nearly \$20,000 by the end of the year. This meteoric rise

captured widespread public attention, which Grayscale promptly sought to capitalize on by expanding its product offerings. In December 2017, Grayscale launched the Ethereum Trust and, as shown above in Chart 1, it likewise took off during the pandemic. Grayscale also created more than a dozen other trusts based upon other digital assets such as Litecoin and Filecoin.

38. For Grayscale's expansion campaign, the music stopped in February 2021, when the years-long premium the Trusts had exhibited suddenly shifted to a discount. As more competitors entered the market offering lower fees, and owning Bitcoin and Ether directly became easier and cheaper—which Grayscale long foresaw would happen—shares in the Trusts began to trade at a significant discount to the underlying NAV per share. As digital asset prices then began to fall in late 2021, the discount deepened and has continued to do so, as shown in Chart 2 below.<sup>6</sup> As of March 3, 2023,<sup>7</sup> the Bitcoin Trust's shares were trading at a 45% discount to the NAV per share and the Ethereum Trust's shares were trading at a 54% discount.

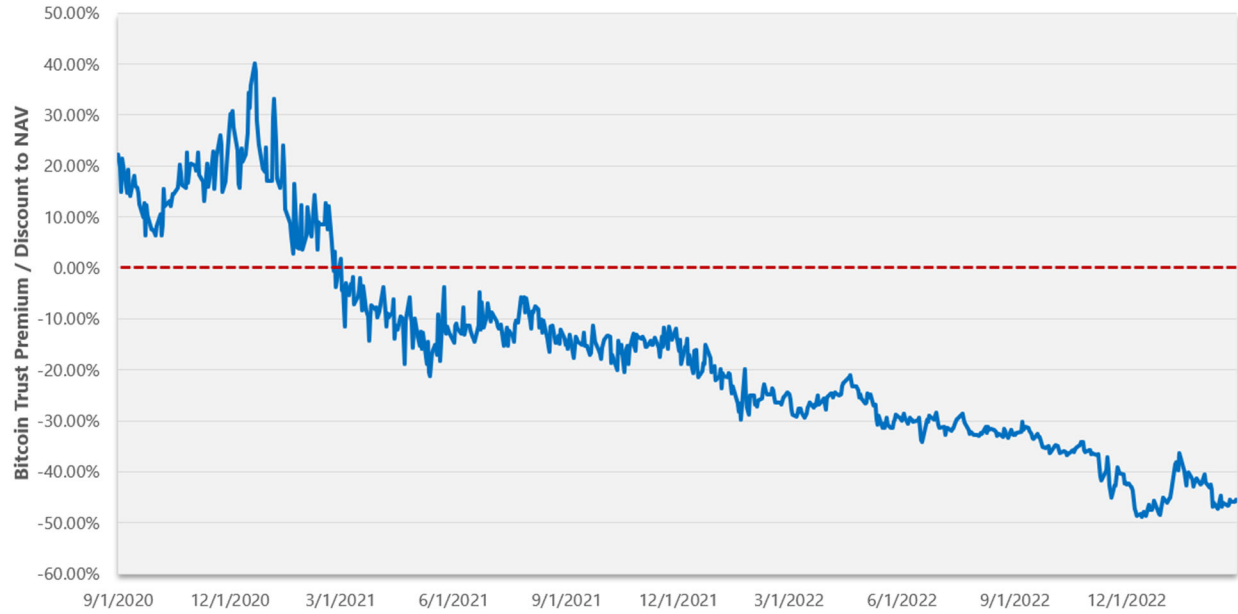
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<sup>6</sup> Shares in the Ethereum Trust reflected the same trading pattern, although their premium in the early years after the Ethereum Trust was established was at times far higher.

<sup>7</sup> All figures appearing herein are current as of the March 3, 2023 market close unless otherwise indicated.

## Share Premium Shifts to Steep Discount

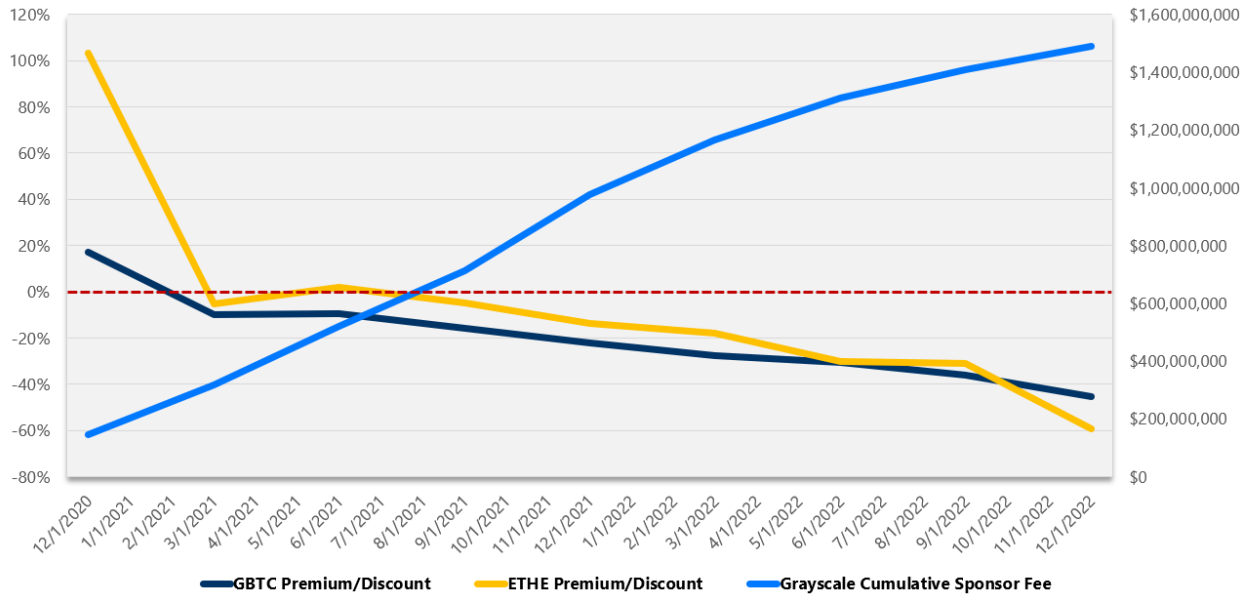
Chart 2



39. Nonetheless, this poor secondary-market share performance proved no impediment to Grayscale capturing fee revenue from shareholders at an accelerating rate. As shown below in Chart 3, from January 2021 to the end of 2022, Grayscale's cumulative Sponsor's Fee income from the Trusts grew by more than 700% from about \$190 million to over \$1.5 billion.

## Grayscale Profits Massively As Share Values Fall

Chart 3



## II. GRAYSCALE BREACHES ITS CONTRACTUAL OBLIGATION TO ENSURE IT IS PAID ONLY AT COMPETITIVE RATES

40. Among other obligations to shareholders, the Trust Agreements expressly require Grayscale to “[m]onitor all fees charged to the Trust[s], and the services rendered by the service providers to the Trust[s], to determine whether the fees paid by, and the services rendered to, the Trust[s] are at competitive rates and are the best price and services available under the circumstances, and if necessary, renegotiate the fee structure to obtain such rates and services for the Trust[s].” Trust Agreements § 6.3(g).<sup>8</sup>

<sup>8</sup> Other more general provisions of the Trust Agreements also require Grayscale to ensure for the benefit of shareholders that the Trusts’ assets are not depleted through payment of excessive fees. For example, Grayscale has the responsibility for “safekeeping . . . of the Trust Estate” and to “[n]ot employ or (footnote continued)

41. The fees that Grayscale must ensure are at “competitive rates” include Grayscale’s own Sponsor’s Fees—which, at the Trusts’ inception, Grayscale set at an annual rate of 2.0% (for the Bitcoin Trust) and 2.5% (for the Ethereum Trust), accruing daily and paid monthly in Bitcoin and Ether. Trust Agreements § 6.8(a)(i). Given the structure of the Trusts, these fees directly reduce each Trust shareholder’s interest in the Trusts and are, in effect, paid by Alameda and the Trusts’ other shareholders. On its website, Grayscale explicitly lists itself at the top of a list of “Service Providers” for each of the Trusts. Its Sponsor’s Fees thus fall squarely within “fees charged to the Trust[s]” by “service providers to the Trust[s].”<sup>9</sup> Yet Grayscale has utterly failed to satisfy its monitoring and renegotiation obligations with respect to the Trusts’ Sponsor’s Fees.

42. As the Trusts’ discount to NAV widened over the course of 2021, investor interest in the Trusts waned. Many investors liquidated their positions on the secondary market at substantial losses. Others opted to invest instead in

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permit others to employ the Trust Estate in any manner except for the benefit of the Trust” including preventing it from being used “for the exclusive benefit of the Sponsor.” Trust Agreements § 6.3(h), (i).

<sup>9</sup> The fact that Grayscale was expected to be in a position of regulating its own conduct, even in regard to such things as fees, is supported by the Trust Agreements’ conflict-of-interest provisions which set forth standards for such situations that require Grayscale to always act with “integrity and good faith” and to consider not only its own interests whenever such a conflict arises, but the “relative interest of *each* party” impacted as well as “customary or accepted industry practices.” *Id.* §§ 6.3(j), 6.6(b).

competing digital asset trusts or exchange-traded products (“ETPs”) that offer various types of exposure to Bitcoin or Ether.<sup>10</sup> Every single one of these competing trusts and products offers significantly lower management fees on a percentage basis, and accepts astronomically lower profit margins on a USD basis.

43. Advisers to trusts that hold Bitcoin directly (so-called “spot Bitcoin products”) typically charge fees of less than 1%—that is, less than half the management fee Grayscale charges the Trusts on a percentage basis. And since these other trusts are generally smaller than the Grayscale Trusts, these lower percentage fees bring in far less on an aggregate basis than what Grayscale receives. Moreover, because the sponsors of these products do not actively manage the invested funds, many management expenses are fixed costs: for instance, marketing, listing and quotation fees, auditing and accounting, and website maintenance. Thus, the pure profits that Grayscale skims from the Trusts’ shareholders are massively larger than the profits competing sponsors retain after deducting expenses against charged fees.

44. For example, The Osprey Bitcoin Trust (OBTC), which launched in February 2021, offers a management fee of 0.49%. With less than \$70 million in

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<sup>10</sup> In general, an exchange-traded product (ETP) is a security that is listed on a U.S. exchange and seeks to provide exposure to the performance of a benchmark (such as the price of gold), an index (such as the S&P 500) or an actively managed strategy. ETFs are the most common and most well-known type of ETP, but ETPs also include exchange-traded notes (ETNs), commodity pools, and other product types.

assets as of early this year, Osprey is managing its trust with about \$1 million in annual fees, about three-tenths of one percent of the nearly \$300 million annual fee Grayscale is currently charging. Similarly, the Valkyrie Bitcoin Trust, which launched in January 2021, provides “exposure to the value of Bitcoin held by the Trust” in exchange for a management fee of just 0.40%, and the Ark 21Shares Bitcoin ETF, a trust that sought SEC approval to become an exchange-traded fund, planned to pay its fund sponsor a “unified fee” of 0.95%.

45. Grayscale’s management fee is so obviously inflated relative to the Trusts’ actual operating expenses—and so obviously correctable—that both Valkyrie and Osprey have penned open letters offering to replace Grayscale and take over the Bitcoin Trust as the new sponsor and manager. Among other things, the advisers promise to lower the Bitcoin Trust’s fees.

46. In a letter dated December 28, 2022, Valkyrie proposed to “[l]ower the fees to a more equitable level, in line with best industry practices.” Specifically, Valkyrie “propose[d] a fee of 75 basis points, which is significantly lower than the current rate of 200 basis points.” Weeks later, Osprey Funds offered to undercut Valkyrie’s proposal even further. On January 13, 2023, noting the “many concerns articulated about Grayscale’s high fees,” Osprey committed that if it were to become sponsor of the Bitcoin Trust it would “slash the management fee to 0.49%, and clean up the expense structure of the fund which contains significant conflicts of interest.”



Of course, even these fees are likely supra-competitive given the lower rates at which Valkyrie and Osprey have operated their own trusts to date.

47. The Trusts are also structurally similar to ETPs that hold other commodities like gold, platinum, or palladium. Those products, too, tend to charge annual fees of 1% or less. For example, the Sprott Physical Platinum and Palladium Trust (SPPP) offers a “management expense ratio” of 0.92%; the abrdn Physical Palladium Shares ETF (PALL) features a total expense ratio of 0.60%; physically backed Gold ETFs offered by SPDR, iShares, abrdn, GraniteShares, VanEck, Goldman, and Credit Suisse feature expense ratios of 0.10% to 0.65%; the GraniteShares Platinum Trust (PLTM) has an expense ratio of 0.50%; and the abrdn Standard Physical Platinum Shares ETF (PPLT) has an expense ratio of 0.60%.

48. Although Grayscale has not received SEC approval to operate as an ETF, it is also notable that its fees far exceed the fees typically paid to advisers to ETFs that track Bitcoin futures and commodities. Unlike Grayscale, such entities actually do require active management and therefore have significant expenses related to asset management. Nevertheless, they manage to operate competitively with far lower fees.

49. For example, the ProShares Bitcoin Strategy ETF (BITO) has reportedly attracted investors away from the Bitcoin Trust in part because it offers a substantially lower management fee. Indeed, BITO is “now the world’s largest and

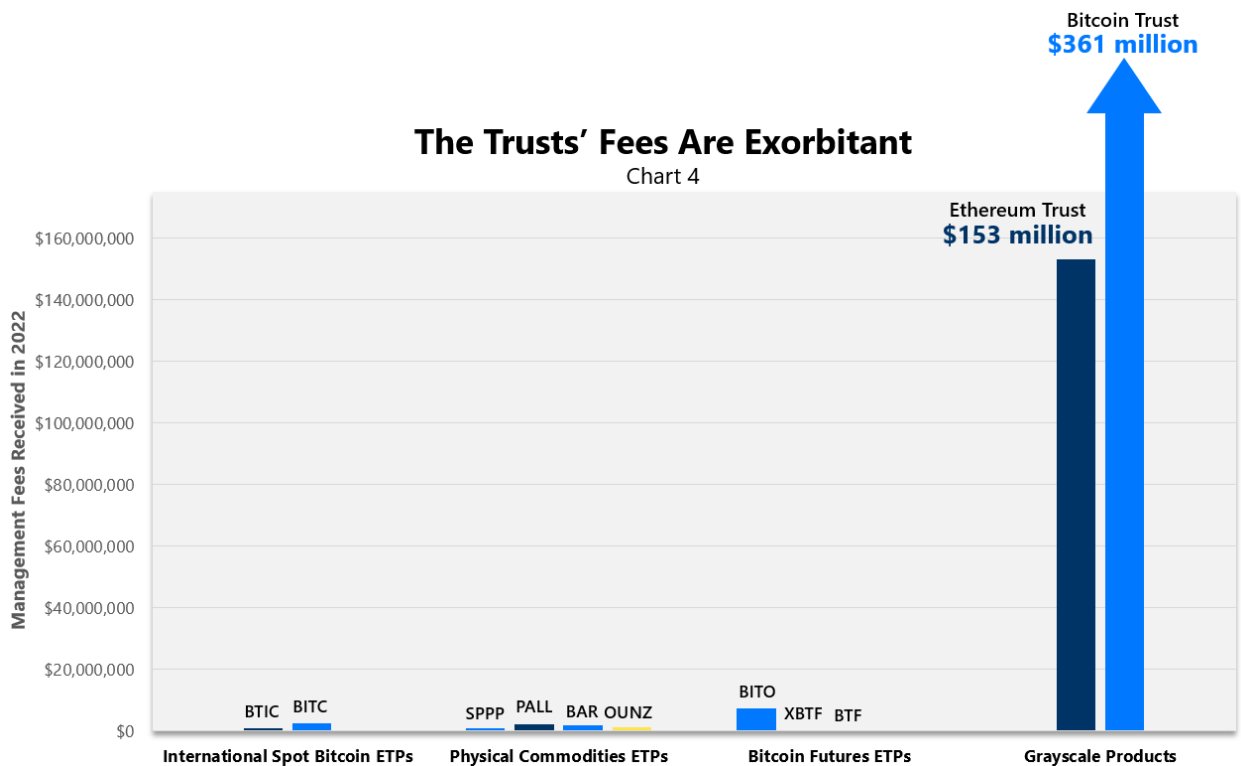
most actively traded cryptocurrency ETF.” BITO invests in Bitcoin futures contracts with the goal, similar to the Bitcoin Trust, of tracking the performance of spot Bitcoin prices. The fund’s investment adviser, ProShares, charges an annual management fee of 0.95%.

50. Other Bitcoin futures ETFs charge fees similar to or lower than BITO’s fees. The VanEck Bitcoin Strategy ETF (XBTF), an actively managed fund that offers exposure to Bitcoin via Bitcoin futures contracts, charges an annual fee of 0.65%. The Valkyrie Bitcoin Strategy ETF (BTF), an actively managed ETF available through Nasdaq that invests primarily in Bitcoin futures contracts, charges an annual management fee of 0.95%.

51. There are also a number of ETPs trading on European exchanges that are designed to track the price of Bitcoin and are 100% backed by “physically held” Bitcoin—much like the “spot” products available in the U.S. As in the U.S., those products typically charge management fees of 1% or less. For example, the Invesco Physical Bitcoin ETP features a fixed annual fee of 0.99%; the Fidelity Physical Bitcoin ETP charges fees of 0.75%; and the CoinShares Physical Bitcoin ETP charges a management fee of 0.98% annually.

52. When Grayscale’s fee rate is considered in the context of the Trust’s size, the noncompetitive nature of Grayscale’s Sponsor’s Fee becomes even more stark. At the peak of the market in 2021, when Bitcoin reached over \$60,000 per

token, Grayscale took fee income from shareholders worth nearly \$620 million. In 2022 Grayscale charged Alameda and other shareholders over \$360 million to perform the largely administrative and custodial functions required as Sponsor of the Bitcoin Trust. In parallel, Grayscale charged over \$150 million last year for minimal additional management responsibilities as Sponsor of the Ethereum Trust. The contrast with any other product investors might consider is egregious. Bitcoin futures ETPs, physical commodities ETPs, and international spot Bitcoin ETPs all generally earn fees in the *low single digit millions* or less.



53. As shown in Chart 4 above, the fees Grayscale earned last year are literally off the chart. They dwarfed those earned by competing ETP providers by many orders of magnitude: the Ethereum Trust’s fees were 21 times larger than the

next most expensive fund identified (BITO) and the Bitcoin Trust's fees were 49 times larger. Given this massive disconnect, it is no surprise that Grayscale's competitors are chomping at the bit to undercut its pricing.

54. It is thus self-evident that Grayscale has not fulfilled its obligation to negotiate competitive Sponsor's Fees. The Sponsor's Fees are so obviously excessive that Grayscale actually *admits* in securities filings that the Sponsor's Fee is "a competitive factor that may influence the value of the Shares"—in other words, it may place the Trusts at a disadvantage relative to their competitors. Indeed, even Grayscale's own executives have tacitly acknowledged that its fees are too high. Just recently, its CEO committed to lowering fees, but only after Grayscale succeeds in its quest to obtain SEC approval to run the Trusts as ETFs. On the podcast *Unchained* on January 27, 2023, Sonnenshein stated:

The total annual management fee for any and all GBTC shareholders is 2%. . . . The fee on the product today is certainly borne by a lot of costs that go into running a product in the crypto space . . . . We've said publicly and I'll say again we are committed to lowering the fee on GBTC when it converts to an ETF but, certainly in the meantime, all the fees that are being generated on GBTC: that is all the capital that we as an organization are putting into our lawsuit against the SEC, bringing the best legal minds possible to the case, and really just continuing to advocate for our investors. We feel very strongly about the case. The full resources of the firm are behind it and, again, we'll lower fees in an ETF state.

55. Sonnenshein's excuse for maintaining Grayscale's exorbitant fees is transparent pretext. At current Bitcoin prices, Grayscale's annual "Sponsor's Fee"

is running at nearly \$300 million per year for the Bitcoin Trust alone. Grayscale could pay a team of five lawyers to work 40 hours a week, 50 weeks a year on its appeal against the SEC for a small fraction of its \$300 million fee. Grayscale could not possibly be spending “all”—or even a material amount—of the \$300 million of its Bitcoin Trust Sponsor’s Fee on “[the Bitcoin Trust]’s lawsuit against the SEC,” as Sonnenshein falsely suggested.

56. In any event, litigation costs cannot possibly justify Grayscale’s excessive Sponsor’s Fees because the Trust Agreements direct the Trusts to pay “extraordinary legal fees and expenses, including *any* legal fees and expenses incurred in connection with litigation, regulatory enforcement or investigation matters” out of the Trust corpus, *separate from and in addition to* the Sponsor’s Fees. Trust Agreement § 6.8(b)(i).<sup>11</sup> It is telling, however, that Sonnenshein himself recognizes that Grayscale’s Sponsor’s Fees are so obviously excessive that they cry out for some explanation—however false.

57. Finally, Grayscale currently operates seventeen digital asset trusts, all of which would share in the benefit of ETF approval. But, according to Sonnenshein, the Bitcoin Trust alone is funding its battle with the SEC. Sonnenshein has thus

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<sup>11</sup> The operative Third Amended Trust Agreement includes a similar, but differently worded provision: “In certain extraordinary circumstances, the Trust may pay expenses in addition to the Combined Fee and the Assumed Fees, such as . . . extraordinary legal fees.” Third Amended Trust Agreement § 4.8(b).

offered no excuse at all for maintaining a 2.5% fee on the Ethereum Trust or any of Grayscale's other trusts that charge investors similarly high rates. The fact is there is no commercial justification for the Trusts' usurious fees. Grayscale has simply perverted the Trusts by holding investors hostage to a perpetual grifting of billions of dollars in the guise of management "fees."

58. Nor do the Trust Agreements sanction Grayscale's malfeasance. Between Trust Agreements Sections 6.3(g), 6.3(i), 6.3(j), and 6.6(b), Grayscale is required to "monitor" its own fees, make a determination that its own fees are "competitive," and "if necessary, renegotiate the fee structure to obtain such rates[.]" ensure the Trust estates are not "employ[ed] . . . in any manner except for the benefit of the Trust Estate[s]" such as through payment of excessive fees, and undertake this determination exercising "integrity," "good faith," and "due diligence" after considering "customary or accepted industry practices[.]"

59. It has done none of these things. Instead, it has breached its obligation to monitor the Sponsor's Fees and "obtain" the "best price" available. It has done so in bad faith and with willful misconduct. It has done so in direct violation of Section 6.3(i) of the Trust Agreements, which prohibits Grayscale from using the Trusts' estates "for the exclusive benefit of the Sponsor," to enrich itself at enormous expense to the Trusts' shareholders.

60. These breaches not only wrongfully extract resources from the Trusts' shareholders—they also put substantial downward pressure on the market price of Trust shares, as Grayscale admits in its filings with the SEC. And because Grayscale wrongfully refuses to permit redemptions, shareholders are left with no ability to escape these harms and reinvest with a competing provider.

### **III. GRAYSCALE'S SELF-SERVING BAN ON REDEMPTIONS VIOLATES THE TRUST AGREEMENTS AND THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

61. The Trust Agreements require that “the Trust shall be managed by the Sponsor in accordance with this Trust Agreement,” Trust Agreements § 6.1, and provides that Grayscale, as the Sponsor, “shall have, and may exercise on behalf of the Trust, all powers and rights necessary, proper, convenient, and advisable to effectuate and carry out the purposes of the Trust[.]” *Id.* § 6.2.

62. This grant of authority carries with it an obligation to “effectuate and carry out the purposes of the Trust[.]” *Id.* This is further confirmed by Section 6.3(a) of the Trust Agreements, which obligates the Sponsor to “[d]evote such of its time to the affairs of the Trust as it shall, in its discretion exercised in good faith, determine to be necessary to carry out the purposes of the Trust, as set forth in Section 1.5, for the benefit of the Shareholders.” Under Section 1.5(a) of the Trust Agreements, the purposes of the Trusts are simple:

- “to accept Bitcoin [or Ether] for subscriptions of Shares” (*i.e.*, creation transactions);

- “to hold Bitcoin [or Ether],” (*i.e.*, custody services); and
- “to distribute Bitcoin [or Ether] (or cash from the sale of Bitcoin [or Ether]) upon redemptions of Shares” (*i.e.*, redemption transactions).

63. In its SEC filings, Grayscale advertises that the Trusts pursue these purposes in furtherance of their simple “investment objective[—]for the value of its Shares (based on BTC per share) to reflect the value of Bitcoin held by the Trust, less fees and expenses.” Correspondingly, the Ethereum Trust’s self-professed “investment objective is for the value of its Shares (based on ETH per Share) to reflect the value of Ethereum held by the Trust, less fees and expenses.”

64. It is incontrovertible that the Trusts were designed, marketed, and intended to act as tracking funds, holding an underlying asset while facilitating the creation and redemption of shares to be sold on the secondary market to purchasers seeking exposure to that asset. The Bitcoin Trust’s SEC filings repeatedly confirm this, assuring shareholders that “the Trust’s investment objective is for the value of the Shares (based on Bitcoin per Share) to reflect the value of the Bitcoins held by the Trust, as determined by reference to the Index Price, less the Trust’s expenses and other liabilities.” The Ethereum Trust’s SEC filings provide the same assurance to investors.

65. When a tracking fund operates as intended, arbitrageurs keep the market value of its shares in line with its NAV. Here, when the Trusts’ shares trade above NAV, arbitrageurs would exchange Bitcoin or Ether for shares in creation



transactions and sell those shares at the prevailing market premium until that selling pressure returned the market price of the Trusts' shares to parity with NAV. When the Trusts' shares trade below NAV, arbitrageurs would buy shares at the prevailing market discount and redeem those shares for digital assets until the buying pressure returned the market price of the Trusts' shares to parity with NAV. The net result is that any premia or discounts are short-lived, and the share price closely tracks the value of the underlying asset (here, Bitcoin or Ether) over the long term.

66. Working in tandem, this double-sided mechanism has two important and related effects: it keeps the value of all the shares aligned with the value of the Trusts' assets and it keeps the overall size of the Trusts in line with market demand for the product. When the Trusts are not being manipulated, it is the market—not Grayscale—that determines the appropriate size of the Trusts.

67. Grayscale's CEO Sonnenshein has indeed publicly touted the Trusts' arbitrage mechanism, assuring the investing public that the Trusts are designed to enable market forces to keep the Trusts' share values aligned with their NAVs. Yet Grayscale itself has been forced to admit that, "[t]o date, GBTC has not met its investment objective and the Shares . . . have not reflected the value of Bitcoin held by GBTC." The reason is simple: Grayscale refuses to allow redemptions.

68. While the Trusts' shares had historically traded at a premium to NAV, that collapsed during the first quarter of 2021. The discount in the price of both

Trusts' shares has been a persistent feature ever since that time. It has at times exceeded 50%—meaning that a share trades at less than half the value of the fractional claim to Bitcoin or Ether that it represents.

69. At current market prices, the Bitcoin Trust holds Bitcoin with a market value of \$14.1 billion, but Bitcoin Trust shares trade at a market capitalization of roughly \$7.8 billion. Reflecting the cost to investors of Grayscale's unabashed perversion of shareholder rights, Bitcoin Trust investors choosing to sell their shares in the secondary market today must absorb a 45% discount to the market value of their fractional interest in the Bitcoin Trust's assets. Similarly, the Ethereum Trust holds Ether with a market value of \$4.7 billion, but the Ethereum Trust's shares trade at a market capitalization of roughly \$2.2 billion. Ethereum Trust investors choosing to sell their shares in the secondary market today must therefore absorb a 54% discount to the market value of their fractional interests in the Ethereum Trust's assets. The staggering size of the NAV discount is indicative of the harm done to the personal rights of shareholders to redeem for their proportional share of digital assets, rather than trade away that interest at a massive loss.

70. Investors in the Trusts thus face an unenviable set of options. On the one hand, they can sell their shares and suffer the impact of the massive discount at current market prices. On the other, they may hold their shares in the hope that the resumption of redemptions in the future will bring the market value of their shares

back in line with the value of the Trusts' assets. Investors who take the former path must forfeit upwards of 50% of their investment in stranded value. But those who take the latter path are trapped in their positions, exposed to ongoing disruptions in the value of the underlying digital assets, which have tended to exhibit much higher realized volatilities than almost any other common asset class.

71. The Trusts have ceased to function due to the radical disconnect between the value of the Trusts' shares and the value of their underlying assets. The Trusts each last issued new shares in the first quarter of 2021, shortly before the Trusts' shares fell below NAV. New creation transactions are not economically feasible, since no rational market participant would deliver Bitcoin or Ether to the Trusts in exchange for shares worth substantially less.

72. Thus, while Grayscale and its officers still seek to lure investors by falsely proclaiming that the Trusts' shareholders "own[] a piece of [the] Bitcoin [or Ether] underlying th[eir] share[s]" and "control" the digital assets held in trust, they have in practice usurped those rights by prohibiting shareholders from redeeming their shares in exchange for the Bitcoin or Ether they supposedly represent.

73. In order to unfreeze the Trusts' operations, Grayscale needs to honor Trust shareholders' right to invoke orderly redemption procedures. As explained above, permitting redemption transactions would allow shareholders to exchange their shares in the Trusts for their fractional interest in the Trusts' assets (either

Bitcoin or Ether), incentivizing arbitrageurs to snap up the Trusts' shares in order to redeem them until the shares traded back into alignment with the Trusts' NAV. But Grayscale refuses to turn on the redemption spigot. As a result, the Trusts remain frozen in time, unable to fulfill *either* their purpose of facilitating creation transactions (because they are no longer economically viable) *or* their purpose of facilitating redemption transactions (because Grayscale refuses to authorize them).

74. Grayscale's refusal to permit redemption transactions can only be explained by one thing: greed. When the Trusts' shares first traded below NAV in the first quarter of 2021, Grayscale was facing serious competitive pressures from other products allowing institutional investors access to Bitcoin and Ether on far more favorable terms. *See supra* ¶¶ 38-39. Bitcoin had begun trading on the Chicago Mercantile Exchange and Bitcoin futures ETFs were just months away from regulatory approval. The Trusts, with their wildly inflated Sponsor's Fees, were no longer competitively situated to capture additional shareholder capital. But Grayscale had a massive captive pool at its disposal that would generate substantial fee income for Grayscale indefinitely if it could prevent capital flight. And capital flight was impossible as long as Grayscale could, however improperly, keep a lid on shareholders' redemption rights, so that is what it did. As a result, the Trusts' shares continue to trade at a massive discount—indicative of the substantial harm caused

by Grayscale’s refusal to honor Trust shareholders’ redemption rights—while Grayscale reaps massive fees.

75. Grayscale attempts to justify its conduct by hiding behind the Trusts’ purported lack of regulatory approval for redemption transactions and its broad discretion to carry out its duties as Sponsor in a self-interested manner. Grayscale’s pretextual efforts to cleanse its malfeasance wither under scrutiny.

76. *First*, Grayscale points to Section 5.1 of the Trust Agreements as requiring “receipt of regulatory approval” as a contractual prerequisite to authorizing redemption transactions. But since the Trusts already *have* regulatory approval for redemption transactions, Grayscale’s reliance on Section 5.1 is a red herring. Indeed, regulatory approval has been in place at least since creation transactions halted in the first quarter of 2021.

77. SEC Regulation M (“Reg M,” 17 C.F.R. § 242.100, *et seq.*) governs the permissibility and timing of share creation and redemption programs. The SEC structured Reg M as “a prophylactic approach to anti-manipulation regulation” by promulgating a comprehensive set of six rules that generally “govern[] the activities of underwriters, issuers, selling security holders, and others in connection with offerings of securities.” Activities conducted in compliance with those rules are *de facto* approved by the SEC, and no further agency action is necessary or available.

78. Reg M straightforwardly permits redemption transactions outside of specified restricted periods that occur when an issuer distributes new securities.<sup>12</sup> Reg M thus allows issuers and distribution participants to distribute securities during one period of time, complete that distribution, and then engage in redemption transactions when, as has long been the case here, those distribution transactions have halted or been completed.

79. Reg M unquestionably authorizes redemptions under the current circumstances. Since the first quarter of 2021, not only have the Trusts not issued any shares, but any share issuance is entirely foreclosed by the large and persistent discounts of the Trusts' shares to their respective NAVs. Under Reg M, the Trusts are not, and as a practical matter cannot be, engaged in any distribution and may thus embrace Trust shareholders' redemption rights at any time. Consistent with Section 5.1 of the Trust Agreement, the Trust has already received "regulatory approval" for "a redemption program."

80. Grayscale begrudgingly acknowledges this. In December 2022, facing public outcries from the shareholders of the Trusts, Grayscale sought to placate them by suggesting in a public letter that it was contemplating a future tender offer for the Bitcoin Trust's shares. Hidden in a footnote, Grayscale conceded that while such

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<sup>12</sup> The "restricted period" typically begins five days before securities are distributed and ends when the distribution is completed.

purchases might otherwise implicate Reg M, because “Regulation M applies to redemptions and repurchases of shares of GBTC when GBTC is creating shares, and because GBTC would not create any shares while pursuing a tender offer, [Grayscale] would not need relief from the requirements of Regulation M.”

81. The Trusts have not created shares in years and cannot do so until their discount to the market price of Bitcoin and Ether is erased. Grayscale’s logic with respect to the Reg M implications of its contemplated tender offer would thus apply with equal force to its acceptance of redemptions. Since the Trust currently is not and cannot be engaged in share creation, the Trusts have regulatory approval for redemptions under Reg M and may accept redemptions at any time without further relief from the SEC.

82. Section 6.3(b) further imposes explicit obligations on Grayscale to execute and file all documents and do “any and all other things as may be appropriate” for the “qualification and operation of the Trust[s] and for the conduct of its affairs.” Thus, Grayscale cannot contend that – notwithstanding Reg M’s existing approval for a redemption program – it would be “inappropriate” to proceed with such a program without communicating with the SEC in advance. Even if true, the Trust Agreements explicitly obligate Grayscale to undertake any communication

and file any documents with the SEC that may be appropriate to facilitate a redemption program under the present circumstances.<sup>13</sup>

83. In any event, the “regulatory approval” language Grayscale tried to effect in Section 5.1 of the Trust Agreement is not even operative. Examination of Grayscale’s purported amendments of the Trust Agreement reveal that Grayscale has been trying, albeit ineffectively, to prospectively insulate its improper actions for years through a series of invalid amendments to the Trust Agreement.

84. Going back to the Third Amended Bitcoin Trust Agreement, Grayscale agreed to subject any trust agreement amendments that “adversely affect . . . the rights of Limited Owners” or “material[ly] change[] . . . the Trust’s purpose or structure” to “written approval or affirmative vote of Limited Owners holding Units equal to at least a majority (over 50%) of the Shares.” Third Amended Bitcoin Trust Agreement § 10.1(a). The agreement was clear that any amendments “shall occur only upon” this shareholder-support condition being met. *Id.*

85. In its 2016 Annual Report, Grayscale likewise explained that “any amendment that adversely affects the rights of Shareholders, appoints a new Sponsor, dissolves the Trust or makes any material change to the Trust’s basic

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<sup>13</sup> Grayscale’s position, moreover, turns Reg M on its head. While Reg M was promulgated to “maintain[] essential investor protection” and for the “prevention of manipulation,” Grayscale invokes Reg M in order to enrich itself at the expense of investors, and in order to manipulate the Trusts’ share prices to maintain excessive discounts from NAV.



investment policies or structure must be approved by the affirmative vote of Shareholders owning at least 50% of the outstanding Shares.”<sup>14</sup>

86. In late 2017, around the same time Grayscale withdrew its initial ETF application and at the point when Bitcoin prices were beginning to skyrocket, Grayscale cunningly sought to “adopt” an amendment to the trust agreement without complying with these requirements.

87. In purporting to pass the Fourth Amended Bitcoin Trust Agreement, Grayscale made several subtle changes to the agreement that “adversely affect” shareholder rights. One of those changes was to eliminate the requirement that adverse amendments receive “written approval or affirmative vote” from the majority of the Limited Owners. This was replaced by provisions permitting materially adverse amendments so long as the majority of shareholders did not object after notice at least twenty days prior to the effective date of the amendment—*i.e.*, negative consent. Fourth Amended Bitcoin Trust Agreement §§ 10.1(a), 10.3.

88. The Fourth Amended Bitcoin Trust Agreement had other adverse changes as well. For example, it purported to expand the Sponsor’s authority to

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<sup>14</sup> Notably, the 2016 Annual Report nowhere suggests that shareholder approval for amendments could be secured through negative consent. By contrast, SEC filings in later years explicitly assert that the Sponsor may amend the trust agreements “in its sole discretion without shareholder consent provided that the Sponsor provides 20 days’ notice of any such amendment.”

suspend or refuse creation orders and redemption orders and limited the circumstances in which Shareholders could compel replacement of the Sponsor.

89. Notwithstanding that Grayscale was materially undermining shareholders' voting rights, Grayscale did not seek, or receive, the "written approval or affirmative vote" of 50% of the Limited Owners (*i.e.*, unaffiliated shareholders) necessary to adopt the Fourth Amended Trust Agreement in accordance with the requirements of the Third Amended Trust Agreement. As a result, the Fourth Amended Bitcoin Trust Agreement—and the subsequent amendments Grayscale sought to impose on investors in service of its redemption-blocking scheme to maximize fees—was ineffective and void *ab initio*.

90. Professing to have fundamentally changed the Trust's voting mechanism, albeit in violation of the existing voting procedures, Grayscale proceeded in the fall of 2018 to subvert redemption rights in the Fifth Amended Bitcoin Trust Agreement. In purporting to pass this amendment, Grayscale employed the negative consent procedure for amendments it had surreptitiously, and invalidly, added to the Fourth Amended Bitcoin Trust Agreement. The new provisions in the Fifth Amended Bitcoin Trust Agreement, including the regulatory-approval prerequisite to redemptions, were therefore—as Grayscale and its deal counsel have no doubt known all along—ineffective and void *ab initio* as well.

91. *Second*, Grayscale also seeks to justify its failure to accept redemptions by hiding behind the broad grant of discretion afforded the Sponsor under the Trust Agreements to act in its “sole discretion” in deciding whether to authorize a redemption program. According to the Trust Agreements, this “sole discretion” language permits Grayscale to “consider only such interests and factors as it desires, including its own interests,” without “any consideration to any interest of . . . the Shareholders.” Trust Agreements § 6.6(d).

92. While broadly drafted, the effect of this self-serving language remains cabined by Delaware law, which is clear that this type of contractual provision cannot be used to justify bad-faith conduct, disloyalty, or self-dealing. Even broadly drafted “sole discretion” language does not excuse Grayscale from its duty to “exercise that discretion consistent with its covenant of good faith and fair dealing.” *Hilco Cap., LP v. Fed. Ins. Co.*, 978 A.2d 174, 178 (Del. 2009); accord *In re P3 Health Grp. Holdings, LLC*, 2022 WL 16548567, at \*26 (Del. Ch. Oct. 31, 2022). And, notably, the Delaware Statutory Trust Act renders the implied covenant nonwaivable. 12 *Del. C.* § 3806(e) (The “governing instrument [of a statutory trust] may not limit or eliminate liability for any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing.”).

93. For these reasons, among others, Grayscale’s bad-faith, disloyal, and self-dealing refusal to allow redemptions in derogation of Trust shareholder rights

lacks a good-faith justification, has not been sanctioned by Grayscale's unsuccessful attempts to amend the Trust Agreements, and remains unexcused under well settled principles of Delaware law.

#### **IV. GRAYSCALE'S BREACHES HAVE BEEN AT THE DIRECTION OF ITS CONTROLLERS**

94. Grayscale has not acted alone. Its exploitation of Trust shareholders and violation of their rights has at all times been at the direction of its ultimate controller, Barry Silbert, who together with Grayscale's current CEO, Michael Sonnenshein, has orchestrated Grayscale's self-serving conduct detailed herein.

95. Silbert, the founder and CEO of DCG and the founder, chairman, and CEO of Grayscale until January 2021, presides over a conflict-laden empire that exists to extract resources from the investing public for his personal benefit. Grayscale, DCG, Genesis, and the Trusts are all pawns in this disloyal and unlawful scheme.

96. As Grayscale's parent and sole member, DCG was instrumental in creating the conditions necessary for Grayscale's ongoing fee bonanza. As discussed above, shares in the Bitcoin Trust traded at a substantial premium to NAV for many years. This demand was, in part, driven by Grayscale's affiliate, Genesis, which like Grayscale is a subsidiary of the Silbert-controlled DCG.

97. Genesis borrowed Bitcoin from a retail-investor lending program (that the SEC subsequently alleged to be an illegal securities offering) and lent those

Bitcoin to cryptocurrency hedge funds buying additional shares of the Bitcoin Trust. Most significantly, Genesis lent a fund called Three Arrows Capital over \$2 billion of Bitcoin that Three Arrows Capital then used for Bitcoin Trust creation transactions, at one point causing Three Arrows Capital to acquire over 6% of all Bitcoin Trust shares outstanding. In this way, DCG and its subsidiary Genesis were responsible for propping up the price of the Bitcoin Trust shares in order to sustain their premium over NAV which, in turn, incentivized the creation of more Bitcoin Trust shares.

98. Over many years, including while Silbert was CEO of Grayscale and later the Chairman of its Board, DCG and Silbert masterminded this coordinated effort for the purpose of inflating the Sponsor's Fee payable to Grayscale, which lacks any independent oversight in the form of unaffiliated directors or otherwise, and is controlled by Silbert.

99. Once the Trust's share price had ballooned far out of proportion to its underlying assets, Silbert and Sonnenshein set about ensuring that the base from which Grayscale's fees are calculated could never shrink. To that end, they devised the subterfuge of invoking Reg M to justify Grayscale's refusal to permit shareholders to redeem their shares out of either Trust and refusal to reduce fees in the interim.

100. Sonnenshein, Grayscale’s current CEO—who has publicly admitted that he is a fiduciary of the Trusts—has not been shy in claiming credit for his role in these decisions. He joined Grayscale in January 2014, when the Bitcoin Trust, with just \$60 million under management, was less than one-half of one percent its current size. As self-styled “employee number one” at Grayscale, and later Managing Director, Sonnenshein personally oversaw and directed Grayscale’s self-dealing conduct in connection with its refusal to allow redemptions. He has openly acknowledged that it was he who chose to sue the SEC and focus the “full resources of [his] team and [his] firm” on Grayscale’s lawsuit against the agency, while refusing to offer any alternative redemption program to shareholders like Alameda.

101. Meanwhile, Grayscale’s abdication of its contractual duty to shareholders to ensure its fees are competitive has likewise been at the direction of Silbert and Sonnenshein. Grayscale’s SEC filings tout that Sonnenshein oversees Grayscale’s entire “strategic direction” and the “growth of the business,” that is, the extraction of more than \$1.3 billion in fees from shareholders while Sonnenshein has served as CEO. Sonnenshein has publicly sought to justify Grayscale’s exorbitant Sponsor’s Fee on multiple occasions. Sonnenshein’s public promise to lower the Sponsor’s Fee upon receipt of ETF approval reflects the reality that it is he who determines the size of Grayscale’s fees.

102. In breach of their fiduciary duties, Grayscale, DCG, Silbert, and Sonnenshein have refused to vindicate Trust shareholders' rights to an investment vehicle with competitive fees that permits redemptions as appropriate. While their conduct has subverted the purpose of the Trusts and saddled Trust beneficiaries with billions of dollars in stranded value, it achieved its intended purpose: As Sonnenshein recently observed, 2022 was "a really good year" for Grayscale.

#### **V. THE ALAMEDA DEBTOR BRINGS THESE CLAIMS TO BENEFIT ITS CREDITORS AND ALL SHAREHOLDERS**

103. Plaintiff Alameda is a significant shareholder in each of the Trusts. As a shareholder, it is also a party to the Trust Agreements. Based on a diligent inquiry to date, though recognizing that Alameda's present business records may be incomplete, the Alameda debtor owns at least 22,166,720 shares in the Bitcoin Trust and at least 6,318,384 shares in the Ethereum Trust. As of the end of 2022, there were 692,370,100 shares outstanding in the Bitcoin Trust and 310,158,500 shares outstanding in the Ethereum Trust, making Alameda a 3.2% and 2.0% shareholder of each, respectively.

104. As of March 3, 2023, Alameda's shares in the Trusts would be worth about \$290 million if sold in the secondary markets. If Grayscale were to reduce its fees and offer redemption programs for the Trusts, Alameda would receive the benefits of critical rights it has as a shareholder. Share prices would swiftly rise to around the NAV per share, or potentially higher, and Alameda's shares, at current

Bitcoin and Ether prices, would be worth more than \$540 million, a \$250 million increase in value Alameda could ultimately choose to monetize and distribute to the FTX Debtors' customers and other creditors.

105. Alameda is only one of the more than one million shareholders in the Trusts, who live in all 50 states and all over the world. Due to Grayscale's persistent marketing to the public, many of these shareholders, like FTX customers, are retail investors. Should Alameda prevail in this suit and secure the injunctive relief it seeks, all trust shareholders would receive their rightful contractual benefits under the Trust Agreements.

106. Assuming for illustrative purposes that shares in the Bitcoin Trust, which are presently collectively worth \$7.8 billion based on secondary market prices, would rise to meet the current NAV, they would rise in value to \$14.1 billion. Shares in the Ethereum Trust, which are presently collectively worth \$2.2 billion based on secondary market prices, would rise in value to a NAV of \$4.7 billion. And these figures are likely conservative. Were shareholders not forced to bear supra-competitive fees, share prices would rise even higher. Altogether, the injunctive relief this lawsuit seeks would return at least \$8.8 billion of value to shareholders at current Bitcoin and Ether prices.

107. The Alameda debtor, moreover, files this lawsuit in a distinctive position. Alameda filed a petition for relief under chapter 11 of the United States



Bankruptcy Code (title 11, U.S. Code) on November 11, 2022. The chapter 11 case is pending before the Honorable John Dorsey, United States Bankruptcy Judge, District of Delaware (Case No. 22-11068). Judge Dorsey is also overseeing the chapter 11 cases of numerous of Plaintiff's affiliates, including Alameda's parent company, Alameda Research LLC, and FTX Trading Ltd. Plaintiff is a debtor in possession under 11 U.S.C. § 1107.

108. The FTX Debtors' chapter 11 filing created a bankruptcy estate for each of the FTX Debtors under 11 U.S.C. § 541. The bankruptcy estate includes "all legal and equitable interests" of Alameda as of the bankruptcy filing, including Alameda's interests in the Trusts and all of its claims in this action.

109. Just prior to Alameda's chapter 11 filing, Mr. John Ray III was appointed to be the FTX Debtors' Chief Executive Officer.<sup>15</sup> Since his appointment, Mr. Ray and his team have been identifying, securing, and recovering assets, uncovering and pursuing claims against third parties and insiders, and maximizing the value of the FTX Debtors' assets, all for the benefit of the FTX Debtors' customers and other creditors. This action to vindicate the bankruptcy estate's rights in the Trusts is an important part of that process.

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<sup>15</sup> Mr. Ray has over 40 years of legal and restructuring experience. He has been the Chief Restructuring Officer or Chief Executive Officer in several of the largest corporate restructurings in history, including among many others, Enron and Residential Capital, where Mr. Ray oversaw substantial recoveries for the benefit of creditors.

**FIRST CAUSE OF ACTION**<sup>16</sup>  
**(Breach Of Contract – The Bitcoin Trust Fees)**

110. All of the allegations set forth in paragraphs 1 through 109 are realleged and incorporated as if fully stated herein.

111. Section 6.3(g) of the Trust Agreement imposes on Grayscale an affirmative obligation to monitor “*all* fees charged to the Trust” to ensure such fees are “at competitive rates” and “the best price and services available under the circumstances, and if necessary, renegotiate the fee structure to obtain such rates and services for the Trust.” The fees that Grayscale must monitor and renegotiate as needed include the Sponsor’s Fee, which, pursuant to Section 6.8(a)(i) of the Trust Agreement and Grayscale’s website, is a service provider fee charged to the Bitcoin Trust. Sections 6.3(h), (i) and (j) further obligate Grayscale to provide for the “safekeeping . . . of the trust,” to prevent “employ[ment] of the Trust Estate in any manner except for the benefit of the Trust,” and to “act with integrity and good faith . . . in all activities relating to the Trust and in resolving conflicts of interest.”

112. Upon information and belief, Grayscale has never engaged in any such efforts to ensure its Sponsor’s Fee was at a “competitive rate.” Instead, the Sponsor’s Fee has remained unchanged since the Bitcoin Trust was created almost a decade ago.

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<sup>16</sup> All causes of action are asserted against Grayscale alone unless otherwise indicated.

113. Had Grayscale complied with its contractual obligations, it would have long ago confronted the inescapable reality that the Sponsor's Fee is far from "competitive." Competing products generally charge fees of less than one percent and these fees amount to far less than \$100 million per year. Thus, Grayscale's fees are many times higher than "competitive" fees.

114. The Sponsor's Fee is and always has been the largest fee payable by the Bitcoin Trust. If one assumes that the Sponsor's Fee is just two times higher than the contractually mandated "best price" required under the Trust Agreement, then Grayscale overcharged Trust shareholders by approximately \$500 million in the past two years alone.

115. Instead of complying with its contractual obligation to monitor and adjust the Sponsor's Fee to ensure shareholders are paying the "best price" possible, Grayscale has chosen to enrich itself at the expense of the Bitcoin Trust's shareholders.

116. To the extent its obligation to monitor and adjust the Sponsor's Fee implicates the conflict-of-interest procedures appearing in Sections 6.3(j) and 6.6(b) of the Trust Agreement, those provisions require Grayscale, in "resolv[ing] [any] conflict of interest" between itself and the Bitcoin Trust, to act "at all times with integrity and good faith," to "exercise due diligence," and to undertake an analysis of "customary or accepted industry practices." It has performed no such exercise.

Instead, it has chosen to place its own interests above those of the Bitcoin Trust's beneficiaries in bad faith and with willful misconduct.

117. By refusing to monitor and renegotiate the Sponsor's Fee—for its own benefit and to the detriment of shareholders like Plaintiff—Grayscale has breached its contractual duties under the Trust Agreement, including but not limited to its Section 6.3(g) obligation to ensure competitive rates and its express duty of integrity and good faith under Sections 6.3, 6.5, 6.6, and 6.7. This breach has resulted in substantial, material, and direct harm to Plaintiff. There is no adequate remedy at law to fully compensate Plaintiff. Only a reduction of the Sponsor's Fee to a competitive rate will remedy the ongoing breach. Plaintiff will further require significant monetary damages to remedy the harm to the value of its shares as a result of Grayscale's past malfeasance.

**SECOND CAUSE OF ACTION**  
**(Breach Of Contract — The Bitcoin Trust Redemption)**

118. All of the allegations set forth in paragraphs 1 through 117 are realleged and incorporated as if fully stated herein.

119. Grayscale's refusal to authorize redemptions constitutes a breach of multiple of its express obligations to shareholders in the Trust Agreement.

120. Sections 1.5(a), 6.1, 6.2, and 6.3(a) of the Trust Agreement obligate Grayscale to effectuate and carry out the purposes of the Trust, one of which is and always has been facilitating redemption transactions by shareholders.

121. Further, Sections 6.3(j), 6.5, 6.6, and 6.7 of the Trust Agreement impose a contractual duty of good faith upon Grayscale, pursuant to which Grayscale must “[a]t *all* times act with integrity and good faith and exercise due diligence in *all* activities relating to the Trust and in resolving conflicts of interest.”

122. Grayscale has breached its express contractual duty of good faith by blocking Bitcoin Trust shareholders’ redemption rights for the improper purpose of enriching itself at shareholders’ expense. Grayscale itself has acknowledged that it has no legitimate justification for refusing to implement a shareholder redemption program, noting that since “Regulation M applies [only] to redemptions and repurchases of shares of GBTC when GBTC is creating shares,” Grayscale “would not need relief from the requirements of Regulation M” so long as it does not permit creation and redemption to occur simultaneously. Grayscale thus knows that its stated reason for refusing to authorize redemptions—that it could not do so without violating Reg M—is false and pretextual.

123. Grayscale’s refusal to authorize shareholder redemptions also constitutes a breach of other provisions of the Trust Agreement, including but not limited to: Section 6.3(b), which obligates Grayscale to execute and file all documents and to do “any and all other things as may be appropriate” for the “qualification and operation of the Trust[s] and for the conduct of its affairs[,]” including if appropriate communicating with the SEC regarding redemptions;

Section 6.3(h), which provides that Grayscale shall “[h]ave fiduciary responsibility for the safekeeping and use of the Trust Estate”; and Section 6.3(i), which prohibits Grayscale from using (or allowing others to use) the “Trust Estate in any manner except for the benefit of the Trust.” Grayscale has breached these obligations by violating shareholders’ rights for the improper purpose of increasing its own fees.

124. As of the date of this filing, the elimination of the Bitcoin Trust discount would increase the value of the Bitcoin Trust’s shares by 45 percent, unlocking stranded value of \$6.3 billion for shareholders. The magnitude of the Bitcoin Trust shares’ discount to NAV is indicative of the harm caused to Bitcoin Trust shareholders through denial of their redemption rights. Yet Grayscale continues to hold its shareholders hostage, reaping exorbitant fees at their expense.

125. By acting in bad faith and with willful misconduct in refusing to permit redemptions—for its own benefit and to the detriment of Plaintiff—Grayscale has breached its contractual duties under the Trust Agreement. This breach has resulted in substantial, material, and direct harm to Plaintiff, whose inability to monetize the value of its shares of the Bitcoin Trust harms its ownership interest as a result of Grayscale’s refusal to allow redemptions. There is no adequate remedy at law to fully compensate Plaintiff. Only the implementation of a redemption program will allow the market to determine the value of Plaintiff’s shares. Plaintiff will further

require significant monetary damages to remedy the harm to the value of its shares as a result of Grayscale's past malfeasance.

**THIRD CAUSE OF ACTION**  
**(Breach Of Implied Covenant — The Bitcoin Trust Redemption)**

126. All of the allegations set forth in paragraphs 1 through 125 are realleged and incorporated as if fully stated herein.

127. Under Delaware law, an implied covenant of good faith and fair dealing attaches to every contract, including statutory trust instruments. This implied covenant is non-waivable. 12 *Del. C.* § 3806(e) (governing instrument of trust agreement may not “limit or eliminate” liability for breach of implied covenant). The covenant of good faith and fair dealing is thus implied in the Trust Agreement as a matter of law.

128. This implied covenant requires, *inter alia*, that Grayscale refrain from acting arbitrarily or unreasonably with respect to the interests of Plaintiff; that it not undermine the intent of the Trust Agreement, frustrate any of its terms or its overarching purpose, or act contrary to the reasonable expectations of the Bitcoin Trust's shareholders; and that it exercise any discretion afforded to it under the Trust Agreement in good faith.

129. Grayscale's conduct breached the implied covenant. Specifically, its refusal to allow shareholder redemptions is arbitrary and unreasonable, especially where Reg M does not foreclose redemptions. This unreasonable refusal undermines

the intent of, frustrates the terms of, and controverts the Bitcoin Trust’s shareholders’ reasonable expectations based on the Trust Agreement, to which they are parties, and which is not designed to allow Grayscale to enrich itself at their expense. Moreover, to the extent the Trust Agreement grants Grayscale any discretion with respect to redemptions, Grayscale has not exercised such discretion in good faith.

130. Grayscale has attempted to sidestep its contractual and implied duties of good faith by amending Section 5.1 of the Trust Agreement to confer upon itself the “sole discretion” to decide whether to offer a redemption program.

131. Grayscale’s effort to authorize itself to act in bad faith is unavailing. Even where a contract grants “sole discretion” to a decision maker, the decision maker must still “exercise that discretion consistent with its covenant of good faith and fair dealing.” *Hilco Cap., LP v. Fed. Ins. Co.*, 978 A.2d 174, 178 (Del. 2009); *accord In re P3 Health Grp. Holdings, LLC*, 2022 WL 16548567, at \*26 (Del. Ch. Oct. 31, 2022). Grayscale has not done so.

132. And, to the extent Grayscale endeavored to create a “regulatory approval” condition precedent to its ability to offer redemptions in Section 5.1 of the Trust Agreement, it has abused its contractual discretion by refusing to even consult the SEC about its ability to offer redemptions under the present circumstances, thus causing that condition to fail willfully and in bad faith.



133. Grayscale’s breach of the implied covenant of good faith and fair dealing has resulted in substantial, material, and direct harm—in the form of significant monetary damages and otherwise—to Plaintiff, which has been forced to hold artificially devalued shares as a result of Grayscale’s conduct. This breach has resulted in substantial, material, and direct harm to Plaintiff, whose inability to monetize the value of its shares of the Bitcoin Trust harms its ownership interest as a result of Grayscale’s refusal to allow redemptions. There is no adequate remedy at law to fully compensate Plaintiff. Only the implementation of a redemption program will allow the market to determine the value of Plaintiff’s shares. Plaintiff will further require significant monetary damages to remedy the harm to the value of its shares as a result of Grayscale’s past malfeasance.

**FOURTH CAUSE OF ACTION**  
**(Breach Of Contract – The Ethereum Trust Fees)**

134. All of the allegations set forth in paragraphs 1 through 133 are realleged and incorporated as if fully stated herein.

135. Sections 6.3(g), (h), (i), and (j) of the Ethereum Trust Agreement impose the same obligations on Grayscale to ensure “competitive” rates and protect shareholders’ rights that the Trust Agreement does.

136. And, as in the case of the Bitcoin Trust Sponsor’s Fee, Grayscale has never engaged in any such efforts. Instead, the Ethereum Trust Sponsor’s Fee has remained unchanged since the Ethereum Trust was created on December 13, 2017.

137. The Ethereum Trust Sponsor’s Fee accrues daily at an annual rate of 2.5%—even higher on a percentage basis than the 2.0% Bitcoin Trust Sponsor’s Fee. It is markedly higher than the management fees charged by other digital asset trusts, *see supra* ¶¶ 42–53, and far from the “competitive” or “best” price the Ethereum Trust Agreement requires.

138. The Ethereum Trust Sponsor’s Fee is and always has been the largest fee payable by the Ethereum Trust. If one assumes that the Ethereum Trust Sponsor’s Fee is just two times higher than the contractually mandated “best price” required under the Ethereum Trust Agreement, then Grayscale overcharged Ethereum Trust shareholders by nearly \$190 million in the past two years alone.

139. Instead of complying with its contractual obligation to monitor and adjust the Ethereum Trust Sponsor’s Fee to ensure shareholders are paying the “best price” possible, Grayscale has chosen to enrich itself at the expense of the Ethereum Trust’s shareholders.

140. To the extent its obligation to monitor and adjust the Ethereum Trust Sponsor’s Fee implicates the conflict-of-interest procedures appearing in Sections 6.3(j) and 6.6(b) of the Ethereum Trust Agreement, those provisions require Grayscale, in “resolv[ing] [any] conflict of interest” between itself and the Ethereum Trust, to act “[a]t all times with integrity and good faith,” to “exercise due diligence,” and to undertake an analysis of “customary or accepted industry practices.” It has

performed no such exercise. Instead, it has chosen to place its own interests above those of the Ethereum Trust’s beneficiaries in bad faith and with willful misconduct.

141. By refusing to monitor and renegotiate the Ethereum Trust Sponsor’s Fee—for its own benefit and to the detriment of shareholders—Grayscale has breached its contractual duties under the Ethereum Trust Agreement, including but not limited to, its Section 6.3(g) obligation to ensure competitive rates and its express duty of good faith and integrity under Sections 6.3, 6.5, 6.6, and 6.7. This breach has resulted in substantial, material, and direct harm to Plaintiff. There is no adequate remedy at law to fully compensate Plaintiff. Only a reduction of the Ethereum Trust Sponsor’s Fee to a competitive rate will remedy the ongoing breach. Plaintiff will further require significant monetary damages to remedy the harm to the value of its shares as a result of Grayscale’s past malfeasance.

**FIFTH CAUSE OF ACTION**  
**(Breach Of Contract — The Ethereum Trust Redemption)**

142. All of the allegations set forth in paragraphs 1 through 141 are realleged and incorporated as if fully stated herein.

143. Grayscale’s refusal to authorize redemptions constitutes a breach of multiple of its express obligations to shareholders in the Ethereum Trust Agreement.

144. Sections 1.5(a), 6.1, 6.2, and 6.3(a) of the Ethereum Trust Agreement obligate Grayscale to “effectuate and carry out the purposes of the Trust,” one of which is and always has been facilitating redemption transactions by shareholders.

145. Further, Sections 6.3(j), 6.5, 6.6, and 6.7 of the Ethereum Trust Agreement impose a contractual duty of good faith upon Grayscale, pursuant to which Grayscale must “[a]t *all* times act with integrity and good faith and exercise due diligence in *all* activities relating to the Trust and in resolving conflicts of interest.”

146. Grayscale has breached its express contractual duty of good faith by blocking Ethereum Trust shareholders’ redemption rights for the improper purpose of enriching itself at shareholders’ expense. Grayscale itself has acknowledged that it has no legitimate justification for refusing to implement a shareholder redemption program. *See supra* ¶ 80. It knows that its stated reason for refusing to authorize redemptions—that it could not do so without violating Reg M—is false and pretextual.

147. Grayscale’s refusal to authorize shareholder redemptions also constitutes a breach of other provisions of the Ethereum Trust Agreement, including but not limited to: Section 6.3(b), which obligates Grayscale to execute and file all documents and to “do any and all other things as may be appropriate” for the “qualification and operation of the Trust and for the conduct of its affairs[,]” including if appropriate communicating with the SEC regarding redemptions; Section 6.3(h), which provides that Grayscale shall “[h]ave fiduciary responsibility for the safekeeping and use of the Trust Estate”; and Section 6.3(i), which prohibits

Grayscale from using (or allowing others to use) the “Trust Estate in any manner except for the benefit of the Trust.” Grayscale has breached these obligations by violating shareholders’ rights for the improper purpose of increasing its own fees.

148. As of the date of this filing, the elimination of the Ethereum Trust discount would increase the value of the Ethereum Trust’s shares by 54 percent, unlocking stranded value of \$2.5 billion for shareholders. The magnitude of the Ethereum Trust shares’ discount to NAV is indicative of the harm caused to Ethereum Trust shareholders through denial of their redemption rights. Yet Grayscale continues to hold its shareholders hostage, reaping exorbitant fees at their expense.

149. By acting in bad faith and with willful misconduct in refusing to permit redemptions—for its own benefit and to the detriment of Plaintiff—Grayscale has breached its contractual duties under the Ethereum Trust Agreement. This breach has resulted in substantial, material, and direct harm to Plaintiff, whose inability to monetize the value of its shares in the Ethereum Trust harms its ownership interest as a result of Grayscale’s refusal to allow redemptions. There is no adequate remedy at law to fully compensate Plaintiff. Only the implementation of a redemption program will allow the market to determine the value of Plaintiff’s shares. Plaintiff will further require significant monetary damages to remedy the harm to the value of its shares as a result of Grayscale’s past malfeasance.

**SIXTH CAUSE OF ACTION**  
**(Breach Of Implied Covenant – The Ethereum Trust Redemption)**

150. All of the allegations set forth in paragraphs 1 through 149 are realleged and incorporated as if fully stated herein.

151. Under Delaware law, an implied covenant of good faith and fair dealing attaches to every contract, including statutory trust instruments. This implied covenant is non-waivable. 12 *Del. C.* § 3806(e) (governing instrument of trust agreement may not “limit or eliminate” liability for breach of implied covenant). The covenant of good faith and fair dealing is thus implied in the Ethereum Trust Agreement as a matter of law.

152. Grayscale has breached this implied covenant for the same reasons set forth at ¶¶ 127–133 *supra*, as it has engaged in the same conduct with respect to shareholder redemptions in connection with the Ethereum Trust as it has in connection with the Bitcoin Trust.

153. Grayscale’s breach of the implied covenant of good faith and fair dealing has resulted in substantial, material, and direct harm to Plaintiff, whose inability to monetize the value of its shares of the Ethereum Trust harms its ownership interest as a result of Grayscale’s refusal to allow redemptions. There is no adequate remedy at law to fully compensate Plaintiff. Only the implementation of a redemption program will allow the market to determine the value of Plaintiff’s

shares. Plaintiff will further require significant monetary damages to remedy the harm to the value of its shares as a result of Grayscale's past malfeasance.

**SEVENTH CAUSE OF ACTION**  
**(Breach Of Fiduciary Duty)**  
**(Against Grayscale, DCG, Silbert, And Sonnenshein (the "Fiduciary Defendants"))**

154. All of the allegations set forth in paragraphs 1 through 153 are realleged and incorporated as if fully stated herein.

155. Pursuant to Section 2.2 of both the Ethereum and the Bitcoin Trust Agreements, "the duty and authority to manage the affairs of the Trust is vested in the Sponsor." Under this and other provisions of the Trust Agreements, the Trustee delegated virtually all of its inherent rights and obligations to Grayscale, including its fiduciary duties.

156. As this Court has recognized, where a "Trust Agreement delegates the function of the Trustee to [a third party], [it] thereby subjects [that third party] to fiduciary duties." *Cargill, Inc. v. JWH Special Circumstance LLC*, 959 A.2d 1096, 1120 (Del. Ch. 2008). Accordingly, in light of its possession of virtually all of the Trustee's powers, Grayscale is subject to fiduciary duties drawn from the Delaware law of trusts absent a clear and unambiguous disclaimer to the contrary. *Id.*

157. The Trust Agreements contain no such clear disclaimer. Instead, by subjecting Grayscale to liability for "fraud, gross negligence, bad faith or willful

misconduct,” Sections 6.5 and 6.6 of the Trust Agreements permit fiduciary duty claims against Grayscale and its controllers.

158. Indeed, Section 6.6 of the Trust Agreements expressly acknowledges that “the Sponsor has duties (including fiduciary duties) and liabilities relating thereto to the Trust [and] the Shareholders,” while Section 6.3(h) further provides that Grayscale “shall . . . [h]ave fiduciary responsibility for the safekeeping and use of the Trust Estate, whether or not in [Grayscale’s] immediate possession or control.”

159. As its sole member and owner, DCG controls Grayscale. It too is thus in a position to control the fiduciary of the underlying trust entity and therefore owes fiduciary duties of its own to the Trusts’ shareholders.

160. As CEO of DCG and Chairman of the Board of Grayscale, Silbert controls both DCG and Grayscale. As such, Silbert is in a position to control the fiduciary and therefore owes fiduciary duties of his own to the Trusts’ shareholders.

161. Sonnenshein owes fiduciary duties to the Trusts’ shareholders as the CEO of Grayscale.

162. Thus, under the laws of the State of Delaware, Grayscale, DCG, Silbert, and Sonnenshein were all subject to the duty of loyalty.

163. The Fiduciary Defendants’ duty of loyalty required that they act in the best interests of the Trusts’ shareholders when deciding whether to authorize



shareholder redemptions and not subordinate the Trusts' shareholders' interests to their own self-interest.

164. This decision presents the Fiduciary Defendants with a conflict of interest because the redemptions that would ensue should the Trusts resume their redemption programs would reduce the size of the Trusts, thereby decreasing Grayscale's Sponsor's Fees and by extension the profits reaped by the Fiduciary Defendants.

165. Placing their own interests before those of the Trusts' shareholders, the Fiduciary Defendants chose to prevent shareholders from vindicating their redemption rights. Rather than even attempting to implement a redemption program, they instead directed their energy to amending the Trust Agreements in a naked attempt to insulate themselves from liability for their bad-faith conduct.

166. The Fiduciary Defendants' decision to prohibit redemptions was not made with the honest belief that the action taken was in the best interests of shareholders. Instead, the Fiduciary Defendants acted to advance their personal interest in increasing Grayscale's fees at the expense of shareholders like Plaintiff.

167. The Fiduciary Defendants' actions and inactions deprived and continue to deprive shareholders like Plaintiff of the ability to exit their investment at a share price commensurate with the value of the Trusts' underlying assets, in contravention of the Trusts' stated purpose as tracking funds.

168. Similarly, the Fiduciary Defendants breached their duty of loyalty by improperly resolving the conflict of interest presented by their obligation to monitor and renegotiate their own Sponsor's Fees, considering only their own interests and disregarding those of the Trusts' shareholders.

169. Plaintiff has stated a claim for breach of fiduciary duty under Delaware law.

**EIGHTH CAUSE OF ACTION**  
**(Declaratory Judgment That Grayscale Must Obtain A Competitive Management Fee For The Bitcoin Trust)**

170. All of the allegations set forth in paragraphs 1 through 169 are realleged and incorporated as if fully stated herein.

171. Pursuant to 10 *Del. C.* §§ 6501 et seq., this Court has authority to issue a declaratory judgment.

172. An actual controversy exists between Plaintiff and Defendants concerning whether Grayscale has an obligation to shareholders to renegotiate the structure of the Bitcoin Trust Sponsor's Fee to obtain competitive rates and thereby ensure that shareholders remain at all times invested in a vehicle providing competitive services.

173. As detailed at ¶ 111 *supra*, Sections 6.3(g), (h), (i), and (j) of the Trust Agreement obligate Grayscale to protect the Trust estate and to ensure that all fees charged to the Bitcoin Trust are at competitive rates.

174. Grayscale has breached these obligations in connection with its failure to monitor and renegotiate its own Sponsor’s Fee. *See supra* ¶¶ 112–117. By the same conduct, it has also breached its express duty of integrity and good faith under Sections 6.3, 6.5, 6.6, and 6.7 of the Trust Agreement. *See supra* ¶ 117. A judicial declaration is necessary and appropriate at this time under the circumstances to establish that Grayscale has thus failed to perform its obligations to shareholders under the Trust Agreement and must reduce its fees charged to the Bitcoin Trust to competitive rates as the Trust Agreement requires.

**NINTH CAUSE OF ACTION**  
**(Declaratory Judgment That The Bitcoin Trust Must Offer A Redemption Program)**

175. All of the allegations set forth in paragraphs 1 through 174 are realleged and incorporated as if fully stated herein.

176. Pursuant to 10 *Del. C.* §§ 6501 et seq., this Court has authority to issue a declaratory judgment.

177. An actual controversy exists between Plaintiff and Defendants concerning whether Grayscale must implement a program to accept redemptions from shareholders in the Bitcoin Trust.

178. As detailed above, Sections 1.5(a), 6.1, 6.2, and 6.3(a) of the Trust Agreement obligate Grayscale to “effectuate and carry out the purposes of the Trust,” one of which is and always has been facilitating redemption transactions

(*supra* ¶ 120); Section 6.3(b) obligates Grayscale to execute and file all documents and to do “any and all other things as may be appropriate” for the “qualification and operation of the Trust and for the conduct of its affairs[,]” including if appropriate communicating with the SEC regarding redemptions (*supra* ¶ 123); and Sections 6.3, 6.5, 6.6, and 6.7 impose a contractual duty of good faith upon Grayscale, pursuant to which Grayscale must “[a]t *all* times act with integrity and good faith and exercise due diligence in *all* activities relating to the Trust and in resolving conflicts of interest,” including those that relate to redemptions (*supra* ¶ 121).

179. Grayscale has breached these obligations in connection with its refusal to implement a shareholder redemption program for the Bitcoin Trust. *See supra* ¶¶ 122–125. By the same conduct, it has also breached the nonwaivable implied covenant of good faith and fair dealing inherent in the Trust Agreement. *See supra* ¶¶ 127–133.

180. A judicial declaration is necessary and appropriate at this time under the circumstances to establish that Grayscale has thus failed to perform its obligations under the Trust Agreement and the implied covenant and must implement a program to accept redemptions from shareholders in the Bitcoin Trust as provided under the Trust Agreement and described herein.

**TENTH CAUSE OF ACTION**  
**(Declaratory Judgment That Grayscale Must Obtain A Competitive Management Fee For The Ethereum Trust)**

181. All of the allegations set forth in paragraphs 1 through 180 are realleged and incorporated as if fully stated herein.

182. Pursuant to 10 *Del. C.* §§ 6501 et seq., this Court has authority to issue a declaratory judgment.

183. An actual controversy exists between Plaintiff and Defendants concerning whether Grayscale has an obligation to shareholders to renegotiate the structure of the Ethereum Trust Sponsor's Fee to obtain competitive rates and thereby ensure that shareholders remain at all times invested in a vehicle providing competitive services.

184. As detailed at ¶ 135 *supra*, Sections 6.3(g), (h), (i), and (j) of the Ethereum Trust Agreement obligate Grayscale to protect the Ethereum Trust estate and to ensure that all fees charged to the Ethereum Trust are at competitive rates.

185. Grayscale has breached these obligations in connection with its failure to monitor and renegotiate its own Ethereum Trust Sponsor's Fee. *See supra* ¶¶ 136–141. By the same conduct, it has also breached its express duty of integrity and good faith under Sections 6.3, 6.5, 6.6, and 6.7 of the Ethereum Trust Agreement. *See supra* ¶ 141. A judicial declaration is necessary and appropriate at this time under the circumstances to establish that Grayscale has thus failed to

perform its obligations to shareholders under the Ethereum Trust Agreement and must reduce its fees charged to the Ethereum Trust to competitive rates as the Ethereum Trust Agreement requires.

**ELEVENTH CAUSE OF ACTION**  
**(Declaratory Judgment That The Ethereum Trust Must Offer A Redemption Program)**

186. All of the allegations set forth in paragraphs 1 through 185 are realleged and incorporated as if fully stated herein.

187. Pursuant to 10 *Del. C.* §§ 6501 et seq., this Court has authority to issue a declaratory judgment.

188. An actual controversy exists between Plaintiff and Defendants concerning whether Grayscale must implement a program to accept redemptions from shareholders in the Ethereum Trust.

189. As detailed above, Sections 1.5(a), 6.1, 6.2, and 6.3(a) of the Ethereum Trust Agreement obligate Grayscale to “effectuate and carry out the purposes of the Trust,” one of which is and always has been facilitating redemption transactions (*supra* ¶ 144); Section 6.3(b) obligates Grayscale to execute and file all documents and to do “any and all other things as may be appropriate” for the “qualification and operation of the Trust and for the conduct of its affairs[,]” including if appropriate communicating with the SEC regarding redemptions (*supra* ¶ 147); and Sections 6.3, 6.5, 6.6, and 6.7 impose a contractual duty of good faith upon Grayscale,

pursuant to which Grayscale must “[a]t *all* times act with integrity and good faith and exercise due diligence in *all* activities relating to the Trust and in resolving conflicts of interest,” including those that relate to redemptions (*supra* ¶ 145).

190. Grayscale has breached these obligations in connection with its refusal to implement a shareholder redemption program for the Ethereum Trust. *See supra* ¶¶ 146–149. By the same conduct, it has also breached the nonwaivable implied covenant of good faith and fair dealing inherent in the Ethereum Trust Agreement. *See supra* ¶¶ 151–153.

191. A judicial declaration is necessary and appropriate at this time under the circumstances to establish that Grayscale has thus failed to perform its obligations under the Ethereum Trust Agreement and the implied covenant and must implement a program to accept redemptions from shareholders in the Ethereum Trust as provided under the Ethereum Trust Agreement and described herein.

### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiff Alameda respectfully requests that the Court enter a judgment:

(a) Finding that Grayscale materially breached its obligations to Plaintiff under the Trust Agreement by failing to ensure the Sponsor’s Fees Grayscale charged were at competitive rates as described herein;

(b) Finding that Grayscale materially breached its obligations to Plaintiff under the Trust Agreement and the implied covenant of good faith and fair dealing by failing to institute a shareholder redemption program as described herein;

(c) Finding that Grayscale materially breached its obligations to Plaintiff under the Ethereum Trust Agreement by failing to ensure that the Sponsor's Fees Grayscale charged were at competitive rates as described herein;

(d) Finding that Grayscale materially breached its obligations to Plaintiff under the Ethereum Trust Agreement and the implied covenant of good faith and fair dealing by failing to institute a shareholder redemption program as described herein;

(e) Finding that Defendants breached the fiduciary duties owed to Plaintiff as a shareholder in the Trusts;

(f) Ordering Grayscale to reduce the fees it charges to Plaintiff and other Trust shareholders to competitive rates as provided under the Trust Agreements and described herein;

(g) Ordering Grayscale to implement a program to accept redemptions from shareholders in the Trusts as provided under the Trust Agreements and described herein;

(h) Awarding Plaintiff damages in an amount to be proven at trial;

(i) Granting such other relief as this Court deems just and proper.



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# EXHIBIT 1

**FIFTH AMENDED AND RESTATED  
DECLARATION OF TRUST  
AND  
TRUST AGREEMENT  
OF  
BITCOIN INVESTMENT TRUST**

**Dated as of September 12, 2018**

**By and Among**

**GRAYSCALE INVESTMENTS, LLC**

**DELAWARE TRUST COMPANY**

(formerly known as CSC Trust Company of Delaware)

**and**

**THE SHAREHOLDERS  
FROM TIME TO TIME HEREUNDER**

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**EXHIBIT A**

Form of Certificate of Trust of Bitcoin Investment Trust..... A-1

**EXHIBIT B**

Form of Participant Agreement .....B-1

**BITCOIN INVESTMENT TRUST**  
**FIFTH AMENDED AND RESTATED**  
**DECLARATION OF TRUST**  
**AND TRUST AGREEMENT**

This **FIFTH AMENDED AND RESTATED DECLARATION OF TRUST AND TRUST AGREEMENT** of **BITCOIN INVESTMENT TRUST** is made and entered into as of the 12<sup>th</sup> day of September, 2018, by and among **GRAYSCALE INVESTMENTS, LLC**, a Delaware limited liability company, **DELAWARE TRUST COMPANY** (formerly known as CSC Trust Company of Delaware), a Delaware corporation, as trustee, and the **SHAREHOLDERS** from time to time hereunder.

**RECITALS**

**WHEREAS**, the Sponsor and the Trustee entered into the Fourth Amended and Restated Declaration of Trust and Trust Agreement dated as of October 24, 2017 (the “**Existing Agreement**”);

**WHEREAS**, the Sponsor and the Trustee wish to amend the Existing Agreement pursuant to Section 10.1 thereof, with such amendment to be effective immediately upon approval of the amendment by the Shareholders.

**NOW, THEREFORE**, pursuant to Section 10.1 of the Existing Agreement, the Trustee and the Sponsor hereby amend and restate the Existing Agreement in its entirety as set forth below.

**ARTICLE I**

**DEFINITIONS; THE TRUST**

**SECTION 1.1**     *Definitions.*

As used in this Trust Agreement, the following terms shall have the following meanings unless the context otherwise requires:

“**Actual Exchange Rate**” means, with respect to any particular asset, at any time, the price per single unit of such asset (determined net of any associated fees) at which the Trust is able to sell such asset for U.S. Dollars (or other applicable fiat currency) at such time to enable the Trust to timely pay any Additional Trust Expenses, through use of the Sponsor’s commercially reasonable efforts to obtain the highest such price.

“**Additional Trust Expenses**” has the meaning set forth in Section 6.8(b).

“**Administrator**” means any Person from time to time engaged by the Sponsor to assist in the administration of the Shares.

“**Administrator Fee**” means the fee payable to the Administrator for services it provides to the Trust, which the Sponsor shall pay the Administrator as a Sponsor-paid Expense.

“**Affiliate**” means (i) any Person directly or indirectly owning, controlling or holding with power to vote 10% or more of the outstanding voting securities of such Person, (ii) any Person 10% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by such Person, (iii) any Person, directly or indirectly, controlling, controlled by or under common control of such Person, (iv) any employee, officer, director, member, manager or partner of such Person, or (v) if such Person is an employee, officer, director, member, manager or partner, any Person for which such Person acts in any such capacity.

“**Annual Report**” means (i) the Trust’s most recent annual report prepared and publicly disseminated pursuant to the standards of any Secondary Market on which the Shares are then listed, quoted or traded or (ii) if the Shares are then registered under the Exchange Act, the Trust’s most recent annual report on Form 10-K prepared and filed in accordance with the rules and regulations of the SEC.

“**Basket**” means a block of 100 Shares.

“**Basket Bitcoin Amount**” means, on any Trade Date, the number of Bitcoins required as of such Trade Date for each Creation Basket or Redemption Basket, as determined by dividing (x) the number of Bitcoins owned by the Trust at 4:00 p.m., New York time, on such Trade Date, after deducting the number of Bitcoins representing the U.S. Dollar value of accrued but unpaid fees and expenses of the Trust (in the case of any such fee and expense other than the Sponsor’s Fee, converted using the Bitcoin Index Price at such time, and carried to the eighth decimal place), by (y) the number of Shares outstanding at such time (with the quotient so obtained calculated to one one-hundred-millionth of one Bitcoin (i.e., carried to the eighth decimal place)) and multiplying such quotient by 100.

“**Bitcoin**” means Bitcoin, a type of virtual currency based on an open source cryptographic protocol existing on the Bitcoin Network as determined by the Sponsor in accordance with Section 6.2(1), and the assets underlying the Trust’s Shares.

“**Bitcoin Account**” means, collectively, the Wallet Account, the Vault Account and any subaccounts associated therewith.

“**Bitcoin Exchange**” means an electronic marketplace where exchange participants may trade, buy and sell Bitcoins based on bid-ask trading.

“**Bitcoin Holdings**” means, at any time, the aggregate value, expressed in U.S. Dollars, of the Trust’s assets (other than U.S. Dollars or other fiat currency), less its liabilities (which include estimated accrued but unpaid fees and expenses), calculated in accordance with Section 8.4.

“**Bitcoin Holdings Fee Basis Amount**” has the meaning assigned thereto in Section 8.4.

“**Bitcoin Index Price**” has the meaning ascribed to such term as provided in the Memorandum.

“**Bitcoin Network**” means the online, end-user-to-end-user network hosting a public transaction ledger, known as a blockchain, and the source code comprising the basis for the cryptographic and algorithmic protocols governing the Bitcoin Network.

“**Business Day**” means any day other than a Saturday, Sunday or other day on which banks are permitted or required to close for business in New York, New York.

“**Certificate of Trust**” means the Certificate of Trust of the Trust, including all amendments thereto, in the form attached hereto as Exhibit A, filed with the Secretary of State of the State of Delaware pursuant to Section 3810 of the Delaware Trust Statute.

“**CFTC**” means the Commodity Futures Trading Commission.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Corporate Trust Office**” means the principal office at which at any particular time the corporate trust business of the Trustee is administered, which office at the date hereof is located at 251 Little Falls Drive, Wilmington, DE 19808.

“**Covered Person**” means the Sponsor and its Affiliates and their respective members, managers, directors, officers, employees, agents and controlling persons.

“**Creation Basket**” means a Basket issued by the Trust in exchange for the deposit of the Basket Bitcoin Amount with the Custodian.

“**Creation Order**” has the meaning assigned thereto in Section 3.3(a)(i).

“**Creation Settlement Date**” means, with respect to any Creation Order, the Business Day on which such Creation Order settles, as specified in the PA Procedures.

“**Custodian**” means Xapo, Inc., or any other Person or Persons from time to time engaged to provide custodian, security or related services to the Trust pursuant to authority delegated by the Sponsor.

“**Custodian Fee**” means the fee payable to the Custodian for the services it provides to the Trust, which the Sponsor shall pay to the Custodian as a Sponsor-paid Expense.

“**DCG**” means Digital Currency Group, Inc., a Delaware corporation.

“**Delaware Trust Statute**” means the Delaware Statutory Trust Act, Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. § 3801 et seq., as the same may be amended from time-to-time.

“**Distributor**” means Genesis Global Trading, Inc. or any other Person from time to time engaged to provide distribution services or related services to the Trust pursuant to authority delegated by the Sponsor.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

“**Event of Withdrawal**” has the meaning set forth in Section 12.1(a)(iv) hereof.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

“**Expenses**” has the meaning set forth in Section 2.4.

“**FinCEN**” means the Financial Crimes Enforcement Network, a bureau of the U.S. Department of Treasury.

“**Fiscal Year**” has the meaning set forth in Article IX hereof.

“**GAAP**” means U.S. generally accepted accounting principles.

“**Incidental Rights**” means the rights to acquire, or otherwise establish dominion and control over, any virtual currency or other asset or right, which rights are incident to the Trust’s ownership of Bitcoins and arise without any action of the Trust, or of the Sponsor or Trustee on behalf of the Trust.

“**Indemnified Persons**” has the meaning assigned to such term in Section 2.4.

“**IR Virtual Currency**” means any virtual currency or other asset or right acquired by the Trust through the exercise (subject to Section 1.5(b) and Section 6.4(l)) of any Incidental Right.

“**IRS**” means the U.S. Internal Revenue Service or any successor thereto.

“**Liquidating Trustee**” has the meaning assigned thereto in Section 12.2.

“**Liquidity Provider**” means an entity eligible to facilitate creations or redemptions of Shares on behalf of a Participant in exchange for cash that has entered into a Participant Agreement and has access to a Liquidity Provider Account.

“**Liquidity Provider Account**” means, with respect to any Liquidity Provider, a Bitcoin wallet address known to the Custodian as belonging to such Liquidity Provider.

“**Marketer**” means Genesis Global Trading, Inc. or any other Person from time to time engaged to provide marketing services or related services to the Trust pursuant to authority delegated by the Sponsor.

“**Marketing Fee**” means the fee payable to the Marketer for services it provides to the Trust, which the Sponsor shall pay the Marketer as a Sponsor-paid Expense.

“**Memorandum**” means (i) the Confidential Private Placement Memorandum of the Trust, as the same may, at any time and from time to time, be amended or supplemented, or (ii) if the Shares are registered under the Exchange Act, the most recent of (x) any prospectus of the Trust that has been filed with the SEC as a part of the Registration Statement and (y) any report filed by the Trust with the SEC under the Exchange Act that states that it is to be treated as the Memorandum for general purposes or any specific purpose.

“**PA Procedures**” has the meaning assigned thereto in Section 3.3(a).

“**Participant**” means a Person that (i) is a registered broker-dealer, (ii) has entered into a Participant Agreement with the Sponsor and the Trust, and (iii) has access to a Participant Self-Administered Account.

“**Participant Agreement**” means an agreement among the Trust, the Sponsor and a Participant, substantially in the form of Exhibit B hereto, as it may be amended or supplemented from time to time in accordance with its terms.

“**Participant Self-Administered Account**” means, with respect to any Participant, a Bitcoin wallet address known to the Custodian as belonging to such Participant.

“**Percentage Interest**” means, with respect to any Shareholder at any time, a fraction, the numerator of which is the number of Shares held by such Shareholder and the denominator of which is the total number of Shares outstanding, in each case as of 4:00 p.m., New York time, on the date of determination.

“**Person**” means any natural person, partnership, limited liability company, statutory trust, corporation, association or other legal entity.

“**Purchase Agreement**” means an agreement among the Trust, the Sponsor and any Shareholder through which the Shareholder agrees to transfer Bitcoin to the Bitcoin Account in exchange for the creation and issuance of Shares.

“**Quarterly Report**” means (i) the Trust’s most recent quarterly report prepared and publicly disseminated pursuant to the standards of any Secondary Market on which the Shares are then listed, quoted or traded or (ii) if the Shares are then registered under the Exchange Act, the Trust’s most recent quarterly report on Form 10-Q prepared and filed in accordance with the rules and regulations of the SEC.

“**Redemption Basket**” means a Basket redeemed by the Trust in exchange for Bitcoins in an amount equal to the Basket Bitcoin Amount.

“**Redemption Order**” has the meaning assigned thereto in Section 5.2(a).

“**Redemption Settlement Date**” means, with respect to any Redemption Order, the Business Day on which such Redemption Order settles, as specified in the PA Procedures.

“**Registration Statement**” means the most recent registration statement of the Trust, as filed with and declared effective by the SEC, as the same may at any time and from time to time be amended or supplemented.

“**SEC**” means the Securities and Exchange Commission.

“**Secondary Market**” means any marketplace or other alternative trading system, as determined by the Sponsor, on which the Shares may then be listed, quoted or traded, including but not limited to, the OTCQX tier of the OTC Markets Group Inc. and NYSE Arca, Inc.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Shareholder**” means any Person that owns Shares.

“**Shares**” means the common units of fractional undivided beneficial interest in the profits, losses, distributions, capital and assets of, and ownership of, the Trust.

“**Sponsor**” means Grayscale Investments, LLC, or any substitute therefor as provided herein, or any successor thereto by merger or operation of law.

“**Sponsor-paid Expense**” and “**Sponsor-paid Expenses**” have the meaning set forth in Section 6.8(a)(v).

“**Sponsor’s Fee**” has the meaning set forth in Section 6.8(a)(i).

“**Total Basket Bitcoin Amount**” means, with respect to any Creation Order or Redemption Order, the applicable Basket Bitcoin Amount multiplied by the number of Creation Baskets or Redemption Baskets, as specified in the applicable Creation Order or Redemption Order.

“**Trade Date**” means, for any Creation Order or Redemption Order, the Business Day on which the Total Basket Bitcoin Amount with respect to such Creation Order or Redemption Order is determined in accordance with the PA Procedures.

“**Transfer Agent**” means Continental Stock Transfer & Trust Company, or any other Person from time to time engaged to provide such services or related services to the Trust pursuant to authority delegated by the Sponsor.

“**Treasury Regulations**” means regulations, including proposed or temporary regulations, promulgated under the Code. References herein to specific provisions of proposed or temporary regulations shall include analogous provisions of final Treasury Regulations or other successor Treasury Regulations.

“**Trust**” means Bitcoin Investment Trust, a Delaware statutory trust formed pursuant to the Certificate of Trust, the affairs of which are governed by this Trust Agreement.

“**Trust Agreement**” means this Fifth Amended and Restated Declaration of Trust and Trust Agreement, as it may at any time or from time-to-time be amended.

“**Trustee**” means Delaware Trust Company (formerly known as CSC Trust Company of Delaware), its successors and assigns, or any substitute therefor as provided herein, acting not in its individual capacity but solely as trustee of the Trust.

“**Trust Estate**” means (i) all the Bitcoins in the Trust’s accounts, including the Bitcoin Account, (ii) all Incidental Rights held by the Trust, (iii) all IR Virtual Currency in the Trust’s accounts, (iv) all proceeds from the sale of Bitcoins, Incidental Rights and IR Virtual Currency pending use of such cash for payment of Additional Trust Expenses or distribution to the Shareholders, and (v) any rights of the Trust pursuant to any agreements, other than this Trust Agreement, to which the Trust is a party.

“**Trust Expense**” has the meaning set forth in Section 2.3.

“**U.S. Dollar**” means United States dollars.

“**Vault Account**” means one or more cold storage accounts in the name of the Sponsor and of the Trust held for the safekeeping of the Trust’s Bitcoins.

“**Wallet Account**” means one or more wallets in the name of the Sponsor and of the Trust held for the deposit and withdrawal of Bitcoins.

#### SECTION 1.2 *Name.*

(a) The name of the Trust is “Bitcoin Investment Trust” in which name the Trustee and the Sponsor shall cause the Trust to carry out its purposes as set forth in Section 1.5, make and execute contracts and other instruments in the name and on behalf of the Trust and sue and be sued in the name and on behalf of the Trust.

#### SECTION 1.3 *Delaware Trustee; Offices.*

(a) The sole Trustee of the Trust is Delaware Trust Company, which is located at the Corporate Trust Office or at such other address in the State of Delaware as the Trustee may designate in writing to the Shareholders. The Trustee shall receive service of process on the Trust in the State of Delaware at the foregoing address. In the event Delaware Trust Company resigns or is removed as the Trustee, the trustee of the Trust in the State of Delaware shall be the successor Trustee, subject to Section 2.1.

(b) The principal office of the Trust, and such additional offices as the Sponsor may establish, shall be located at such place or places inside or outside the State of Delaware as the Sponsor may designate from time to time in writing to the Trustee and the Shareholders. Initially, the principal office of the Trust shall be at c/o Grayscale Investments, LLC, 636 Avenue of the Americas, 3<sup>rd</sup> Floor, New York, New York 10011.

#### SECTION 1.4 *Declaration of Trust.*

The Trust Estate shall be held in trust for the Shareholders. It is the intention of the parties hereto that the Trust shall be a statutory trust, under the Delaware Trust Statute and that this Trust Agreement shall constitute the governing instrument of the Trust. It is not the intention



of the parties hereto to create a general partnership, limited partnership, limited liability company, joint stock association, corporation, bailment or any form of legal relationship other than a Delaware statutory trust that is treated as a grantor trust for U.S. federal income tax purposes and for purposes of applicable state and local tax laws. Nothing in this Trust Agreement shall be construed to make the Shareholders partners or members of a joint stock association. Effective as of the date hereof, the Trustee and the Sponsor shall have all of the rights, powers and duties set forth herein and in the Delaware Trust Statute with respect to accomplishing the purposes of the Trust. The Trustee has filed the certificate of trust required by Section 3810 of the Delaware Trust Statute in connection with the formation of the Trust under the Delaware Trust Statute.

#### SECTION 1.5 *Purposes and Powers.*

(a) The purposes of the Trust shall be to accept Bitcoin for subscriptions of Shares in accordance with Article III hereof, to hold Bitcoin, Incidental Rights and IR Virtual Currency, to distribute Bitcoin (or cash from the sale of Bitcoin) upon redemptions of Shares in accordance with Article V hereof (if authorized in accordance with Section 5.1 hereof) and to distribute Bitcoin, Incidental Rights and IR Virtual Currency (or cash from the sale thereof) upon the liquidation of the Trust, and to enter into any lawful transaction and engage in any lawful activities in furtherance of or incidental to the foregoing. For the avoidance of doubt, such activities include any lawful action necessary or desirable in connection with the Trust's ownership of Incidental Rights, including the acquisition of IR Virtual Currency, except if such action would be prohibited by Section 1.5(b)SECTION 1.1(b) or any other provision of this Trust Agreement. The Trust shall not engage in any business activity and shall not acquire or own any assets other than Bitcoin, Incidental Rights and (if permissible under Section 1.5(b) and Section 6.4(1)) IR Virtual Currency, or take any of the actions set forth in Section 6.4. The Trust shall have all of the powers specified in Section 3.1 hereof as powers which may be exercised by a Sponsor on behalf of the Trust under this Trust Agreement.

(b) The Trust shall not take any action that could cause the Trust to be treated other than as a grantor trust for U.S. federal income tax purposes. Without limiting the generality of the foregoing, nothing in this Trust Agreement (including, for the avoidance of doubt, Section 1.5(a)) shall be construed to give the Trustee or the Sponsor the power to vary the investment of the Shareholders within the meaning of Section 301.7701-4(c) or similar provisions of the Treasury Regulations, nor shall the Trustee or the Sponsor take any action that would vary the investment of the Shareholders.

#### SECTION 1.6 *Tax Treatment.*

Each of the parties hereto, by entering into this Trust Agreement, (i) expresses its intention that the Shares will qualify under applicable tax law as interests in a grantor trust which holds the Trust Estate, (ii) agrees that it will file its own U.S. federal, state and local income, franchise and other tax returns in a manner that is consistent with clause (i) of this Section 1.6 and with the classification of the Trust as a grantor trust, and (iii) agrees to use reasonable efforts to notify the Sponsor promptly upon a receipt of any notice from any taxing authority having jurisdiction over such holders of Shares with respect to the treatment of the Shares as anything other than interests in a grantor trust.

SECTION 1.7 *Legal Title.*

Legal title to all of the Trust Estate shall be vested in the Trust as a separate legal entity; *provided, however*, that if applicable law in any jurisdiction requires legal title to any portion of the Trust Estate to be vested otherwise, the Sponsor may cause legal title to such portion of the Trust Estate to be held by or in the name of the Sponsor or any other Person (other than a Shareholder) as nominee.

**ARTICLE II**

**THE TRUSTEE**

SECTION 2.1 *Term; Resignation; Removal.*

(a) Delaware Trust Company has been appointed and hereby agrees to serve as the Trustee of the Trust. The Trust shall have only one Trustee unless otherwise determined by the Sponsor. The Trustee shall serve until such time as the Trust is terminated or if the Sponsor removes the Trustee or the Trustee resigns. The Trustee is appointed to serve as the trustee of the Trust in the State of Delaware and shall at all times satisfy the requirements of Section 3807(a) of the Delaware Trust Statute and be authorized to exercise corporate trust powers under the laws of Delaware, having a combined capital, surplus and undivided profits of at least \$50,000,000 and subject to supervision or examination by federal or state authorities. If the Trustee publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Article II the combined capital, surplus and undivided profits of the Trustee shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible to serve as trustee of the Trust in accordance with the provisions of this Section 2.1, the Trustee shall resign promptly in the manner and with the effect specified in this Article II. The Trustee may have normal banking and trust relationships with the Sponsor and their respective Affiliates; *provided* that none of (i) the Sponsor, (ii) any Person involved in the organization or operation of the Sponsor or the Trust or (iii) any Affiliate of any of them may be the Trustee hereunder. The Trust shall have at least one trustee with a principal place of business in Delaware. It is understood and agreed by the parties hereto that the Trustee shall have none of the duties or liabilities of the Sponsor and shall have no obligation to supervise or monitor the Sponsor or otherwise manage the Trust.

(b) The Trustee is permitted to resign upon at least one hundred eighty (180) days' notice to the Sponsor upon which date such resignation shall be effective.

(c) If at any time the Trustee shall cease to be eligible to serve as trustee of the Trust in accordance with the provisions of this Trust Agreement, or if at any time the Trustee shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, then the Sponsor may remove the Trustee and appoint a successor trustee by written instrument, in duplicate, which instrument shall be delivered to the Trustee so removed and the successor trustee. The Sponsor may at any time, upon sixty (60) days' prior notice to the Trustee,

remove the Trustee and appoint a successor trustee by written instrument or instruments, in triplicate, signed by the Sponsor or its attorney-in-fact duly authorized, one complete set of which instruments shall be delivered to the Trustee so removed and one complete set to the successor so appointed.

#### SECTION 2.2 *Powers.*

Except to the extent expressly set forth in Section 1.3 and this Article II, the duty and authority to manage the affairs of the Trust is vested in the Sponsor, which duty and authority the Sponsor may further delegate as provided herein, all pursuant to Section 3806(b)(7) of the Delaware Trust Statute. The duties of the Trustee shall be limited to (i) accepting legal process served on the Trust in the State of Delaware, (ii) the execution of any certificates required to be filed with the Secretary of State of the State of Delaware which the Trustee is required to execute under Section 3811 of the Delaware Trust Statute and (iii) any other duties specifically allocated to the Trustee in this Trust Agreement. The Trustee shall provide prompt notice to the Sponsor of its performance of any of the foregoing. The Sponsor shall reasonably keep the Trustee informed of any actions taken by the Sponsor with respect to the Trust that would reasonably be expected to affect the rights, obligations or liabilities of the Trustee hereunder or under the Delaware Trust Statute.

#### SECTION 2.3 *Compensation and Expenses of the Trustee.*

The Trustee shall be entitled to receive from the Sponsor, as a Sponsor-paid Expense, reasonable compensation for its services hereunder as set forth in a separate fee agreement and shall be entitled to be reimbursed by the Sponsor on behalf of the Trust for reasonable out-of-pocket expenses incurred by it in the performance of its duties hereunder, including without limitation, the reasonable compensation, out-of-pocket expenses and disbursements of counsel, any experts and such other agents as the Trustee may employ in connection with the exercise and performance of its rights and duties hereunder (together, the “**Trust Expenses**”). To the extent that the Sponsor fails to pay the Trust Expenses, the Trust will be responsible for such Trust Expenses.

#### SECTION 2.4 *Indemnification.*

(a) The Trust hereby agrees to be primary obligor and shall indemnify, defend and hold harmless the Trustee and any of the officers, directors, employees and agents of the Trustee (the “**Indemnified Persons**”) from and against any and all losses, damages, liabilities, claims, actions, suits, costs, expenses, disbursements (including the reasonable fees and expenses of counsel and fees and expenses incurred in connection with enforcement of its indemnification rights hereunder), taxes and penalties of any kind and nature whatsoever (collectively, “**Expenses**”), to the extent that such Expenses arise out of or are imposed upon or asserted at any time against such Indemnified Persons with respect to the performance of this Trust Agreement, the creation, operation or termination of the Trust or the transactions contemplated hereby; *provided, however*, that the Trust shall not be required to indemnify any Indemnified Person for any Expenses which are a result of the willful misconduct, bad faith or gross negligence of an Indemnified Person. If the Trust shall have insufficient assets or improperly refuses to pay an Indemnified Person within sixty (60) days of a request for payment owed hereunder, DCG shall,

as secondary obligor, compensate or reimburse the Trustee or indemnify, defend and hold harmless an Indemnified Person as if it were the primary obligor hereunder; *provided, however*, that DCG shall not be required to indemnify any Indemnified Person for any Expenses which are a result of the willful misconduct, bad faith or gross negligence of an Indemnified Person. To the fullest extent permitted by law and by the requirement for treatment of the Trust as a grantor trust for tax purposes, Expenses to be incurred by an Indemnified Person shall, from time to time, be advanced by, or on behalf of, DCG prior to the final disposition of any matter upon receipt by DCG of an undertaking by, or on behalf of, such Indemnified Person to repay such amount if it shall be determined that the Indemnified Person is not entitled to be indemnified under this Trust Agreement.

(b) As security for any amounts owing to the Trustee hereunder, the Trustee shall have a lien against the Trust property, which lien shall be prior to the rights of the Sponsor, DCG or any other Shareholder. The obligations of DCG and the Trust to indemnify the Indemnified Persons under this Section 2.4 shall survive the termination of this Trust Agreement.

#### SECTION 2.5 *Successor Trustee.*

Upon the resignation or removal of the Trustee, the Sponsor shall appoint a successor Trustee by delivering a written instrument to the outgoing Trustee. Any successor Trustee must satisfy the requirements of Section 3807 of the Delaware Trust Statute. The successor Trustee shall become fully vested with all of the rights, powers, duties and obligations of the outgoing Trustee under this Trust Agreement, with like effect as if originally named as Trustee, and the outgoing Trustee shall be discharged of its duties and obligations under this Trust Agreement. Any business entity into which the Trustee may be merged or converted or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any entity succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, to the fullest extent permitted by law without the execution or filing of any paper or any further act on the part of any of the parties hereto.

#### SECTION 2.6 *Liability of Trustee.*

Except as otherwise provided in this Article II, in accepting the trust created hereby, Delaware Trust Company acts solely as Trustee hereunder and not in its individual capacity, and all Persons having any claim against Delaware Trust Company by reason of the transactions contemplated by this Trust Agreement and any other agreement to which the Trust is a party shall look only to the Trust Estate for payment or satisfaction thereof. The Trustee shall not be liable or accountable hereunder to the Trust or to any other Person or under any other agreement to which the Trust is a party, except for the Trustee's own fraud, gross negligence, bad faith or willful misconduct. In particular, but not by way of limitation:

(a) The Trustee shall have no liability or responsibility for the validity or sufficiency of this Trust Agreement or for the form, character, genuineness, sufficiency, enforceability, collectability, location, existence, value or validity of the Trust Estate;

(b) The Trustee has not prepared or verified, and shall not be responsible or liable for, any information, disclosure or other statement in the Memorandum or in any other document issued or delivered in connection with the sale or transfer of the Shares;

(c) The Trustee shall not be liable for any actions taken or omitted to be taken by it in accordance with the instructions of the Sponsor or the Liquidating Trustee;

(d) The Trustee shall not have any liability for the acts or omissions of the Sponsor, the Custodian or their respective delegates;

(e) The Trustee shall have no duty or obligation to supervise the performance of any obligations of the Sponsor, the Custodian or their respective delegates or any Participant;

(f) No provision of this Trust Agreement shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its rights or powers hereunder;

(g) Under no circumstances shall the Trustee be liable for any obligations of the Trust arising under this Trust Agreement or any other agreements to which the Trust is a party;

(h) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Trust Agreement, or to institute, conduct or defend any litigation under this Trust Agreement or any other agreements to which the Trust is a party, at the request, order or direction of the Sponsor unless the Sponsor has offered to Delaware Trust Company (in its capacity as Trustee and individually) security or indemnity satisfactory to it against the costs, expenses and liabilities that may be incurred by Delaware Trust Company (including, without limitation, the reasonable fees and expenses of its counsel) therein or thereby;

(i) Notwithstanding anything contained herein to the contrary, the Trustee shall not be required to take any action in any jurisdiction other than in the State of Delaware if the taking of such action will (i) require the consent or approval or authorization or order of, or the giving of notice to, or the registration with or taking of any action in respect of, any state or other governmental authority or agency of any jurisdiction other than the State of Delaware, (ii) result in any fee, tax or other governmental charge becoming payable by the Trustee under the laws of any jurisdiction or any political subdivision thereof other than the State of Delaware or (iii) subject the Trustee to personal jurisdiction, other than in the State of Delaware, for causes of action arising from personal acts unrelated to the consummation of the actions of the Trustee contemplated by this Trust Agreement;

(j) To the extent that, at law or in equity, the Trustee has duties (including fiduciary duties) and liabilities relating thereto to the Trust, the Shareholders or any other Person, the Trustee, acting under this Trust Agreement, shall not be liable to the Trust, the Shareholders or any other Person for its good faith reliance on the provisions of this Trust Agreement, and the provisions of this Trust Agreement, to the extent that they restrict or eliminate the duties and liabilities of the Trustee otherwise existing at law or in equity are agreed by the parties hereto to replace such other duties and liabilities of the Trustee; and

(k) The Trustee shall not be liable for punitive, exemplary, consequential or similar damages for a breach of the Trust Agreement under any circumstances.

SECTION 2.7 *Reliance; Advice of Counsel.*

(a) In the absence of bad faith, the Trustee may conclusively rely upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Trust Agreement in determining the truth of the statements and the correctness of the opinions contained therein, and shall incur no liability to anyone in acting or not acting on any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper believed by it to be genuine and believed by it to be signed by the proper party or parties and need not investigate any fact or matter pertaining to, or contained in, any such document; *provided, however*, that the Trustee shall have examined any certificates and opinions so as to reasonably determine compliance of such certificates and opinions with the requirements of this Trust Agreement. The Trustee may accept a certified copy of a resolution of the board of directors or other governing body of any corporate party as conclusive evidence that such resolution has been duly adopted by such body and that such resolution is in full force and effect. As to any fact or matter the method of the determination of which is not specifically prescribed in this Trust Agreement, the Trustee may for all purposes hereof rely on a certificate, signed by the president, any vice president, the treasurer or any other authorized officers of the relevant party, as to such fact or matter, and such certificate shall constitute full protection to the Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon.

(b) In the exercise or administration of the Trust hereunder and in the performance of its duties and obligations under this Trust Agreement, the Trustee, at the expense of the Trust (i) may act directly or through its agents, attorneys, custodians or nominees pursuant to agreements entered into with any of them, and the Trustee shall not be liable for the conduct or misconduct of such agents, attorneys, custodians or nominees if such agents, attorneys, custodians or nominees shall have been selected by the Trustee with reasonable care and (ii) may consult with counsel, accountants and other skilled professionals to be selected with reasonable care by it. The Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the opinion or advice of any such counsel, accountant or other such Persons.

SECTION 2.8 *Payments to the Trustee.*

Any amounts paid to the Trustee pursuant to this Article II shall be deemed not to be a part of the Trust Estate immediately after such payment. Any amounts owing to the Trustee under this Trust Agreement shall constitute a claim against the Trust Estate. Notwithstanding any other provision of this Trust Agreement, all payments to the Trustee, including fees, expenses and any amounts paid in connection with indemnification of the Trustee in accordance with the terms of this Trust Agreement will be payable only in U.S. Dollars.

## ARTICLE III

### SHARES; CREATIONS AND ISSUANCE OF CREATION BASKETS

#### SECTION 3.1 *General.*

The Sponsor shall have the power and authority, without action or approval by the Shareholders, to cause the Trust to issue Shares from time to time as it deems necessary or desirable. The number of Shares authorized shall be unlimited, and the Shares so authorized may be represented in part by fractional Shares, calculated to one one-hundred-millionth of one Bitcoin (i.e., carried to the eighth decimal place). From time to time, the Sponsor may cause the Trust to divide or combine the Shares into a greater or lesser number without thereby changing the proportionate beneficial interests in the Trust Estate, or in any way affecting the rights, of the Shareholders, without action or approval by the Shareholders. The Trust shall issue Shares solely in exchange for contributions of Bitcoin (or for no consideration if pursuant to a Share distribution or split-up). All Shares when so issued shall be fully paid and non-assessable. Subject to the limitations upon, and requirements for, the issuance of Creation Baskets stated herein and in the PA Procedures (as defined below), the number of Creation Baskets that may be issued by the Trust is unlimited. Every Shareholder, by virtue of having purchased or otherwise acquired a Share, shall be deemed to have expressly consented and agreed to be bound by the terms of this Trust Agreement.

#### SECTION 3.2 *Offer of Shares; Procedures for Creation and Issuance of Creation Baskets to Persons Other than Participants.*

On any Business Day, the Trust may create and issue Creation Baskets to any Person that has signed a Purchase Agreement with the Trust in exchange for a transfer of the Total Basket Bitcoin Amount into the Trust's Bitcoin Account; *provided* that the Trust shall create and issue Creation Baskets only if the Sponsor has determined in good faith that such creation and issuance does not conflict with the other terms of this Trust Agreement or with applicable law.

#### SECTION 3.3 *Offer of Shares; Procedures for Creation and Issuance of Creation Baskets to Participants.*

(a) General. The following procedures, as supplemented by the more detailed procedures specified in the Exhibits, annexes, attachments and procedures, as applicable, to each Participant Agreement (the "**PA Procedures**"), which may be amended from time to time in accordance with the provisions of the relevant Participant Agreement (*provided* that any such amendment shall not constitute an amendment of this Trust Agreement), shall govern the Trust with respect to the creation and issuance of Creation Baskets to Participants, subject to Section 3.3(b).

(i) On any Business Day, a Participant may place an order for one or more Creation Baskets (each, a "**Creation Order**") in the manner provided in the PA Procedures.

(ii) The Sponsor or its delegate shall process Creation Orders only from Participants with respect to which a Participant Agreement is in full force and effect and only in accordance with the PA Procedures. The Sponsor or its delegate shall maintain and make available at the Trust's principal offices during normal business hours a current list of the Participants with respect to which a Participant Agreement is in full force and effect.

(iii) The Trust shall create and issue Creation Baskets only in exchange for deposit with the Custodian on the applicable Creation Settlement Date of the applicable Total Basket Bitcoin Amount by the relevant Participant or Liquidity Provider, as applicable.

(iv) The Sponsor or its delegate has final determination of all questions as to the calculation of the Total Basket Bitcoin Amount at any time.

(v) Deposits of Bitcoin other than those received from a Participant Self-Administered Account or a Liquidity Provider Account shall be rejected. The expense and risk of delivery, ownership and safekeeping of Bitcoins, until such Bitcoins have been received and not rejected by the Trust, shall be borne solely by the Participant or a Liquidity Provider, as applicable.

(vi) Upon the Custodian's receipt of the Total Basket Bitcoin Amount, the Sponsor or its delegate shall (A) direct the Custodian to transfer the Total Bitcoin Basket Amount to the Vault Account, (B) direct the Transfer Agent to credit to the Participant's account the number of Creation Baskets ordered by the Participant and (C) compensate the Liquidity Provider pursuant to the PA Procedures.

(vii) The Custodian may accept delivery of Bitcoins by such other means as the Sponsor, from time to time, may determine to be acceptable for the Trust.

(b) Rejection or Suspension. The Sponsor or its delegate shall reject a Creation Order if the Creation Order is not in proper form as described in the relevant Participant Agreement or if the fulfillment of the Creation Order, in the opinion of its counsel, might be unlawful. The issuance of Creation Baskets may be suspended by the Sponsor generally, or refused with respect to a particular Creation Order, during any period when the transfer books of the Transfer Agent are closed or if circumstances outside the control of the Sponsor or its delegate make it for all practicable purposes not feasible to process Creation Orders or for any other reason at any time or from time to time. None of the Sponsor, its delegates or the Custodian shall be liable for the suspension or rejection of any Creation Order.

(c) Conflict. In the event of any conflict between the procedures described in this Section 3.3 and the PA Procedures, the PA Procedures shall control.

(d) Successor Custodian. If a successor to the Custodian shall be employed, the Trust and the Sponsor shall establish procedures acceptable to such successor with respect to the matters addressed in this Section 3.3.



SECTION 3.4 *Book-Entry System.*

(a) Shares shall be held in book-entry form by the Transfer Agent. The Sponsor or its delegate shall direct the Transfer Agent to (i) credit or debit the number of Creation Baskets or Redemption Baskets to the account of the applicable Shareholder and (ii) issue or cancel Creation Baskets or Redemption Baskets, as applicable, at the direction of the Sponsor or its delegate.

(b) The Sponsor or its delegate may cause the Trust to issue Shares in certificated form in its sole discretion.

SECTION 3.5 *Assets of the Trust.*

The Trust Estate shall irrevocably belong to the Trust for all purposes, subject only to the rights of creditors of the Trust and shall be so recorded upon the books of account of the Trust.

SECTION 3.6 *Liabilities of the Trust.*

The Trust Estate shall be charged with the liabilities of the Trust and with all expenses, costs, charges and reserves attributable to the Trust. The Sponsor shall have full discretion, to the extent not inconsistent with applicable law, to determine which items shall be treated as income and which items as capital, and each such determination and allocation shall be conclusive and binding upon the Shareholders.

SECTION 3.7 *Distributions.*

(a) The Trust may make distributions on Shares either in cash or in kind, including in such form as is necessary and permissible for the Trust to facilitate the distribution of Incidental Rights and/or IR Virtual Currency.

(b) Distributions on Shares, if any, may be made with such frequency as the Sponsor may determine, which may be daily or otherwise, to the Shareholders, from the Trust Estate, after providing for actual and accrued liabilities. All distributions on Shares shall be made *pro rata* to the Shareholders in proportion to their respective Percentage Interests at the date and time of record established for such distribution.

(c) If the Trust sells Bitcoins, Incidental Rights and/or IR Virtual Currency in order to pay Additional Trust Expenses, then any cash remaining from these sales after the payment of any Additional Trust Expenses shall promptly be distributed to the Shareholders.

SECTION 3.8 *Voting Rights.*

Notwithstanding any other provision hereof, on each matter submitted to a vote of the Shareholders, each Shareholder shall be entitled to a proportionate vote based upon its Percentage Interest at such time.

SECTION 3.9 *Equality.*

All Shares shall represent an equal proportionate beneficial interest in the Trust Estate subject to the liabilities of the Trust, and each Share's interest in the Trust Estate shall be equal to each other Share.

## **ARTICLE IV**

### **TRANSFERS OF SHARES**

#### **SECTION 4.1**     *General Prohibition.*

A Shareholder may not sell, assign, transfer or otherwise dispose of, or pledge, hypothecate or in any manner encumber any or all of its Shares or any part of its right, title and interest in the Trust Estate except as permitted in this Article IV and any act in violation of this Article IV shall not be binding upon or recognized by the Trust (regardless of whether the Sponsor shall have knowledge thereof), unless approved in writing by the Sponsor.

#### **SECTION 4.2**     *Restricted Securities.*

Except for Shares transferred in a transaction registered under the Securities Act, the Shares are "restricted securities" that cannot be resold, pledged or otherwise transferred without registration under the Securities Act and state securities laws or exemption therefrom and may not be resold, pledged or otherwise transferred without the prior written consent of the Sponsor, which it may withhold in its sole discretion for any reason or for no reason. The Sponsor may provide any such written consent in the Memorandum.

#### **SECTION 4.3**     *Transfer of Shares Generally.*

Shares shall be transferable on the books of account for the Trust only by the record holder thereof or by his or her duly authorized agent upon delivery to the Sponsor or the Transfer Agent or similar agent of a duly executed instrument of transfer, and such evidence of the genuineness of each such execution and authorization and of such other matters as may be required by the Sponsor. Upon such delivery, and subject to any further requirements specified by the Sponsor, the transfer shall be recorded on the books of account for the Trust. Until a transfer is so recorded, the Shareholder of record of Shares shall be deemed to be the Shareholder with respect to such Shares for all purposes hereunder and neither the Sponsor nor the Trust, nor the Transfer Agent or any similar agent or registrar or any officer, employee or agent of the Trust, shall be affected by any notice of a proposed transfer.

## **ARTICLE V**

### **REDEMPTIONS**

#### **SECTION 5.1**     *Unavailability of Redemption Program.*

Unless otherwise determined by the Sponsor in its sole discretion following the Trust's receipt of regulatory approval therefor, the Trust shall not offer a redemption program for the Shares. The Trust may, but shall not be required to, seek regulatory approval to operate a

redemption program. If any redemption program is approved, then any redemption authorized by the Sponsor shall be subject to the provisions of this Article V.

SECTION 5.2 *Redemption of Redemption Baskets.*

(a) General. Upon the approval of a redemption program and authorization by the Sponsor, the following procedures, as supplemented by the PA Procedures, which may be amended from time to time in accordance with the provisions of the Participant Agreement (*provided* that any such amendment shall not constitute an amendment of this Trust Agreement), shall govern the Trust with respect to the redemption of Redemption Baskets, subject to Section 5.2(b).

(i) On any Business Day, a Participant may place an order to redeem Redemption Baskets (each, a “**Redemption Order**”) in the manner provided in the PA Procedures.

(ii) The Sponsor or its delegates shall process Redemption Orders only from Participants with respect to which a Participant Agreement is in full force and effect.

(iii) The Trust shall redeem Redemption Baskets only in exchange for deposit with the Transfer Agent on the Redemption Settlement Date of the total number of Baskets indicated in the Participant’s Redemption Order.

(iv) Upon receipt of the total number of Baskets indicated in the Participant’s Redemption Order, the Sponsor or its delegate shall instruct the Transfer Agent to cancel the Shares in the Baskets so redeemed. The Sponsor or its delegate shall also instruct the Custodian to deposit into the Participant’s Self-Administered Account or the Liquidity Provider Account, as applicable, a number of Bitcoins equal to the Total Basket Bitcoin Amount.

(v) The Sponsor or its delegate has final determination of all questions as to the determination of the Total Basket Bitcoin Amount at any time.

(vi) The Total Basket Bitcoin Amount shall be delivered only to a Participant Self-Administered Account or a Liquidity Provider Account.

(vii) The Total Basket Bitcoin Amount shall be subject to the deduction of any applicable tax or other governmental charges that may be due.

(b) Rejection or Suspension. The Sponsor or its delegate shall reject a Redemption Order if the Redemption Order is not in proper form as described in the relevant Participant Agreement or if the fulfillment of the Redemption Order, in the opinion of its counsel, might be unlawful. The redemption of Baskets may be suspended by the Sponsor generally, or refused with respect to a particular Redemption Order, during any period when the transfer books of the Transfer Agent are closed or if circumstances outside the control of the Sponsor or its delegate make it for all practicable purposes not feasible to process Redemption Orders or for any other reason at any time or from time to time. None of the Sponsor, its

delegates or the Custodian shall be liable for the suspension or rejection of any Redemption Order.

(c) Conflict. In the event of any conflict between the procedures described in this Section 5.2 and the PA Procedures, the PA Procedures shall control.

#### SECTION 5.3 *Other Redemption Procedures.*

The Sponsor or its delegates from time to time may, but shall have no obligation to, establish procedures with respect to redemption of Shares in lot sizes smaller than the Redemption Basket and permitting the redemption distribution to be delivered in a manner other than that specified in Section 5.2.

### ARTICLE VI

#### THE SPONSOR

#### SECTION 6.1 *Management of the Trust.*

Pursuant to Section 3806(b)(7) of the Delaware Trust Statute, the Trust shall be managed by the Sponsor in accordance with this Trust Agreement. The Sponsor may delegate, as provided herein, the duty and authority to manage the affairs of the Trust. Any determination as to what is in the interests of the Trust made by the Sponsor in good faith shall be conclusive. In construing the provisions of this Trust Agreement, the presumption shall be in favor of a grant of power to the Sponsor, but subject, for the avoidance of doubt, to the restrictions, prohibitions and limitations expressly set forth in Section 1.5, Section 6.4(1) and otherwise in this Trust Agreement. The enumeration of any specific power in this Trust Agreement shall not be construed as limiting the aforesaid power.

#### SECTION 6.2 *Authority of Sponsor.*

In addition to, and not in limitation of, any rights and powers conferred by law or other provisions of this Trust Agreement, and except as limited, restricted or prohibited by the express provisions of this Trust Agreement or the Delaware Trust Statute, the Sponsor shall have, and may exercise on behalf of the Trust, all powers and rights necessary, proper, convenient or advisable to effectuate and carry out the purposes of the Trust, which powers and rights shall include, without limitation, the following:

(a) To enter into, execute, accept, deliver and maintain, and to cause the Trust to perform its obligations under, contracts, agreements and any or all other documents and instruments incidental to the Trust's purposes, and to do and perform all such acts as may be in furtherance of the Trust's purposes, or necessary or appropriate for the offer and sale of the Shares, including, but not limited to, causing the Trust to enter into (i) contracts or agreements with the Sponsor or an Affiliate, *provided* that any such contract or agreement does not conflict with the provisions of Section 1.5(b) of this Trust Agreement, Section 6.4 of this Trust Agreement or clause (ii) of this Section 6.2(a) and (ii) contracts with third parties for various services, it being understood that any document or instrument executed or accepted by the

Sponsor in the Sponsor's name shall be deemed executed and accepted on behalf of the Trust by the Sponsor, *provided, however*, that such services may be performed by an Affiliate or Affiliates of the Sponsor so long as the Sponsor has made a good faith determination that (A) the Affiliate that it proposes to engage to perform such services is qualified to do so (considering the prior experience of the Affiliate or the individuals employed by the Affiliate); (B) the terms and conditions of the agreement pursuant to which such Affiliate is to perform services for the Trust are no less favorable to the Trust than could be obtained from equally-qualified unaffiliated third parties; and (C) the maximum period covered by the agreement pursuant to which such Affiliate is to perform services for the Trust shall not exceed one year, and such agreement shall be terminable without penalty upon one hundred twenty (120) days' prior written notice by the Trust;

(b) To establish, maintain, deposit into, and sign checks and/or otherwise draw upon, accounts on behalf of the Trust with appropriate banking and savings institutions;

(c) To deposit, withdraw, pay, retain and distribute the Trust Estate or any portion thereof in any manner consistent with the provisions of this Trust Agreement;

(d) To supervise the preparation of the Memorandum and supplements and amendments thereto;

(e) To make or authorize the making of distributions to the Shareholders and expenses of the Trust out of the Trust Estate;

(f) To cause the Trust to appoint an agent to act on behalf of the Shareholders pursuant to Section 7.5;

(g) To prepare, or cause to be prepared, and file, or cause to be filed, an application to register any Shares under the Securities Act and/or the Exchange Act and to take any other action and execute and deliver any certificates or documents that may be necessary to effectuate such registration;

(h) To prepare, or cause to be prepared, and file, or cause to be filed, an application to enable the Shares to be listed, quoted or traded on any Secondary Market and to take any other action and execute and deliver any certificates or documents that may be necessary to effectuate such listing, quotation or trading;

(i) To appoint one or more Custodians or other security vendors, including itself or an Affiliate, to provide for custodian security services, or to determine not to appoint any Custodian or other security vendors, and to otherwise take any action with respect to the Custodians or other security vendors to safeguard the Trust Estate;

(j) In the sole and absolute discretion of the Sponsor, to admit an Affiliate or Affiliates of the Sponsor as additional Sponsors;

(k) To delegate those of its duties hereunder as it shall determine from time to time to one or more Distributors, and add any additional service providers, if needed and as applicable;

(l) To perform such other services as the Sponsor believes that the Trust may from time to time require;

(m) To determine, in good faith, which peer-to-peer network, among a group of incompatible forks of the Bitcoin Network, is generally accepted as Bitcoin and should therefore be considered “Bitcoin” for the Trust’s purposes, which the Sponsor will determine based on a variety of then relevant factors, including (but not limited to) the following: (i) the Sponsor’s beliefs regarding expectations of the core developers of Bitcoin, users, services businesses, miners and other constituencies and (ii) the actual, continued development, acceptance, mining power and community engagement; provided that the Sponsor shall not make a determination that would conflict with Section 1.5(b) or Section 6.4(1) of this Trust Agreement; and

(n) In general, but subject to Section 1.5 and Section 6.4 of this Trust Agreement, to do everything necessary, suitable or proper for the accomplishment of any purpose or the furtherance of any power herein set forth, either alone or in association with others, and to do every other act or thing incidental or appurtenant to, or growing out of or connected with, the aforesaid purposes or powers.

### SECTION 6.3 *Obligations of the Sponsor.*

In addition to the obligations expressly provided by the Delaware Trust Statute or this Trust Agreement, the Sponsor shall:

(a) Devote such of its time to the affairs of the Trust as it shall, in its discretion exercised in good faith, determine to be necessary to carry out the purposes of the Trust, as set forth in Section 1.5, for the benefit of the Shareholders;

(b) Execute, file, record and/or publish all certificates, statements and other documents and do any and all other things as may be appropriate for the formation, qualification and operation of the Trust and for the conduct of its affairs in all appropriate jurisdictions;

(c) Retain independent public accountants to audit the accounts of the Trust;

(d) Employ attorneys to represent the Sponsor and, as necessary, the Trust;

(e) Select and enter into agreements with the Trustee and any other service provider to the Trust;

(f) Use its best efforts to maintain the status of the Trust as a grantor trust for U.S. federal income tax purposes under Subpart E, Part I of Subchapter J of the Code;

(g) Monitor all fees charged to the Trust, and the services rendered by the service providers to the Trust, to determine whether the fees paid by, and the services rendered to, the Trust are at competitive rates and are the best price and services available under the circumstances, and if necessary, renegotiate the fee structure to obtain such rates and services for the Trust;

(h) Have fiduciary responsibility for the safekeeping and use of the Trust Estate, whether or not in the Sponsor's immediate possession or control;

(i) Not employ or permit others to employ the Trust Estate in any manner except for the benefit of the Trust, including, among other things, the utilization of any portion of the Trust Estate as compensating balances for the exclusive benefit of the Sponsor;

(j) At all times act with integrity and good faith and exercise due diligence in all activities relating to the Trust and in resolving conflicts of interest;

(k) Enter into a Participant Agreement with each Participant and discharge the duties and responsibilities of the Trust and the Sponsor thereunder;

(l) Receive directly or through its delegates from Participants and process properly submitted Creation Orders, as described in Section 3.3(a);

(m) Receive directly or through its delegates from Participants and process properly submitted Redemption Orders (if authorized), as described in Section 5.2(a), or as may from time to time be permitted by Section 5.3;

(n) Interact with the Custodian and any other party as required;

(o) If the Shares are listed, quoted or traded on any Secondary Market, cause the Trust to comply with all rules, orders and regulations of such Secondary Market to which the Trust is subject as a result of the listing, quotation or trading of the Shares on such Secondary Market, and take all such other actions that may reasonably be taken and are necessary for the Shares to remain listed, quoted or traded on such Secondary Market until the Trust is terminated or the Shares are no longer listed, quoted or traded on such Secondary Market;

(p) If the Shares are transferred in a transaction registered under the Securities Act or registered under the Exchange Act, cause the Trust to comply with all rules, orders and regulations of the SEC and take all such other actions as may reasonably be taken and are necessary for the Shares to remain registered under the Exchange Act until the Trust is terminated or the Shares are no longer registered under the Exchange Act; and

(q) Take all actions to prepare and, to the extent required by this Trust Agreement or by law, mail to Shareholders any reports, press releases or statements, financial or otherwise, that the Sponsor determines are required to be provided to Shareholders by applicable law or governmental regulation or the requirements of any Secondary Market on which the Shares are listed, quoted or traded or, if any Shares are transferred in a transaction registered under the Securities Act or registered under the Exchange Act, the SEC, as applicable.

The foregoing clauses of Section 6.2 and Section 6.3 shall be construed as powers, and the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the general powers of the Sponsor. Any action by the Sponsor hereunder shall be deemed an action on behalf of the Trust, and not an action in an individual capacity.

#### SECTION 6.4 *General Prohibitions.*

The Trust shall not, and the Sponsor shall not have the power to cause the Trust to:

- (a) Receive any property other than Bitcoin upon the issuance of Shares;
- (b) Hold any property other than (i) Bitcoin, Incidental Rights and IR Virtual Currency, (ii) cash from the sale of Bitcoin, Incidental Rights or IR Virtual Currency and (iii) interests in any liquidating trust or other vehicle formed to hold Incidental Rights or IR Virtual Currency pending distribution of such interests to the Shareholders;
- (c) Hold any cash from the sale of Bitcoins, Incidental Rights or IR Virtual Currency for more than thirty (30) Business Days prior to using such cash to pay Additional Trust Expenses and distributing any remaining cash to the Shareholders;
- (d) If the redemption of Shares is not authorized pursuant to Section 5.1, redeem any Shares other than upon the dissolution of the Trust;
- (e) If the redemption of Shares is authorized pursuant to Section 5.1, redeem the Shares other than (i) to satisfy a Redemption Order from a Participant, (ii) as provided in Section 5.2 or Section 5.3 or (iii) upon the dissolution of the Trust;
- (f) Borrow money from, or loan money to, any Shareholder, the Sponsor or any other Person;
- (g) Create, incur, assume or suffer to exist any lien, mortgage, pledge conditional sales or other title retention agreement, charge, security interest or encumbrance on or with respect to the Trust Estate, except for (i) liens for taxes not delinquent or being contested in good faith and by appropriate proceedings and for which appropriate reserves have been established and (ii) liens by the Trustee against the Trust property as security for any amounts owing to the Trustee hereunder;
- (h) Commingle the Trust Estate with the assets of any other Person;
- (i) Permit rebates to be received by the Sponsor or any Affiliate of the Sponsor, or permit the Sponsor or any Affiliate of the Sponsor to engage in any reciprocal business arrangements which would circumvent the foregoing prohibition;
- (j) Enter into any contract with the Sponsor or an Affiliate of the Sponsor (A) that, except for selling agreements for the sale of Shares, has a term of more than one year and that does not provide that it may be canceled by the Trust without penalty on one hundred twenty (120) days prior written notice or (B) for the provision of services, except at rates and terms at least as favorable as those that may be obtained from third parties in arm's length negotiations;
- (k) Enter into any exclusive brokerage contract;
- (l) Elect to be treated as an association taxable as a corporation for U.S. federal income tax purposes; or



(m) Notwithstanding any other provision of this Trust Agreement, including Section 6.4(b), take any action that could cause the Trust to be treated other than as a grantor trust for U.S. federal income tax purposes.

SECTION 6.5 *Liability of Covered Persons.*

A Covered Person shall have no liability to the Trust or to any Shareholder or other Covered Person for any loss suffered by the Trust which arises out of any action or inaction of such Covered Person if such Covered Person, in good faith, determined that such course of conduct was in the best interest of the Trust and such course of conduct did not constitute fraud, gross negligence, bad faith or willful misconduct of such Covered Person. Subject to the foregoing, neither the Sponsor nor any other Covered Person shall be personally liable for the return or repayment of all or any portion of the Bitcoin transferred, or the purchase price otherwise paid, by a Shareholder for its Shares, it being expressly agreed that any such return made pursuant to this Trust Agreement shall be made solely from the assets of the Trust without any rights of contribution from the Sponsor or any other Covered Person. A Covered Person shall not be liable for the conduct or misconduct of any delegatee selected by the Sponsor with reasonable care.

SECTION 6.6 *Fiduciary Duty.*

(a) To the extent that, at law or in equity, the Sponsor has duties (including fiduciary duties) and liabilities relating thereto to the Trust, the Shareholders or any other Person, the Sponsor acting under this Trust Agreement shall not be liable to the Trust, the Shareholders or any other Person for its good faith reliance on the provisions of this Trust Agreement subject to the standard of care set forth in Section 6.5 herein. The provisions of this Trust Agreement, to the extent that they restrict or eliminate the duties and liabilities of the Sponsor otherwise existing at law or in equity are agreed by the parties hereto to replace such other duties and liabilities of the Sponsor. To the fullest extent permitted by law, no Person other than the Sponsor and the Trustee shall have any duties (including fiduciary duties) or liabilities at law or in equity to the Trust, the Shareholders or any other Person.

(b) Unless otherwise expressly provided herein:

(i) whenever a conflict of interest exists or arises between the Sponsor or any of its Affiliates, on the one hand, and the Trust, any Shareholder or any other Person, on the other hand; or

(ii) whenever this Trust Agreement or any other agreement contemplated herein provides that the Sponsor shall act in a manner that is, or provides terms that are, fair and reasonable to the Trust, any Shareholder or any other Person,

the Sponsor shall resolve such conflict of interest, take such action or provide such terms, considering in each case the relative interest of each party (including its own interest) to such conflict, agreement, transaction or situation and the benefits and burdens relating to such interests, any customary or accepted industry practices, and any applicable generally accepted accounting practices or principles. In the absence of bad faith by the Sponsor, the resolution, action or terms so made, taken or provided by the Sponsor shall not constitute a breach of this

Trust Agreement or any other agreement contemplated herein or of any duty or obligation of the Sponsor at law or in equity or otherwise.

(c) The Sponsor and any Affiliate of the Sponsor may engage in or possess an interest in profit-seeking or business ventures of any nature or description, independently or with others, whether or not such ventures are competitive with the Trust and the doctrine of corporate opportunity, or any analogous doctrine, shall not apply to the Sponsor. If the Sponsor acquires knowledge of a potential transaction, agreement, arrangement or other matter that may be an opportunity for the Trust, it shall have no duty to communicate or offer such opportunity to the Trust, and the Sponsor shall not be liable to the Trust or to the Shareholders for breach of any fiduciary or other duty by reason of the fact that the Sponsor pursues or acquires for, or directs such opportunity to, another Person or does not communicate such opportunity or information to the Trust. Neither the Trust nor any Shareholder shall have any rights or obligations by virtue of this Trust Agreement or the trust relationship created hereby in or to such independent ventures or the income or profits or losses derived therefrom, and the pursuit of such ventures, even if competitive with the purposes of the Trust, shall not be deemed wrongful or improper. Except to the extent expressly provided herein, the Sponsor may engage or be interested in any financial or other transaction with the Trust, the Shareholders or any Affiliate of the Trust or the Shareholders.

(d) To the fullest extent permitted by law and notwithstanding any other provision of this Trust Agreement or in any agreement contemplated herein or applicable provisions of law or equity or otherwise, whenever in this Trust Agreement a Person is permitted or required to make a decision (a) in its “sole discretion” or “discretion” or under a grant of similar authority or latitude, the Person shall be entitled to consider only such interests and factors as it desires, including its own interests, and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Trust, the Shareholders or any other Person, or (b) in its “good faith” or under another express standard, the Person shall act under such express standard and shall not be subject to any other or different standard. The term “good faith” as used in this Trust Agreement shall mean subjective good faith as such term is understood and interpreted under Delaware law.

#### SECTION 6.7 *Indemnification of the Sponsor.*

(a) The Sponsor shall be indemnified by the Trust against any losses, judgments, liabilities, expenses and amounts paid in settlement of any claims sustained by it in connection with its activities for the Trust, *provided* that (i) the Sponsor was acting on behalf of, or performing services for, the Trust and has determined, in good faith, that such course of conduct was in the best interests of the Trust and such liability or loss was not the result of fraud, gross negligence, bad faith, willful misconduct, or a material breach of this Trust Agreement on the part of the Sponsor and (ii) any such indemnification will be recoverable only from the Trust Estate. All rights to indemnification permitted herein and payment of associated expenses shall not be affected by the dissolution or other cessation of existence of the Sponsor, or the withdrawal, adjudication of bankruptcy or insolvency of the Sponsor, or the filing of a voluntary or involuntary petition in bankruptcy under Title 11 of the United States Code by or against the Sponsor.

(b) Notwithstanding the provisions of Section 6.7(a) above, the Sponsor, any Participant and any other Person acting as a broker-dealer for the Trust shall not be indemnified for any losses, liabilities or expenses arising from or out of an alleged violation of U.S. federal or state securities laws unless (i) there has been a successful adjudication on the merits of each count involving alleged securities law violations as to the particular indemnitee and the court approves the indemnification of such expenses (including, without limitation, litigation costs), (ii) such claims have been dismissed with prejudice on the merits by a court of competent jurisdiction as to the particular indemnitee and the court approves the indemnification of such expenses (including, without limitation, litigation costs) or (iii) a court of competent jurisdiction approves a settlement of the claims against a particular indemnitee and finds that indemnification of the settlement and related costs should be made.

(c) The Trust shall not incur the cost of that portion of any insurance that insures any party against any liability, the indemnification of which is herein prohibited.

(d) Expenses incurred in defending a threatened or pending civil, administrative or criminal action suit or proceeding against the Sponsor shall be paid by the Trust in advance of the final disposition of such action, suit or proceeding if (i) the legal action relates to the performance of duties or services by the Sponsor on behalf of the Trust; (ii) the legal action is initiated by a third party who is not a Shareholder or the legal action is initiated by a Shareholder and a court of competent jurisdiction specifically approves such advance; and (iii) the Sponsor undertakes to repay the advanced funds with interest to the Trust in cases in which it is not entitled to indemnification under this Section 6.7.

(e) The term “Sponsor” as used only in this Section 6.7 shall include, in addition to the Sponsor, any other Covered Person performing services on behalf of the Trust and acting within the scope of the Sponsor’s authority as set forth in this Trust Agreement.

(f) In the event the Trust is made a party to any claim, dispute, demand or litigation or otherwise incurs any loss, liability, damage, cost or expense as a result of or in connection with any Shareholder’s (or assignee’s) obligations or liabilities unrelated to Trust affairs, such Shareholder (or assignees cumulatively) shall indemnify, defend, hold harmless, and reimburse the Trust for all such loss, liability, damage, cost and expense incurred, including attorneys’ and accountants’ fees.

#### SECTION 6.8 *Expenses and Limitations Thereon.*

##### (a) Sponsor’s Fee.

(i) The Trust shall pay to the Sponsor a fee (the “**Sponsor’s Fee**”), payable in Bitcoins (except as provided in Section 6.8(a)(iv)), which shall accrue daily in U.S. Dollars at an annual rate of 2.0% of the Bitcoin Holdings Fee Basis Amount of the Trust as of 4:00 p.m., New York time, on each day; *provided* that for a day that is not a Business Day, the calculation shall be based on the Bitcoin Holdings Fee Basis Amount from the most recent Business Day, reduced by the accrued and unpaid Sponsor’s Fee for such most recent Business Day and for each day after such most recent Business Day and prior to the relevant calculation date. The amount of Bitcoins payable in respect of each

daily U.S. Dollar accrual shall be determined by reference to the same Bitcoin Index Price used to determine such accrual. The Sponsor's Fee is payable to the Sponsor monthly in arrears.

(ii) Except as provided in Section 6.8(a)(iv), to cause the Trust to pay the Sponsor's Fee, the Sponsor shall instruct the Custodian to withdraw from the Bitcoin Account the number of Bitcoins equal to the accrued but unpaid Sponsor's Fee and transfer such Bitcoins to the Sponsor's account at such times as the Sponsor determines in its absolute discretion.

(iii) After the payment of the Sponsor's Fee to the Sponsor, the Sponsor may elect to convert the Bitcoins it receives into U.S. Dollars. The Shareholders acknowledge that the rate at which the Sponsor converts such Bitcoins to U.S. Dollars may differ from the rate at which the Sponsor's Fee was initially converted into Bitcoins. The Trust shall not be responsible for any fees and expenses incurred by the Sponsor to convert Bitcoins received in payment of the Sponsor's Fee into U.S. Dollars.

(iv) If the Trust holds any Incidental Rights and/or IR Virtual Currency at any time, the Trust may pay the Sponsor's Fee, in whole or in part, with such Incidental Rights and/or IR Virtual Currency by entering into an agreement with the Sponsor and transferring such Incidental Rights and/or IR Virtual Currency to the Sponsor at a value to be determined pursuant to such agreement; *provided* that the Trust shall use Incidental Rights and/or IR Virtual Currency to pay the Sponsor's Fee only if such agreement and transfer do not otherwise conflict with the terms of this Trust Agreement. If the Trust pays the Sponsor's Fee in Incidental Rights and/or IR Virtual Currency, in whole or in part, the amount of Bitcoins that would otherwise have been used to satisfy such payment shall be correspondingly reduced.

(v) The Sponsor may, from time to time, temporarily waive all or a portion of the Sponsor's Fee in its sole discretion.

(vi) As partial consideration for receipt of the Sponsor's Fee, the Sponsor shall assume and pay all fees and other expenses incurred by the Trust in the ordinary course of its affairs, excluding taxes, but including: (i) the Marketing Fee, (ii) the Administrator Fee, (iii) the Custodian Fee, (iv) the Transfer Agent fee, (v) the Trustee fee, (vi) the fees and expenses related to the listing, quotation or trading of the Shares on any Secondary Market (including customary legal, marketing and audit fees and expenses) in an amount up to \$600,000 in any given Fiscal Year, (vii) ordinary course legal fees and expenses, (viii) audit fees, (ix) regulatory fees, including, if applicable, any fees relating to the registration of the Shares under the Securities Act or the Exchange Act, (x) printing and mailing costs, (xi) costs of maintaining the Trust's website and (xii) applicable license fees (each, a "**Sponsor-paid Expense**" and together, the "**Sponsor-paid Expenses**"), *provided* that any expense that qualifies as an Additional Trust Expense as set forth in Section 6.8(b) shall be deemed to be an Additional Trust Expenses and not a Sponsor-paid Expense.

(b) Additional Trust Expenses.

(i) The Trust shall pay any expenses incurred by the Trust in addition to the Sponsor's Fee that are not Sponsor-paid Expenses, including, but not limited to, (i) taxes and governmental charges, (ii) expenses and costs of any extraordinary services performed by the Sponsor (or any other service provider) on behalf of the Trust to protect the Trust or the interests of Shareholders (including in connection with any Incidental Rights and any IR Virtual Currency), (iii) any indemnification of the Custodian, Administrator or other agents, service providers or counterparties of the Trust, (iv) the fees and expenses related to the listing, quotation or trading of the Shares on any Secondary Market (including legal, marketing and audit fees and expenses) to the extent exceeding \$600,000 in any given Fiscal Year and (v) extraordinary legal fees and expenses, including any legal fees and expenses incurred in connection with litigation, regulatory enforcement or investigation matters (collectively, "**Additional Trust Expenses**").

(ii) To cause the Trust to pay the Additional Trust Expenses, if any, the Sponsor or its delegates (i) shall instruct the Custodian to withdraw from the Bitcoin Account Bitcoins in such quantity as may be necessary to permit payment of such Additional Trust Expenses and (ii) may either (x) cause the Trust (or its delegate) to convert such Bitcoin into U.S. Dollars or other fiat currencies at the Actual Exchange Rate or (y) cause the Trust (or its delegate) to deliver such Bitcoins in kind in satisfaction of such Additional Trust Expenses.

(iii) If the Trust holds any Incidental Rights and/or IR Virtual Currency at any time, the Trust may pay any Additional Trust Expenses, in whole or in part, with such Incidental Rights and/or IR Virtual Currency by entering into an agreement with the relevant payee and transferring such Incidental Rights and/or IR Virtual Currency to that payee at a value to be determined pursuant to such agreement; *provided* that the Trust shall use Incidental Rights and/or IR Virtual Currency to pay Additional Trust Expenses only if such agreement and transfer does not otherwise conflict with the terms of this Trust Agreement. If the Trust pays the Additional Trust Expenses in Incidental Rights and/or IR Virtual Currency, in whole or in part, the amount of Bitcoin that would otherwise have been used to satisfy such payment shall be correspondingly reduced.

(c) The Sponsor or any Affiliate of the Sponsor may be reimbursed only for the actual cost to the Sponsor or such Affiliate of any expenses that it advances on behalf of the Trust for payment of which the Trust is responsible. In addition, payment to the Sponsor or such Affiliate for indirect expenses incurred in performing services for the Trust in its capacity as the Sponsor (or an Affiliate of the Sponsor) of the Trust, such as salaries and fringe benefits of officers and directors, rent or depreciation, utilities and other administrative items generally falling within the category of the Sponsor's "overhead," is prohibited.

#### SECTION 6.9 *Voluntary Withdrawal of the Sponsor.*

The Sponsor may withdraw voluntarily as the Sponsor of the Trust only upon one hundred and twenty (120) days' prior written notice to all Shareholders and the Trustee. If the withdrawing Sponsor is the last remaining Sponsor, the Shareholders holding Shares equal to at least a majority (over 50%) of the Shares may vote to elect and appoint, effective as of a date on

or prior to the withdrawal, a successor Sponsor who shall carry on the affairs of the Trust. If the Sponsor withdraws and a successor Sponsor is named, the withdrawing Sponsor shall pay all expenses as a result of its withdrawal.

**SECTION 6.10** *Litigation.*

The Sponsor is hereby authorized to prosecute, defend, settle or compromise actions or claims at law or in equity as may be necessary or proper to enforce or protect the Trust's interests. The Sponsor shall satisfy any judgment, decree or decision of any court, board or authority having jurisdiction or any settlement of any suit or claim prior to judgment or final decision thereon, first, out of any insurance proceeds available therefor, next, out of the Trust's assets and, thereafter, out of the assets (to the extent that it is permitted to do so under the various other provisions of this Trust Agreement) of the Sponsor.

**SECTION 6.11** *Bankruptcy; Merger of the Sponsor.*

(a) The Sponsor shall not cease to be a Sponsor of the Trust merely upon the occurrence of its making an assignment for the benefit of creditors, filing a voluntary petition in bankruptcy, filing a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, filing an answer or other pleading admitting or failing to contest material allegations of a petition filed against it in any proceeding of this nature or seeking, consenting to or acquiescing in the appointment of a trustee, receiver or liquidator for itself or of all or any substantial part of its properties.

(b) To the fullest extent permitted by law, and on sixty (60) days' prior written notice to the Shareholders of their right to vote thereon, if any such transaction is other than with an affiliated entity, nothing in this Trust Agreement shall be deemed to prevent the merger of the Sponsor with another corporation or other entity, the reorganization of the Sponsor into or with any other corporation or other entity, the transfer of all the capital stock of the Sponsor or the assumption of the rights, duties and liabilities of the Sponsor by, in the case of a merger, reorganization or consolidation, the surviving corporation or other entity by operation of law. Without limiting the foregoing, none of the transactions referenced in the preceding sentence shall be deemed to be a voluntary withdrawal for purposes of Section 6.10 or an Event of Withdrawal for purposes of Section 12.1(a)(iv).

**ARTICLE VII**

**THE SHAREHOLDERS**

**SECTION 7.1** *No Management or Control; Limited Liability; Exercise of Rights through a Participant.*

The Shareholders shall not participate in the management or control of the Trust nor shall they enter into any transaction on behalf of the Trust or have the power to sign for or bind the Trust, said power being vested solely and exclusively in the Sponsor. Except as provided in Section 7.3 hereof, no Shareholder shall be bound by, or be personally liable for, the expenses,

liabilities or obligations of the Trust in excess of its Percentage Interest of the Trust Estate. Except as provided in Section 7.3 hereof, each Share owned by a Shareholder shall be fully paid and no assessment shall be made against any Shareholder. No salary shall be paid to any Shareholder in its capacity as a Shareholder, nor shall any Shareholder have a drawing account or earn interest on its Percentage Interest of the Trust Estate. By the purchase and acceptance or other lawful delivery and acceptance of Shares, each owner of such Shares shall be deemed to be a Shareholder and beneficiary of the Trust and vested with beneficial undivided interest in the Trust to the extent of the Shares owned beneficially by such Shareholder, subject to the terms and conditions of this Trust Agreement.

#### SECTION 7.2 *Rights and Duties.*

The Shareholders shall have the following rights, powers, privileges, duties and liabilities:

(a) The Shareholders shall have the right to obtain from the Sponsor information on all things affecting the Trust, *provided* that such information is for a purpose reasonably related to the Shareholder's interest as a beneficial owner of the Trust.

(b) The Shareholders shall receive the share of the distributions provided for in this Trust Agreement in the manner and at the times provided for in this Trust Agreement.

(c) Except for the Shareholders' transfer rights set forth in Article IV and the Shareholders' redemption rights set forth in Article V hereof, Shareholders shall have the right to demand a redemption of their Shares only upon the dissolution and winding up of the Trust and only to the extent of funds available therefor, as provided in Section 12.2. In no event shall a Shareholder be entitled to demand or receive property other than cash upon the dissolution and winding up of the Trust. No Shareholder shall have priority over any other Shareholder as to distributions. The Shareholder shall not have any right to bring an action for partition against the Trust.

(d) Shareholders holding Shares representing at least a majority (over 50%) of the Shares may vote to appoint a successor Sponsor as provided in Section 6.10 or to continue the Trust as provided in Section 12.1(a)(iv).

Except as set forth above, the Shareholders shall have no voting or other rights with respect to the Trust.

#### SECTION 7.3 *Limitation of Liability.*

(a) Except as provided in Section 6.7(f) hereof, and as otherwise provided under Delaware law, the Shareholders shall be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of Delaware and no Shareholder shall be liable for claims against or debts of the Trust in excess of its Percentage Interest of the Trust Estate, except in the case of a Shareholder that is a Participant, in the event that the liability is founded upon misstatements or omissions contained in such Shareholder's Participant Agreement. In addition, and subject to the exceptions set forth in the immediately preceding sentence, the Trust shall not make a claim

against a Shareholder with respect to amounts distributed to such Shareholder or amounts received by such Shareholder upon redemption of such Shareholder's Shares unless, under Delaware law, such Shareholder is liable to repay such amount.

(b) The Trust shall indemnify to the full extent permitted by law and the other provisions of this Trust Agreement, and to the extent of the Trust Estate, each Shareholder against any claims of liability asserted against such Shareholder solely because it is a beneficial owner of one or more Shares as a Shareholder.

(c) Every written note, bond, contract, instrument, certificate or undertaking made or issued by the Sponsor on behalf of the Trust shall give notice to the effect that the same was executed or made by or on behalf of the Trust and that the obligations of such instrument are not binding upon the Shareholders individually but are binding only upon the assets and property of the Trust, and no resort shall be had to the Shareholders' personal property for satisfaction of any obligation or claim thereunder, and appropriate references may be made to this Trust Agreement and may contain any further recital that the Sponsor deems appropriate, but the omission thereof shall not operate to bind the Shareholders individually or otherwise invalidate any such note, bond, contract, instrument, certificate or undertaking. Nothing contained in this Section 7.3 shall diminish the limitation on the liability of the Trust to the extent set forth in Section 3.6 hereof.

#### SECTION 7.4 *Derivative Actions.*

Subject to any other requirements of applicable law including Section 3816 of the Delaware Trust Statute, no Shareholder shall have the right, power or authority to bring or maintain a derivative action, suit or other proceeding on behalf of the Trust unless two or more Shareholders who (i) are not Affiliates of one another and (ii) collectively hold at least 10% of the outstanding Shares join in the bringing or maintaining of such action, suit or other proceeding.

#### SECTION 7.5 *Appointment of Agents.*

(a) By the purchase and acceptance or other lawful delivery, acceptance or holding of the Shares, the Shareholders shall be deemed to agree that the Sponsor may cause the Trust to appoint an agent to act on their behalf in connection with any distribution of Incidental Rights and/or IR Virtual Currency if the Sponsor has determined in good faith that such appointment is reasonably necessary or in the best interests of the Trust and the Shareholders in order to facilitate the distribution of any Incidental Rights and/or IR Virtual Currency. For the avoidance of doubt, the Sponsor may cause the Trust to appoint the Sponsor or any of its Affiliates to act in such capacity, subject to Section 6.2(a) of this Trust Agreement. Any Person appointed as agent of the Shareholders pursuant to this Section 7.5(a)(i) shall receive an in-kind distribution of Incidental Rights and/or IR Virtual Currency on behalf of the Shareholders of record with respect to such distribution and (ii) following receipt of any such distribution, shall determine, in such Person's sole discretion and without any direction from the Trust or the Sponsor (in its capacity as Sponsor of the Trust), whether and when to sell the distributed Incidental Rights and/or IR Virtual Currency on behalf of the record date Shareholders.



(b) Any agent appointed pursuant to Section 7.5(a) shall not receive any compensation in connection with its role as agent. The foregoing notwithstanding, any such agent shall be entitled to receive from any distribution of Incidental Rights and/or IR Virtual Currency, Incidental Rights and/or IR Virtual Currency with an aggregate fair market value equal to the amount of administrative and other reasonable expenses incurred by such agent in connection with such in-kind distribution of Incidental Rights and/or IR Virtual Currency, including expenses incurred by such agent in connection with any post-distribution sale of such Incidental Rights and/or Virtual Currency.

**SECTION 7.6**     *Business of Shareholders.*

Except as otherwise specifically provided herein, any of the Shareholders and any shareholder, officer, director, employee or other Person holding a legal or beneficial interest in an entity that is a Shareholder, may engage in or possess an interest in business ventures of every nature and description, independently or with others, and the pursuit of such ventures, even if competitive with the affairs of the Trust, shall not be deemed wrongful or improper.

**SECTION 7.7**     *Authorization of Memorandum.*

Each Shareholder (or any permitted assignee thereof) hereby agrees that the Trust, the Sponsor and the Trustee are authorized to execute, deliver and perform the agreements, acts, transactions and matters contemplated hereby or described in, or contemplated by, the Memorandum on behalf of the Trust without any further act, approval or vote of the Shareholders, notwithstanding any other provision of this Trust Agreement, the Delaware Trust Statute or any applicable law, rule or regulation.

**ARTICLE VIII**

**BOOKS OF ACCOUNT AND REPORTS**

**SECTION 8.1**     *Books of Account.*

Proper books of account for the Trust shall be kept and shall be audited annually by an independent certified public accounting firm selected by the Sponsor in its sole discretion, and there shall be entered therein all transactions, matters and things relating to the Trust as are required by the applicable law and regulations and as are usually entered into books of account kept by trusts. The books of account shall be kept at the principal office of the Trust and each Shareholder (or any duly constituted designee of a Shareholder) shall have, at all times during normal business hours, free access to and the right to inspect and copy the same for any purpose reasonably related to the Shareholder's interest as a beneficial owner of the Trust. Such books of account shall be kept, and the Trust shall report its profits and losses on, the accrual method of accounting for financial accounting purposes on a Fiscal Year basis as described in Article IX.

**SECTION 8.2**     *Annual Updates, Quarterly Updates and Account Statements.*

(a) If the Shares are not then listed, quoted or traded on any Secondary Market or registered under the Securities Act or the Exchange Act, the Sponsor shall furnish

each Shareholder with an annual report of the Trust within one hundred and eighty (180) calendar days after the Trust's fiscal year (or as soon as reasonably practicable thereafter) including, but not limited to, annual audited financial statements (including a statement of income and statement of financial condition), prepared in accordance with GAAP and accompanied by a report of the independent registered public accounting firm that audited such statements.

(b) If the Shares are then listed, quoted or traded on a Secondary Market or registered under the Securities Act or the Exchange Act, the Sponsor shall prepare and publish the Trust's Annual Reports and Quarterly Reports as required by the rules and regulations of such Secondary Market or the SEC, as applicable.

### SECTION 8.3 *Tax Information.*

Appropriate tax information (adequate to enable each Shareholder to complete and file its U.S. federal tax return) shall be delivered to each Shareholder following the end of each Fiscal Year but, to the extent possible, no later than April 1. All such information shall be prepared, and all of the Trust's tax returns shall be filed, in a manner consistent with the treatment of the Trust as a grantor trust. The Trust's taxable year shall be the calendar year. The Trustee shall comply with all U.S. federal withholding requirements respecting distributions to, or receipts of amounts on behalf of, Shareholders that the Trustee reasonably believes are applicable under the Code. The consent of Shareholders shall not be required for such withholding.

### SECTION 8.4 *Calculation of Bitcoin Holdings.*

The Sponsor or its delegate shall calculate and publish the Trust's Bitcoin Holdings on each Business Day as of 4:00 p.m., New York time, or as soon as practicable thereafter. In order to calculate the Bitcoin Holdings, the Sponsor shall:

1. Determine the Bitcoin Index Price as of such Business Day;
2. Multiply the Bitcoin Index Price by the Trust's aggregate number of Bitcoins owned by the Trust as of 4:00 p.m., New York time, on the immediately preceding day, less the aggregate number of Bitcoins payable as the accrued and unpaid Sponsor's Fee as of 4:00 p.m., New York time, on the immediately preceding day;
3. Add the U.S. Dollar value of Bitcoins, calculated using the Bitcoin Index Price, receivable under pending Creation Orders, if any, determined by multiplying the number of the Creation Baskets represented by such Creation Orders by the Basket Bitcoin Amount and then multiplying such product by the Bitcoin Index Price;
4. Subtract the U.S. Dollar amount of accrued and unpaid Additional Trust Expenses, if any;
5. Subtract the U.S. Dollar value of the Bitcoins, calculated using the Bitcoin Index Price, to be distributed under pending Redemption Orders, if any, determined by multiplying the number of Redemption Baskets represented by such Redemption Orders by the Basket Bitcoin Amount and then multiplying such product by the

Bitcoin Index Price (the amount derived from steps 1 through 5 above, the “**Bitcoin Holdings Fee Basis Amount**”); and

6. Subtract the U.S. Dollar amount of the Sponsor’s Fee that accrues for such Business Day, as calculated based on the Bitcoin Holdings Fee Basis Amount for such Business Day.

Notwithstanding the foregoing, (i) in the event that the Sponsor determines that the methodology used to determine the Bitcoin Index Price is not an appropriate basis for valuation of the Trust’s Bitcoins, the Sponsor shall use an alternative methodology as set forth in the Memorandum and (ii) in the event that the Trust holds any Incidental Rights and/or IR Virtual Currency, the Sponsor may, at its discretion, include the value of such Incidental Rights and/or IR Virtual Currency in the determination of the Trust’s Bitcoin Holdings, *provided* that the Sponsor has determined in good faith a method for assigning an objective value to such Incidental Rights and/or IR Virtual Currency.

#### SECTION 8.5 *Maintenance of Records.*

The Sponsor shall maintain for a period of at least six Fiscal Years (a) all books of account required by Section 8.1 hereof; (b) a list of the names and last known address of, and number of Shares owned by, all Shareholders; (c) a copy of the Certificate of Trust and all certificates of amendment thereto; (d) executed copies of any powers of attorney pursuant to which any certificate has been executed; (e) copies of the Trust’s U.S. federal, state and local income tax returns and reports, if any; (f) copies of any effective written Trust Agreements, Participant Agreements, including any amendments thereto; and (g) any financial statements of the Trust. The Sponsor may keep and maintain the books and records of the Trust in paper, magnetic, electronic or other format as the Sponsor may determine in its sole discretion, *provided* that the Sponsor shall use reasonable care to prevent the loss or destruction of such records. If there is a conflict between this Section 8.5 and the rules and regulations of any Secondary Market on which the Shares are listed, quoted or traded or, if applicable, the SEC with respect to the maintenance of records, the records shall be maintained pursuant to the rules and regulations of such Secondary Market or the SEC.

### ARTICLE IX

#### FISCAL YEAR

##### SECTION 9.1 *Fiscal Year.*

The fiscal year of the Trust for financial accounting purposes (the “**Fiscal Year**”) shall begin on the 1<sup>st</sup> day of January and end on the 31<sup>st</sup> day of December of each year. The Fiscal Year in which the Trust shall terminate shall end on the date of such termination.

## ARTICLE X

### AMENDMENT OF TRUST AGREEMENT; MEETINGS

#### SECTION 10.1 *Amendments to the Trust Agreement.*

(a) *Amendment Generally.*

(i) Except as otherwise specifically provided in this Section 10.1, the Sponsor, in its sole discretion and without Shareholder consent, may amend or otherwise supplement this Trust Agreement by making an amendment, an agreement supplemental hereto, or an amended and restated declaration of trust and trust agreement. Any such restatement, amendment and/or supplement hereto shall be effective on such date as designated by the Sponsor in its sole discretion; *provided* that the Sponsor shall not be permitted to make any such amendment, or otherwise supplement this Trust Agreement, if such amendment or supplement would permit the Sponsor, the Trustee or any other Person to vary the investment of the Shareholders (within the meaning of Treasury Regulations Section 301.7701-4(c)) or would otherwise adversely affect the status of the Trust as a grantor trust for U.S. federal income tax purposes.

(ii) Any amendments to this Trust Agreement which materially adversely affects the interests of the Shareholders shall occur only upon the vote of Shareholders holding Shares equal to at least a majority (over 50%) of the Shares (not including Shares held by the Sponsor and its Affiliates). For all purposes of this Section 10.1, a Shareholder shall be deemed to consent to a modification or amendment of this Trust Agreement if the Sponsor has notified such Shareholder in writing of the proposed modification or amendment and the Shareholder has not, within twenty (20) calendar days of such notice, notified the Sponsor in writing that the Shareholder objects to such modification or amendment. Notwithstanding anything to the contrary herein, notice pursuant to this Section 10.1 may be given by the Sponsor to the Shareholder by email or other electronic transmission and shall be deemed given upon receipt without requirement of confirmation.

(b) Without limitation of the foregoing, the Sponsor may, without the approval of the Shareholders, amend the provisions of this Trust Agreement if the Trust is advised at any time by the Trust's accountants or legal counsel that the amendments made are necessary to ensure that the Trust's status as a grantor trust will be respected for U.S. federal income tax purposes.

(c) No amendment affecting the rights or duties of the Trustee shall be binding upon or effective against the Trustee unless consented to by the Trustee in writing. No amendment shall be made to this Trust Agreement without the consent of the Trustee if the Trustee reasonably believes that such amendment adversely affects any of its rights, duties or liabilities. The Trustee shall be under no obligation to execute any amendment to the Trust Agreement or to any agreement to which the Trust is a party until it has received an instruction letter from the Sponsor, in form and substance reasonably satisfactory to the Trustee, (i) directing the Trustee to execute such amendment, (ii) representing and warranting to the Trustee that such

execution is authorized and permitted by the terms of the Trust Agreement and (if applicable) such other agreement to which the Trust is a party and does not conflict with or violate any other agreement to which the Trust is a party and (iii) confirming that such execution and acts related thereto are covered by the indemnity provisions of the Trust Agreement in favor of the Trustee and do not adversely affect the Trustee.

(d) Upon amendment of this Trust Agreement, the Certificate of Trust shall also be amended, if required by the Delaware Trust Statute, to reflect such change. At the expense of the Sponsor, the Trustee shall execute and file any amendment to the Certificate of Trust if so directed by the Sponsor.

(e) To the fullest extent permitted by law, no provision of this Trust Agreement may be amended, waived or otherwise modified orally but only by a written instrument adopted in accordance with this Section 10.1.

#### SECTION 10.2 *Meetings of the Trust.*

Meetings of the Shareholders may be called by the Sponsor in its sole discretion. The Sponsor shall furnish written notice to all Shareholders thereof of the meeting and the purpose of the meeting, which shall be held on a date not less than ten (10) nor more than sixty (60) days after the date of mailing of said notice, at a reasonable time and place. Any notice of meeting shall be accompanied by a description of the action to be taken at the meeting. Shareholders may vote in person or by proxy at any such meeting.

#### SECTION 10.3 *Action Without a Meeting.*

Any action required or permitted to be taken by Shareholders by vote may be taken without a meeting by written consent setting forth the actions so taken. Such written consents shall be treated for all purposes as votes at a meeting. If the vote or consent of any Shareholder to any action of the Trust or any Shareholder, as contemplated by this Trust Agreement, is solicited by the Sponsor, the solicitation shall be effected by notice to each Shareholder given in the manner provided in Section 13.5. The vote or consent of each Shareholder so solicited shall be deemed conclusively to have been cast or granted as requested in the notice of solicitation, whether or not the notice of solicitation is actually received by that Shareholder, unless the Shareholder expresses written objection to the vote or consent by notice given in the manner provided in Section 13.5 and actually received by the Trust within twenty (20) days after the notice of solicitation is sent. The Covered Persons dealing with the Trust shall be entitled to act in reliance on any vote or consent that is deemed cast or granted pursuant to this Section 10.3 and shall be fully indemnified by the Trust in so doing. Any action taken or omitted in reliance on any such deemed vote or consent of one or more Shareholders shall not be void or voidable by reason of any communication made by or on behalf of all or any of such Shareholders in any manner other than as expressly provided in Section 13.5.

## ARTICLE XI

### TERM

#### SECTION 11.1 *Term.*

The term for which the Trust is to exist shall be perpetual, unless terminated pursuant to the provisions of Article XII hereof or as otherwise provided by law.

## ARTICLE XII

### TERMINATION

#### SECTION 12.1 *Events Requiring Dissolution of the Trust.*

(a) The Trust shall dissolve at any time upon the happening of any of the following events:

(i) a U.S. federal or state regulator requires the Trust to shut down or forces the Trust to liquidate its Bitcoins or seizes, impounds or otherwise restricts access to the Trust Estate;

(ii) any ongoing event exists that either prevents the Trust from making or makes impractical the Trust's reasonable efforts to make a fair determination of the Bitcoin Index Price;

(iii) any ongoing event exists that either prevents the Trust from converting or makes impractical the Trust's reasonable efforts to convert Bitcoins to U.S. Dollars; or

(iv) a certificate of dissolution or revocation of the Sponsor's charter is filed (and ninety (90) days have passed after the date of notice to the Sponsor of revocation without a reinstatement of the Sponsor's charter) or the withdrawal, removal, adjudication or admission of bankruptcy or insolvency of the Sponsor (each of the foregoing events an "**Event of Withdrawal**") has occurred unless (i) at the time there is at least one remaining Sponsor or (ii) within ninety (90) days of such Event of Withdrawal Shareholders holding at least a majority (over 50%) of the Shares agree in writing to continue the affairs of the Trust and to select, effective as of the date of such event, one or more successor Sponsors.

(b) The Sponsor may, in its sole discretion, dissolve the Trust if any of the following events occur:

(i) the SEC determines that the Trust is an investment company required to be registered under the Investment Company Act of 1940;

(ii) the CFTC determines that the Trust is a commodity pool under the Commodity Exchange Act;

(iii) the Trust is determined to be a “money service business” under the regulations promulgated by FinCEN under the authority of the U.S. Bank Secrecy Act and is required to comply with certain FinCEN regulations thereunder;

(iv) the Trust is required to obtain a license or make a registration under any state law regulating money transmitters, money services businesses, providers of prepaid or stored value or similar entities, or virtual currency businesses;

(v) the Trust becomes insolvent or bankrupt;

(vi) the Custodian resigns or is removed without replacement;

(vii) all of the Trust’s Bitcoins are sold;

(viii) the Sponsor determines that the size of the Trust Estate in relation to the expenses of the Trust makes it unreasonable or imprudent to continue the affairs of the Trust;

(ix) the Sponsor receives notice from the IRS or from counsel for the Trust or the Sponsor that the Trust fails to qualify for treatment, or will not be treated, as a grantor trust under the Code;

(x) the Trustee notifies the Sponsor of the Trustee’s election to resign and the Sponsor does not appoint a successor trustee within one hundred and eighty (180) days; or

(xi) the Sponsor determines, in its sole discretion, that it is desirable or advisable for any reason to discontinue the affairs of the Trust.

(c) The death, legal disability, bankruptcy, insolvency, dissolution, or withdrawal of any Shareholder (as long as such Shareholder is not the sole Shareholder of the Trust) shall not result in the termination of the Trust, and such Shareholder, his or her estate, custodian or personal representative shall have no right to a redemption of such Shareholder’s Shares. Each Shareholder (and any assignee thereof) expressly agrees that in the event of his or her death, he or she waives on behalf of himself or herself and his or her estate, and he or she directs the legal representative of his or her estate and any person interested therein to waive the furnishing of any inventory, accounting or appraisal of the Trust Estate and any right to an audit or examination of the books of account for the Trust, except for such rights as are set forth in Article VIII hereof relating to the books of account and reports of the Trust.

#### SECTION 12.2 *Distributions on Dissolution.*

Upon the dissolution of the Trust, the Sponsor (or in the event there is no Sponsor, such person (the “**Liquidating Trustee**”) as the majority in interest of the Shareholders may propose and approve) shall take full charge of the Trust Estate. Any Liquidating Trustee so appointed

shall have and may exercise, without further authorization or approval of any of the parties hereto, all of the powers conferred upon the Sponsor under the terms of this Trust Agreement, subject to all of the applicable limitations, contractual and otherwise, upon the exercise of such powers, and *provided* that the Liquidating Trustee shall not have general liability for the acts, omissions, obligations and expenses of the Trust. Thereafter, in accordance with Section 3808(e) of the Delaware Trust Statute, the affairs of the Trust shall be wound up and all assets owned by the Trust shall be liquidated as promptly as is consistent with obtaining the fair value thereof, and the proceeds therefrom shall be applied and distributed in the following order of priority: (a) to the expenses of liquidation and termination and to creditors, including Shareholders who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the Trust (whether by payment or the making of reasonable provision for payment thereof) other than liabilities for distributions to Shareholders, and (b) to the Shareholders pro rata in accordance with their respective Percentage Interests of the Trust Estate.

**SECTION 12.3** *Termination; Certificate of Cancellation.*

Following the dissolution and distribution of the assets of the Trust, the Trust shall terminate and the Sponsor or the Liquidating Trustee, as the case may be, shall instruct the Trustee to execute and cause such certificate of cancellation of the Certificate of Trust to be filed in accordance with the Delaware Trust Statute at the expense of the Sponsor or the Liquidating Trustee, as the case may be. Notwithstanding anything to the contrary contained in this Trust Agreement, the existence of the Trust as a separate legal entity shall continue until the filing of such certificate of cancellation.

**ARTICLE XIII**

**MISCELLANEOUS**

**SECTION 13.1** *Governing Law.*

The validity and construction of this Trust Agreement and all amendments hereto shall be governed by the laws of the State of Delaware, and the rights of all parties hereto and the effect of every provision hereof shall be subject to and construed according to the laws of the State of Delaware without regard to the conflict of laws provisions thereof; *provided, however*, that causes of action for violations of U.S. federal or state securities laws shall not be governed by this Section 13.1, and *provided, further*, that the parties hereto intend that the provisions hereof shall control over any contrary or limiting statutory or common law of the State of Delaware (other than the Delaware Trust Statute) and that, to the maximum extent permitted by applicable law, there shall not be applicable to the Trust, the Trustee, the Sponsor, the Shareholders or this Trust Agreement any provision of the laws (statutory or common) of the State of Delaware (other than the Delaware Trust Statute) pertaining to trusts that relate to or regulate in a manner inconsistent with the terms hereof: (a) the filing with any court or governmental body or agency of trustee accounts or schedules of trustee fees and charges, (b) affirmative requirements to post bonds for trustees, officers, agents, or employees of a trust, (c) the necessity for obtaining court or other governmental approval concerning the acquisition, holding or disposition of real or personal property, (d) fees or other sums payable to trustees, officers, agents or employees of a trust, (e) the allocation of receipts and expenditures to income or principal, (f) restrictions or



limitations on the permissible nature, amount or concentration of trust investments or requirements relating to the titling, storage or other manner of holding of trust assets, or (g) the establishment of fiduciary or other standards or responsibilities or limitations on the acts or powers of trustees or managers that are inconsistent with the limitations on liability or authorities and powers of the Trustee or the Sponsor set forth or referenced in this Trust Agreement. Section 3540 of Title 12 of the Delaware Code shall not apply to the Trust. The Trust shall be of the type commonly called a “statutory trust,” and without limiting the provisions hereof, but subject to Section 1.5 and Section 1.6, the Trust may exercise all powers that are ordinarily exercised by such a statutory trust under Delaware law. Subject to Section 1.5 and Section 1.6, the Trust specifically reserves the right to exercise any of the powers or privileges afforded to statutory trusts and the absence of a specific reference herein to any such power, privilege or action shall not imply that the Trust may not exercise such power or privilege or take such actions.

#### SECTION 13.2 *Provisions In Conflict With Law or Regulations.*

(a) The provisions of this Trust Agreement are severable, and if the Sponsor shall determine, with the advice of counsel, that any one or more of such provisions (the “**Conflicting Provisions**”) are in conflict with the Code, the Delaware Trust Statute, the Securities Act, if applicable, or other applicable U.S. federal or state laws or the rules and regulations of any Secondary Market, the Conflicting Provisions shall be deemed never to have constituted a part of this Trust Agreement, even without any amendment of this Trust Agreement pursuant to this Trust Agreement; *provided, however*, that such determination by the Sponsor shall not affect or impair any of the remaining provisions of this Trust Agreement or render invalid or improper any action taken or omitted prior to such determination. No Sponsor or Trustee shall be liable for making or failing to make such a determination.

(b) If any provision of this Trust Agreement shall be held invalid or unenforceable in any jurisdiction, such holding shall not in any manner affect or render invalid or unenforceable such provision in any other jurisdiction or any other provision of this Trust Agreement in any jurisdiction.

#### SECTION 13.3 *Merger and Consolidation.*

Subject to the provisions of Section 1.5 and Section 1.6, the Sponsor may cause (i) the Trust to be merged into or consolidated with, converted to or to sell all or substantially all of its assets to, another trust or entity; (ii) the Shares of the Trust to be converted into beneficial interests in another statutory trust (or series thereof); or (iii) the Shares of the Trust to be exchanged for shares in another trust or company under or pursuant to any U.S. state or federal statute to the extent permitted by law. For the avoidance of doubt, subject to the provisions of Section 1.5, the Sponsor, with written notice to the Shareholders, may approve and effect any of the transactions contemplated under (i), (ii) and (iii) above without any vote or other action of the Shareholders.

#### SECTION 13.4 *Construction.*

In this Trust Agreement, unless the context otherwise requires, words used in the singular or in the plural include both the plural and singular and words denoting any gender include all genders. The title and headings of different parts are inserted for convenience and shall not affect the meaning, construction or effect of this Trust Agreement.

SECTION 13.5 *Notices.*

All notices or communications under this Trust Agreement (other than notices of pledge or encumbrance of Shares, and reports and notices by the Sponsor to the Shareholders) shall be in writing and shall be effective upon personal delivery, or if sent by mail, postage prepaid, or if sent electronically, by email, or by overnight courier, and addressed, in each such case, to the address set forth in the books and records of the Trust or such other address as may be specified in writing, of the party to whom such notice is to be given, upon the deposit of such notice in the United States mail, upon transmission and electronic confirmation thereof or upon deposit with a representative of an overnight courier, as the case may be. Notices of pledge or encumbrance of Shares shall be effective upon timely receipt by the Sponsor in writing. Any reports or notices by the Sponsor to the Shareholders which are given electronically shall be effective upon receipt without requirement of confirmation.

All notices that are required to be provided to the Trustee shall be sent to:

Delaware Trust Company  
Attention: Corporate Trust Administration  
251 Little Falls Drive  
Wilmington, DE 19808

All notices that the Trustee is required to provide shall be sent to:

if to the Trust, at

Bitcoin Investment Trust  
636 Avenue of the Americas  
New York, New York 10011  
Attention: Grayscale Investments, LLC

if to the Sponsor, at

Grayscale Investments, LLC  
636 Avenue of the Americas  
New York, New York 10011  
Attention: Michael Sonnenshein

SECTION 13.6 *Counterparts; Electronic Signatures.*

This Trust Agreement may be executed in one or more counterparts (including those by facsimile or other electronic means), all of which shall constitute one and the same instrument binding on all of the parties hereto, notwithstanding that all parties are not signatory to the original or the same counterpart. This Trust Agreement, to the extent signed and delivered by means of a facsimile machine or other electronic transmission, shall be treated in all manner and respects as an original agreement and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

SECTION 13.7 *Binding Nature of Trust Agreement.*

The terms and provisions of this Trust Agreement shall be binding upon and inure to the benefit of the heirs, custodians, executors, estates, administrators, personal representatives, successors and permitted assigns of the respective Shareholders. For purposes of determining the rights of any Shareholder or assignee hereunder, the Trust and the Sponsor may rely upon the Trust records as to who are Shareholders and permitted assignees, and all Shareholders and assignees agree that the Trust and the Sponsor, in determining such rights, shall rely on such records and that Shareholders and their assignees shall be bound by such determination.

SECTION 13.8 *No Legal Title to Trust Estate.*

Subject to the provisions of Section 1.7 in the case of the Sponsor, the Shareholders shall not have legal title to any part of the Trust Estate.

SECTION 13.9 *Creditors.*

No creditors of any Shareholders shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the Trust Estate.

SECTION 13.10 *Integration.*

This Trust Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

SECTION 13.11 *Goodwill; Use of Name.*

No value shall be placed on the name or goodwill of the Trust, which shall belong exclusively to Grayscale Investments, LLC.





# EXHIBIT 2

**THIRD AMENDED AND RESTATED  
DECLARATION OF TRUST  
AND  
TRUST AGREEMENT  
OF  
BITCOIN INVESTMENT TRUST**

**Dated as of January 1, 2016**

**By and Among**

**GRAYSCALE INVESTMENTS, LLC**  
(formerly known as Alternative Currency Asset Management, LLC)

**DELAWARE TRUST COMPANY**  
(formerly known as CSC Trust Company of Delaware)

**and**

**THE UNITHOLDERS**

from time to time hereunder

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**EXHIBIT A**

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**BITCOIN INVESTMENT TRUST**  
**THIRD AMENDED AND RESTATED**  
**DECLARATION OF TRUST**  
**AND TRUST AGREEMENT**

This **THIRD AMENDED AND RESTATED DECLARATION OF TRUST AND TRUST AGREEMENT** of **BITCOIN INVESTMENT TRUST** is made and entered into as of the 1<sup>st</sup> day of January, 2016, by and among **GRAYSCALE INVESTMENTS, LLC** (formerly known as Alternative Currency Asset Management, LLC), a Delaware limited liability company, **DELAWARE TRUST COMPANY** (formerly known as CSC Trust Company of Delaware), a Delaware corporation, as trustee, and the **UNITHOLDERS** from time to time hereunder.

\* \* \*

**RECITALS**

**WHEREAS**, the Sponsor and the Trustee entered into the Second Amended and Restated Declaration of Trust and Trust Agreement dated as of December 26, 2014 (the “**Existing Agreement**”);

**WHEREAS**, the Sponsor and the Trustee wish to amend the Existing Agreement pursuant to Section 10.1 thereof, with such amendment to be effective immediately after the close of the 2015 calendar year.

**NOW, THEREFORE**, pursuant to Section 10.1 of the Existing Agreement, the Trustee and the Sponsor hereby amend and restate the Existing Agreement in its entirety as set forth below.

**ARTICLE I**

**DEFINITIONS; THE TRUST**

**SECTION 1.1** *Definitions.* As used in this Trust Agreement, the following terms shall have the following meanings unless the context otherwise requires:

“**Actual Exchange Rate**” means the highest exchange rate and lowest fees the Sponsor can find within a reasonable time frame in order to pay the Combined Fee in USD.

“**Affiliate**” – An “Affiliate” of a Person means (i) any Person directly or indirectly owning, controlling or holding with power to vote 10% or more of the outstanding voting securities of such Person, (ii) any Person 10% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by such Person, (iii) any Person, directly or indirectly, controlling, controlled by or under common control of such Person, (iv) any employee, officer, director, member, manager or partner of such Person, or (v) if such

Person is an employee, officer, director, member, manager or partner, any Person for which such Person acts in any such capacity.

**“Annual Update”** means the annual report that is prepared pursuant to the Alternative Reporting Standard of the OTCQX U.S. Disclosure Guidelines.

**“Assumed Fee”** means the Constituent Fees, the Shareholder Communications Hub fee, Transfer Agent fee, Trustee fee, OTCQX Fees and expenses related to public trading on OTCQX in an amount up to \$600,000 annually (including legal and audit fees and expenses), any other legal and accounting fees, regulatory fees, printing and mailing costs, and applicable license fees.

**“Basket”** means a block of 100 Units.

**“Basket Bitcoin Amount”** means the number of Bitcoins that will be required for each Creation Basket or Redemption Basket, as determined from time to time by dividing the number of Bitcoins owned by the Trust at such time by the number of Units outstanding at such time (calculated to one one-hundred-millionth of one Bitcoin) and multiplying the quotient obtained by 100.

**“Bitcoin”**— means a type of a virtual currency based on an open source cryptographic protocol existing on the Bitcoin Network, and the assets underlying the Trust’s Units.

**“Bitcoin Account”** means a hot wallet which is online and connected to the internet. The Bitcoin Account is used along with the Trust Storage Account and the Trust Safekeeping Account, as applicable, to receive Creation Basket deposits from Participants. Shortly after receipt of the appropriate number of Bitcoins, the Bitcoins are then transferred to the Trust Storage Account and/or the Trust Safekeeping Account, as applicable.

**“Bitcoin Benchmark Exchanges”** shall have the meaning assigned to such term as provided in the currently effective Memorandum.

**“Bitcoin Market Price”** shall have the meaning assigned to such term as provided in the currently effective Memorandum.

**“Business Day”** means each weekday on which banks are open in New York, New York.

**“Certificate of Trust”** means the Certificate of Trust of the Trust, including all amendments thereto, in the form attached hereto as Exhibit A, filed with the Secretary of State of the State of Delaware pursuant to Section 3810 of the Delaware Trust Statute.

**“Code”** means the Internal Revenue Code of 1986, as amended.

**“Combined Fee”** means a fee that accrues daily at an annual rate of 2% of the NAV of the Trust and is payable to the Sponsor by the Trust monthly in arrears. Calculated in USD but paid in the equivalent number of Bitcoins.

**“Combined Fee Exchange Rate”** means the exchange rate that will be used to convert the Combined Fee from USD to the appropriate number of Bitcoins. It is calculated based upon

the Bitcoin Market Price at 4:00 p.m., Eastern time in the case of daily accruals and as of the last day of each month for withdrawal and payment in arrears. The Combined Fee Exchange Rate does not include fees and expenses for converting USD into Bitcoins.

“**Constituent Fee**” means the Marketing Fee, Custodian Fee and the Sponsor Fee which collectively constitute the Combined Fee.

“**Continuous Offering**” means the continuous offering during which additional Units may be sold in Baskets pursuant to this Trust Agreement.

“**Corporate Trust Office**” means the principal office at which at any particular time the corporate trust business of the Trustee is administered, which office at the date hereof is located at 2711 Centerville Road, Suite 400, Wilmington, DE 19808.

“**Covered Person**” means the Sponsor and its Affiliates and their respective members, managers, directors, officers employees, agents and controlling persons.

“**Creation Basket**” means Baskets issued by the Trust in exchange for deposits of the Creation Basket Bitcoin Amount.

“**Creation Basket Bitcoin Amount**” means the number of Bitcoins that will be required for each Creation Basket, as determined from time to time by dividing the number of Bitcoins owned by the Trust at such time by the number of Units outstanding at such time (calculated to one one-hundred-millionth of one Bitcoin) and multiplying the quotient obtained by 100.

“**Creation Order**” shall have the meaning assigned thereto in Section 3.2(a)(i).

“**Creation Order Date**” shall have the meaning assigned thereto in Section 3.2(a)(i).

“**Custodian**” means DCG Holdco, or any other Person from time to time engaged to provide custodian services or related services to the Trust pursuant to authority delegated by the Sponsor.

“**Custodian Fee**” means the paid by the Sponsor to the Custodian from the Constituent Fee.

“**DCG Holdco**” means DCG Holdco, Inc. (formerly known as SecondMarket Holdings, Inc.), a Delaware corporation.

“**Delaware Trust Statute**” means the Delaware Statutory Trust Act, Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. § 3801 et seq., as the same may be amended from time-to-time.

“**Distributor**” means SecondMarket, Inc. or any other Person from time to time engaged to provide distribution services or related services to the Trust pursuant to authority delegated by the Sponsor.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

“**Event of Withdrawal**” shall have the meaning set forth in Section 12.1(f) hereof.

“**Extraordinary Fee**” means, in certain extraordinary circumstances, the expenses paid by the Trust in addition to the Combined Fee and the Assumed Fees, such as, but not limited to, taxes and governmental charges, expenses and costs of any extraordinary services performed by the Sponsor (or any other Service Provider) on behalf of the Trust to protect the Trust or the interests of Unitholders, indemnification expenses, and extraordinary legal fees and expenses.

“**Fiscal Year**” shall have the meaning set forth in Article IX hereof.

“**Indemnified Parties**” shall have the meaning assigned to such term in Section 2.4.

“**Internal Revenue Service**” or “**IRS**” means the U.S. Internal Revenue Service or any successor thereto.

“**Limited Owner**” means any person or entity who is or becomes an owner of Units of the Trust.

“**Liquidating Trustee**” shall have the meaning assigned thereto in Section 12.2.

“**Marketer**” means SecondMarket, Inc. or any other Person from time to time engaged to provide marketing services or related services to the Trust pursuant to authority delegated by the Sponsor.

“**Marketing Fee**” means a fee paid by the Sponsor to the Marketer from the Constituent Fee.

“**Memorandum**” means the Confidential Private Placement Memorandum, as the same may at any time and from time to time be amended or supplemented.

“**Net Asset Value**” means the aggregate value, expressed in USD, of the Trust’s assets, less its liabilities (which include estimated accrued but unpaid fees and expenses). The Sponsor or its delegate shall calculate and publish the Trust’s NAV each business day as of 4:00 p.m., Eastern time, or as soon thereafter as practicable.

In order to calculate the NAV, the Sponsor shall:

1. Determine the Bitcoin Market Price.
2. Multiply the Bitcoin Market Price by the Trust’s aggregate number of Bitcoins owned as of 4:00 p.m., Eastern time on the immediately preceding day.
3. Add the dollar value of the Bitcoins receivable under pending Creation Baskets.
4. Add the accrued but unpaid interest, if any and the value of other Trust assets, if any.
5. Subtract the accrued but unpaid Combined Fee (and Extraordinary Fee, if any).

6. Subtract the dollar value of the Bitcoins payable under pending Redemption Baskets.

7. Subtract other Trust expenses and liabilities, if any.

In the event that the Sponsor determines that the methodology used to determine the Bitcoin Market Price is not an appropriate basis for valuation of the Trust's Bitcoins, the Sponsor shall determine an alternative methodology.

**"Net Asset Value Per Basket"** means the product obtained by multiplying the Net Asset Value Per Unit by the number of Units comprising a Basket at such time.

**"Net Asset Value Per Unit"** means the Net Asset Value divided by the number of Units outstanding on the date of calculation.

**"OTCQX"** means the OTCQX tier of the OTC Markets Group Inc.

**"OTCQX Application"** means the application that is required by the OTCQX which, if approved, will then enable the Units to be traded on the OTCQX.

**"OTCQX Fees"** means the fees outlined by Part 5 of the OTCQX Rules for U.S. Companies, as amended from time to time.

**"Participant"** means a Person that (i) is a registered broker-dealer, (ii) has entered into a Participant Agreement with the Sponsor and the Trust, and (iii) has access to an Participant Self-Administered Account.

**"Participant Agreement"** means an agreement among the Trust, the Sponsor and a Participant, substantially in the form of Exhibit B hereto, as it may be amended or supplemented from time to time in accordance with its terms.

**"Participant Self-Administered Account"** means a Bitcoin wallet address previously known to the Custodian as belonging to the Participant.

**"Percentage Interest"** shall be a fraction, the numerator of which is the number of any Unitholder's Units and the denominator of which is the total number of Units of the Trust outstanding as of the date of determination.

**"Person"** means any natural person, partnership, limited liability company, statutory trust, corporation, association, or other legal entity.

**"Quarterly Update"** means the quarterly report that is prepared pursuant to the Alternative Reporting Standard of the OTCQX U.S. Disclosure Guidelines.

**"Redemption Basket"** means Baskets of Units redeemed in exchange for Bitcoins in an amount equal to the Redemption Basket Bitcoin Amount.

**“Redemption Basket Bitcoin Amount”** means the number of Bitcoins that will be required for each Redemption Basket, as determined from time to time by dividing the number of Bitcoins owned by the Trust at such time by the number of Units outstanding at such time (calculated to one one-hundred-millionth of one Bitcoin) and multiplying the quotient obtained by 100.

**“Redemption Order”** shall have the meaning assigned thereto in Section 6.1(a).

**“Redemption Order Date”** shall have the meaning assigned thereto in Section 6.1(a).

**“Shareholder Communications Hub”** means SM Systems, Inc. or any other Person from time to time engaged to provide such services or related services to the Trust pursuant to authority delegated by the Sponsor.

**“Sponsor”** means Grayscale Investments, LLC (formerly known as Alternative Currency Asset Management, LLC), or any substitute therefor as provided herein, or any successor thereto by merger or operation of law.

**“Sponsor Fee”** means the remaining amount, if any, paid to the Sponsor after the Constituent Fees and/or Assumed Fees from the Combined Fee have been paid first.

**“Transfer Agent”** means Continental Stock Transfer Corporation or any other Person from time to time engaged to provide such services or related services to the Trust pursuant to authority delegated by the Sponsor.

**“Treasury Regulations”** means regulations, including proposed or temporary regulations, promulgated under the Code. References herein to specific provisions of proposed or temporary regulations shall include analogous provisions of final Treasury Regulations or other successor Treasury Regulations.

**“Trust”** means Bitcoin Investment Trust, a Delaware statutory trust formed pursuant to the Certificate of Trust, the business and affairs of which are governed by this Trust Agreement.

**“Trust Agreement”** means this Third Amended and Restated Declaration of Trust and Trust Agreement, as it may at any time or from time-to-time be amended.

**“Trust Storage Account”** means a wallet that is not online and not connected to the internet, used for storage of the Trust’s Bitcoins where they are readily accessible and available to pay Redemption Baskets and Trust expenses.

**“Trust Safekeeping Account”** means a wallet that is not online and not connected to the internet, used for “deep” cold storage of the Trust’s Bitcoins where they are not readily accessible and can only be accessed as provided by the rules of the Custodian.

**“Trustee”** means Delaware Trust Company (formerly known as CSC Trust Company of Delaware), its successors and assigns, or any substitute therefor as provided herein, acting not in its individual capacity but solely as trustee of the Trust.

“**Trust Estate**” means the all the Bitcoins on deposit in the Trust’s accounts, and all proceeds from the sale of Bitcoin while such proceeds are held on deposit in the Trust’s accounts, as well as any rights of the Trust pursuant to any other agreements to which the Trust is a party.

“**Unitholders**” means the Sponsor and all Limited Owners, as holders of Units, where no distinction is required by the context in which the term is used.

“**Units**” means the common units of fractional undivided beneficial interest in the profits, losses, distributions, capital and assets of, and ownership of, the Trust. Units may be owned by the Sponsor or a Limited Owner.

#### SECTION 1.2 *Name.*

(a) The name of the Trust is “Bitcoin Investment Trust” in which name the Trustee and the Sponsor cause the Trust to carry out its purposes as set forth in Section 1.5, make and execute contracts and other instruments in the name and on behalf of the Trust and sue and be sued in the name and on behalf of the Trust.

#### SECTION 1.3 *Delaware Trustee; Offices.*

(a) The sole Trustee of the Trust is Delaware Trust Company, which is located at the Corporate Trust Office or at such other address in the State of Delaware as the Trustee may designate in writing to the Unitholders. The Trustee shall receive service of process on the Trust in the State of Delaware at the foregoing address. In the event Delaware Trust Company resigns or is removed as the Trustee, the Trustee of the Trust in the State of Delaware shall be the successor Trustee, subject to Section 2.1.

(b) The principal office of the Trust, and such additional offices as the Sponsor may establish, shall be located at such place or places inside or outside the State of Delaware as the Sponsor may designate from time to time in writing to the Trustee and the Unitholders. Initially, the principal office of the Trust shall be at c/o Grayscale Investments, LLC, 636 Avenue of the Americas, 6<sup>th</sup> Floor, New York, New York 10011.

SECTION 1.4 *Declaration of Trust.* The Trust Estate shall be held in trust for the Unitholders. It is the intention of the parties hereto that the Trust shall be a statutory trust, under the Delaware Trust Statute and that this Trust Agreement shall constitute the governing instrument of the Trust. It is not the intention of the parties hereto to create a general partnership, limited partnership, limited liability company, joint stock association, corporation, bailment or any form of legal relationship other than a Delaware statutory trust that is treated as a grantor trust for U.S. federal income tax purposes and for purposes of applicable state and local tax laws. Nothing in this Trust Agreement shall be construed to make the Unitholders partners or members of a joint stock association. Effective as of the date hereof, the Trustee and the Sponsor shall have all of the rights, powers and duties set forth herein and in the Delaware Trust Statute with respect to accomplishing the purposes of the Trust. The Trustee has filed the certificate of trust required by Section 3810 of the Delaware Trust Statute in connection with the formation of the Trust under the Delaware Trust Statute.



SECTION 1.5 *Purposes and Powers.* The purposes of the Trust shall be to accept subscriptions for Units in Bitcoin in accordance with Article III hereof, to distribute Bitcoin upon redemptions of Units in accordance with Article VI hereof, and to enter into any lawful transaction and engage in any lawful activities in furtherance of or incidental to the foregoing. The Trust shall not engage in any business activity and shall not acquire or own any assets other than Bitcoin or cash from the sale of Bitcoin, as provided in this Trust Agreement, or take any of the actions set forth in Section 4.4. The Trust shall have all of the powers specified in Section 3.1 hereof as powers which may be exercised by a Sponsor on behalf of the Trust under this Trust Agreement. Nothing in this Trust Agreement shall be construed to give the Trustee or the Sponsor the power to vary the investment of the Unitholders within the meaning of Section 301.7704-4(c) or similar provisions of the Treasury Regulations, nor shall the Trustee or the Sponsor take any action that would vary the investment of the Unitholders..

SECTION 1.6 *Tax Treatment.*

Each of the parties hereto, by entering into this Trust Agreement, (i) expresses its intention that, unless the IRS determines otherwise in a private letter ruling issued to the Trust or to the Sponsor on behalf of the Trust, this amendment of the Trust Agreement shall be treated for U.S. federal income tax purposes, and for all applicable state and local tax purposes, as the creation of a new trust through a contribution by the prior trust of all of its assets to the new trust and the assumption by the new trust of all of the prior trust's liabilities, followed by a distribution by the prior trust of interests in the new trust in complete liquidation of the prior trust; (ii) the Units will qualify under applicable tax law as interests in a grantor trust which holds the Trust Estate, (iii) agrees that it will file its own U.S. federal, state and local income, franchise and other tax returns in a manner that is consistent with clause (i) of this Section 1.6 and with the classification of the Trust as a grantor trust, and (iv) agrees to use reasonable efforts to notify the Sponsor promptly upon a receipt of any notice from any taxing authority having jurisdiction over such holders of Units with respect to the treatment of the Units as anything other than interests in a grantor trust.

SECTION 1.7 *Legal Title.* Legal title to all of the Trust Estate shall be vested in the Trust as a separate legal entity; provided, however, that where applicable law in any jurisdiction requires any part of the Trust Estate to be vested otherwise, the Sponsor may cause legal title to the Trust Estate or any portion thereof to be held by or in the name of the Sponsor or any other Person (other than a Unitholder) as nominee.

## ARTICLE II

### THE TRUSTEE

SECTION 2.1 *Term; Resignation.*

(a) Delaware Trust Company has been appointed and hereby agrees to serve as the Trustee of the Trust. The Trust shall have only one Trustee unless otherwise determined by the Sponsor. The Trustee shall serve until such time as the Trust is terminated or if the Sponsor removes the Trustee or the Trustee resigns. The Trustee is appointed to serve as the trustee of the Trust in the State of Delaware for the purpose of satisfying the requirement of

Section 3807(a) of the Delaware Trust Statute that the Trust have at least one trustee with a principal place of business in Delaware. It is understood and agreed by the parties hereto that the Trustee shall have none of the duties or liabilities of the Sponsor and shall have no obligation to supervise or monitor the Sponsor or otherwise manage the Trust.

(b) The Trustee is permitted to resign upon at least one hundred eighty (180) days' notice to the Sponsor upon which date such resignation shall be effective.

**SECTION 2.2 Powers.** Except to the extent expressly set forth in Section 1.3 and this Article, the duty and authority to manage the affairs of the Trust is vested in the Sponsor, which duty and authority the Sponsor may further delegate as provided herein, all pursuant to Section 3806(b)(7) of the Delaware Trust Statute. The duties of the Trustee shall be limited to (i) accepting legal process served on the Trust in the State of Delaware, (ii) the execution of any certificates required to be filed with the Secretary of State of the State of Delaware which the Trustee is required to execute under Section 3811 of the Delaware Trust Statute, and (iii) any other duties specifically allocated to the Trustee in this Trust Agreement. The Trustee shall provide prompt notice to the Sponsor of its performance of any of the foregoing. The Sponsor shall reasonably keep the Trustee informed of any actions taken by the Sponsor with respect to the Trust that would reasonably be expected to affect the rights, obligations or liabilities of the Trustee hereunder or under the Delaware Trust Statute.

**SECTION 2.3 Compensation and Expenses of the Trustee.** The Trustee shall be entitled to receive from the Sponsor reasonable compensation for its services hereunder as set forth in a separate fee agreement and shall be entitled to be reimbursed by the Trust for reasonable out-of-pocket expenses incurred by it in the performance of its duties hereunder, including without limitation, the reasonable compensation, out-of-pocket expenses and disbursements of counsel and such other agents as the Trustee may employ in connection with the exercise and performance of its rights and duties hereunder.

**SECTION 2.4 Indemnification.**

(a) The Trust hereby agrees to be primary obligor and shall (i) compensate the Trustee in accordance with a separate fee agreement with the Trustee, (ii) reimburse the Trustee for all reasonable expenses (including reasonable fees and expenses of counsel and other experts) and (iii) indemnify, defend and hold harmless the Trustee and any of the officers, directors, employees and agents of the Trustee (the "**Indemnified Persons**") from and against any and all losses, damages, liabilities, claims, actions, suits, costs, expenses, disbursements (including the reasonable fees and expenses of counsel), taxes and penalties of any kind and nature whatsoever (collectively, "**Expenses**"), to the extent that such Expenses arise out of or are imposed upon or asserted at any time against such Indemnified Persons with respect to the performance of this Trust Agreement, the creation, operation or termination of the Trust or the transactions contemplated hereby; provided, however, that the Trust shall not be required to indemnify any Indemnified Person for any Expenses which are a result of the willful misconduct, bad faith or gross negligence of an Indemnified Person. If the Trust shall have insufficient assets or improperly refuses to pay an Indemnified Person within 60 days of a request for payment owed hereunder, DCG Holdco shall, as secondary obligor, compensate or reimburse the Trustee or indemnify, defend and hold harmless an Indemnified Person as if it were the primary obligor

hereunder; provided, however, that DCG Holdco shall not be required to indemnify any Indemnified Person for any Expenses which are a result of the willful misconduct, bad faith or gross negligence of an Indemnified Person. To the fullest extent permitted by law and by the requirement for treatment of the Trust as a grantor trust for tax purposes, Expenses to be incurred by an Indemnified Person shall, from time to time, be advanced by, or on behalf of, DCG Holdco prior to the final disposition of any matter upon receipt by DCG Holdco of an undertaking by, or on behalf of, such Indemnified Person to repay such amount if it shall be determined that the Indemnified Person is not entitled to be indemnified under this Agreement.

(b) As security for any amounts owing to the Trustee hereunder, the Trustee shall have a lien against the Trust property, which lien shall be prior to the rights of the Sponsor, DCG Holdco or any other beneficial owner of the Trust. The obligations of DCG Holdco and the Trust to indemnify the Indemnified Persons under this Section 3 shall survive the termination of this Trust Agreement.

SECTION 2.5 *Successor Trustee.* Upon the resignation or removal of the Trustee, the Sponsor shall appoint a successor Trustee by delivering a written instrument to the outgoing Trustee. Any successor Trustee must satisfy the requirements of Section 3807 of the Delaware Trust Statute. The successor Trustee shall become fully vested with all of the rights, powers, duties and obligations of the outgoing Trustee under this Trust Agreement, with like effect as if originally named as Trustee, and the outgoing Trustee shall be discharged of its duties and obligations under this Trust Agreement. Any business entity into which the Trustee may be merged or converted or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any entity succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, to the fullest extent permitted by law without the execution or filing of any paper or any further act on the part of any of the parties hereto.

SECTION 2.6 *Liability of Trustee.* Except as otherwise provided in this Article, in accepting the trust created hereby, Delaware Trust Company acts solely as Trustee hereunder and not in its individual capacity, and all Persons having any claim against Delaware Trust Company by reason of the transactions contemplated by this Trust Agreement and any other agreement to which the Trust is a party shall look only to the Trust Estate for payment or satisfaction thereof. The Trustee shall not be liable or accountable hereunder to the Trust or to any other Person or under any other agreement to which the Trust is a party, except for the Trustee's own fraud, gross negligence, bad faith or willful misconduct. In particular, but not by way of limitation:

(a) The Trustee shall have no liability or responsibility for the validity or sufficiency of this Trust Agreement or for the form, character, genuineness, sufficiency, value or validity of the Trust Estate;

(b) The Trustee has not prepared or verified, and shall not be responsible or liable for, any information, disclosure or other statement in the Memorandum or in any other document issued or delivered in connection with the sale or transfer of the Shares;

(c) The Trustee shall not be responsible or liable for the genuineness, enforceability, collectability, value, sufficiency, location or existence of any of the Bitcoins or other assets of the Trust;

(d) The Trustee shall not be liable for any actions taken or omitted to be taken by it in accordance with the instructions of the Sponsor or the Liquidating Trustee;

(e) The Trustee shall not have any liability for the acts or omissions of the Sponsor, the Custodian or their respective delegates;

(f) The Trustee shall have no duty or obligation to supervise the performance of any obligations of the Sponsor, the Custodian or their respective delegates or any Participant;

(g) No provision of this Trust Agreement shall require the Trustee to act or expend or risk its own funds or otherwise incur any financial liability in the performance of any of its rights or powers hereunder;

(h) Under no circumstances shall the Trustee be liable for indebtedness evidenced by or other obligations of the Trust arising under this Trust Agreement or any other agreements to which the Trust is a party;

(i) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Trust Agreement, or to institute, conduct or defend any litigation under this Trust Agreement or any other agreements to which the Trust is a party, at the request, order or direction of the Sponsor unless the Sponsor has offered to Delaware Trust Company (in its capacity as Trustee and individually) security or indemnity satisfactory to it against the costs, expenses and liabilities that may be incurred by Delaware Trust Company (including, without limitation, the reasonable fees and expenses of its counsel) therein or thereby;

(j) Notwithstanding anything contained herein to the contrary, the Trustee shall not be required to take any action in any jurisdiction other than in the State of Delaware if the taking of such action will (i) require the consent or approval or authorization or order of or the giving of notice to, or the registration with or taking of any action in respect of, any state or other governmental authority or agency of any jurisdiction other than the State of Delaware, (ii) result in any fee, tax or other governmental charge under the laws of any jurisdiction or any political subdivision thereof in existence as of the date hereof other than the State of Delaware becoming payable by the Trustee or (iii) subject the Trustee to personal jurisdiction, other than in the State of Delaware, for causes of action arising from personal acts unrelated to the consummation of the transactions by the Trustee, as the case may be, contemplated hereby; and

(k) To the extent that, at law or in equity, the Trustee has duties (including fiduciary duties) and liabilities relating thereto to the Trust, the Unitholders or to any other Person, the Trustee acting under this Trust Agreement shall not be liable to the Trust, the Unitholders or to any other Person for its good faith reliance on the provisions of this Trust Agreement. The provisions of this Trust Agreement, to the extent that they restrict or eliminate the duties and liabilities of the Trustee otherwise existing at law or in equity are agreed by the parties hereto to replace such other duties and liabilities of the Trustee.

(l) The Trustee shall not be liable for punitive, exemplary, consequential or similar damages for a breach of the Trust Agreement under any circumstances.

**SECTION 2.7** *Reliance; Advice of Counsel.* In the absence of bad faith, the Trustee may conclusively rely upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Trust Agreement in determining the truth of the statements and the correctness of the opinions contained therein, and shall incur no liability to anyone in acting or not acting on any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper believed by it to be genuine and believed by it to be signed by the proper party or parties and need not investigate any fact or matter pertaining to or in any such document; provided, however, that the Trustee shall have examined any certificates or opinions so as to reasonably determine compliance of the same with the requirements of this Trust Agreement. The Trustee may accept a certified copy of a resolution of the board of directors or other governing body of any corporate party as conclusive evidence that such resolution has been duly adopted by such body and that the same is in full force and effect. As to any fact or matter the method of the determination of which is not specifically prescribed herein, the Trustee may for all purposes hereof rely on a certificate, signed by the president or any vice president or by the treasurer or other authorized officers of the relevant party, as to such fact or matter, and such certificate shall constitute full protection to the Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon.

(b) In the exercise or administration of the Trust hereunder and in the performance of its duties and obligations under this Trust Agreement, the Trustee, at the expense of the Trust (i) may act directly or through its agents, attorneys, custodians or nominees pursuant to agreements entered into with any of them, and the Trustee shall not be liable for the conduct or misconduct of such agents, attorneys, custodians or nominees if such agents, attorneys, custodians or nominees shall have been selected by the Trustee with reasonable care and (ii) may consult with counsel, accountants and other skilled professionals to be selected with reasonable care by it. The Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the opinion or advice of any such counsel, accountant or other such Persons.

**SECTION 2.8** *Payments to the Trustee.* Any amounts paid to the Trustee pursuant to this Article shall be deemed not to be a part of the Trust Estate immediately after such payment. Any amounts owing to the Trustee under this Trust Agreement shall constitute a claim against the Trust Estate.

### **ARTICLE III**

#### **UNITS; CAPITAL CONTRIBUTIONS; CREATIONS AND ISSUANCE OF CREATION BASKETS**

**SECTION 3.1** *General.* The Sponsor shall have the power and authority, without Limited Owner approval, to issue Units from time to time as it deems necessary or desirable. The number of Units authorized shall be unlimited, and the Units so authorized may be represented in part by fractional Units, calculated to one one-hundred-millionth of one Bitcoin. From time to time, the Sponsor may divide or combine the Units into a greater or lesser number

without thereby changing the proportionate beneficial interests. The Sponsor may issue Units solely in exchange for contributions of Bitcoin (or for no consideration if pursuant to a Unit dividend or split-up), all without action or approval of the Limited Owners. All Units when so issued on the terms determined by the Sponsor shall be fully paid and non-assessable. Every Unitholder, by virtue of having purchased or otherwise acquired a Unit, shall be deemed to have expressly consented and agreed to be bound by the terms of this Trust Agreement.

SECTION 3.2 *Offer of Units; Procedures for Creation and Issuance of Creation Baskets.*

(a) General. The following procedures, as supplemented by the more detailed procedures specified in the Exhibits, annexes, attachments and procedures, as applicable, to the Participant Agreement, which may be amended from time to time in accordance with the provisions of the Participant Agreement (and any such amendment will not constitute an amendment of this Trust Agreement), will govern the Trust with respect to the creation and issuance of Creation Baskets. Subject to the limitations upon and requirements for issuance of Creation Baskets stated herein and in such procedures, the number of Creation Baskets which may be issued by the Trust is unlimited.

(i) On any Business Day, a Participant may deposit the Basket Bitcoin Amount with the Custodian and submit an order to create a Basket (a “**Creation Order**”) for Creation Baskets from the Trust via notification to the Sponsor or its delegate in the manner provided in the Participant Agreement. Creation Orders must be received by 6:00 p.m., Eastern time on a Business Day (the “**Creation Order Date**”). The Sponsor or its delegate will process Creation Orders only from Participants with respect to which the Participant Agreement is in full force and effect. The Sponsor or its delegate will maintain and make available at the Trust’s principal offices during normal business hours a current list of the Participants with respect to which the Participant Agreement is in full force and effect.

(ii) Any Creation Order is subject to rejection by the Sponsor or its delegate pursuant to Section 3.2(b).

(iii) After receiving the Creation Basket Bitcoin Amount and accepting a Participant’s Creation Order, the Sponsor or its delegate will have the Transfer Agent credit the Creation Baskets to fill the Participant’s Creation Order within one Business Day immediately following the Creation Order Date.

(iv) Determination of required deposits. The Creation Basket Bitcoin Amount required for a Creation Basket will be determined by dividing the number of Bitcoins owned by the Trust at such time by the number of Units outstanding at such time (calculated to one one-hundred-millionth of one Bitcoin) and multiplying the quotient obtained by 100 and the number of Creation Baskets. The Sponsor or its delegate has final determination of all questions as to the composition of the Creation Basket Bitcoin Amount.

(v) Delivery of required deposits. A Participant who places a Creation Order shall deliver the Creation Basket Bitcoin Amount to the Bitcoin Account, the Trust Storage Account or the Trust Safekeeping Account, at the Custodian's instruction, by no later than 6:00 p.m., Eastern time on the Creation Order Day. The Participant shall initiate delivery of the Creation Basket Bitcoin Amount from the Participant Self-Administered Account. Deposits other than those received from a Participant Self-Administered Account shall be rejected. The expense and risk of delivery, ownership and safekeeping of Bitcoins, until such Bitcoins have been received by the Trust, shall be borne solely by the Participant. Upon receipt of the Creation Basket Bitcoin Amount, the Custodian shall transfer the Creation Bitcoin Basket Amount to the Trust Storage Account or the Trust Safekeeping Account, as applicable. The Sponsor or its delegate shall then direct the Transfer Agent to credit the number of Creation Baskets ordered to the Participant's account on the next Business Day after the Creation Order Date.

(vi) The Custodian may accept delivery of Bitcoins by such other means as the Sponsor, from time to time, may determine to be acceptable for the Trust.

(b) Rejection. The delivery of the Baskets against deposit of the Creation Basket Bitcoin Amount may be suspended generally, or refused with respect to particular requested creations, during any period when the transfer books of the Sponsor or its delegate are closed or if any such action is deemed necessary or advisable by the Sponsor or its delegate or for any reason at any time or from time to time. None of the Sponsor, its delegates, or the Custodian shall be liable for the rejection or acceptance of any Creation Order or Creation Basket Bitcoin Amount.

### SECTION 3.3 *Book-Entry-Only System*

(a) Units shall be held in book-entry form by the Transfer Agent. The Sponsor or its delegate shall direct the Transfer Agent to credit or debit the number of Creation or Redemption Baskets to the applicable Participant. The Transfer Agent shall issue or cancel each Participant's Creation Basket or Redemption Basket, as applicable.

(b) Successor Custodian. If a successor to the Custodian shall be employed, the Trust and the Sponsor shall establish procedures acceptable to such successor with respect to the matters addressed in this Section.

SECTION 3.4 *Assets of the Trust.* The Trust Estate shall irrevocably belong to the Trust for all purposes, subject only to the rights of creditors of the Trust and except as may otherwise be required by applicable tax laws, and shall be so recorded upon the books of account of the Trust.

SECTION 3.5 *Liabilities of the Trust.* The Trust Estate shall be charged with the liabilities of the Trust; and all expenses, costs, charges and reserves attributable to the Trust. The Sponsor shall have full discretion, to the extent not inconsistent with applicable law, to determine which items shall be treated as income and which items as capital, and each such determination and allocation shall be conclusive and binding upon the Unitholders.

SECTION 3.6 *Distributions.* Distributions on Units, if any, may be paid with such frequency as the Sponsor may determine, which may be daily or otherwise, to the Unitholders from the Trust Estate, after providing for actual and accrued liabilities. All distributions on Units thereof shall be distributed pro rata to the Unitholders in proportion to the total outstanding Units held by such Unitholders at the date and time of record established for the payment of such distribution. Such distributions may be made in cash or Units as determined by the Sponsor or pursuant to any program that the Sponsor may have in effect at the time for the election by each Unitholder of the mode of the making of such distribution to that Unitholder.

(b) The Units shall represent units of beneficial interest in the Trust Estate. Each Unitholder shall be entitled to receive its pro rata share of distributions in accordance with Section 3.6(a).

SECTION 3.7 *Voting Rights.* Notwithstanding any other provision hereof, on each matter submitted to a vote of the Unitholders, each Unitholder shall be entitled to a proportionate vote based upon the product of the Net Asset Value Per Unit multiplied by the number of Units, or fraction thereof, standing in its name on the books of the Trust in accordance with Section 3.3.

SECTION 3.8 *Equality.* All Units shall represent an equal proportionate beneficial interest in the assets of the Trust subject to the liabilities of the Trust, and each Unit shall be equal to each other Unit. The Sponsor may from time to time divide or combine the Units into a greater or lesser number of Units without thereby changing the proportionate beneficial interest in the assets of the Trust or in any way affecting the rights of Unitholders.

## ARTICLE IV

### THE SPONSOR

SECTION 4.1 *Management of the Trust.* Pursuant to Section 3806(b)(7) of the Delaware Trust Statute, the Trust shall be managed by the Sponsor in accordance with this Trust Agreement. The Sponsor may delegate as provided herein, the duty and authority to manage the affairs of the Trust. Any determination as to what is in the interests of the Trust made by the Sponsor in good faith shall be conclusive. In constructing the provisions of this Trust Agreement, the presumption shall be in favor of a grant of power to the Sponsor. The enumeration of any specific power in this Trust Agreement shall not be construed as limiting the aforesaid power.

SECTION 4.2 *Authority of Sponsor.* In addition to and not in limitation of any rights and powers conferred by law or other provisions of this Trust Agreement, and except as limited, restricted or prohibited by the express provisions of this Trust Agreement or the Delaware Trust Statute, the Sponsor shall have and may exercise on behalf of the Trust, all powers and rights necessary, proper, convenient or advisable to effectuate and carry out the purposes and objectives of the Trust, which shall include, without limitation, the following:

(a) To enter into, execute, deliver and maintain, and to cause the Trust to perform its obligations under, contracts, agreements and any or all other documents and



instruments, and to do and perform all such things as may be in furtherance of Trust purposes or necessary or appropriate for the offer and sale of the Units, including, but not limited to, contracts with third parties various services, provided, however, that such services may be performed by an Affiliate or Affiliates of the Sponsor so long as the Sponsor has made a good faith determination that: (A) the Affiliate which it proposes to engage to perform such services is qualified to do so (considering the prior experience of the Affiliate or the individuals employed thereby); (B) the terms and conditions of the agreement pursuant to which such Affiliate is to perform services for the Trust are no less favorable to the Trust than could be obtained from equally-qualified unaffiliated third parties; and (C) the maximum period covered by the agreement pursuant to which such Affiliate is to perform services for the Trust shall not exceed one year, and such agreement shall be terminable without penalty upon one hundred twenty (120) days' prior written notice by the Trust;

(b) To establish, maintain, deposit into, sign checks and/or otherwise draw upon accounts on behalf of the Trust with appropriate banking and savings institutions, and execute and/or accept any instrument or agreement incidental to the Trust's purposes, any such instrument or agreement so executed or accepted by the Sponsor in the Sponsor's name shall be deemed executed and accepted on behalf of the Trust by the Sponsor;

(c) To deposit, withdraw, pay, retain and distribute the Trust Estate or any portion thereof in any manner consistent with the provisions of this Trust Agreement;

(d) To supervise the preparation of the Memorandum and supplements and amendments thereto;

(e) To pay or authorize the payment of distributions to the Unitholders and expenses of the Trust;

(f) To prepare, or cause to be prepared, and file, or cause to be filed, an application to enable the Units to be traded on the OTCQX and to take any other action and execute and deliver any certificate or documents that may be necessary to effectuate such trading; and

(g) In the sole and absolute discretion of the Sponsor, to admit an Affiliate or Affiliates of the Sponsor as additional Sponsors. Notwithstanding the foregoing, the Sponsor may not admit Affiliate(s) of the Sponsor as an additional Sponsor if it has received notice of its removal as a Sponsor, pursuant to Section 7.2(d).

**SECTION 4.3** *Obligations of the Sponsor.* In addition to the obligations expressly provided by the Delaware Trust Statute or this Trust Agreement, the Sponsor shall:

(a) Devote such of its time to the business and affairs of the Trust as it shall, in its discretion exercised in good faith, determine to be necessary to carry out the purposes of the Trust for the benefit of the Trust and the Limited Owners;

(b) Execute, file, record and/or publish all certificates, statements and other documents and do any and all other things as may be appropriate for the formation, qualification and operation of the Trust and for the conduct of its business in all appropriate jurisdictions;

- (c) Retain independent public accountants to audit the accounts of the Trust;
- (d) Employ attorneys to represent the Sponsor and as necessary, the Trust;
- (e) Select and enter into agreements with the Trust's Trustee and any other service provider;
- (f) Use its best efforts to maintain the status of the Trust as a grantor trust for U.S. federal income tax purposes under Subpart E, Part I of Subchapter J of the Code;
- (g) Monitor all fees charged to the Trust, and the services rendered by the service providers to the Trust, to determine whether the fees paid by, and the services rendered to, the Trust are at competitive rates and are the best price and services available under the circumstances, and if necessary, renegotiate the fee structure to obtain such rates and services for the Trust;
- (h) Have fiduciary responsibility for the safekeeping and use of the Trust Estate, whether or not in the Sponsor's immediate possession or control, and the Sponsor will not employ or permit others to employ the Trust Estate in any manner except for the benefit of the Trust, including, among other things, the utilization of any portion of the Trust Estate as compensating balances for the exclusive benefit of the Sponsor. The Sponsor shall at all times act with integrity and good faith and exercise due diligence in all activities relating to the Trust and in resolving conflicts of interest;
- (i) Enter into a Participant Agreement with each Participant and discharge the duties and responsibilities of the Trust and the Sponsor thereunder;
- (j) Receive directly or through its delegates from Participants and process properly submitted Creation Orders, as described in Section 3.2(a);
- (k) In connection with Creation Orders, receive directly or through its delegates the number of Bitcoins in an amount equal to the Creation Basket Bitcoin Amount from Participants;
- (l) In connection with Creation Orders, after receiving the Creation Basket Bitcoin Amount and accepting a Participant's Creation Order, the Sponsor or its delegate will direct the Transfer Agent to credit the Creation Baskets to fill the Participant's Creation Order within one Business Day immediately following the Creation Order Date;
- (m) Receive directly or through its delegates from Participants and process properly submitted Redemption Orders, as described in Section 6.1(a), or as may from time to time be permitted by Section 6.2;
- (n) In connection with Redemption Orders, after receiving the Redemption Order specifying the number of Redemption Baskets that the Participant wishes to redeem and confirming the Participant Self-Administered Account information, the Sponsor or its delegates instructs the Custodian to send the Participant a number of Bitcoins equal to the Redemption Basket Bitcoin Amount and directs the Transfer Agent to debit the number of Redemption

Baskets redeemed from the Participant's account on the next business day after the redemption order date;

(o) Interact with the Custodian and any other party as required;

(p) If the OTCQX Application is approved by OTCQX, then the Sponsor, on behalf of the Trust, shall cause the Trust to comply with all rules, orders and regulations of the OTCQX to which the Trust is subject as a result of the approval of the OTCQX Application and the Sponsor will take all such other actions which may reasonably be taken which are necessary for the Units to remain traded on the OTCQX until the Trust is either terminated or if the Units are no longer traded on the OTCQX. In addition, the Sponsor is authorized and shall take, all actions to prepare and, to the extent required by this Agreement or by law, mail to Unitholders any reports, press releases or statements, financial or otherwise, that the Sponsor determines are required to be provided to Unitholders by applicable law or governmental regulation or the requirements of OTCQX, as applicable;

(q) Delegate those of its duties hereunder as it shall determine from time to time to one or more Distributors, add any additional service providers, if needed and as applicable;

(r) Perform such other services as the Sponsor believes that the Trust may from time to time require; and

(s) In general, to do everything necessary, suitable or proper for the accomplishment of any purpose or the attainment of any object or the furtherance of any power herein set forth, either alone or in association with others, and to do every other act or thing incidental or appurtenant to or growing out of or connected with the aforesaid purposes, objects or powers.

The foregoing clauses shall be construed both as objects and powers, and the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the general powers of the Sponsor. Any action by the Sponsor hereunder shall be deemed an action on behalf of the Trust, and not an action in an individual capacity.

SECTION 4.4 *General Prohibitions.* The Trust shall not:

(a) Receive any property other than Bitcoin upon the issuance or sale of Units;

(b) Hold any property other than Bitcoins or cash from the sale of Bitcoins;

(c) Redeem the Units other than to fund a redemption request from a Participant, as provided in Section 4.10 or Section 5.2 or upon the dissolution of the Trust;

(d) Borrow money from or loan money to any Unitholder (including the Sponsor) or other Person;

(e) Create, incur, assume or suffer to exist any lien, mortgage, pledge conditional sales or other title retention agreement, charge, security interest or encumbrance, except liens for taxes not delinquent or being contested in good faith and by appropriate proceedings and for which appropriate reserves have been established;

(f) Commingle its assets with those of any other Person, except to the extent as permitted under applicable law and the regulation;

(g) Permit rebates to be received by the Sponsor or any Affiliate of the Sponsor, or permit the Sponsor or any Affiliate of the Sponsor to engage in any reciprocal business arrangements which would circumvent the foregoing prohibition;

(h) Enter into any contract with the Sponsor or an Affiliate of the Sponsor (except for selling agreements for the sale of Units) which has a term of more than one year and which does not provide that it may be canceled by the Trust without penalty on sixty (60) days prior written notice or for the provision of services, except at rates and terms at least as favorable as those which may be obtained from third parties in arm's length negotiations;

(i) Enter into any exclusive brokerage contract; or

(j) Cause the Trust to elect to be treated as an association taxable as a corporation for U.S. federal income tax purposes.

SECTION 4.5 *Liability of Covered Persons.* A Covered Person shall have no liability to the Trust or to any Unitholder or other Covered Person for any loss suffered by the Trust which arises out of any action or inaction of such Covered Person if such Covered Person, in good faith, determined that such course of conduct was in the best interest of the Trust and such course of conduct did not constitute fraud, gross negligence, bad faith or willful misconduct of such Covered Person. Subject to the foregoing, neither the Sponsor nor any other Covered Person shall be personally liable for the return or repayment of all or any portion of the capital or profits of any Limited Owner or assignee thereof, it being expressly agreed that any such return of capital or profits made pursuant to this Trust Agreement shall be made solely from the assets of the Trust without any rights of contribution from the Sponsor or any other Covered Person. A Covered Person shall not be liable for the conduct or misconduct of any delegatee selected by the Sponsor with reasonable care.

SECTION 4.6 *Fiduciary Duty.*

(a) To the extent that, at law or in equity, the Sponsor has duties (including fiduciary duties) and liabilities relating thereto to the Trust, the Unitholders or to any other Person, the Sponsor acting under this Trust Agreement shall not be liable to the Trust, the Unitholders or to any other Person for its good faith reliance on the provisions of this Trust Agreement subject to the standard of care in Section 4.5 herein. The provisions of this Trust Agreement, to the extent that they restrict or eliminate the duties and liabilities of the Sponsor otherwise existing at law or in equity are agreed by the parties hereto to replace such other duties and liabilities of the Sponsor. To the fullest extent permitted by law, no person other than the Sponsor and the Trustee shall have any duties (including fiduciary duties) or liabilities at law or in equity to the Trust and the Limited Owners or any other person.

(b) Unless otherwise expressly provided herein:

(i) whenever a conflict of interest exists or arises between the Sponsor or any of its Affiliates, on the one hand, and the Trust or any Unitholder or any other Person, on the other hand; or

(ii) whenever this Trust Agreement or any other agreement contemplated herein or therein provides that the Sponsor shall act in a manner that is, or provides terms that are, fair and reasonable to the Trust, any Unitholder or any other Person,

the Sponsor shall resolve such conflict of interest, take such action or provide such terms, considering in each case the relative interest of each party (including its own interest) to such conflict, agreement, transaction or situation and the benefits and burdens relating to such interests, any customary or accepted industry practices, and any applicable generally accepted accounting practices or principles. In the absence of bad faith by the Sponsor, the resolution, action or terms so made, taken or provided by the Sponsor shall not constitute a breach of this Trust Agreement or any other agreement contemplated herein or of any duty or obligation of the Sponsor at law or in equity or otherwise.

(c) The Sponsor and any Affiliate of the Sponsor may engage in or possess an interest in other profit-seeking or business ventures of any nature or description, independently or with others, whether or not such ventures are competitive with the Trust and the doctrine of corporate opportunity, or any analogous doctrine, shall not apply to the Sponsor. If the Sponsor acquires knowledge of a potential transaction, agreement, arrangement or other matter that may be an opportunity for the Trust, it shall have no duty to communicate or offer such opportunity to the Trust, and the Sponsor shall not be liable to the Trust or to the Unitholders for breach of any fiduciary or other duty by reason of the fact that the Sponsor pursues or acquires for, or directs such opportunity to another Person or does not communicate such opportunity or information to the Trust. Neither the Trust nor any Unitholder shall have any rights or obligations by virtue of this Trust Agreement or the trust relationship created hereby in or to such independent ventures or the income or profits or losses derived therefrom, and the pursuit of such ventures, even if competitive with the purposes of the Trust, shall not be deemed wrongful or improper. Except to the extent expressly provided herein, the Sponsor may engage or be interested in any financial or other transaction with the Trust, the Unitholders or any Affiliate of the Trust or the Unitholders.

(d) To the fullest extent permitted by law and notwithstanding any other provision of this Agreement or in any agreement contemplated herein or applicable provisions of law or equity or otherwise, whenever in this Trust Agreement a Person is permitted or required to make a decision (a) in its "sole discretion" or "discretion" or under a grant of similar authority or latitude, the Person shall be entitled to consider only such interests and factors as it desires, including its own interests, and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Trust, the Unitholders or any other Person, or (b) in its "good faith" or under another express standard, the Person shall act under such express standard and shall not be subject to any other or different standard. The term

"good faith" as used in this Trust Agreement shall mean subjective good faith as such term is understood and interpreted under Delaware law.

SECTION 4.7 *Indemnification of the Sponsor.*

(a) The Sponsor shall be indemnified by the Trust against any losses, judgments, liabilities, expenses and amounts paid in settlement of any claims sustained by it in connection with its activities for the Trust, provided that (i) the Sponsor was acting on behalf of or performing services for the Trust and has determined, in good faith, that such course of conduct was in the best interests of the Trust and such liability or loss was not the result of fraud, gross negligence, bad faith, willful misconduct, or a material breach of this Trust Agreement on the part of the Sponsor and (ii) any such indemnification will only be recoverable from the Trust Estate. All rights to indemnification permitted herein and payment of associated expenses shall not be affected by the dissolution or other cessation to exist of the Sponsor, or the withdrawal, adjudication of bankruptcy or insolvency of the Sponsor, or the filing of a voluntary or involuntary petition in bankruptcy under Title 11 of the Code by or against the Sponsor.

(b) Notwithstanding the provisions of Section 4.7(a) above, the Sponsor and any Person acting as broker-dealer for the Trust shall not be indemnified for any losses, liabilities or expenses arising from or out of an alleged violation of U.S. federal or state securities laws unless (i) there has been a successful adjudication on the merits of each count involving alleged securities law violations as to the particular indemnitee and the court approves the indemnification of such expenses (including, without limitation, litigation costs), (ii) such claims have been dismissed with prejudice on the merits by a court of competent jurisdiction as to the particular indemnitee and the court approves the indemnification of such expenses (including, without limitation, litigation costs) or (iii) a court of competent jurisdiction approves a settlement of the claims against a particular indemnitee and finds that indemnification of the settlement and related costs should be made.

(c) The Trust shall not incur the cost of that portion of any insurance which insures any party against any liability, the indemnification of which is herein prohibited.

(d) Expenses incurred in defending a threatened or pending civil, administrative or criminal action suit or proceeding against the Sponsor shall be paid by the Trust in advance of the final disposition of such action, suit or proceeding, if (i) the legal action relates to the performance of duties or services by the Sponsor on behalf of the Trust; (ii) the legal action is initiated by a third party who is not a Limited Owner or the legal action is initiated by a Limited Owner and a court of competent jurisdiction specifically approves such advance; and (iii) the Sponsor undertakes to repay the advanced funds with interest to the Trust in cases in which it is not entitled to indemnification under this Section 4.7.

(e) The term "Sponsor" as used only in this Section 4.7 shall include, in addition to the Sponsor, any other Covered Person performing services on behalf of the Trust and acting within the scope of the Sponsor's authority as set forth in this Trust Agreement.

(f) In the event the Trust is made a party to any claim, dispute, demand or litigation or otherwise incurs any loss, liability, damage, cost or expense as a result of or in connection with any Limited Owner's (or assignee's) obligations or liabilities unrelated to Trust business, such Limited Owner (or assignees cumulatively) shall indemnify, defend, hold harmless, and reimburse the Trust for all such loss, liability, damage, cost and expense incurred, including attorneys' and accountants' fees.

SECTION 4.8 *Expenses and Limitations Thereon.*(a) Combined Fee.

(i) The Trust shall pay a combined fee ("**Combined Fee**") which accrues daily at an annual rate of 2% of the NAV of the Trust and is payable to the Sponsor monthly in arrears.

(ii) Although the Combined Fee is calculated in USD, the Combined Fee shall be paid in the equivalent number of Bitcoins monthly in arrears. The exchange rate that shall be used to convert the Combined Fee from USD to the appropriate number of Bitcoins shall be calculated based upon the Bitcoin Market Price at 4:00 p.m., Eastern time in the case of daily accruals and as of the last day of each month for withdrawal and payment in arrears ("**Combined Fee Exchange Rate**"). The Combined Fee Exchange Rate does not include fees and expenses for converting USD into Bitcoins.

(iii) After converting the Combined Fee from USD into the required number of Bitcoins based upon the Actual Exchange Rate (as defined below), the Sponsor, its delegates, or the Custodian shall withdraw the corresponding number of Bitcoins from the Trust Storage Account.

(iv) In order to pay the Combined Fee in USD, the Sponsor may be required to convert the Combined Fee, as reflected by the appropriate number of Bitcoins, into USD. The Sponsor shall use its best efforts within a reasonable time frame in order to seek the highest exchange rate and lowest fees ("**Actual Exchange Rate**"). It is expected that the Combined Fee Exchange Rate and the Actual Exchange Rate may differ.

(v) At the Sponsor's election and upon agreement from the Administrator, the Sponsor may elect to (i) direct its delegates or the Custodian to withdraw the Bitcoin amount comprising the Combined Fee, (ii) convert the Combined Fee to USD and (iii) pay such dollar amount to the Sponsor, who will then pay itself as well as the relevant Constituent Fees and Assumed Fees (as defined below). Alternatively, the Sponsor may elect to (i) direct its delegates or the Custodian to withdraw the Bitcoin amount comprising the Combined Fee, (ii) convert the Combined Fee to USD and (iii) pay certain Constituent Fees and/or Assumed Fees from the Combined Fee and the remaining amount, if any, to the Sponsor.

(vi) As consideration for receipt of the Combined Fee, the Sponsor shall assume and pay the following fees and expenses of the Trust: the Marketing Fee, Custodian Fee and the Sponsor Fee (the "**Constituent Fees**"), the Shareholder Communications Hub fee, Transfer Agent fee, Trustee fee, OTCQX Fees and expenses

related to public trading on OTCQX in an amount up to \$600,000 annually (including legal and audit fees and expenses), any other legal and accounting fees, regulatory fees, printing and mailing costs, and applicable license fees (along with the Constituent Fees, the “**Assumed Fees**”).

(b) Extraordinary Fee.

(i) In certain extraordinary circumstances, the Trust may pay expenses in addition to the Combined Fee and the Assumed Fees, such as, but not limited to, taxes and governmental charges, expenses and costs of any extraordinary services performed by the Sponsor (or any other Service Provider) on behalf of the Trust to protect the Trust or the interests of Unitholders, indemnification expenses, fees and expenses related to public trading on OTCQX in excess of \$600,000 annually, and extraordinary legal fees and expenses (collectively, “**Extraordinary Fees**”).

(c) The Sponsor, its delegates or the Custodian shall withdraw Bitcoins as needed from the Trust Storage Account to pay the Combined Fees (as well as the Extraordinary Fees, if any).

(d) The Sponsor or any Affiliate of the Sponsor may only be reimbursed for the actual cost to the Sponsor or such Affiliate of any expenses which it advances on behalf of the Trust for which payment the Trust is responsible. In addition, payment to the Sponsor or such Affiliate for indirect expenses incurred in performing services for the Trust in its capacity as the Sponsor of the Trust, such as salaries and fringe benefits of officers and directors, rent or depreciation, utilities and other administrative items generally falling within the category of the Sponsor’s “overhead,” is prohibited.

**SECTION 4.9** *Business of Unitholders.* Except as otherwise specifically provided herein, any of the Unitholders and any shareholder, officer, director, employee or other person holding a legal or beneficial interest in an entity which is a Unitholder, may engage in or possess an interest in business ventures of every nature and description, independently or with others, and the pursuit of such ventures, even if competitive with the business of the Trust, shall not be deemed wrongful or improper.

**SECTION 4.10** *Voluntary Withdrawal of the Sponsor.* The Sponsor may withdraw voluntarily as the Sponsor of the Trust only upon one hundred and twenty (120) days’ prior written notice to all Limited Owners and the Trustee. If the withdrawing Sponsor is the last remaining Sponsor, Limited Owners holding Units equal to at least a majority (over 50%) of the Shares (not including Units held by the Sponsor) may vote to elect and appoint, effective as of a date on or prior to the withdrawal, a successor Sponsor who shall carry on the business of the Trust. In the event of its removal or withdrawal, the Sponsor shall be entitled to a redemption of its Units at the Net Asset Value. If the Sponsor withdraws and a successor Sponsor is named, the withdrawing Sponsor shall pay all expenses as a result of its withdrawal.

**SECTION 4.11** *Authorization of Memorandum.* Each Limited Owner (or any permitted assignee thereof) hereby agrees that the Trust, the Sponsor and the Trustee are authorized to execute, deliver and perform the agreements, acts, transactions and matters



contemplated hereby or described in or contemplated by the Memorandum on behalf of the Trust without any further act, approval or vote of the Limited Owners, notwithstanding any other provision of this Trust Agreement, the Delaware Trust Statute or any applicable law, rule or regulation.

SECTION 4.12 *Litigation.* The Sponsor is hereby authorized to prosecute, defend, settle or compromise actions or claims at law or in equity as may be necessary or proper to enforce or protect the Trust's interests. The Sponsor shall satisfy any judgment, decree or decision of any court, board or authority having jurisdiction or any settlement of any suit or claim prior to judgment or final decision thereon, first, out of any insurance proceeds available therefor, next, out of the Trust's assets and, thereafter, out of the assets (to the extent that it is permitted to do so under the various other provisions of this Agreement) of the Sponsor.

## ARTICLE V

### TRANSFERS OF UNITS

SECTION 5.1 *General Prohibition.* A Limited Owner may not sell, assign, transfer or otherwise dispose of, or pledge, hypothecate or in any manner encumber any or all of his Units or any part of his right, title and interest in the capital or profits in the Trust except as permitted in this Article and any act in violation of this Article shall not be binding upon or recognized by the Trust (regardless of whether the Sponsor shall have knowledge thereof), unless approved in writing by the Sponsor.

SECTION 5.2 *Transfer of Sponsor's Units.* Upon an Event of Withdrawal (as defined in Section 12.1(f)), the Sponsor's Units shall be purchased by the Trust for a purchase price in cash equal to the Net Asset Value thereof. The Sponsor will not cease to be a Sponsor of the Trust merely upon the occurrence of its making an assignment for the benefit of creditors, filing a voluntary petition in bankruptcy, filing a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, filing an answer or other pleading admitting or failing to contest material allegations of a petition filed against it in any proceeding of this nature or seeking, consenting to or acquiescing in the appointment of a trustee, receiver or liquidator for itself or of all or any substantial part of its properties.

(b) To the full extent permitted by law, and on sixty (60) days' prior written notice to the Limited Owners, of their right to vote thereon, if the transaction is other than with an Affiliated entity, nothing in this Trust Agreement shall be deemed to prevent the merger of the Sponsor with another corporation or other entity, the reorganization of the Sponsor into or with any other corporation or other entity, the transfer of all the capital stock of the Sponsor or the assumption of the rights, duties and liabilities of the Sponsor by, in the case of a merger, reorganization or consolidation, the surviving corporation or other entity by operation of law or the transfer of the Sponsor's Units to an Affiliate of the Sponsor. Without limiting the foregoing, none of the transactions referenced in the preceding sentence shall be deemed to be a voluntary withdrawal for purposes of Section 4.10 or an Event of Withdrawal for purposes of Section 5.2(a).

SECTION 5.3 *Transfer of Units.* The Units are “restricted securities” that cannot be resold without registration under the Securities Act and state securities laws or exemption therefrom and may not be transferred or resold without the prior written consent of the Sponsor, which it may withhold in its sole discretion for any reason or for no reason.

## ARTICLE VI

### REDEMPTIONS

SECTION 6.1 *Redemption of Redemption Baskets.* The following procedures, as supplemented by the more detailed procedures specified in the attachment to the Participant Agreement, which may be amended from time to time in accordance with the provisions of the Participant Agreement (and any such amendment will not constitute an amendment of this Trust Agreement), will govern the Trust with respect to the redemption of Redemption Baskets.

(a) On any Business Day, a Participant may submit an order to redeem a Basket (a “**Redemption Order**”) for Redemption Baskets from the Trust that the Participant wishes to redeem and also confirms the Participant Self-Administered Account information via notification to the Sponsor or its delegate in the manner provided in the Participant Agreement. Redemption Orders must be received by 6:00 p.m., Eastern time on a Business Day (the “**Redemption Order Date**”). The Sponsor or its delegate will process Redemption Orders only from Participants with respect to which the Participant Agreement is in full force and effect.

(b) If the Redemption Order is accepted, then the Sponsor or its delegates shall instruct the Custodian to send the Participant a number of Bitcoins equal to the Redemption Basket Bitcoin Amount and shall also direct the Transfer Agent to debit the number of Redemption Baskets redeemed from the Participant’s account on the next business day after the Redemption Order Date.

(c) Determination of redemption amounts. The Redemption Basket Bitcoin Amount required for a Redemption Basket shall be determined by dividing the number of Bitcoins owned by the Trust at such time by the number of Units outstanding at such time (calculated to one one-hundred-millionth of one Bitcoin) and multiplying the quotient obtained by 100 and the number of Redemption Baskets. The Sponsor or its delegate has final determination of all questions as to the composition of the Redemption Basket Bitcoin Amount.

(d) Delivery of redemption amounts. The Redemption Basket Bitcoin Amount due from the Trust is delivered to the Participant as directed in the Participant’s Participant Agreement.

(i) The Redemption Basket Bitcoin Amount from the Trust shall be transferred by the Custodian from the Trust Storage Account or the Trust Safekeeping Account, as applicable, to the Participant Self-Administered Account, after giving effect to all estimated accrued but unpaid expenses by no later than 6:00 p.m., Eastern time on the next Business Day after the Creation Order Date. Redemption amounts of Bitcoins shall only be delivered to the Participant Self-Administered Account. The Participant

and the Trust shall each be at risk in respect of Bitcoins credited to their respective accounts in the event of the Custodian's insolvency. The Redemption Basket Bitcoin Amount shall be subject to the deduction of any applicable tax or other governmental charges that may be due.

(ii) The Sponsor or its delegate shall direct the Transfer Agent to cancel the number of Redemption Baskets redeemed by the Participant's account on the next Business Day after the Creation Order Date.

(iii) The Sponsor or its delegate has final determination of all questions as to the composition of the Redemption Basket Bitcoin Amount.

(e) Rejection. The Sponsor or its delegates will reject a Redemption Order if the Redemption Order is not in proper form as described in the Participant Agreement or if the fulfillment of the Redemption Order, in the opinion of its counsel, might be unlawful. The Sponsor or its delegate may suspend Redemption Orders if the Sponsor or its delegates determines, in its sole discretion, that a suspension is necessary or desirable.

SECTION 6.2 *Other Redemption Procedures*. The Sponsor or its delegates from time to time may, but shall have no obligation to, establish procedures with respect to redemption of Units in lot sizes smaller than the Redemption Basket and permitting the redemption distribution to be in a form, and delivered in a manner, other than that specified in Section 6.1.

## ARTICLE VII

### THE LIMITED OWNERS

SECTION 7.1 *No Management or Control; Limited Liability; Exercise of Rights through a Participant*. The Limited Owners shall not participate in the management or control of the Trust nor shall they enter into any transaction on behalf of the Trust or have the power to sign for or bind the Trust, said power being vested solely and exclusively in the Sponsor. Except as provided in Section 7.3 hereof, no Limited Owner shall be bound by, or be personally liable for, the expenses, liabilities or obligations of the Trust in excess of his share of the Trust Estate. Except as provided in Section 7.3 hereof, each Unit owned by a Limited Owner shall be fully paid and no assessment shall be made against any Limited Owner. No salary shall be paid to any Limited Owner in his capacity as a Limited Owner, nor shall any Limited Owner have a drawing account or earn interest on its share of the Trust Estate. By the purchase and acceptance or other lawful delivery and acceptance of Units, each owner shall be deemed to be a Limited Owner and beneficiary of the Trust and vested with beneficial undivided interest in the Trust to the extent of the Units owned beneficially by such Limited Owner, subject to the terms and conditions of this Trust Agreement.

SECTION 7.2 *Rights and Duties*. The Limited Owners shall have the following rights, powers, privileges, duties and liabilities:

(a) The Limited Owners shall have the right to obtain from the Sponsor information on all things affecting the Trust, provided that such is for a purpose reasonably related to the Limited Owner's interest as a beneficial owner of the Trust.

(b) The Limited Owners shall receive the share of the distributions provided for in this Trust Agreement in the manner and at the times provided for in this Trust Agreement.

(c) Except for the Limited Owners' redemption rights set forth in Article VI hereof, Limited Owners shall have the right to demand the return of their capital only upon the dissolution and winding up of the Trust and only to the extent of funds available therefor as provided in Section 12.2. In no event shall a Limited Owner be entitled to demand or receive property other than cash upon the dissolution and winding up of the Trust. No Limited Owner shall have priority over any other Limited Owner as to distributions. The Limited Owner shall not have any right to bring an action for partition against the Trust.

(d) Limited Owners holding Units representing (i) at least a majority (over 50%) of the Shares (not including Units held by the Sponsor and its Affiliates) may vote to continue the Trust as provided in Section 12.1(f), (ii) at least 75% of the Shares may remove the Sponsor on 90 days' prior written notice to the Sponsor, and (vii) at least 75% of the Shares may terminate the Trust as provided in Section 12.1.

Except as set forth above, the Limited Owners shall have no voting or other rights with respect to the Trust.

### SECTION 7.3 *Limitation of Liability.*

(a) Except as provided in Section 4.7(f) hereof, and as otherwise provided under Delaware law, the Limited Owners shall be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the general corporation law of Delaware and no Limited Owner shall be liable for claims against, or debts of the Trust in excess of his share of the Trust Estate, except in the event that the liability is founded upon misstatements or omissions contained in such Limited Owner's Participant Agreement delivered in connection with his purchase of Units. In addition, and subject to the exceptions set forth in the immediately preceding sentence, the Trust shall not make a claim against a Limited Owner with respect to amounts distributed to such Limited Owner or amounts received by such Limited Owner upon redemption unless, under Delaware law, such Limited Owner is liable to repay such amount.

(b) The Trust shall indemnify to the full extent permitted by law and the other provisions of this Agreement, and to the extent of the applicable Trust Estate, each Limited Owner against any claims of liability asserted against such Limited Owner solely because he is a beneficial owner of one or more Units as a Limited Owner.

(c) Every written note, bond, contract, instrument, certificate or undertaking made or issued by the Sponsor shall give notice to the effect that the same was executed or made by or on behalf of the Trust and that the obligations of such instrument are not binding upon the Limited Owners individually but are binding only upon the assets and property of the Trust, and no resort shall be had to the Limited Owners' personal property for satisfaction of

any obligation or claim thereunder, and appropriate references may be made to this Trust Agreement and may contain any further recital which the Sponsor deems appropriate, but the omission thereof shall not operate to bind the Limited Owners individually or otherwise invalidate any such note, bond, contract, instrument, certificate or undertaking. Nothing contained in this Section 7.3 shall diminish the limitation on the liability of the Trust to the extent set forth in Section 3.4 and 3.5 hereof.

**SECTION 7.4**     *Derivative Actions.*

In addition to any other requirements of applicable law including Section 3816 of the Delaware Trust Statute, no Unitholder shall have the right, power or authority to bring or maintain a derivative action, suit or other proceeding on behalf of the Trust unless two or more Unitholders who (i) are not affiliates of one another and (ii) collectively hold at least 10% of the outstanding Units join in the bringing or maintaining of such action, suit or other proceeding.

**ARTICLE VIII**

**BOOKS OF ACCOUNT AND REPORTS**

**SECTION 8.1**     *Books of Account.* Proper books of account for the Trust shall be kept and shall be audited annually by an independent certified public accounting firm selected by the Sponsor in its sole discretion, and there shall be entered therein all transactions, matters and things relating to the Trust as are required by the applicable law and regulations and as are usually entered into books of account kept by trusts. The books of account shall be kept at the principal office of the Trust and each Limited Owner (or any duly constituted designee of a Limited Owner) shall have, at all times during normal business hours, free access to and the right to inspect and copy the same for any purpose reasonably related to the Limited Owner's interest as a beneficial owner of the Trust. Such books of account shall be kept, and the Trust shall report its profits and losses on, the accrual method of accounting for financial accounting purposes on a Fiscal Year basis as described in Article X.

**SECTION 8.2**     *Quarterly Updates, Annual Updates and Account Statements.* The Sponsor will prepare and publish the Trust's Quarterly Updates and Annual Updates as required by the OTCQX's Alternative Reporting Standards and any other applicable rules and regulations of the OTCQX, as applicable.

(b) The Limited Owners will have access to the Shareholder Communications Hub, which enables the Limited Owners to view their unaudited account statements, as available.

SECTION 8.3 *Tax Information.* Appropriate tax information (adequate to enable each Limited Owner to complete and file its U.S. federal tax return) shall be delivered to each Limited Owner as soon as practicable following the end of each Fiscal Year but generally no later than March 15. All such tax returns and information will be filed in a manner consistent with the treatment of the Trust as a grantor trust. The Trust's taxable year shall be the calendar year. The Trustee shall comply with all United States federal withholding requirements respecting distributions to, or receipts of amounts on behalf of, Unitholders that the Trustee reasonably believes are applicable under the Code. The consent of Unitholders shall not be required for such withholding.

SECTION 8.4 *Calculation of Net Asset Value.* Net Asset Value shall be calculated at such times as the Sponsor shall determine from time to time.

SECTION 8.5 *Maintenance of Records.* The Sponsor shall maintain: (a) for a period of at least six Fiscal Years all books of account required by Section 8.1 hereof; a list of the names and last known address of, and number of Units owned by, all Unitholders, a copy of the Certificate of Trust and all certificates of amendment thereto, together with executed copies of any powers of attorney pursuant to which any certificate has been executed; copies of the Trust's U.S. federal, state and local income tax returns and reports, if any; and (b) for a period of at least six Fiscal Years copies of any effective written Trust Agreements, Participant Agreements, including any amendments thereto, and any financial statements of the Trust. The Sponsor may keep and maintain the books and records of the Trust in paper, magnetic, electronic or other format at the Sponsor may determine in its sole discretion, provided the Sponsor uses reasonable care to prevent the loss or destruction of such records. If there is a conflict between this Section 8.5 and the rules and regulations of the OTCQX with respect to the maintenance of records, the records will be maintained pursuant to the rules and regulations of the OTCQX.

## **ARTICLE IX**

### **FISCAL YEAR**

SECTION 9.1 *Fiscal Year.* The Fiscal Year shall begin on the 1<sup>st</sup> day of January and end on the 31<sup>st</sup> day of December of each year. The first Fiscal Year of the Trust commenced on the 13<sup>th</sup> day of September 2013 and shall end on the 31<sup>st</sup> day of December 2013. The Fiscal Year in which the Trust shall terminate shall end on the date of such termination.

## **ARTICLE X**

### **AMENDMENT OF TRUST AGREEMENT; MEETINGS**

SECTION 10.1 *Amendments to the Trust Agreement.*

(a) The Sponsor may, without the approval of the Limited Owners, make such amendments to this Trust Agreement which (i) are necessary to add to the representations, duties or obligations of the Sponsor or surrender any right or power granted to the Sponsor herein, for the benefit of the Limited Owners, (ii) are necessary to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein

or in the Memorandum, or to make any other provisions with respect to matters or questions arising under this Trust Agreement or the Memorandum which will not be inconsistent with the provisions of the Trust Agreement or the Memorandum, or (iii) the Sponsor deems advisable, provided, however, that no amendment shall be adopted pursuant to this clause 10.1(a) unless the adoption thereof (A) is not adverse to the interests of the Limited Owners; (B) is consistent with Section 1.5 and Section 4.1 hereof; and (C) does not adversely affect the limitations on liability of the Limited Owners, as described in Article VII hereof or the status of the Trust as a grantor trust for U.S. federal income tax purposes. Amendments to this document which adversely affect (i) the rights of Limited Owners, (ii) the appointment of a new Sponsor pursuant to Section 4.2(f) above, (iii) the dissolution of the Trust pursuant to Section 12.1(f) below and (iv) any material changes in the Trust's purpose or structure shall occur only upon the written approval or affirmative vote of Limited Owners holding Units equal to at least a majority (over 50%) of the Shares.

(b) Notwithstanding any provision to the contrary contained in Sections 10.1(a) hereof, the Sponsor may, without the approval of the Limited Owners, amend the provisions of this Trust Agreement if the Trust is advised at any time by the Trust's accountants or legal counsel that the amendments made are necessary to ensure that the Trust's status as a grantor trust will be respected for U.S. federal income tax purposes.

(c) Upon amendment of this Trust Agreement, the Certificate of Trust shall also be amended, if required by the Delaware Trust Statute, to reflect such change. At the expense of the Sponsor, the Trustee shall execute and file any amendment to the Certificate of Trust if so directed by the Sponsor.

(d) No amendment affecting the rights or duties of the Trustee shall be binding upon or effective against the Trustee unless consented to by the Trustee in writing. No amendment shall be made to this Trust Agreement without the consent of the Trustee if it reasonably believes that such amendment adversely affects any of the rights, duties or liabilities of the Trustee. The Trustee shall be under no obligation to execute any amendment to the Trust Agreement or to any agreement to which the Trust is a party until it has received an instruction letter from the Sponsor, in form and substance reasonably satisfactory to the Trustee (i) directing the Trustee to execute such amendment, (ii) representing and warranting to the Trustee that such execution is authorized and permitted by the terms of the Trust Agreement and (if applicable) such other agreement to which the Trust is a party and does not conflict with or violate any other agreement to which the Trust is a party and (iii) confirming that such execution and acts related thereto are covered by the indemnity provisions of the Trust Agreement in favor of the Trustee and do not adversely affect the Trustee.

(e) To the fullest extent permitted by law, no provision of this Trust Agreement may be amended, waived or otherwise modified orally but only by a written instrument adopted in accordance with this Section.

**SECTION 10.2 *Meetings of the Trust.*** Meetings of the Unitholders may be called by the Sponsor and will be called by it upon the written request of Limited Owners holding Units equal to at least 30% of the Shares. Such call for a meeting shall be deemed to have been made upon the receipt by the Sponsor of a written request from Limited Owners representing the

requisite percentage of Shares. The Sponsor shall deposit in the United States mails, within 15 days after receipt of said request, written notice to all Unitholders thereof of the meeting and the purpose of the meeting, which shall be held on a date, not less than 30 nor more than 60 days after the date of mailing of said notice, at a reasonable time and place. Any notice of meeting shall be accompanied by a description of the action to be taken at the meeting and an opinion of independent counsel as to the effect of such proposed action on the liability of Limited Owners for the debts of the Trust. Unitholders may vote in person or by proxy at any such meeting.

SECTION 10.3 *Action Without a Meeting.* Any action required or permitted to be taken by Unitholders by vote may be taken without a meeting by written consent setting forth the actions so taken. Such written consents shall be treated for all purposes as votes at a meeting. If the vote or consent of any Unitholder to any action of the Trust or any Unitholder, as contemplated by this Trust Agreement, is solicited by the Sponsor, the solicitation shall be effected by notice to each Unitholder given in the manner provided in Section 13.5. The vote or consent of each Unitholder so solicited shall be deemed conclusively to have been cast or granted as requested in the notice of solicitation, whether or not the notice of solicitation is actually received by that Unitholder, unless the Unitholder expresses written objection to the vote or consent by notice given in the manner provided in Section 13.5 below and actually received by the Trust within 20 days after the notice of solicitation is affected. The Covered Persons dealing with the Trust shall be entitled to act in reliance on any vote or consent which is deemed cast or granted pursuant to this Section and shall be fully indemnified by the Trust in so doing. Any action taken or omitted in reliance on any such deemed vote or consent of one or more Unitholders shall not be void or voidable by reason of timely communication made by or on behalf of all or any of such Unitholders in any manner other than as expressly provided in Section 13.5.

## ARTICLE XI

### TERM

SECTION 11.1 *Term.* The term for which the Trust is to exist shall be perpetual, unless terminated pursuant to the provisions of Article XII hereof or as otherwise provided by law.

## ARTICLE XII

### TERMINATION

SECTION 12.1 *Events Requiring Dissolution of the Trust.* The Trust shall dissolve at any time upon the happening of any of the following events:

(a) a United States federal or state regulator requires the Trust to shut down or forces the Trust to liquidate its Bitcoins or seizes, impounds or otherwise restricts access to Trust assets;

(b) the Trust is determined to be a “money service business” under the regulations promulgated by FinCEN under the authority of the US Bank Secrecy Act and is



required to comply with certain FinCEN regulations thereunder, and the Sponsor has made the determination that dissolution of the Trust is advisable;

(c) the Trust is required to obtain a license or make a registration under any state law regulating money transmitters, money services business, providers of prepaid or stored value or similar entities, virtual currency business, and the Sponsor has made the determination that dissolution of the Trust is advisable;

(d) any ongoing event exists that either prevents the Trust from making or makes impractical the Trust's reasonable efforts to make a fair determination of the Bitcoin Market Price;

(e) any ongoing event exists that either prevents the Trust from converting or makes impractical the Trust's reasonable efforts to convert Bitcoins to USD;

(f) the filing of a certificate of dissolution or revocation of the Sponsor's charter (and the expiration of 90 days after the date of notice to the Sponsor of revocation without a reinstatement of its charter) or upon the withdrawal, removal, adjudication or admission of bankruptcy or insolvency of the Sponsor, or an event of withdrawal (each of the foregoing events an "**Event of Withdrawal**") unless (i) at the time there is at least one remaining Sponsor or (ii) within 90 days of such Event of Withdrawal all the remaining Unitholders agree in writing to continue the business of the Trust and to select, effective as of the date of such event, one or more successor Sponsors;

(g) Unitholders holding at least 75% of the outstanding Units notify the Sponsor that they elect to dissolve the Trust, notice of which is sent to the Sponsor not less than ninety (90) Business Days prior to the effective date of dissolution; or

(h) the Custodian resigns or is removed without replacement.

The Sponsor may, in its sole discretion, dissolve the Trust if any of the following events occur:

(a) the SEC determines that the Trust is an investment company required to be registered under the Investment Company Act of 1940;

(b) the CFTC determines that the Trust is a commodity pool under the Commodity Exchange Act;

(c) the Trust becomes insolvent or bankrupt;

(d) all of the Trust's assets are sold;

(e) the determination of the Sponsor that the aggregate net assets of the Trust in relation to the expenses of the Trust make it unreasonable or imprudent to continue the business of the Trust;

(f) the Sponsor receives notice from the IRS or from counsel for the Trust or the Sponsor that the Trust fails to qualify for treatment, or will not be treated, as a grantor trust under the Code; and

(g) if the Trustee notifies the Sponsor of the Trustee's election to resign and the Sponsor does not appoint a successor trustee within 180 days, the Trust will dissolve.

The death, legal disability, bankruptcy, insolvency, dissolution, or withdrawal of any Limited Owner (as long as such Limited Owner is not the sole Limited Owner of the Trust) shall not result in the termination of the Trust, and such Limited Owner, his estate, custodian or personal representative shall have no right to withdraw or value such Limited Owner's Units. Each Limited Owner (and any assignee thereof) expressly agrees that in the event of his death, he waives on behalf of himself and his estate, and he directs the legal representative of his estate and any person interested therein to waive the furnishing of any inventory, accounting or appraisal of the assets of the Trust and any right to an audit or examination of the books of the Trust, except for such rights as are set forth in Article VIII hereof relating to the Books of Account and reports of the Trust.

**SECTION 12.2 *Distributions on Dissolution.*** Upon the dissolution of the Trust, the Sponsor (or in the event there is no Sponsor, such person (the "**Liquidating Trustee**") as the majority in interest of the Limited Owners may propose and approve) shall take full charge of the Trust Estate. Any Liquidating Trustee so appointed shall have and may exercise, without further authorization or approval of any of the parties hereto, all of the powers conferred upon the Sponsor under the terms of this Trust Agreement, subject to all of the applicable limitations, contractual and otherwise, upon the exercise of such powers, and provided that the Liquidating Trustee shall not have general liability for the acts, omissions, obligations and expenses of the Trust. Thereafter, in accordance with Section 3808(e) of the Delaware Trust Statute, the affairs of the Trust shall be wound up and all assets shall be liquidated as promptly as is consistent with obtaining the fair value thereof, and the proceeds therefrom shall be applied and distributed in the following order of priority: (a) to the expenses of liquidation and termination and to creditors, including Unitholders who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the Trust (whether by payment or the making of reasonable provision for payment thereof) other than liabilities for distributions to Unitholders, and (b) to the Sponsor and each Limited Owner pro rata in accordance with their respective Percentage Interests.

**SECTION 12.3 *Termination; Certificate of Cancellation.*** Following the dissolution and distribution of the assets of the Trust, the Trust shall terminate and Sponsor or Liquidating Trustee, as the case may be, shall instruct the Trustee to execute and cause such certificate of cancellation of the Certificate of Trust to be filed in accordance with the Delaware Trust Statute at the expense of the Sponsor. Notwithstanding anything to the contrary contained in this Trust Agreement, the existence of the Trust as a separate legal entity shall continue until the filing of such certificate of cancellation.

## ARTICLE XIII

### MISCELLANEOUS

SECTION 13.1 *Governing Law.* The validity and construction of this Trust Agreement and all amendments hereto shall be governed by the laws of the State of Delaware, and the rights of all parties hereto and the effect of every provision hereof shall be subject to and construed according to the laws of the State of Delaware without regard to the conflict of laws provisions thereof; provided, however, that causes of action for violations of U.S. federal or state securities laws shall not be governed by this Section 13.1, and provided, further, that the parties hereto intend that the provisions hereof shall control over any contrary or limiting statutory or common law of the State of Delaware (other than the Delaware Trust Statute) and that, to the maximum extent permitted by applicable law, there shall not be applicable to the Trust, the Trustee, the Sponsor, the Unitholders or this Trust Agreement any provision of the laws (statutory or common) of the State of Delaware (other than the Delaware Trust Statute) pertaining to trusts which relate to or regulate in a manner inconsistent with the terms hereof: (a) the filing with any court or governmental body or agency of trustee accounts or schedules of trustee fees and charges, (b) affirmative requirements to post bonds for trustees, officers, agents, or employees of a trust, (c) the necessity for obtaining court or other governmental approval concerning the acquisition, holding or disposition of real or personal property, (d) fees or other sums payable to trustees, officers, agents or employees of a trust, (e) the allocation of receipts and expenditures to income or principal, (f) restrictions or limitations on the permissible nature, amount or concentration of trust investments or requirements relating to the titling, storage or other manner of holding of trust assets, or (g) the establishment of fiduciary or other standards or responsibilities or limitations on the acts or powers of trustees or managers that are inconsistent with the limitations on liability or authorities and powers of the Trustee or the Sponsor set forth or referenced in this Trust Agreement. Section 3540 of Title 12 of the Delaware Code shall not apply to the Trust. The Trust shall be of the type commonly called a “statutory trust,” and without limiting the provisions hereof, but subject to Sections 1.5 and 1.6, the Trust may exercise all powers that are ordinarily exercised by such a statutory trust under Delaware law. Subject to Sections 1.5 and 1.6, the Trust specifically reserves the right to exercise any of the powers or privileges afforded to statutory trusts and the absence of a specific reference herein to any such power, privilege or action shall not imply that the Trust may not exercise such power or privilege or take such actions.

### SECTION 13.2 *Provisions In Conflict With Law or Regulations.*

(a) The provisions of this Trust Agreement are severable, and if the Sponsor shall determine, with the advice of counsel, that any one or more of such provisions (the “**Conflicting Provisions**”) are in conflict with the Code, the Delaware Trust Statute or other applicable U.S. federal or state laws or the rules and regulations of the OTCQX, the Conflicting Provisions shall be deemed never to have constituted a part of this Trust Agreement, even without any amendment of this Trust Agreement pursuant to this Trust Agreement; provided, however, that such determination by the Sponsor shall not affect or impair any of the remaining provisions of this Trust Agreement or render invalid or improper any action taken or omitted prior to such determination. No Sponsor or Trustee shall be liable for making or failing to make such a determination.

(b) If any provision of this Trust Agreement shall be held invalid or unenforceable in any jurisdiction, such holding shall not in any manner affect or render invalid or unenforceable such provision in any other jurisdiction or any other provision of this Trust Agreement in any jurisdiction.

SECTION 13.3. *Merger and Consolidation.* The Sponsor may cause (i) the Trust to be merged into or consolidated with, converted to or to sell all or substantially all of its assets to, another trust or entity; (ii) the Units of the Trust to be converted into beneficial interests in another statutory trust (or series thereof); or (iii) the Units of the Trust to be exchanged for units in another trust or company under or pursuant to any U.S. state or federal statute to the extent permitted by law. For the avoidance of doubt, the Sponsor, with written notice to the Unitholders, may approve and effect any of the transactions contemplated under (i) – (iii) above without any vote or other action of the Unitholders.

SECTION 13.4 *Construction.* In this Trust Agreement, unless the context otherwise requires, words used in the singular or in the plural include both the plural and singular and words denoting any gender include all genders. The title and headings of different parts are inserted for convenience and shall not affect the meaning, construction or effect of this Trust Agreement.

SECTION 13.5 *Notices.* All notices or communications under this Trust Agreement (other than notices of pledge or encumbrance of Units, and reports and notices by the Sponsor to the Limited Owners) shall be in writing and shall be effective upon personal delivery, or if sent by mail, postage prepaid, or if sent electronically, by facsimile or by overnight courier; and addressed, in each such case, to the address set forth in the books and records of the Trust or such other address as may be specified in writing, of the party to whom such notice is to be given, upon the deposit of such notice in the United States mail, upon transmission and electronic confirmation thereof or upon deposit with a representative of an overnight courier, as the case may be. Notices of pledge or encumbrance of Units shall be effective upon timely receipt by the Sponsor in writing.

All notices that are required to be provided to the Trustee shall be sent to:

Delaware Trust Company  
Attention: Corporate Trust Administration  
2711 Centerville Road, Suite 400  
Wilmington, DE 19808

All notices that the Trustee is required to provide shall be sent to:

if to the Trust, at

Bitcoin Investment Trust  
636 Avenue of the Americas, 6<sup>th</sup> Floor  
New York, New York 10011  
Attention: General Counsel of Grayscale Investments, LLC

if to the Sponsor, at

Grayscale Investments, LLC  
636 Avenue of the Americas, 6<sup>th</sup> Floor  
New York, New York 10011  
Attention: General Counsel

SECTION 13.6 *Counterparts.* This Trust Agreement may be executed in several counterparts, and all so executed shall constitute one agreement, binding on all of the parties hereto, notwithstanding that all the parties are not signatory to the original or the same counterpart.

SECTION 13.7 *Binding Nature of Trust Agreement.* The terms and provisions of this Trust Agreement shall be binding upon and inure to the benefit of the heirs, custodians, executors, estates, administrators, personal representatives, successors and permitted assigns of the respective Unitholders. For purposes of determining the rights of any Unitholder or assignee hereunder, the Trust and the Sponsor may rely upon the Trust records as to who are Unitholders and permitted assignees, and all Unitholders and assignees agree that the Trust and the Sponsor, in determining such rights, shall rely on such records and that Limited Owners and assignees shall be bound by such determination.

SECTION 13.8 *No Legal Title to Trust Estate.* Subject to the provisions of Section 1.7 in the case of the Sponsor, the Unitholders shall not have legal title to any part of the Trust Estate.

SECTION 13.9 *Creditors.* No creditors of any Unitholders shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to the Trust Estate.

SECTION 13.10 *Integration.* This Trust Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

SECTION 13.11 *Goodwill; Use of Name.* No value shall be placed on the name or goodwill of the Trust, which shall belong exclusively to Grayscale Investments, LLC.

**IN WITNESS WHEREOF**, the undersigned have duly executed this Third Amended and Restated Declaration of Trust and Trust Agreement as of the day and year first above written.

**DELAWARE TRUST COMPANY,**  
as Trustee

By: \_\_\_\_\_  
Name:  
Title:

**GRAYSCALE INVESTMENTS, LLC,** as  
Sponsor

By: \_\_\_\_\_  
Name:  
Title:

**DCG HOLDCO, INC.,** solely with respect to  
Section 2.4

By: \_\_\_\_\_  
Name:  
Title:



# EXHIBIT 3

**AMENDED AND RESTATED  
DECLARATION OF TRUST  
AND  
TRUST AGREEMENT  
OF  
ETHEREUM INVESTMENT TRUST**

**Dated as of July 3, 2018**

**By and Among**

**GRAYSCALE INVESTMENTS, LLC**

**DELAWARE TRUST COMPANY**

**and**

**THE SHAREHOLDERS**



**Confidential treatment requested by the registrant for its submission of this draft registration statement  
pursuant to Securities and Exchange Commission Rule 83**

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**ETHEREUM INVESTMENT TRUST**  
**AMENDED AND RESTATED**  
**DECLARATION OF TRUST**  
**AND TRUST AGREEMENT**

This **AMENDED AND RESTATED DECLARATION OF TRUST AND TRUST AGREEMENT** of **ETHEREUM INVESTMENT TRUST** is made and entered into as of the 3<sup>rd</sup> day of July, 2018, by and among **GRAYSCALE INVESTMENTS, LLC**, a Delaware limited liability company, **DELAWARE TRUST COMPANY**, a Delaware corporation, as trustee, and the **SHAREHOLDERS** from time to time hereunder.

\* \* \*

**RECITALS**

**WHEREAS**, the Sponsor and the Trustee entered into the Declaration of Trust and Trust Agreement dated as of December 13, 2017 (the “**Existing Agreement**”);

**WHEREAS**, the Sponsor and the Trustee wish to amend the Existing Agreement pursuant to Section 10.1 thereof, with such amendment to be effective immediately upon approval of the amendment by the Shareholders.

**NOW, THEREFORE**, pursuant to Section 10.1 of the Existing Agreement, the Trustee and the Sponsor hereby amend and restate the Existing Agreement in its entirety as set forth below.

**ARTICLE I**

**DEFINITIONS; THE TRUST**

SECTION 1.1 *Definitions*. As used in this Trust Agreement, the following terms shall have the following meanings unless the context otherwise requires:

“**Actual Exchange Rate**” means, with respect to any particular asset, at any time, the price per single unit of such asset (determined net of any associated fees) at which the Trust is able to sell such asset for U.S. Dollars (or other applicable fiat currency) at such time to enable the Trust to timely pay any Additional Trust Expenses, through use of the Sponsor’s commercially reasonable efforts to obtain the highest such price.

“**Additional Trust Expenses**” has the meaning set forth in Section 6.8(b).

“**Administrator**” means any Person from time to time engaged by the Sponsor to assist in the administration of the Shares.

“**Administrator Fee**” means the fee payable to the Administrator for services it provides to the Trust, which the Sponsor shall pay the Administrator as a Sponsor-paid Expense.

“**Affiliate**” means (i) any Person directly or indirectly owning, controlling or holding with power to vote 10% or more of the outstanding voting securities of such Person, (ii) any Person 10% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by such Person, (iii) any Person, directly or indirectly, controlling, controlled by or under common control of such Person, (iv) any employee, officer, director, member, manager or partner of such Person, or (v) if such Person is an employee, officer, director, member, manager or partner, any Person for which such Person acts in any such capacity.

“**Annual Report**” means (i) the Trust’s most recent annual report prepared and publicly disseminated pursuant to the standards of any Secondary Market on which the Shares are then listed, quoted or traded or (ii) if the Shares are then registered under the Exchange Act, the Trust’s most recent annual report on Form 10-K prepared and filed in accordance with the rules and regulations of the SEC.

“**Basket**” means a block of 100 Shares.

“**Basket ETH Amount**” means, on any Trade Date, the number of ETH required as of such Trade Date for each Creation Basket or Redemption Basket, as determined by dividing (x) the number of ETH owned by the Trust at 4:00 p.m., New York time, on such Trade Date, after deducting the number of ETH representing the U.S. Dollar value of accrued but unpaid fees and expenses of the Trust (in the case of any such fee and expense other than the Sponsor’s Fee, converted using the ETH Index Price at such time, and carried to the eighth decimal place), by (y) the number of Shares outstanding at such time (with the quotient so obtained calculated to one one-hundred-millionth of one ETH (i.e., carried to the eighth decimal place)), and multiplying such quotient by 100.

“**Business Day**” means any day other than a Saturday, Sunday or other day on which banks are permitted or required to close for business in New York, New York.

“**Certificate of Trust**” means the Certificate of Trust of the Trust, including all amendments thereto, in the form attached hereto as Exhibit A, filed with the Secretary of State of the State of Delaware pursuant to Section 3810 of the Delaware Trust Statute.

“**CFTC**” means the Commodity Futures Trading Commission.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Corporate Trust Office**” means the principal office at which at any particular time the corporate trust business of the Trustee is administered, which office at the date hereof is located at 251 Little Falls Drive, Wilmington, DE 19808.

“**Covered Person**” means the Sponsor and its Affiliates and their respective members, managers, directors, officers, employees, agents and controlling persons.

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“**Creation Basket**” means a Basket issued by the Trust in exchange for the transfer of the Basket ETH Amount to the Trust.

“**Creation Order**” has the meaning assigned thereto in Section 3.3(a)(i).

“**Creation Settlement Date**” means, with respect to any Creation Order, the Business Day on which such Creation Order settles, as specified in the PA Procedures.

“**DCG**” means Digital Currency Group, Inc., a Delaware corporation.

“**Delaware Trust Statute**” means the Delaware Statutory Trust Act, Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. § 3801 et seq., as the same may be amended from time-to-time.

“**Distributor**” means Genesis Global Trading, Inc. or any other Person from time to time engaged to provide distribution services or related services to the Trust pursuant to authority delegated by the Sponsor.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

“**Ethereum Network**” means the online, end-user-to-end-user network hosting a public transaction ledger, known as a blockchain, and the source code comprising the basis for the cryptographic and algorithmic protocols governing the Ethereum network.

“**ETH**” means Ethereum, a type of virtual currency based on an open source cryptographic protocol existing on the Ethereum Network as determined by the Sponsor in accordance with Section 6.2(m), and the assets underlying the Trust’s Shares.

“**ETH Account**” means an account holding the Trust’s ETH, which, in the discretion of the Sponsor, could be an on-blockchain hot or cold wallet or a collection of accounts or sub-accounts maintained by one or more Security Vendors that represent or relate to on-blockchain ETH accounts that hold the Trust’s ETH.

“**ETH Benchmark Exchanges**” means, at any time, the ETH exchanges that represent at least 10% of the aggregate trading volume of the ETH market during the last thirty (30) consecutive calendar days.

“**ETH Holdings**” means, at any time, the aggregate value, expressed in U.S. Dollars, of the Trust’s assets (other than U.S. Dollars or other fiat currency), less its liabilities (which include estimated accrued but unpaid fees and expenses), calculated in accordance with Section 8.4.

“**ETH Holdings Fee Basis Amount**” has the meaning assigned thereto in Section 8.4.

“**ETH Index Price**” has the meaning ascribed to such term in the Memorandum.

“**Event of Withdrawal**” has the meaning set forth in Section 12.1(a)(iv) hereof.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

“**Expenses**” has the meaning set forth in Section 2.4.

“**FinCEN**” means the Financial Crimes Enforcement Network, a bureau of the U.S. Department of Treasury.

“**Fiscal Year**” has the meaning set forth in Article IX hereof.

“**FOIA**” means the Freedom of Information Act.

“**GAAP**” means U.S. generally accepted accounting principles.

“**Incidental Rights**” means the rights to acquire, or otherwise establish dominion and control over, any virtual currency or other asset or right, which rights are incident to the Trust’s ownership of ETH and arise without any action of the Trust, or of the Sponsor or Trustee on behalf of the Trust.

“**Indemnified Persons**” has the meaning assigned to such term in Section 2.4.

“**IR Virtual Currency**” means any virtual currency or other asset or right acquired by the Trust through the exercise (subject to Section 1.5(b) and Section 6.4(m)) of any Incidental Right.

“**IRS**” means the U.S. Internal Revenue Service or any successor thereto.

“**Liquidating Trustee**” has the meaning assigned thereto in Section 12.2.

“**Liquidity Provider**” means an entity eligible to facilitate creations or redemptions of Shares on behalf of a Participant in exchange for cash that has entered into a Participant Agreement and has access to a Liquidity Provider Account.

“**Liquidity Provider Account**” means, with respect to any Liquidity Provider, an ETH wallet address known to the Sponsor and the Security Vendors as belonging to such Liquidity Provider.

“**Marketer**” means Genesis Global Trading, Inc. or any other Person from time to time engaged to provide marketing services or related services to the Trust pursuant to authority delegated by the Sponsor.

“**Marketing Fee**” means the fee payable to the Marketer for services it provides to the Trust, which the Sponsor shall pay the Marketer as a Sponsor-paid Expense.

“**Memorandum**” means (i) the Confidential Private Placement Memorandum of the Trust, as the same may, at any time and from time to time, be amended or supplemented, or (ii) if the Shares are registered under the Exchange Act, the most recent of (x) any prospectus of the Trust that has been filed with the SEC as a part of the Registration Statement and (y) any report filed by the Trust with the SEC under the Exchange Act that states that it is to be treated as the Memorandum for general purposes or any specific purpose.

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“**PA Procedures**” has the meaning assigned thereto in [Section 3.3\(a\)](#).

“**Participant**” means a Person that (i) is a registered broker-dealer, (ii) has entered into a Participant Agreement with the Sponsor and the Trust and (iii) has access to a Participant Self-Administered Account.

“**Participant Agreement**” means an agreement among the Trust, the Sponsor and a Participant, substantially in the form of Exhibit B hereto, as it may be amended or supplemented from time to time in accordance with its terms.

“**Participant Self-Administered Account**” means, with respect to any Participant, an ETH wallet address known to the Sponsor and the Security Vendors as belonging to such Participant.

“**Percentage Interest**” means, with respect to any Shareholder at any time, a fraction, the numerator of which is the number of Shares held by such Shareholder and the denominator of which is the total number of Shares outstanding, in each case as of 4:00 p.m., New York time, on the date of determination.

“**Person**” means any natural person, partnership, limited liability company, statutory trust, corporation, association or other legal entity.

“**Public Access Law**” has the meaning assigned thereto in [Section 13.7\(b\)](#).

“**Purchase Agreement**” means an agreement among the Trust, the Sponsor and any Shareholder through which the Shareholder agrees to transfer ETH to the ETH Account in exchange for the creation and issuance of Shares.

“**Quarterly Report**” means (i) the Trust’s most recent quarterly report prepared and publicly disseminated pursuant to the standards of any Secondary Market on which the Shares are then listed, quoted or traded or (ii) if the Shares are then registered under the Exchange Act, the Trust’s most recent quarterly report on Form 10-Q prepared and filed in accordance with the rules and regulations of the SEC.

“**Redemption Basket**” means a Basket redeemed by the Trust in exchange for ETH in an amount equal to the Basket ETH Amount.

“**Redemption Order**” has the meaning assigned thereto in [Section 5.2\(a\)](#).

“**Redemption Settlement Date**” means, with respect to any Redemption Order, the Business Day on which such Redemption Order settles, as specified in the PA Procedures.



“**Registration Statement**” means the most recent registration statement of the Trust, as filed with and declared effective by the SEC, as the same may at any time and from time to time be amended or supplemented.

“**Rules**” has the meaning assigned thereto in [Section 13.3](#).

“**SEC**” means the Securities and Exchange Commission.

“**Secondary Market**” means any marketplace or other alternative trading system, as determined by the Sponsor, on which the Shares may then be listed, quoted or traded, including but not limited to, the OTCQX tier of the OTC Markets Group Inc. and NYSE Arca, Inc.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Security Vendor**” or “**Security Vendors**” means Ledger SAS and any other Person or Persons from time to time engaged to provide security or custodian services or related services to the Trust pursuant to authority delegated by the Sponsor.

“**Security Vendors Fee**” means the fee payable to the Security Vendors for the services they provide to the Trust, which the Sponsor shall pay to the Security Vendors as a Sponsor-paid Expense.

“**Shareholder**” means any Person that owns Shares.

“**Shares**” means the common units of fractional undivided beneficial interest in the profits, losses, distributions, capital and assets of, and ownership of, the Trust.

“**Sponsor**” means Grayscale Investments, LLC, or any substitute therefor as provided herein, or any successor thereto by merger or operation of law.

“**Sponsor-paid Expense**” and “**Sponsor-paid Expenses**” have the meaning set forth in [Section 6.8\(a\)\(v\)](#).

“**Sponsor’s Fee**” has the meaning set forth in [Section 6.8\(a\)\(i\)](#).

“**Total Basket ETH Amount**” means, with respect to any Creation Order or Redemption Order, the applicable Basket ETH Amount multiplied by the number of Creation Baskets or Redemption Baskets, as specified in the applicable Creation Order or Redemption Order.

“**Trade Date**” means, for any Creation Order or Redemption Order, the Business Day on which the Total Basket ETH Amount with respect to such Creation Order or Redemption Order is determined in accordance with the PA Procedures.

“**Transfer Agent**” means Continental Stock Transfer & Trust Company or any other Person from time to time engaged to provide such services or related services to the Trust pursuant to authority delegated by the Sponsor.

“**Treasury Regulations**” means regulations, including proposed or temporary regulations, promulgated under the Code. References herein to specific provisions of proposed or temporary regulations shall include analogous provisions of final Treasury Regulations or other successor Treasury Regulations.

“**Trust**” means Ethereum Investment Trust, a Delaware statutory trust formed pursuant to the Certificate of Trust, the affairs of which are governed by this Trust Agreement.

“**Trust Agreement**” means this Amended and Restated Declaration of Trust and Trust Agreement, as it may at any time or from time-to-time be amended.

“**Trust Counsel**” has the meaning set forth in [Section 13.3](#).

“**Trustee**” means Delaware Trust Company, its successors and assigns, or any substitute therefor as provided herein, acting not in its individual capacity but solely as trustee of the Trust.

“**Trust Estate**” means (i) all the ETH in the Trust’s accounts, including the ETH Account, (ii) all Incidental Rights held by the Trust, (iii) all IR Virtual Currency in the Trust’s accounts, (iv) all proceeds from the sale of ETH, Incidental Rights and IR Virtual Currency pending use of such cash for payment of Additional Trust Expenses or distribution to the Shareholders and (v) any rights of the Trust pursuant to any agreements, other than this Trust Agreement, to which the Trust is a party.

“**Trust Expense**” has the meaning set forth in [Section 2.3](#).

“**U.S. Dollar**” means United States dollars.

SECTION 1.2 *Name*. The name of the Trust is “Ethereum Investment Trust” in which name the Trustee and the Sponsor shall cause the Trust to carry out its purposes as set forth in [Section 1.5](#), make and execute contracts and other instruments in the name and on behalf of the Trust and sue and be sued in the name and on behalf of the Trust.

SECTION 1.3 *Delaware Trustee; Offices*.

(a) The sole Trustee of the Trust is Delaware Trust Company, which is located at the Corporate Trust Office or at such other address in the State of Delaware as the Trustee may designate in writing to the Shareholders. The Trustee shall receive service of process on the Trust in the State of Delaware at the foregoing address. In the event Delaware Trust Company resigns or is removed as the Trustee, the trustee of the Trust in the State of Delaware shall be the successor Trustee, subject to [Section 2.1](#).

(b) The principal office of the Trust, and such additional offices as the Sponsor may establish, shall be located at such place or places inside or outside the State of Delaware as the Sponsor may designate from time to time in writing to the Trustee and the Shareholders. Initially, the principal office of the Trust shall be at c/o Grayscale Investments, LLC, 636 Avenue of the Americas, 3rd Floor, New York, New York 10011.

SECTION 1.4 *Declaration of Trust*. The Trust Estate shall be held in trust for the Shareholders. It is the intention of the parties hereto that the Trust shall be a statutory trust, under the Delaware Trust Statute and that this Trust Agreement shall constitute the governing instrument of the Trust. It is not the intention of the parties hereto to create a general partnership, limited partnership, limited liability company, joint stock association, corporation, bailment or any form of legal relationship other than a Delaware statutory trust that is treated as a grantor trust for U.S. federal income tax purposes and for purposes of applicable state and local tax laws. Nothing in this Trust Agreement shall be construed to make the Shareholders partners or members of a joint stock association. Effective as of the date hereof, the Trustee and the Sponsor shall have all of the rights, powers and duties set forth herein and in the Delaware Trust Statute with respect to accomplishing the purposes of the Trust. The Trustee has filed the certificate of trust required by Section 3810 of the Delaware Trust Statute in connection with the formation of the Trust under the Delaware Trust Statute.

SECTION 1.5 *Purposes and Powers*.

(a) The purposes of the Trust shall be to accept ETH for subscriptions of Shares in accordance with Article III hereof, to hold ETH, Incidental Rights and IR Virtual Currency, to distribute ETH (or cash from the sale of ETH) upon redemptions of Shares in accordance with Article V hereof (if authorized in accordance with Section 5.1 hereof) and to distribute ETH, Incidental Rights and IR Virtual Currency (or cash from the sale thereof) upon the liquidation of the Trust, and to enter into any lawful transaction and engage in any lawful activities in furtherance of or incidental to the foregoing. For the avoidance of doubt, such activities include any lawful action necessary or desirable in connection with the Trust's ownership of Incidental Rights, including the acquisition of IR Virtual Currency, except if such action would be prohibited by Section 1.5(b) or any other provision of this Trust Agreement. The Trust shall not engage in any business activity and shall not acquire or own any assets other than ETH, Incidental Rights and (if permissible under Section 1.5(b) and Section 6.4(m)) IR Virtual Currency, or take any of the actions set forth in Section 6.4. The Trust shall have all of the powers specified in Section 3.1 hereof as powers which may be exercised by a Sponsor on behalf of the Trust under this Trust Agreement.

(b) The Trust shall not take any action that could cause the Trust to be treated other than as a grantor trust for U.S. federal income tax purposes. Without limiting the generality of the foregoing, nothing in this Trust Agreement (including, for the avoidance of doubt, Section 1.5(a)) shall be construed to give the Trustee or the Sponsor the power to vary the investment of the Shareholders within the meaning of Section 301.7701-4(c) or similar provisions of the Treasury Regulations, nor shall the Trustee or the Sponsor take any action that would vary the investment of the Shareholders.

SECTION 1.6 *Tax Treatment*. Each of the parties hereto, by entering into this Trust Agreement, (i) expresses its intention that the Shares will qualify under applicable tax law as interests in a grantor trust which holds the Trust Estate, (ii) agrees that it will file its own U.S. federal, state and local income, franchise and other tax returns in a manner that is consistent with clause (i) of this Section 1.6 and with the classification of the Trust as a grantor trust, and (iii) agrees to use reasonable efforts to notify the Sponsor promptly upon a receipt of any notice from any taxing authority having jurisdiction over such holders of Shares with respect to the treatment of the Shares as anything other than interests in a grantor trust.

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SECTION 1.7 *Legal Title*. Legal title to all of the Trust Estate shall be vested in the Trust as a separate legal entity; *provided, however*, that if applicable law in any jurisdiction requires legal title to any portion of the Trust Estate to be vested otherwise, the Sponsor may cause legal title to such portion of the Trust Estate to be held by or in the name of the Sponsor or any other Person (other than a Shareholder) as nominee.

## ARTICLE II

### THE TRUSTEE

#### SECTION 2.1 *Term; Resignation; Removal*.

(a) Delaware Trust Company has been appointed and hereby agrees to serve as the Trustee of the Trust. The Trust shall have only one Trustee unless otherwise determined by the Sponsor. The Trustee shall serve until such time as the Trust is terminated or if the Sponsor removes the Trustee or the Trustee resigns. The Trustee is appointed to serve as the trustee of the Trust in the State of Delaware and shall at all times satisfy the requirements of Section 3807(a) of the Delaware Trust Statute and be authorized to exercise corporate trust powers under the laws of Delaware, having a combined capital, surplus and undivided profits of at least \$50,000,000 and subject to supervision or examination by federal or state authorities. If the Trustee publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Article II the combined capital, surplus and undivided profits of the Trustee shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible to serve as trustee of the Trust in accordance with the provisions of this Section 2.1, the Trustee shall resign promptly in the manner and with the effect specified in this Article II. The Trustee may have normal banking and trust relationships with the Sponsor and their respective Affiliates; *provided* that none of (i) the Sponsor, (ii) any Person involved in the organization or operation of the Sponsor or the Trust or (iii) any Affiliate of any of them may be the Trustee hereunder. The Trust shall have at least one trustee with a principal place of business in Delaware. It is understood and agreed by the parties hereto that the Trustee shall have none of the duties or liabilities of the Sponsor and shall have no obligation to supervise or monitor the Sponsor or otherwise manage the Trust.

(b) The Trustee is permitted to resign upon at least sixty (60) days' notice to the Sponsor upon which date such resignation shall be effective.

(c) If at any time the Trustee shall cease to be eligible to serve as trustee of the Trust in accordance with the provisions of this Trust Agreement, or if at any time the Trustee shall become incapable of acting, or shall be adjudged bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, then the Sponsor may remove the Trustee and appoint a successor trustee by written instrument, in duplicate, which instrument shall be delivered to the Trustee so removed and the successor trustee. The Sponsor may at any time, upon sixty (60) days' prior notice to the Trustee, remove the Trustee and appoint a successor trustee by written instrument or instruments, in triplicate, signed by the Sponsor or its attorney-in-fact duly authorized, one complete set of which instruments shall be delivered to the Trustee so removed and one complete set to the successor so appointed.

SECTION 2.2 *Powers.* Except to the extent expressly set forth in Section 1.3 and this Article II, the duty and authority to manage the affairs of the Trust is vested in the Sponsor, which duty and authority the Sponsor may further delegate as provided herein, all pursuant to Section 3806(b)(7) of the Delaware Trust Statute. The duties of the Trustee shall be limited to (i) accepting legal process served on the Trust in the State of Delaware, (ii) the execution of any certificates required to be filed with the Secretary of State of the State of Delaware which the Trustee is required to execute under Section 3811 of the Delaware Trust Statute and (iii) any other duties specifically allocated to the Trustee in this Trust Agreement. The Trustee shall provide prompt notice to the Sponsor of its performance of any of the foregoing. The Sponsor shall reasonably keep the Trustee informed of any actions taken by the Sponsor with respect to the Trust that would reasonably be expected to affect the rights, obligations or liabilities of the Trustee hereunder or under the Delaware Trust Statute.

SECTION 2.3 *Compensation and Expenses of the Trustee.* The Trustee shall be entitled to receive from the Sponsor, as a Sponsor-paid Expense, reasonable compensation for its services hereunder as set forth in a separate fee agreement and shall be entitled to be reimbursed by the Sponsor on behalf of the Trust for reasonable out-of-pocket expenses incurred by it in the performance of its duties hereunder, including without limitation, the reasonable compensation, out-of-pocket expenses and disbursements of counsel, any experts and such other agents as the Trustee may employ in connection with the exercise and performance of its rights and duties hereunder (together, the "**Trust Expenses**"). To the extent that the Sponsor fails to pay the Trust Expenses, the Trust will be responsible for such Trust Expenses.

SECTION 2.4 *Indemnification.*

(a) The Trust hereby agrees to be primary obligor and shall indemnify, defend and hold harmless the Trustee and any of the officers, directors, employees and agents of the Trustee (the "**Indemnified Persons**") from and against any and all losses, damages, liabilities, claims, actions, suits, costs, expenses, disbursements (including the reasonable fees and expenses of counsel and fees and expenses incurred in connection with enforcement of its indemnification rights hereunder), taxes and penalties of any kind and nature whatsoever (collectively, "**Expenses**"), to the extent that such Expenses arise out of or are imposed upon or asserted at any time against such Indemnified Persons with respect to the performance of this Trust Agreement, the creation, operation or termination

of the Trust or the transactions contemplated hereby; *provided, however*, that the Trust shall not be required to indemnify any Indemnified Person for any Expenses which are a result of the willful misconduct, bad faith or gross negligence of an Indemnified Person. If the Trust shall have insufficient assets or improperly refuses to pay an Indemnified Person within sixty (60) days of a request for payment owed hereunder, DCG shall, as secondary obligor, compensate or reimburse the Trustee or indemnify, defend and hold harmless an Indemnified Person as if it were the primary obligor hereunder; *provided, however*, that DCG shall not be required to indemnify any Indemnified Person for any Expenses which are a result of the willful misconduct, bad faith or gross negligence of an Indemnified Person. To the fullest extent permitted by law and by the requirement for treatment of the Trust as a grantor trust for tax purposes, Expenses to be incurred by an Indemnified Person shall, from time to time, be advanced by, or on behalf of, DCG prior to the final disposition of any matter upon receipt by DCG of an undertaking by, or on behalf of, such Indemnified Person to repay such amount if it shall be determined that the Indemnified Person is not entitled to be indemnified under this Trust Agreement.

(b) As security for any amounts owing to the Trustee hereunder, the Trustee shall have a lien against the Trust property, which lien shall be prior to the rights of the Sponsor, DCG or any other Shareholder. The obligations of DCG and the Trust to indemnify the Indemnified Persons under this Section 2.4 shall survive the termination of this Trust Agreement.

SECTION 2.5 *Successor Trustee*. Upon the resignation or removal of the Trustee, the Sponsor shall appoint a successor Trustee by delivering a written instrument to the outgoing Trustee. Any successor Trustee must satisfy the requirements of Section 3807 of the Delaware Trust Statute. The successor Trustee shall become fully vested with all of the rights, powers, duties and obligations of the outgoing Trustee under this Trust Agreement, with like effect as if originally named as Trustee, and the outgoing Trustee shall be discharged of its duties and obligations under this Trust Agreement. Any business entity into which the Trustee may be merged or converted or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any entity succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, to the fullest extent permitted by law without the execution or filing of any paper or any further act on the part of any of the parties hereto.

SECTION 2.6 *Liability of Trustee*. Except as otherwise provided in this Article II, in accepting the trust created hereby, Delaware Trust Company acts solely as Trustee hereunder and not in its individual capacity, and all Persons having any claim against Delaware Trust Company by reason of the transactions contemplated by this Trust Agreement and any other agreement to which the Trust is a party shall look only to the Trust Estate for payment or satisfaction thereof. The Trustee shall not be liable or accountable hereunder to the Trust or to any other Person or under any other agreement to which the Trust is a party, except for the Trustee's own fraud, gross negligence, bad faith or willful misconduct. In particular, but not by way of limitation:

(a) The Trustee shall have no liability or responsibility for the validity or sufficiency of this Trust Agreement or for the form, character, genuineness, sufficiency, enforceability, collectability, location, existence, value or validity of the Trust Estate;

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(b) The Trustee has not prepared or verified, and shall not be responsible or liable for, any information, disclosure or other statement in the Memorandum or in any other document issued or delivered in connection with the sale or transfer of the Shares;

(c) The Trustee shall not be liable for any actions taken or omitted to be taken by it in accordance with the instructions of the Sponsor or the Liquidating Trustee;

(d) The Trustee shall not have any liability for the acts or omissions of the Sponsor, the Security Vendors or their respective delegates;

(e) The Trustee shall have no duty or obligation to supervise the performance of any obligations of the Sponsor, the Security Vendors or their respective delegates or any Participant;

(f) No provision of this Trust Agreement shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its rights or powers hereunder;

(g) Under no circumstances shall the Trustee be liable for any obligations of the Trust arising under this Trust Agreement or any other agreements to which the Trust is a party;

(h) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Trust Agreement, or to institute, conduct or defend any litigation under this Trust Agreement or any other agreements to which the Trust is a party, at the request, order or direction of the Sponsor unless the Sponsor has offered to Delaware Trust Company (in its capacity as Trustee and individually) security or indemnity satisfactory to it against the costs, expenses and liabilities that may be incurred by Delaware Trust Company (including, without limitation, the reasonable fees and expenses of its counsel) therein or thereby;

(i) Notwithstanding anything contained herein to the contrary, the Trustee shall not be required to take any action in any jurisdiction other than in the State of Delaware if the taking of such action will (i) require the consent or approval or authorization or order of, or the giving of notice to, or the registration with or taking of any action in respect of, any state or other governmental authority or agency of any jurisdiction other than the State of Delaware, (ii) result in any fee, tax or other governmental charge becoming payable by the Trustee under the laws of any jurisdiction or any political subdivision thereof other than the State of Delaware or (iii) subject the Trustee to personal jurisdiction, other than in the State of Delaware, for causes of action arising from personal acts unrelated to the consummation of the actions of the Trustee contemplated by this Trust Agreement;

(j) To the extent that, at law or in equity, the Trustee has duties (including fiduciary duties) and liabilities relating thereto to the Trust, the Shareholders or any other Person, the Trustee, acting under this Trust Agreement, shall not be liable to the Trust, the Shareholders or any other Person for its good faith reliance on the provisions of this Trust Agreement, and the provisions of this Trust Agreement, to the extent that they restrict or eliminate the duties and liabilities of the Trustee otherwise existing at law or in equity are agreed by the parties hereto to replace such other duties and liabilities of the Trustee; and

(k) The Trustee shall not be liable for punitive, exemplary, consequential or similar damages for a breach of the Trust Agreement under any circumstances.

SECTION 2.7 *Reliance; Advice of Counsel.*

(a) In the absence of bad faith, the Trustee may conclusively rely upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Trust Agreement in determining the truth of the statements and the correctness of the opinions contained therein, and shall incur no liability to anyone in acting or not acting on any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper believed by it to be genuine and believed by it to be signed by the proper party or parties and need not investigate any fact or matter pertaining to, or contained in, any such document; *provided, however*, that the Trustee shall have examined any certificates and opinions so as to reasonably determine compliance of such certificates and opinions with the requirements of this Trust Agreement. The Trustee may accept a certified copy of a resolution of the board of directors or other governing body of any corporate party as conclusive evidence that such resolution has been duly adopted by such body and that such resolution is in full force and effect. As to any fact or matter the method of the determination of which is not specifically prescribed in this Trust Agreement, the Trustee may for all purposes hereof rely on a certificate, signed by the president, any vice president, the treasurer or any other authorized officers of the relevant party, as to such fact or matter, and such certificate shall constitute full protection to the Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon.

(b) In the exercise or administration of the Trust hereunder and in the performance of its duties and obligations under this Trust Agreement, the Trustee, at the expense of the Trust (i) may act directly or through its agents, attorneys, custodians or nominees pursuant to agreements entered into with any of them, and the Trustee shall not be liable for the conduct or misconduct of such agents, attorneys, custodians or nominees if such agents, attorneys, custodians or nominees shall have been selected by the Trustee with reasonable care and (ii) may consult with counsel, accountants and other skilled professionals to be selected with reasonable care by it. The Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the opinion or advice of any such counsel, accountant or other such Persons.



SECTION 2.8 *Payments to the Trustee.* Any amounts paid to the Trustee pursuant to this Article II shall be deemed not to be a part of the Trust Estate immediately after such payment. Any amounts owing to the Trustee under this Trust Agreement shall constitute a claim against the Trust Estate. Notwithstanding any other provision of this Trust Agreement, all payments to the Trustee, including fees, expenses and any amounts paid in connection with indemnification of the Trustee in accordance with the terms of this Trust Agreement will be payable only in U.S. Dollars.

### ARTICLE III

#### SHARES; CREATIONS AND ISSUANCE OF CREATION BASKETS

SECTION 3.1 *General.* The Sponsor shall have the power and authority, without action or approval by the Shareholders, to cause the Trust to issue Shares from time to time as it deems necessary or desirable. The number of Shares authorized shall be unlimited, and the Shares so authorized may be represented in part by fractional Shares, calculated to one one-hundred-millionth of one ETH (i.e., carried to the eighth decimal place). From time to time, the Sponsor may cause the Trust to divide or combine the Shares into a greater or lesser number without thereby changing the proportionate beneficial interests in the Trust Estate, or in any way affecting the rights, of the Shareholders, without action or approval by the Shareholders. The Trust shall issue Shares solely in exchange for contributions of ETH (or for no consideration if pursuant to a Share distribution or split-up). All Shares when so issued shall be fully paid and non-assessable. Subject to the limitations upon, and requirements for, the issuance of Creation Baskets stated herein and in the PA Procedures (as defined below), the number of Creation Baskets that may be issued by the Trust is unlimited. Every Shareholder, by virtue of having purchased or otherwise acquired a Share, shall be deemed to have expressly consented and agreed to be bound by the terms of this Trust Agreement.

SECTION 3.2 *Offer of Shares; Procedures for Creation and Issuance of Creation Baskets to Persons Other than Participants.*

On any Business Day, the Trust may create and issue Creation Baskets to any Person that has signed a Purchase Agreement with the Trust in exchange for a transfer of the Total Basket ETH Amount into the Trust's ETH Account; *provided* that the Trust shall create and issue Creation Baskets only if the Sponsor has determined in good faith that such creation and issuance does not conflict with the other terms of this Trust Agreement or with applicable law.

SECTION 3.3 *Offer of Shares; Procedures for Creation and Issuance of Creation Baskets to Participants.*

(a) General. The following procedures, as supplemented by the more detailed procedures specified in the Exhibits, annexes, attachments and procedures, as applicable, to each Participant Agreement (the "**PA Procedures**"), which may be amended from time to time in accordance with the provisions of the relevant Participant Agreement (*provided* that any such amendment shall not constitute an amendment of this Trust Agreement), shall govern the Trust with respect to the creation and issuance of Creation Baskets to Participants, subject to Section 3.3(b).

(i) On any Business Day, a Participant may place an order for one or more Creation Baskets (each, a “**Creation Order**”) in the manner provided in the PA Procedures.

(ii) The Sponsor or its delegate shall process Creation Orders only from Participants with respect to which a Participant Agreement is in full force and effect and only in accordance with the PA Procedures. The Sponsor or its delegate shall maintain and make available at the Trust’s principal offices during normal business hours a current list of the Participants with respect to which a Participant Agreement is in full force and effect.

(iii) The Trust shall create and issue Creation Baskets only in exchange for transfer to the Trust on the applicable Creation Settlement Date of the applicable Total Basket ETH Amount by the relevant Participant or Liquidity Provider, as applicable.

(iv) The Sponsor or its delegate has final determination of all questions as to the calculation of the Total Basket ETH Amount at any time.

(v) Transfers of ETH other than those received from a Participant Self-Administered Account or a Liquidity Provider Account shall be rejected. The expense and risk of delivery, ownership and safekeeping of ETH, until such ETH have been received and not rejected by the Trust, shall be borne solely by the Participant or a Liquidity Provider, as applicable.

(vi) Upon the transfer of the Total Basket ETH Amount to the ETH Account, the Sponsor or its delegate shall (A) if applicable and instructing the Security Vendors as necessary, transfer the Total ETH Basket Amount to the appropriate sub-account of the ETH Account, (B) direct the Transfer Agent to credit to the Participant’s account the number of Creation Baskets ordered by the Participant and (C) compensate the Liquidity Provider pursuant to the PA Procedures.

(vii) The Trust may accept delivery of ETH by such other means as the Sponsor, from time to time, may determine to be acceptable for the Trust.

(b) Rejection or Suspension. The Sponsor or its delegate shall reject a Creation Order if the Creation Order is not in proper form as described in the relevant Participant Agreement or if the fulfillment of the Creation Order, in the opinion of its counsel, might be unlawful. The issuance of Creation Baskets may be suspended by the Sponsor generally, or refused with respect to a particular Creation Order, during any period when the transfer books of the Transfer Agent are closed or if circumstances outside the control of the Sponsor or its delegate make it for all practicable purposes not feasible to process Creation Orders or for any other reason at any time or from time to time. None of the Sponsor, its delegates or the Security Vendors shall be liable for the suspension or rejection of any Creation Order.

(c) Conflict. In the event of any conflict between the procedures described in this Section 3.3 and the PA Procedures, the PA Procedures shall control.

(d) Successor Security Vendors. If a successor to any of the Security Vendors shall be employed, the Trust and the Sponsor shall establish procedures acceptable to such successor with respect to the matters addressed in this Section 3.3.

SECTION 3.4 *Book-Entry System*.

(a) Shares shall be held in book-entry form by the Transfer Agent. The Sponsor or its delegate shall direct the Transfer Agent to (i) credit or debit the number of Creation Baskets or Redemption Baskets to the account of the applicable Shareholder and (ii) issue or cancel Creation Baskets or Redemption Baskets, as applicable, at the direction of the Sponsor or its delegate.

(b) The Sponsor or its delegate may cause the Trust to issue Shares in certificated form in its sole discretion.

SECTION 3.5 *Assets of the Trust*. The Trust Estate shall irrevocably belong to the Trust for all purposes, subject only to the rights of creditors of the Trust and shall be so recorded upon the books of account of the Trust.

SECTION 3.6 *Liabilities of the Trust*. The Trust Estate shall be charged with the liabilities of the Trust and with all expenses, costs, charges and reserves attributable to the Trust. The Sponsor shall have full discretion, to the extent not inconsistent with applicable law, to determine which items shall be treated as income and which items as capital, and each such determination and allocation shall be conclusive and binding upon the Shareholders.

SECTION 3.7 *Distributions*.

(a) The Trust may make distributions on Shares either in cash or in kind, including in such form as is necessary and permissible for the Trust to facilitate the distribution of Incidental Rights and/or IR Virtual Currency.

(b) Distributions on Shares, if any, may be made with such frequency as the Sponsor may determine, which may be daily or otherwise, to the Shareholders, from the Trust Estate, after providing for actual and accrued liabilities. All distributions on Shares shall be made *pro rata* to the Shareholders in proportion to their respective Percentage Interests at the date and time of record established for such distribution.

(c) If the Trust sells ETH, Incidental Rights and/or IR Virtual Currency in order to pay Additional Trust Expenses, then any cash remaining from these sales after the payment of any Additional Trust Expenses shall promptly be distributed to the Shareholders.

SECTION 3.8 *Voting Rights*. Notwithstanding any other provision hereof, on each matter submitted to a vote of the Shareholders, each Shareholder shall be entitled to a proportionate vote based upon its Percentage Interest at such time.

SECTION 3.9 *Equality*. All Shares shall represent an equal proportionate beneficial interest in the Trust Estate subject to the liabilities of the Trust, and each Share's interest in the Trust Estate shall be equal to each other Share.

## ARTICLE IV

### TRANSFERS OF SHARES

SECTION 4.1 *General Prohibition*. A Shareholder may not sell, assign, transfer or otherwise dispose of, or pledge, hypothecate or in any manner encumber any or all of its Shares or any part of its right, title and interest in the Trust Estate except as permitted in this Article IV and any act in violation of this Article IV shall not be binding upon or recognized by the Trust (regardless of whether the Sponsor shall have knowledge thereof), unless approved in writing by the Sponsor.

#### SECTION 4.2 *Restricted Securities*.

Except for Shares transferred in a transaction registered under the Securities Act, the Shares are "restricted securities" that cannot be resold, pledged or otherwise transferred without registration under the Securities Act and state securities laws or exemption therefrom and may not be resold, pledged or otherwise transferred without the prior written consent of the Sponsor, which it may withhold in its sole discretion for any reason or for no reason. The Sponsor may provide any such written consent in the Memorandum.

#### SECTION 4.3 *Transfer of Shares Generally*.

Shares shall be transferable on the books of account for the Trust only by the record holder thereof or by his or her duly authorized agent upon delivery to the Sponsor or the Transfer Agent or similar agent of a duly executed instrument of transfer, and such evidence of the genuineness of each such execution and authorization and of such other matters as may be required by the Sponsor. Upon such delivery, and subject to any further requirements specified by the Sponsor, the transfer shall be recorded on the books of account for the Trust. Until a transfer is so recorded, the Shareholder of record of Shares shall be deemed to be the Shareholder with respect to such Shares for all purposes hereunder and neither the Sponsor nor the Trust, nor the Transfer Agent or any similar agent or registrar or any officer, employee or agent of the Trust, shall be affected by any notice of a proposed transfer.

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**ARTICLE V****REDEMPTIONS**

SECTION 5.1 *Unavailability of Redemption Program*. Unless otherwise determined by the Sponsor in its sole discretion following the Trust's receipt of regulatory approval therefor, the Trust shall not offer a redemption program for the Shares. The Trust may, but shall not be required to, seek regulatory approval to operate a redemption program. If any redemption program is approved, then any redemption authorized by the Sponsor shall be subject to the provisions of this Article V.

SECTION 5.2 *Redemption of Redemption Baskets*.

(a) General. Upon the approval of a redemption program and authorization by the Sponsor, the following procedures, as supplemented by the PA Procedures, which may be amended from time to time in accordance with the provisions of the Participant Agreement (*provided* that any such amendment shall not constitute an amendment of this Trust Agreement), shall govern the Trust with respect to the redemption of Redemption Baskets, subject to Section 5.2(b).

(i) On any Business Day, a Participant may place an order to redeem Redemption Baskets (each, a "**Redemption Order**") in the manner provided in the PA Procedures.

(ii) The Sponsor or its delegates shall process Redemption Orders only from Participants with respect to which a Participant Agreement is in full force and effect.

(iii) The Trust shall redeem Redemption Baskets only in exchange for deposit with the Transfer Agent on the Redemption Settlement Date of the total number of Baskets indicated in the Participant's Redemption Order.

(iv) Upon receipt of the total number of Baskets indicated in the Participant's Redemption Order, the Sponsor or its delegate shall instruct the Transfer Agent to cancel the Shares in the Baskets so redeemed. The Sponsor or its delegate shall, instructing the Security Vendors as necessary, transfer to the Participant's Self-Administered Account or the Liquidity Provider Account, as applicable, a number of ETH equal to the Total Basket ETH Amount.

(v) The Sponsor or its delegate has final determination of all questions as to the determination of the Total Basket ETH Amount at any time.

(vi) The Total Basket ETH Amount shall be delivered only to a Participant Self-Administered Account or a Liquidity Provider Account.

(vii) The Total Basket ETH Amount shall be subject to the deduction of any applicable tax or other governmental charges that may be due.

(b) Rejection or Suspension. The Sponsor or its delegate shall reject a Redemption Order if the Redemption Order is not in proper form as described in the relevant Participant Agreement or if the fulfillment of the Redemption Order, in the opinion of its counsel, might be unlawful. The redemption of Baskets may be suspended by the Sponsor generally, or refused with respect to a particular Redemption Order, during any period when the transfer books of the Transfer Agent are closed or if circumstances outside the control of the Sponsor or its delegate make it for all practicable purposes not feasible to process Redemption Orders or for any other reason at any time or from time to time. None of the Sponsor, its delegates or the Security Vendors shall be liable for the suspension or rejection of any Redemption Order.

(c) Conflict. In the event of any conflict between the procedures described in this Section 5.2 and the PA Procedures, the PA Procedures shall control.

SECTION 5.3 *Other Redemption Procedures*. The Sponsor or its delegates from time to time may, but shall have no obligation to, establish procedures with respect to redemption of Shares in lot sizes smaller than the Redemption Basket and permitting the redemption distribution to be delivered in a manner other than that specified in Section 5.2.

## ARTICLE VI

### THE SPONSOR

SECTION 6.1 *Management of the Trust*. Pursuant to Section 3806(b)(7) of the Delaware Trust Statute, the Trust shall be managed by the Sponsor in accordance with this Trust Agreement. The Sponsor may delegate, as provided herein, the duty and authority to manage the affairs of the Trust. Any determination as to what is in the interests of the Trust made by the Sponsor in good faith shall be conclusive. In construing the provisions of this Trust Agreement, the presumption shall be in favor of a grant of power to the Sponsor, but subject, for the avoidance of doubt, to the restrictions, prohibitions and limitations expressly set forth in Section 1.5, Section 6.4(m) and otherwise in this Trust Agreement. The enumeration of any specific power in this Trust Agreement shall not be construed as limiting the aforesaid power.

SECTION 6.2 *Authority of Sponsor*. In addition to, and not in limitation of, any rights and powers conferred by law or other provisions of this Trust Agreement, and except as limited, restricted or prohibited by the express provisions of this Trust Agreement or the Delaware Trust Statute, the Sponsor shall have and may exercise on behalf of the Trust, all powers and rights necessary, proper, convenient or advisable to effectuate and carry out the purposes of the Trust, which powers and rights shall include, without limitation, the following:

(a) To enter into, execute, accept, deliver and maintain, and to cause the Trust to perform its obligations under, contracts, agreements and any or all other documents and instruments incidental to the Trust's purposes, and to do and perform all such acts as may be in furtherance of the Trust's purposes, or necessary or appropriate

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for the offer and sale of the Shares, including, but not limited to, causing the Trust to enter into (i) contracts or agreements with the Sponsor or an Affiliate, *provided* that any such contract or agreement does not conflict with the provisions of Section 1.5(b) of this Trust Agreement, Section 6.4 of this Trust Agreement or clause (ii) of this Section 6.2(g) and (ii) contracts with third parties for various services, it being understood that any document or instrument executed or accepted by the Sponsor in the Sponsor's name shall be deemed executed and accepted on behalf of the Trust by the Sponsor, *provided, however*, that such services may be performed by an Affiliate or Affiliates of the Sponsor so long as the Sponsor has made a good faith determination that (A) the Affiliate that it proposes to engage to perform such services is qualified to do so (considering the prior experience of the Affiliate or the individuals employed by the Affiliate); (B) the terms and conditions of the agreement pursuant to which such Affiliate is to perform services for the Trust are no less favorable to the Trust than could be obtained from equally-qualified unaffiliated third parties; and (C) the maximum period covered by the agreement pursuant to which such Affiliate is to perform services for the Trust shall not exceed one year, and such agreement shall be terminable without penalty upon one hundred twenty (120) days' prior written notice by the Trust;

(b) To establish, maintain, deposit into, and sign checks and/or otherwise draw upon, accounts on behalf of the Trust with appropriate banking and savings institutions;

(c) To deposit, withdraw, pay, retain and distribute the Trust Estate or any portion thereof in any manner consistent with the provisions of this Trust Agreement;

(d) To supervise the preparation of the Memorandum and supplements and amendments thereto;

(e) To make or authorize the making of distributions to the Shareholders and expenses of the Trust out of the Trust Estate;

(f) To cause the Trust to appoint an agent to act on behalf of the Shareholders pursuant to Section 7.5;

(g) To prepare, or cause to be prepared, and file, or cause to be filed, an application to register any Shares under the Securities Act and/or the Exchange Act and to take any other action and execute and deliver any certificates or documents that may be necessary to effectuate such registration;

(h) To prepare, or cause to be prepared, and file, or cause to be filed, an application to enable the Shares to be listed, quoted or traded on any Secondary Market and to take any other action and execute and deliver any certificates or documents that may be necessary to effectuate such listing, quotation or trading;

(i) To appoint one or more Security Vendors, including itself or an Affiliate, to provide for custodial or non-custodial security services, or to determine not to appoint any Security Vendors, and to otherwise take any action with respect to the Security Vendors to safeguard the Trust Estate;

(j) In the sole and absolute discretion of the Sponsor, to admit an Affiliate or Affiliates of the Sponsor as additional Sponsors;

(k) To delegate those of its duties hereunder as it shall determine from time to time to one or more Distributors, and add any additional service providers, if needed and as applicable;

(l) To perform such other services as the Sponsor believes that the Trust may from time to time require;

(m) To determine, in good faith, which peer-to-peer network, among a group of incompatible forks of the Ethereum Network, is generally accepted as ETH and should therefore be considered "ETH" for the Trust's purposes, which the Sponsor will determine based on a variety of then relevant factors, including (but not limited to) the following: (i) the Sponsor's beliefs regarding expectations of the core developers of ETH, users, services businesses, miners and other constituencies and (ii) the actual, continued development, acceptance, mining power and community engagement; *provided* that the Sponsor shall not make a determination that would conflict with Section 1.5(b) or Section 6.4(m) of this Trust Agreement; and

(n) In general, but subject to Section 1.5 and Section 6.4 of this Trust Agreement, to do everything necessary, suitable or proper for the accomplishment of any purpose or the furtherance of any power herein set forth, either alone or in association with others, and to do every other act or thing incidental or appurtenant to, or growing out of or connected with, the aforesaid purposes or powers.

**SECTION 6.3 *Obligations of the Sponsor.*** In addition to the obligations expressly provided by the Delaware Trust Statute or this Trust Agreement, the Sponsor shall:

(a) Devote such of its time to the affairs of the Trust as it shall, in its discretion exercised in good faith, determine to be necessary to carry out the purposes of the Trust, as set forth in Section 1.5, for the benefit of the Shareholders;

(b) Execute, file, record and/or publish all certificates, statements and other documents and do any and all other things as may be appropriate for the formation, qualification and operation of the Trust and for the conduct of its affairs in all appropriate jurisdictions;

(c) Retain independent public accountants to audit the accounts of the Trust;

(d) Employ attorneys to represent the Sponsor and, as necessary, the Trust;

(e) Select and enter into agreements with the Trustee and any other service provider to the Trust;



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- (f) Use its best efforts to maintain the status of the Trust as a grantor trust for U.S. federal income tax purposes under Subpart E, Part I of Subchapter J of the Code;
- (g) Monitor all fees charged to the Trust, and the services rendered by the service providers to the Trust, to determine whether the fees paid by, and the services rendered to, the Trust are at competitive rates and are the best price and services available under the circumstances, and if necessary, renegotiate the fee structure to obtain such rates and services for the Trust;
- (h) Have fiduciary responsibility for the safekeeping and use of the Trust Estate, whether or not in the Sponsor's immediate possession or control;
- (i) Not employ or permit others to employ the Trust Estate in any manner except for the benefit of the Trust, including, among other things, the utilization of any portion of the Trust Estate as compensating balances for the exclusive benefit of the Sponsor;
- (j) At all times act with integrity and good faith and exercise due diligence in all activities relating to the Trust and in resolving conflicts of interest;
- (k) Enter into a Participant Agreement with each Participant and discharge the duties and responsibilities of the Trust and the Sponsor thereunder;
- (l) Receive directly or through its delegates from Participants and process properly submitted Creation Orders, as described in Section 3.3(a);
- (m) Receive directly or through its delegates from Participants and process properly submitted Redemption Orders (if authorized), as described in Section 5.2(a), or as may from time to time be permitted by Section 5.3;
- (n) Interact with the Security Vendors and any other party as required;
- (o) If the Shares are listed, quoted or traded on any Secondary Market, cause the Trust to comply with all rules, orders and regulations of such Secondary Market to which the Trust is subject as a result of the listing, quotation or trading of the Shares on such Secondary Market, and take all such other actions that may reasonably be taken and are necessary for the Shares to remain listed, quoted or traded on such Secondary Market until the Trust is terminated or the Shares are no longer listed, quoted or traded on such Secondary Market;
- (p) If the Shares are transferred in a transaction registered under the Securities Act or registered under the Exchange Act, cause the Trust to comply with all rules, orders and regulations of the SEC and take all such other actions as may reasonably be taken and are necessary for the Shares to remain registered under the Exchange Act until the Trust is terminated or the Shares are no longer registered under the Exchange Act; and

(q) Take all actions to prepare and, to the extent required by this Trust Agreement or by law, mail to Shareholders any reports, press releases or statements, financial or otherwise, that the Sponsor determines are required to be provided to Shareholders by applicable law or governmental regulation or the requirements of any Secondary Market on which the Shares are listed, quoted or traded or, if any Shares are transferred in a transaction registered under the Securities Act or registered under the Exchange Act, the SEC, as applicable.

The foregoing clauses of Section 6.2 and Section 6.3 shall be construed as powers, and the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the general powers of the Sponsor. Any action by the Sponsor hereunder shall be deemed an action on behalf of the Trust, and not an action in an individual capacity.

SECTION 6.4 *General Prohibitions*. The Trust shall not, and the Sponsor shall not have the power to cause the Trust to:

- (a) Receive any property other than ETH upon the issuance of Shares;
- (b) Hold any property other than (i) ETH, Incidental Rights and IR Virtual Currency, (ii) cash from the sale of ETH, Incidental Rights or IR Virtual Currency and (iii) interests in any liquidating trust or other vehicle formed to hold Incidental Rights or IR Virtual Currency pending distribution of such interests to the Shareholders;
- (c) Hold any cash from the sale of ETH, Incidental Rights or IR Virtual Currency for more than thirty (30) Business Days prior to using such cash to pay Additional Trust Expenses and distributing any remaining cash to the Shareholders;
- (d) If the redemption of Shares is not authorized pursuant to Section 5.1, redeem any Shares other than upon the dissolution of the Trust;
- (e) If the redemption of Shares is authorized pursuant to Section 5.1, redeem the Shares other than (i) to satisfy a Redemption Order from a Participant, (ii) as provided in Section 5.2 or Section 5.3 or (iii) upon the dissolution of the Trust;
- (f) Borrow money from, or loan money to, any Shareholder, the Sponsor or any other Person;
- (g) Create, incur, assume or suffer to exist any lien, mortgage, pledge conditional sales or other title retention agreement, charge, security interest or encumbrance on or with respect to the Trust Estate, except for (i) liens for taxes not delinquent or being contested in good faith and by appropriate proceedings and for which appropriate reserves have been established and (ii) liens by the Trustee against the Trust property as security for any amounts owing to the Trustee hereunder;
- (h) Commingle the Trust Estate with the assets of any other Person;

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- (i) Permit rebates to be received by the Sponsor or any Affiliate of the Sponsor, or permit the Sponsor or any Affiliate of the Sponsor to engage in any reciprocal business arrangements which would circumvent the foregoing prohibition;
- (j) Enter into any contract with the Sponsor or an Affiliate of the Sponsor (A) that, except for selling agreements for the sale of Shares, has a term of more than one year and that does not provide that it may be canceled by the Trust without penalty on one hundred twenty (120) days prior written notice or (B) for the provision of services, except at rates and terms at least as favorable as those that may be obtained from third parties in arm's length negotiations;
- (k) Enter into any exclusive brokerage contract;
- (l) Elect to be treated as an association taxable as a corporation for U.S. federal income tax purposes; or
- (m) Notwithstanding any other provision of this Trust Agreement, including Section 6.4(b), take any action that could cause the Trust to be treated other than as a grantor trust for U.S. federal income tax purposes.

**SECTION 6.5 *Liability of Covered Persons.*** A Covered Person shall have no liability to the Trust or to any Shareholder or other Covered Person for any loss suffered by the Trust which arises out of any action or inaction of such Covered Person if such Covered Person, in good faith, determined that such course of conduct was in the best interest of the Trust and such course of conduct did not constitute fraud, gross negligence, bad faith or willful misconduct of such Covered Person. Subject to the foregoing, neither the Sponsor nor any other Covered Person shall be personally liable for the return or repayment of all or any portion of the ETH transferred, or the purchase price otherwise paid, by a Shareholder for its Shares, it being expressly agreed that any such return made pursuant to this Trust Agreement shall be made solely from the assets of the Trust without any rights of contribution from the Sponsor or any other Covered Person. A Covered Person shall not be liable for the conduct or misconduct of any delegatee selected by the Sponsor with reasonable care.

**SECTION 6.6 *Fiduciary Duty.***

(a) To the extent that, at law or in equity, the Sponsor has duties (including fiduciary duties) and liabilities relating thereto to the Trust, the Shareholders or any other Person, the Sponsor acting under this Trust Agreement shall not be liable to the Trust, the Shareholders or any other Person for its good faith reliance on the provisions of this Trust Agreement subject to the standard of care set forth in Section 6.5 herein. The provisions of this Trust Agreement, to the extent that they restrict or eliminate the duties and liabilities of the Sponsor otherwise existing at law or in equity are agreed by the parties hereto to replace such other duties and liabilities of the Sponsor. To the fullest extent permitted by law, no Person other than the Sponsor and the Trustee shall have any duties (including fiduciary duties) or liabilities at law or in equity to the Trust, the Shareholders or any other Person.

(b) Unless otherwise expressly provided herein, (i) whenever a conflict of interest exists or arises between the Sponsor or any of its Affiliates, on the one hand, and the Trust, any Shareholder or any other Person, on the other hand; or (ii) whenever this Trust Agreement or any other agreement contemplated herein provides that the Sponsor shall act in a manner that is, or provides terms that are, fair and reasonable to the Trust, any Shareholder or any other Person, the Sponsor shall resolve such conflict of interest, take such action or provide such terms, considering in each case the relative interest of each party (including its own interest) to such conflict, agreement, transaction or situation and the benefits and burdens relating to such interests, any customary or accepted industry practices, and any applicable generally accepted accounting practices or principles. In the absence of bad faith by the Sponsor, the resolution, action or terms so made, taken or provided by the Sponsor shall not constitute a breach of this Trust Agreement or any other agreement contemplated herein or of any duty or obligation of the Sponsor at law or in equity or otherwise.

(c) The Sponsor and any Affiliate of the Sponsor may engage in or possess an interest in profit-seeking or business ventures of any nature or description, independently or with others, whether or not such ventures are competitive with the Trust and the doctrine of corporate opportunity, or any analogous doctrine, shall not apply to the Sponsor. If the Sponsor acquires knowledge of a potential transaction, agreement, arrangement or other matter that may be an opportunity for the Trust, it shall have no duty to communicate or offer such opportunity to the Trust, and the Sponsor shall not be liable to the Trust or to the Shareholders for breach of any fiduciary or other duty by reason of the fact that the Sponsor pursues or acquires for, or directs such opportunity to, another Person or does not communicate such opportunity or information to the Trust. Neither the Trust nor any Shareholder shall have any rights or obligations by virtue of this Trust Agreement or the trust relationship created hereby in or to such independent ventures or the income or profits or losses derived therefrom, and the pursuit of such ventures, even if competitive with the purposes of the Trust, shall not be deemed wrongful or improper. Except to the extent expressly provided herein, the Sponsor may engage or be interested in any financial or other transaction with the Trust, the Shareholders or any Affiliate of the Trust or the Shareholders.

(d) To the fullest extent permitted by law and notwithstanding any other provision of this Trust Agreement or in any agreement contemplated herein or applicable provisions of law or equity or otherwise, whenever in this Trust Agreement a Person is permitted or required to make a decision (a) in its "sole discretion" or "discretion" or under a grant of similar authority or latitude, the Person shall be entitled to consider only such interests and factors as it desires, including its own interests, and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Trust, the Shareholders or any other Person, or (b) in its "good faith" or under another express standard, the Person shall act under such express standard and shall not be subject to any other or different standard. The term "good faith" as used in this Trust Agreement shall mean subjective good faith as such term is understood and interpreted under Delaware law.

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SECTION 6.7 *Indemnification of the Sponsor.*

(a) The Sponsor shall be indemnified by the Trust against any losses, judgments, liabilities, expenses and amounts paid in settlement of any claims sustained by it in connection with its activities for the Trust, provided that (i) the Sponsor was acting on behalf of, or performing services for, the Trust and has determined, in good faith, that such course of conduct was in the best interests of the Trust and such liability or loss was not the result of fraud, gross negligence, bad faith, willful misconduct, or a material breach of this Trust Agreement on the part of the Sponsor and (ii) any such indemnification will be recoverable only from the Trust Estate. All rights to indemnification permitted herein and payment of associated expenses shall not be affected by the dissolution or other cessation of existence of the Sponsor, or the withdrawal, adjudication of bankruptcy or insolvency of the Sponsor, or the filing of a voluntary or involuntary petition in bankruptcy under Title 11 of the United States Code by or against the Sponsor.

(b) Notwithstanding the provisions of Section 6.7(a) above, the Sponsor, any Participant and any other Person acting as a broker-dealer for the Trust shall not be indemnified for any losses, liabilities or expenses arising from or out of an alleged violation of U.S. federal or state securities laws unless (i) there has been a successful adjudication on the merits of each count involving alleged securities law violations as to the particular indemnitee and the court approves the indemnification of such expenses (including, without limitation, litigation costs), (ii) such claims have been dismissed with prejudice on the merits by a court of competent jurisdiction as to the particular indemnitee and the court approves the indemnification of such expenses (including, without limitation, litigation costs) or (iii) a court of competent jurisdiction approves a settlement of the claims against a particular indemnitee and finds that indemnification of the settlement and related costs should be made.

(c) The Trust shall not incur the cost of that portion of any insurance that insures any party against any liability, the indemnification of which is herein prohibited.

(d) Expenses incurred in defending a threatened or pending civil, administrative or criminal action suit or proceeding against the Sponsor shall be paid by the Trust in advance of the final disposition of such action, suit or proceeding, if (i) the legal action relates to the performance of duties or services by the Sponsor on behalf of the Trust; (ii) the legal action is initiated by a third party who is not a Shareholder or the legal action is initiated by a Shareholder and a court of competent jurisdiction specifically approves such advance; and (iii) the Sponsor undertakes to repay the advanced funds with interest to the Trust in cases in which it is not entitled to indemnification under this Section 6.7.

(e) The term "Sponsor" as used only in this Section 6.7 shall include, in addition to the Sponsor, any other Covered Person performing services on behalf of the Trust and acting within the scope of the Sponsor's authority as set forth in this Trust Agreement.

(f) In the event the Trust is made a party to any claim, dispute, demand or litigation or otherwise incurs any loss, liability, damage, cost or expense as a result of or in connection with any Shareholder's (or assignee's) obligations or liabilities unrelated to Trust affairs, such Shareholder (or assignees cumulatively) shall indemnify, defend, hold harmless, and reimburse the Trust for all such loss, liability, damage, cost and expense incurred, including attorneys' and accountants' fees.

SECTION 6.8 *Expenses and Limitations Thereon.*

(a) Sponsor's Fee.

(i) The Trust shall pay to the Sponsor a fee (the "**Sponsor's Fee**"), payable in ETH (except as provided in Section 6.8(a)(iv)), which shall accrue daily in U.S. Dollars at an annual rate of 2.5% of the ETH Holdings Fee Basis Amount of the Trust as of 4:00 p.m., New York time, on each day; *provided* that for a day that is not a Business Day, the calculation shall be based on the ETH Holdings Fee Basis Amount from the most recent Business Day, reduced by the accrued and unpaid Sponsor's Fee for such most recent Business Day and for each day after such most recent Business Day and prior to the relevant calculation date. The amount of ETH payable in respect of each daily U.S. Dollar accrual shall be determined by reference to the same ETH Index Price used to determine such accrual. The Sponsor's Fee is payable to the Sponsor monthly in arrears.

(ii) Except as provided in Section 6.8(a)(iv), to cause the Trust to pay the Sponsor's Fee, the Sponsor shall, instructing the Security Vendors as necessary, withdraw from the ETH Account the number of ETH equal to the accrued but unpaid Sponsor's Fee and transfer such ETH to the Sponsor's account at such times as the Sponsor determines in its absolute discretion.

(iii) After the payment of the Sponsor's Fee to the Sponsor, the Sponsor may elect to convert the ETH it receives into U.S. Dollars. The Shareholders acknowledge that the rate at which the Sponsor converts such ETH to U.S. Dollars may differ from the rate at which the Sponsor's Fee was initially converted into ETH. The Trust shall not be responsible for any fees and expenses incurred by the Sponsor to convert ETH received in payment of the Sponsor's Fee into U.S. Dollars.

(iv) If the Trust holds any Incidental Rights and/or IR Virtual Currency at any time, the Trust may pay the Sponsor's Fee, in whole or in part, with such Incidental Rights and/or IR Virtual Currency by entering into an agreement with the Sponsor and transferring such Incidental Rights and/or IR Virtual Currency to the Sponsor at a value to be determined pursuant to such agreement; *provided* that the Trust shall use Incidental Rights and/or IR Virtual Currency to pay the Sponsor's Fee only if such agreement and transfer do not otherwise conflict with the terms of this Trust Agreement. If the Trust pays the Sponsor's Fee in Incidental Rights and/or IR Virtual Currency, in whole or in part, the amount of ETH that would otherwise have been used to satisfy such payment shall be correspondingly reduced.

(v) The Sponsor may, from time to time, temporarily waive all or a portion of the Sponsor's Fee in its sole discretion.

(vi) As partial consideration for receipt of the Sponsor's Fee, the Sponsor shall assume and pay all fees and other expenses incurred by the Trust in the ordinary course of its affairs, excluding taxes, but including: (i) the Marketing Fee, (ii) the Administrator Fee, (iii) the Security Vendors Fee, (iv) the Transfer Agent fee, (v) the Trustee fee, (vi) the fees and expenses related to the listing, quotation or trading of the Shares on any Secondary Market (including customary legal, marketing and audit fees and expenses) in an amount up to \$600,000 in any given Fiscal Year, (vii) ordinary course legal fees and expenses, (viii) audit fees, (ix) regulatory fees, including, if applicable, any fees relating to the registration of the Shares under the Securities Act or the Exchange Act, (x) printing and mailing costs, (xi) costs of maintaining the Trust's website and (xii) applicable license fees (each, a "**Sponsor-paid Expense**" and together, the "**Sponsor-paid Expenses**"), *provided* that any expense that qualifies as an Additional Trust Expense as set forth in Section 6.8(b) shall be deemed to be an Additional Trust Expense and not a Sponsor-paid Expense.

(b) Additional Trust Expenses.

(i) The Trust shall pay any expenses incurred by the Trust in addition to the Sponsor's Fee that are not Sponsor-paid Expenses, including, but not limited to, (i) taxes and governmental charges, (ii) expenses and costs of any extraordinary services performed by the Sponsor (or any other service provider) on behalf of the Trust to protect the Trust or the interests of Shareholders (including in connection with any Incidental Rights and any IR Virtual Currency), (iii) any indemnification of the Security Vendors or other agents, service providers or counterparties of the Trust, (iv) the fees and expenses related to the listing, quotation or trading of the Shares on any Secondary Market (including legal, marketing and audit fees and expenses) to the extent exceeding \$600,000 in any given Fiscal Year and (v) extraordinary legal fees and expenses, including any legal fees and expenses incurred in connection with litigation, regulatory enforcement or investigation matters (collectively, "**Additional Trust Expenses**").

(ii) To cause the Trust to pay the Additional Trust Expenses, if any, the Sponsor or its delegates shall, instructing the Security Vendors as necessary, (i) withdraw from the ETH Account ETH in such quantity as may be necessary to permit payment of such Additional Trust Expenses and (ii) may either (x) cause the Trust (or its delegate) to convert such ETH into U.S. Dollars or other fiat currencies at the Actual Exchange Rate or (y) cause the Trust (or its delegate) to deliver such ETH in kind in satisfaction of such Additional Trust Expenses.

(iii) If the Trust holds any Incidental Rights and/or IR Virtual Currency at any time, the Trust may pay any Additional Trust Expenses, in whole or in part, with such Incidental Rights and/or IR Virtual Currency by entering into an agreement with the relevant payee and transferring such Incidental Rights and/or IR Virtual Currency to that payee at a value to be determined pursuant to such agreement; *provided* that the Trust shall use Incidental Rights and/or IR Virtual Currency to pay Additional Trust Expenses only if such agreement and transfer does not otherwise conflict with the terms of this Trust Agreement. If the Trust pays the Additional Trust Expenses in Incidental Rights and/or IR Virtual Currency, in whole or in part, the amount of ETH that would otherwise have been used to satisfy such payment shall be correspondingly reduced.

(c) The Sponsor or any Affiliate of the Sponsor may be reimbursed only for the actual cost to the Sponsor or such Affiliate of any expenses that it advances on behalf of the Trust for payment of which the Trust is responsible. In addition, payment to the Sponsor or such Affiliate for indirect expenses incurred in performing services for the Trust in its capacity as the Sponsor (or an Affiliate of the Sponsor) of the Trust, such as salaries and fringe benefits of officers and directors, rent or depreciation, utilities and other administrative items generally falling within the category of the Sponsor's "overhead," is prohibited.

SECTION 6.9 *Voluntary Withdrawal of the Sponsor*. The Sponsor may withdraw voluntarily as the Sponsor of the Trust only upon one hundred and twenty (120) days' prior written notice to all Shareholders and the Trustee. If the withdrawing Sponsor is the last remaining Sponsor, the Shareholders holding Shares equal to at least a majority (over 50%) of the Shares may vote to elect and appoint, effective as of a date on or prior to the withdrawal, a successor Sponsor who shall carry on the affairs of the Trust. If the Sponsor withdraws and a successor Sponsor is named, the withdrawing Sponsor shall pay all expenses as a result of its withdrawal.

SECTION 6.10 *Litigation*. The Sponsor is hereby authorized to prosecute, defend, settle or compromise actions or claims at law or in equity as may be necessary or proper to enforce or protect the Trust's interests. The Sponsor shall satisfy any judgment, decree or decision of any court, board or authority having jurisdiction or any settlement of any suit or claim prior to judgment or final decision thereon, first, out of any insurance proceeds available therefor, next, out of the Trust's assets and, thereafter, out of the assets (to the extent that it is permitted to do so under the various other provisions of this Trust Agreement) of the Sponsor.

SECTION 6.11 *Bankruptcy; Merger of the Sponsor*.

(a) The Sponsor shall not cease to be a Sponsor of the Trust merely upon the occurrence of its making an assignment for the benefit of creditors, filing a voluntary petition in bankruptcy, filing a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, filing an answer or other pleading admitting or failing to contest material allegations of a petition filed against it in any proceeding of this nature or seeking, consenting to or acquiescing in the appointment of a trustee, receiver or liquidator for itself or of all or any substantial part of its properties.



(b) To the fullest extent permitted by law, and on sixty (60) days' prior written notice to the Shareholders of their right to vote thereon, if any such transaction is other than with an affiliated entity, nothing in this Trust Agreement shall be deemed to prevent the merger of the Sponsor with another corporation or other entity, the reorganization of the Sponsor into or with any other corporation or other entity, the transfer of all the capital stock of the Sponsor or the assumption of the rights, duties and liabilities of the Sponsor by, in the case of a merger, reorganization or consolidation, the surviving corporation or other entity by operation of law. Without limiting the foregoing, none of the transactions referenced in the preceding sentence shall be deemed to be a voluntary withdrawal for purposes of Section 6.10 or an Event of Withdrawal for purposes of Section 12.1(a)(iv).

## ARTICLE VII

### THE SHAREHOLDERS

SECTION 7.1 *No Management or Control; Limited Liability; Exercise of Rights through a Participant.* The Shareholders shall not participate in the management or control of the Trust nor shall they enter into any transaction on behalf of the Trust or have the power to sign for or bind the Trust, said power being vested solely and exclusively in the Sponsor. Except as provided in Section 7.3 hereof, no Shareholder shall be bound by, or be personally liable for, the expenses, liabilities or obligations of the Trust in excess of its Percentage Interest of the Trust Estate. Except as provided in Section 7.3 hereof, each Share owned by a Shareholder shall be fully paid and no assessment shall be made against any Shareholder. No salary shall be paid to any Shareholder in its capacity as a Shareholder, nor shall any Shareholder have a drawing account or earn interest on its Percentage Interest of the Trust Estate. By the purchase and acceptance or other lawful delivery and acceptance of Shares, each owner of such Shares shall be deemed to be a Shareholder and beneficiary of the Trust and vested with beneficial undivided interest in the Trust to the extent of the Shares owned beneficially by such Shareholder, subject to the terms and conditions of this Trust Agreement.

SECTION 7.2 *Rights and Duties.* The Shareholders shall have the following rights, powers, privileges, duties and liabilities:

(a) The Shareholders shall have the right to obtain from the Sponsor information on all things affecting the Trust, provided that such information is for a purpose reasonably related to the Shareholder's interest as a beneficial owner of the Trust.

(b) The Shareholders shall receive the share of the distributions provided for in this Trust Agreement in the manner and at the times provided for in this Trust Agreement.

(c) Except for the Shareholders' transfer rights set forth in Article IV and the Shareholders' redemption rights set forth in Article V hereof, Shareholders shall have the right to demand a redemption of their Shares only upon the dissolution and winding up of the Trust and only to the extent of funds available therefor, as provided in Section 12.2. In no event shall a Shareholder be entitled to demand or receive property other than cash upon the dissolution and winding up of the Trust. No Shareholder shall have priority over any other Shareholder as to distributions. The Shareholder shall not have any right to bring an action for partition against the Trust.

(d) Shareholders holding Shares representing at least a majority (over 50%) of the Shares may vote to appoint a successor Sponsor as provided in Section 6.10 or to continue the Trust as provided in Section 12.1(a)(iv).

Except as set forth above, the Shareholders shall have no voting or other rights with respect to the Trust.

#### SECTION 7.3 *Limitation of Liability.*

(a) Except as provided in Section 6.7(f) hereof, and as otherwise provided under Delaware law, the Shareholders shall be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of Delaware and no Shareholder shall be liable for claims against, or debts of the Trust in excess of its Percentage Interest of the Trust Estate, except in the case of a Shareholder that is a Participant, in the event that the liability is founded upon misstatements or omissions contained in such Shareholder's Participant Agreement. In addition, and subject to the exceptions set forth in the immediately preceding sentence, the Trust shall not make a claim against a Shareholder with respect to amounts distributed to such Shareholder or amounts received by such Shareholder upon redemption of such Shareholder's Shares unless, under Delaware law, such Shareholder is liable to repay such amount.

(b) The Trust shall indemnify to the full extent permitted by law and the other provisions of this Trust Agreement, and to the extent of the Trust Estate, each Shareholder against any claims of liability asserted against such Shareholder solely because it is a beneficial owner of one or more Shares as a Shareholder.

(c) Every written note, bond, contract, instrument, certificate or undertaking made or issued by the Sponsor on behalf of the Trust shall give notice to the effect that the same was executed or made by or on behalf of the Trust and that the obligations of such instrument are not binding upon the Shareholders individually but are binding only upon the assets and property of the Trust, and no resort shall be had to the Shareholders' personal property for satisfaction of any obligation or claim thereunder, and appropriate references may be made to this Trust Agreement and may contain any further recital that the Sponsor deems appropriate, but the omission thereof shall not operate to bind the Shareholders individually or otherwise invalidate any such note, bond, contract, instrument, certificate or undertaking. Nothing contained in this Section 7.3 shall diminish the limitation on the liability of the Trust to the extent set forth in Section 3.6 hereof.

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SECTION 7.4 *Derivative Actions*. Subject to any other requirements of applicable law including Section 3816 of the Delaware Trust Statute, no Shareholder shall have the right, power or authority to bring or maintain a derivative action, suit or other proceeding on behalf of the Trust unless two or more Shareholders who (i) are not Affiliates of one another and (ii) collectively hold at least 10% of the outstanding Shares join in the bringing or maintaining of such action, suit or other proceeding.

SECTION 7.5 *Appointment of Agents*.

(a) By the purchase and acceptance or other lawful delivery, acceptance or holding of the Shares, the Shareholders shall be deemed to agree that the Sponsor may cause the Trust to appoint an agent to act on their behalf in connection with any distribution of Incidental Rights and/or IR Virtual Currency if the Sponsor has determined in good faith that such appointment is reasonably necessary or in the best interests of the Trust and the Shareholders in order to facilitate the distribution of any Incidental Rights and/or IR Virtual Currency. For the avoidance of doubt, the Sponsor may cause the Trust to appoint the Sponsor or any of its Affiliates to act in such capacity, subject to Section 6.2(a) of this Trust Agreement. Any Person appointed as agent of the Shareholders pursuant to this Section 7.5(a) (i) shall receive an in-kind distribution of Incidental Rights and/or IR Virtual Currency on behalf of the Shareholders of record with respect to such distribution and (ii) following receipt of any such distribution, shall determine, in such Person's sole discretion and without any direction from the Trust or the Sponsor (in its capacity as Sponsor of the Trust), whether and when to sell the distributed Incidental Rights and/or IR Virtual Currency on behalf of the record date Shareholders.

(b) Any agent appointed pursuant to Section 7.5(a) shall not receive any compensation in connection with its role as agent. The foregoing notwithstanding, any such agent shall be entitled to receive from any distribution of Incidental Rights and/or IR Virtual Currency, Incidental Rights and/or IR Virtual Currency with an aggregate fair market value equal to the amount of administrative and other reasonable expenses incurred by such agent in connection with such in-kind distribution of Incidental Rights and/or IR Virtual Currency, including expenses incurred by such agent in connection with any post-distribution sale of such Incidental Rights and/or Virtual Currency.

SECTION 7.6 *Business of Shareholders*. Except as otherwise specifically provided herein, any of the Shareholders and any shareholder, officer, director, employee or other Person holding a legal or beneficial interest in an entity that is a Shareholder, may engage in or possess an interest in business ventures of every nature and description, independently or with others, and the pursuit of such ventures, even if competitive with the affairs of the Trust, shall not be deemed wrongful or improper.

SECTION 7.7 *Authorization of Memorandum.* Each Shareholder (or any permitted assignee thereof) hereby agrees that the Trust, the Sponsor and the Trustee are authorized to execute, deliver and perform the agreements, acts, transactions and matters contemplated hereby or described in, or contemplated by, the Memorandum on behalf of the Trust without any further act, approval or vote of the Shareholders, notwithstanding any other provision of this Trust Agreement, the Delaware Trust Statute or any applicable law, rule or regulation.

## ARTICLE VIII

### BOOKS OF ACCOUNT AND REPORTS

SECTION 8.1 *Books of Account.* Proper books of account for the Trust shall be kept and shall be audited annually by an independent certified public accounting firm selected by the Sponsor in its sole discretion, and there shall be entered therein all transactions, matters and things relating to the Trust as are required by the applicable law and regulations and as are usually entered into books of account kept by trusts. The books of account shall be kept at the principal office of the Trust and each Shareholder (or any duly constituted designee of a Shareholder) shall have, at all times during normal business hours, free access to and the right to inspect and copy the same for any purpose reasonably related to the Shareholder's interest as a beneficial owner of the Trust. Such books of account shall be kept, and the Trust shall report its profits and losses on, the accrual method of accounting for financial accounting purposes on a Fiscal Year basis as described in Article IX.

#### SECTION 8.2 *Annual Reports.*

(a) If the Shares are not then listed, quoted or traded on any Secondary Market or registered under the Securities Act or the Exchange Act, the Sponsor shall furnish each Shareholder with an annual report of the Trust within one hundred and eighty (180) calendar days after the Trust's fiscal year (or as soon as reasonably practicable thereafter) including, but not limited to, annual audited financial statements (including a statement of income and statement of financial condition), prepared in accordance with GAAP and accompanied by a report of the independent registered public accounting firm that audited such statements.

(b) If the Shares are then listed, quoted or traded on a Secondary Market or registered under the Securities Act or the Exchange Act, the Sponsor shall prepare and publish the Trust's Annual Reports and Quarterly Reports as required by the rules and regulations of such Secondary Market or the SEC, as applicable.

SECTION 8.3 *Tax Information.* Appropriate tax information (adequate to enable each Shareholder to complete and file its U.S. federal tax return) shall be delivered to each Shareholder following the end of each Fiscal Year but, to the extent possible, no later than April 1. All such information shall be prepared, and all of the Trust's tax returns shall be filed, in a manner consistent with the treatment of the Trust as a grantor trust. The Trust's taxable year shall be the calendar year. The Trustee shall comply with all U.S. federal withholding requirements respecting distributions to, or receipts of amounts on behalf of, Shareholders that the Trustee reasonably believes are applicable under the Code. The consent of Shareholders shall not be required for such withholding.

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SECTION 8.4 *Calculation of ETH Holdings*. The Sponsor or its delegate shall calculate and publish the Trust's ETH Holdings on each Business Day as of 4:00 p.m., New York time, or as soon as practicable thereafter. In order to calculate the ETH Holdings, the Sponsor shall:

1. Determine the ETH Index Price as of such Business Day;
2. Multiply the ETH Index Price by the Trust's aggregate number of ETH owned by the Trust as of 4:00 p.m., New York time, on the immediately preceding day, less the aggregate number of ETH payable as the accrued and unpaid Sponsor's Fee as of 4:00 p.m., New York time, on the immediately preceding day;
3. Add the U.S. Dollar value of ETH, calculated using the ETH Index Price, receivable under pending Creation Orders, if any, determined by multiplying the number of the Creation Baskets represented by such Creation Orders by the Basket ETH Amount and then multiplying such product by the ETH Index Price;
4. Subtract the U.S. Dollar amount of accrued and unpaid Additional Trust Expenses, if any;
5. Subtract the U.S. Dollar value of the ETH, calculated using the ETH Index Price, to be distributed under pending Redemption Orders, if any, determined by multiplying the number of Redemption Baskets represented by such Redemption Orders by the Basket ETH Amount and then multiplying such product by the ETH Index Price (the amount derived from steps 1 through 5 above, the "**ETH Holdings Fee Basis Amount**"); and
6. Subtract the U.S. Dollar amount of the Sponsor's Fee that accrues for such Business Day, as calculated based on the ETH Holdings Fee Basis Amount for such Business Day.

Notwithstanding the foregoing, (i) in the event that the Sponsor determines that the methodology used to determine the ETH Index Price is not an appropriate basis for valuation of the Trust's ETH, the Sponsor shall use an alternative methodology as set forth in the Memorandum and (ii) in the event that the Trust holds any Incidental Rights and/or IR Virtual Currency, the Sponsor may, at its discretion, include the value of such Incidental Rights and/or IR Virtual Currency in the determination of the Trust's ETH Holdings, provided that the Sponsor has determined in good faith a method for assigning an objective value to such Incidental Rights and/or IR Virtual Currency.

SECTION 8.5 *Maintenance of Records*. The Sponsor shall maintain for a period of at least six Fiscal Years (a) all books of account required by Section 8.1 hereof; (b) a list of the names and last known address of, and number of Shares owned by, all Shareholders; (c) a copy of the Certificate of Trust and all certificates of amendment thereto; (d) executed copies of any powers of attorney pursuant to which any certificate has been executed; (e) copies of the Trust's U.S. federal, state and local income tax returns and reports, if any; (f) copies of any effective written Trust Agreements, Participant Agreements, including any amendments thereto; and (g) any financial statements of the Trust. The Sponsor may keep and maintain the books and records of the Trust in paper, magnetic, electronic or other format as the Sponsor may determine in its sole discretion, *provided* that the Sponsor shall use reasonable care to prevent the loss or destruction of such records. If there is a conflict between this Section 8.5 and the rules and regulations of any Secondary Market on which the Shares are listed, quoted or traded or, if applicable, the SEC with respect to the maintenance of records, the records shall be maintained pursuant to the rules and regulations of such Secondary Market or the SEC.

## ARTICLE IX

### FISCAL YEAR

SECTION 9.1 *Fiscal Year*. The fiscal year of the Trust for financial accounting purposes (the “**Fiscal Year**”) shall begin on the 1<sup>st</sup> day of January and end on the 31<sup>st</sup> day of December of each year. The Fiscal Year in which the Trust shall terminate shall end on the date of such termination.

## ARTICLE X

### AMENDMENT OF TRUST AGREEMENT; MEETINGS

SECTION 10.1 *Amendments to the Trust Agreement*.

(a) *Amendment Generally*.

(i) Except as otherwise specifically provided in this Section 10.1, the Sponsor, in its sole discretion and without Shareholder consent, may amend or otherwise supplement this Trust Agreement by making an amendment, an agreement supplemental hereto, or an amended and restated declaration of trust and trust agreement. Any such restatement, amendment and/or supplement hereto shall be effective on such date as designated by the Sponsor in its sole discretion; *provided* that the Sponsor shall not be permitted to make any such amendment, or otherwise supplement this Trust Agreement, if such amendment or supplement would permit the Sponsor, the Trustee or any other Person to vary the investment of the Shareholders (within the meaning of Treasury Regulations Section 301.7701-4(c)) or would otherwise adversely affect the status of the Trust as a grantor trust for U.S. federal income tax purposes.

(ii) Any amendments to this Trust Agreement which materially adversely affects the interests of the Shareholders shall occur only upon the vote of Shareholders holding Shares equal to at least a majority (over 50%) of the Shares (not including Shares held by the Sponsor and its Affiliates). For all purposes of this Section 10.1, a Shareholder shall be deemed to consent to a modification or amendment of this Trust Agreement if the Sponsor has notified such Shareholder in writing of the proposed modification or amendment and the Shareholder has not, within twenty (20) calendar days of such notice, notified the Sponsor in writing that the Shareholder objects to such modification or amendment. Notwithstanding anything to the contrary herein, notice pursuant to this Section 10.1 may be given by the Sponsor to the Shareholder by email or other electronic transmission and shall be deemed given upon receipt without requirement of confirmation.

(b) Without limitation of the foregoing, the Sponsor may, without the approval of the Shareholders, amend the provisions of this Trust Agreement if the Trust is advised at any time by the Trust's accountants or legal counsel that the amendments made are necessary to ensure that the Trust's status as a grantor trust will be respected for U.S. federal income tax purposes.

(c) No amendment affecting the rights or duties of the Trustee shall be binding upon or effective against the Trustee unless consented to by the Trustee in writing. No amendment shall be made to this Trust Agreement without the consent of the Trustee if the Trustee reasonably believes that such amendment adversely affects any of its rights, duties or liabilities. The Trustee shall be under no obligation to execute any amendment to the Trust Agreement or to any agreement to which the Trust is a party until it has received an instruction letter from the Sponsor, in form and substance reasonably satisfactory to the Trustee (i) directing the Trustee to execute such amendment, (ii) representing and warranting to the Trustee that such execution is authorized and permitted by the terms of the Trust Agreement and (if applicable) such other agreement to which the Trust is a party and does not conflict with or violate any other agreement to which the Trust is a party and (iii) confirming that such execution and acts related thereto are covered by the indemnity provisions of the Trust Agreement in favor of the Trustee and do not adversely affect the Trustee.

(d) Upon amendment of this Trust Agreement, the Certificate of Trust shall also be amended, if required by the Delaware Trust Statute, to reflect such change. At the expense of the Sponsor, the Trustee shall execute and file any amendment to the Certificate of Trust if so directed by the Sponsor.

(e) To the fullest extent permitted by law, no provision of this Trust Agreement may be amended, waived or otherwise modified orally but only by a written instrument adopted in accordance with this Section 10.1.

**SECTION 10.2 Meetings of the Trust.** Meetings of the Shareholders may be called by the Sponsor in its sole discretion. The Sponsor shall furnish written notice to all Shareholders thereof of the meeting and the purpose of the meeting, which shall be held on a date, not less than ten (10) nor more than sixty (60) days after the date of mailing of said notice, at a reasonable time and place. Any notice of meeting shall be accompanied by a description of the action to be taken at the meeting. Shareholders may vote in person or by proxy at any such meeting.

SECTION 10.3 *Action Without a Meeting*. Any action required or permitted to be taken by Shareholders by vote may be taken without a meeting by written consent setting forth the actions so taken. Such written consents shall be treated for all purposes as votes at a meeting. If the vote or consent of any Shareholder to any action of the Trust or any Shareholder, as contemplated by this Trust Agreement, is solicited by the Sponsor, the solicitation shall be effected by notice to each Shareholder given in the manner provided in Section 13.6. The vote or consent of each Shareholder so solicited shall be deemed conclusively to have been cast or granted as requested in the notice of solicitation, whether or not the notice of solicitation is actually received by that Shareholder, unless the Shareholder expresses written objection to the vote or consent by notice given in the manner provided in Section 13.6 and actually received by the Trust within twenty (20) days after the notice of solicitation is sent. The Covered Persons dealing with the Trust shall be entitled to act in reliance on any vote or consent that is deemed cast or granted pursuant to this Section 10.3 and shall be fully indemnified by the Trust in so doing. Any action taken or omitted in reliance on any such deemed vote or consent of one or more Shareholders shall not be void or voidable by reason of any communication made by or on behalf of all or any of such Shareholders in any manner other than as expressly provided in Section 13.6.

## ARTICLE XI

### TERM

SECTION 11.1 *Term*. The term for which the Trust is to exist shall be perpetual, unless terminated pursuant to the provisions of Article XII hereof or as otherwise provided by law.

## ARTICLE XII

### TERMINATION

SECTION 12.1 *Events Requiring Dissolution of the Trust*.

(a) The Trust shall dissolve at any time upon the happening of any of the following events:

(i) a U.S. federal or state regulator requires the Trust to shut down or forces the Trust to liquidate its ETH or seizes, impounds or otherwise restricts access to the Trust Estate;

(ii) any ongoing event exists that either prevents the Trust from making or makes impractical the Trust's reasonable efforts to make a fair determination of the ETH Index Price;



(iii) any ongoing event exists that either prevents the Trust from converting or makes impractical the Trust's reasonable efforts to convert ETH to U.S. Dollars; or

(iv) a certificate of dissolution or revocation of the Sponsor's charter is filed (and ninety (90) days have passed after the date of notice to the Sponsor of revocation without a reinstatement of the Sponsor's charter) or the withdrawal, removal, adjudication or admission of bankruptcy or insolvency of the Sponsor (each of the foregoing events an "**Event of Withdrawal**") has occurred unless (i) at the time there is at least one remaining Sponsor or (ii) within ninety (90) days of such Event of Withdrawal Shareholders holding at least a majority (over 50%) of the Shares agree in writing to continue the affairs of the Trust and to select, effective as of the date of such event, one or more successor Sponsors.

(b) The Sponsor may, in its sole discretion, dissolve the Trust if any of the following events occur:

(i) the SEC determines that the Trust is an investment company required to be registered under the Investment Company Act of 1940;

(ii) the CFTC determines that the Trust is a commodity pool under the Commodity Exchange Act;

(iii) the Trust is determined to be a "money service business" under the regulations promulgated by FinCEN under the authority of the U.S. Bank Secrecy Act and is required to comply with certain FinCEN regulations thereunder;

(iv) the Trust is required to obtain a license or make a registration under any state law regulating money transmitters, money services businesses, providers of prepaid or stored value or similar entities, or virtual currency businesses;

(v) the Trust becomes insolvent or bankrupt;

(vi) a Security Vendor resigns or is removed without replacement;

(vii) all of the Trust's ETH are sold;

(viii) the Sponsor determines that the size of the Trust Estate in relation to the expenses of the Trust makes it unreasonable or imprudent to continue the affairs of the Trust;

(ix) the Sponsor receives notice from the IRS or from counsel for the Trust or the Sponsor that the Trust fails to qualify for treatment, or will not be treated, as a grantor trust under the Code;

(x) the Trustee notifies the Sponsor of the Trustee's election to resign and the Sponsor does not appoint a successor trustee within one hundred and eighty (180) days; or

(xi) the Sponsor determines, in its sole discretion, that it is desirable or advisable for any reason to discontinue the affairs of the Trust.

The death, legal disability, bankruptcy, insolvency, dissolution, or withdrawal of any Shareholder (as long as such Shareholder is not the sole Shareholder of the Trust) shall not result in the termination of the Trust, and such Shareholder, his or her estate, custodian or personal representative shall have no right to a redemption of such Shareholder's Shares. Each Shareholder (and any assignee thereof) expressly agrees that in the event of his or her death, he or she waives on behalf of himself or herself and his or her estate, and he or she directs the legal representative of his or her estate and any person interested therein to waive the furnishing of any inventory, accounting or appraisal of the Trust Estate and any right to an audit or examination of the books of account for the Trust, except for such rights as are set forth in Article VIII hereof relating to the books of account and reports of the Trust.

SECTION 12.2 *Distributions on Dissolution*. Upon the dissolution of the Trust, the Sponsor (or in the event there is no Sponsor, such person (the "**Liquidating Trustee**") as the majority in interest of the Shareholders may propose and approve) shall take full charge of the Trust Estate. Any Liquidating Trustee so appointed shall have and may exercise, without further authorization or approval of any of the parties hereto, all of the powers conferred upon the Sponsor under the terms of this Trust Agreement, subject to all of the applicable limitations, contractual and otherwise, upon the exercise of such powers, and provided that the Liquidating Trustee shall not have general liability for the acts, omissions, obligations and expenses of the Trust. Thereafter, in accordance with Section 3808(e) of the Delaware Trust Statute, the affairs of the Trust shall be wound up and all assets owned by the Trust shall be liquidated as promptly as is consistent with obtaining the fair value thereof, and the proceeds therefrom shall be applied and distributed in the following order of priority: (a) to the expenses of liquidation and termination and to creditors, including Shareholders who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the Trust (whether by payment or the making of reasonable provision for payment thereof) other than liabilities for distributions to Shareholders, and (b) to the Shareholders *pro rata* in accordance with their respective Percentage Interests of the Trust Estate.

SECTION 12.3 *Termination; Certificate of Cancellation*. Following the dissolution and distribution of the assets of the Trust, the Trust shall terminate and the Sponsor or the Liquidating Trustee, as the case may be, shall instruct the Trustee to execute and cause such certificate of cancellation of the Certificate of Trust to be filed in accordance with the Delaware Trust Statute at the expense of the Sponsor or the Liquidating Trustee, as the case may be. Notwithstanding anything to the contrary contained in this Trust Agreement, the existence of the Trust as a separate legal entity shall continue until the filing of such certificate of cancellation.

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**ARTICLE XIII****MISCELLANEOUS**

SECTION 13.1 *Governing Law.* The validity and construction of this Trust Agreement and all amendments hereto shall be governed by the laws of the State of Delaware, and the rights of all parties hereto and the effect of every provision hereof shall be subject to and construed according to the laws of the State of Delaware without regard to the conflict of laws provisions thereof; *provided, however,* that causes of action for violations of U.S. federal or state securities laws shall not be governed by this Section 13.1, and *provided, further,* that the parties hereto intend that the provisions hereof shall control over any contrary or limiting statutory or common law of the State of Delaware (other than the Delaware Trust Statute) and that, to the maximum extent permitted by applicable law, there shall not be applicable to the Trust, the Trustee, the Sponsor, the Shareholders or this Trust Agreement any provision of the laws (statutory or common) of the State of Delaware (other than the Delaware Trust Statute) pertaining to trusts that relate to or regulate in a manner inconsistent with the terms hereof: (a) the filing with any court or governmental body or agency of trustee accounts or schedules of trustee fees and charges, (b) affirmative requirements to post bonds for trustees, officers, agents, or employees of a trust, (c) the necessity for obtaining court or other governmental approval concerning the acquisition, holding or disposition of real or personal property, (d) fees or other sums payable to trustees, officers, agents or employees of a trust, (e) the allocation of receipts and expenditures to income or principal, (f) restrictions or limitations on the permissible nature, amount or concentration of trust investments or requirements relating to the titling, storage or other manner of holding of trust assets or (g) the establishment of fiduciary or other standards or responsibilities or limitations on the acts or powers of trustees or managers that are inconsistent with the limitations on liability or authorities and powers of the Trustee or the Sponsor set forth or referenced in this Trust Agreement. Section 3540 of Title 12 of the Delaware Code shall not apply to the Trust. The Trust shall be of the type commonly called a “statutory trust,” and without limiting the provisions hereof, but subject to Section 1.5 and Section 1.6, the Trust may exercise all powers that are ordinarily exercised by such a statutory trust under Delaware law. Subject to Section 1.5 and Section 1.6, the Trust specifically reserves the right to exercise any of the powers or privileges afforded to statutory trusts and the absence of a specific reference herein to any such power, privilege or action shall not imply that the Trust may not exercise such power or privilege or take such actions.

SECTION 13.2 *Provisions In Conflict With Law or Regulations.*

(a) The provisions of this Trust Agreement are severable, and if the Sponsor shall determine, with the advice of counsel, that any one or more of such provisions (the “**Conflicting Provisions**”) are in conflict with the Code, the Delaware Trust Statute, the Securities Act, if applicable, or other applicable U.S. federal or state laws or the rules and regulations of any Secondary Market, the Conflicting Provisions shall be deemed never to have constituted a part of this Trust Agreement, even without any amendment of this Trust Agreement pursuant to this Trust Agreement; *provided, however,* that such determination by the Sponsor shall not affect or impair any of the remaining provisions of this Trust Agreement or render invalid or improper any action taken or omitted prior to such determination. No Sponsor or Trustee shall be liable for making or failing to make such a determination.

(b) If any provision of this Trust Agreement shall be held invalid or unenforceable in any jurisdiction, such holding shall not in any manner affect or render invalid or unenforceable such provision in any other jurisdiction or any other provision of this Trust Agreement in any jurisdiction.

SECTION 13.3 *Counsel to the Trust*. Counsel to the Trust may also be counsel to the Sponsor and its Affiliates. The Sponsor may execute on behalf of the Trust and the Shareholders any consent to the representation of the Trust that counsel may request pursuant to the New York Rules of Professional Conduct or similar rules in any other jurisdiction (the “**Rules**”). The Shareholders acknowledge that the Trust has selected Davis Polk & Wardwell LLP as legal counsel to the Trust (“**Trust Counsel**”). Trust Counsel shall not represent any Shareholder in the absence of a clear and explicit agreement to such effect between the Shareholder and Trust Counsel (and that only to the extent specifically set forth in that agreement), and in the absence of any such agreement Trust Counsel shall owe no duties directly to a Shareholder. Each Shareholder agrees that, in the event any dispute or controversy arises between any Shareholder and the Trust, or between any Shareholder or the Trust, on the one hand, and the Sponsor (or an Affiliate thereof that Trust Counsel represents), on the other hand, that Trust Counsel may represent either the Trust or the Sponsor (or its Affiliate), or both, in any such dispute or controversy to the extent permitted by the Rules, and each Shareholder hereby consents to such representation. Each Shareholder further acknowledges that, regardless of whether Trust Counsel has in the past represented any Shareholder with respect to other matters, Trust Counsel has not represented the interests of any Shareholder in the preparation and negotiation of this Trust Agreement.

SECTION 13.4 *Merger and Consolidation*. Subject to the provisions of Section 1.5 and Section 1.6, the Sponsor may cause (i) the Trust to be merged into or consolidated with, converted to or to sell all or substantially all of its assets to, another trust or entity; (ii) the Shares of the Trust to be converted into beneficial interests in another statutory trust (or series thereof); or (iii) the Shares of the Trust to be exchanged for shares in another trust or company under or pursuant to any U.S. state or federal statute to the extent permitted by law. For the avoidance of doubt, subject to the provisions of Section 1.5, the Sponsor, with written notice to the Shareholders, may approve and effect any of the transactions contemplated under (i), (ii) and (iii) above without any vote or other action of the Shareholders.

SECTION 13.5 *Construction*. In this Trust Agreement, unless the context otherwise requires, words used in the singular or in the plural include both the plural and singular and words denoting any gender include all genders. The title and headings of different parts are inserted for convenience and shall not affect the meaning, construction or effect of this Trust Agreement.

SECTION 13.6 *Notices*. All notices or communications under this Trust Agreement (other than notices of pledge or encumbrance of Shares, and reports and notices by the Sponsor to the Shareholders) shall be in writing and shall be effective upon personal delivery, or if sent by mail, postage prepaid, or if sent electronically, by email, or by overnight courier; and addressed, in each such case, to the address set forth in the books and records of the Trust or such other address as may be specified in writing, of the party to whom such notice is to be given, upon the deposit of such notice in the United States mail, upon transmission and electronic confirmation thereof or upon deposit with a representative of an overnight courier, as the case may be. Notices of pledge or encumbrance of Shares shall be effective upon timely receipt by the Sponsor in writing. Any reports or notices by the Sponsor to the Shareholders which are given electronically shall be effective upon receipt without requirement of confirmation.

All notices that are required to be provided to the Trustee shall be sent to:

Delaware Trust Company  
Attention: Corporate Trust Administration  
251 Little Falls Drive  
Wilmington, DE 19808

All notices that the Trustee is required to provide shall be sent to:

if to the Trust, at

Ethereum Investment Trust  
636 Avenue of the Americas, 3rd Floor  
New York, New York 10011  
Attention: Grayscale Investments, LLC

if to the Sponsor, at

Grayscale Investments, LLC  
636 Avenue of the Americas, 3rd Floor  
New York, New York 10011  
Attention: Michael Sonnenshein

SECTION 13.7 *Confidentiality*.

(a) All communications between the Sponsor or the Trustee on the one hand, and any Shareholder, on the other, shall be presumed to include confidential, proprietary, trade secret and other sensitive information. Unless otherwise agreed to in writing by the Sponsor, each Shareholder shall maintain the confidentiality of information that is non-public information furnished by the Sponsor regarding the Sponsor and the Trust received by such Shareholder pursuant to this Trust Agreement in accordance with such procedures as it applies generally to information of this kind (including procedures relating to information sharing with Affiliates), except (i) as otherwise required by governmental regulatory agencies (including tax authorities in

connection with an audit or other similar examination of such Shareholder), self-regulating bodies, law, legal process, or litigation in which such Shareholder is a defendant, plaintiff or other named party or (ii) to directors, employees, representatives and advisors of such Shareholder and its Affiliates who need to know the information and who are informed of the confidential nature of the information and agree to keep it confidential. Without limiting the foregoing, each Shareholder acknowledges that notices and reports to Shareholders hereunder may contain material non-public information and agrees not to use such information other than in connection with monitoring its investment in the Trust and agrees not to trade in securities on the basis of any such information.

(b) In the event that the Sponsor determines in good faith that (i) a Shareholder has violated or is reasonably likely to violate the provisions of this Section 13.7 or (ii) a Shareholder that is subject to FOIA, any state public records access law or any other law or statutory or regulatory requirement that is similar to FOIA in intent or effect (each, a “**Public Access Law**”) is reasonably likely to be subject to a disclosure request pursuant to a Public Access Law that would result in the disclosure by such Shareholder of confidential information regarding the Trust, the Sponsor may (x) provide to such Shareholder access to such information only on the Trust’s website in password protected, non-downloadable, non-printable format and (y) require such Shareholder to return any copies of information provided to it by the Sponsor or the Trust.

(c) If any Public Access Law would potentially cause a Shareholder or any of its Affiliates to disclose information relating to the Trust, its Affiliates and/or any investment of the Trust, then in addition to compliance with the notice requirements set forth in Section 13.7(a) above, such Shareholder shall take commercially reasonable steps to oppose and prevent the requested disclosure unless (i) such Shareholder is advised by counsel that there exists no reasonable basis on which to oppose such disclosure or (ii) the Sponsor does not object in writing to such disclosure within ten (10) days (or such lesser time period as stipulated by the applicable law) of such notice. Each Shareholder acknowledges and agrees that in such event, notwithstanding any other provision of this Trust Agreement, the Sponsor may, in order to prevent any such potential disclosure that the Sponsor determines in good faith is likely to occur, withhold all or any part of the information otherwise to be provided to such Shareholder; *provided*, that the Sponsor shall not withhold any such information if a Shareholder confirms in writing to the Sponsor that compliance with the procedures provided for in Section 13.7(b) above is legally sufficient to prevent such potential disclosure.

(d) A Shareholder may, by giving written notice to the Sponsor, elect not to receive copies of any document, report or other information that such Shareholder would otherwise be entitled to receive pursuant to this Trust Agreement and is not required by applicable law to be delivered. The Sponsor agrees that it shall make any such documents available to such Shareholder at the Sponsor’s offices.

(e) Notwithstanding anything in this Trust Agreement to the contrary, each Shareholder and each Shareholder's employees, representatives or other agents are authorized to disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the Trust and any transaction entered into by the Trust and all materials of any kind (including opinions or other tax analyses) relating to such tax treatment or tax structure that are provided to such Shareholder, except for any information identifying the Sponsor, the Trust, the Trustee or their respective advisors, affiliates, officers, directors, members, employees and principals or (except to the extent relevant to such tax structure or tax treatment) any nonpublic commercial or financial information.

(f) Any obligation of a Shareholder pursuant to this Section 13.7 may be waived by the Sponsor in its sole discretion.

(g) Each Shareholder acknowledges and agrees that (i) the restrictions contained in this Section 13.7 are necessary for the protection of the affairs and goodwill of the Sponsor, the Trustee, the Trust and their Affiliates and each Shareholder considers such restrictions to be reasonable for such purpose, (ii) the misappropriation or unauthorized disclosure of confidential information is likely to cause substantial and irreparable damage to the Sponsor, the Trustee, the Trust and their Affiliates and (iii) damages may not be an adequate remedy for breach of this Section 13.7. Accordingly, the Sponsor, the Trustee, the Trust and their Affiliates shall be entitled to injunctive and other equitable relief, in addition to all other remedies available to them at law or at equity, and no proof of special damages shall be necessary for the enforcement of this Section 13.7.

SECTION 13.8 *Counterparts; Electronic Signatures*. This Trust Agreement may be executed in one or more counterparts (including those by facsimile or other electronic means), all of which shall constitute one and the same instrument binding on all of the parties hereto, notwithstanding that all parties are not signatory to the original or the same counterpart. This Trust Agreement, to the extent signed and delivered by means of a facsimile machine or other electronic transmission, shall be treated in all manner and respects as an original agreement and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

SECTION 13.9 *Binding Nature of Trust Agreement*. The terms and provisions of this Trust Agreement shall be binding upon and inure to the benefit of the heirs, custodians, executors, estates, administrators, personal representatives, successors and permitted assigns of the respective Shareholders. For purposes of determining the rights of any Shareholder or assignee hereunder, the Trust and the Sponsor may rely upon the Trust records as to who are Shareholders and permitted assignees, and all Shareholders and assignees agree that the Trust and the Sponsor, in determining such rights, shall rely on such records and that Shareholders and their assignees shall be bound by such determination.

SECTION 13.10 *No Legal Title to Trust Estate*. Subject to the provisions of Section 1.7 in the case of the Sponsor, the Shareholders shall not have legal title to any part of the Trust Estate.

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SECTION 13.11 *Creditors*. No creditors of any Shareholders shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to the Trust Estate.

SECTION 13.12 *Integration*. This Trust Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

SECTION 13.13 *Goodwill; Use of Name*. No value shall be placed on the name or goodwill of the Trust, which shall belong exclusively to Grayscale Investments, LLC.

SECTION 13.14 *Compliance with Applicable Law*. Each Shareholder agrees to use its commercially reasonable efforts, upon reasonable request by the Sponsor, to cooperate with the Sponsor in complying with the applicable provisions of any material applicable law. Notwithstanding any other provision of this Trust Agreement to the contrary, the Sponsor, in its own name and on behalf of the Trust, shall be authorized without the consent of any Person, including any Shareholder, to take such action as in its sole discretion it deems necessary or advisable to comply with any anti-money laundering or anti-terrorist laws, rules, regulations, directives or special measures, including the actions contemplated by the Participant Agreements.

[Signature Page Follows]



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**IN WITNESS WHEREOF**, the undersigned have duly executed this Amended and Restated Declaration of Trust and Trust Agreement as of the day and year first above written.

**DELAWARE TRUST COMPANY,**  
as Trustee

By: /s/ Alan R. Halpern  
Name: Alan R. Halpern  
Title: Vice President

**GRAYSCALE INVESTMENTS, LLC,** as Sponsor

By: /s/ Michael Sonnenshein  
Name: Michael Sonnenshein  
Title: Managing Director

**DIGITAL CURRENCY GROUP, INC.,** solely with respect to Section 2.4

By: /s/ Barry Silbert  
Name: Barry Silbert  
Title: CEO

[Signature Page]

**EXHIBIT A**

**FORM OF CERTIFICATE OF TRUST**

A-1

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**CERTIFICATE OF TRUST  
OF  
ETHEREUM INVESTMENT TRUST**

THIS Certificate of Trust of Ethereum Investment Trust (the "Trust") is being duly executed and filed on behalf of the Trust by the undersigned, as trustee, to form a statutory trust under the Delaware Statutory Trust Act (12 Del. C. § 3801 et seq.) (the "Act").

1. Name. The name of the statutory trust formed hereby is Ethereum Investment Trust.

2. Delaware Trustee. The name and business address of the trustee of the Trust in the State of Delaware are Delaware Trust Company, 251 Little Falls Drive, Wilmington, DE 19808.

3. Effective Date. This Certificate of Trust shall be effective upon filing.

IN WITNESS WHEREOF, the undersigned has duly executed this Certificate of Trust in accordance with Section 3811(a)(1) of the Act.

DELAWARE TRUST COMPANY, not in its individual capacity but solely as Trustee of the Trust

By: \_\_\_\_\_  
Name:  
Title:

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**EXHIBIT B**

**FORM OF PARTICIPANT AGREEMENT**

B-1



SUPPLEMENTAL INFORMATION PURSUANT TO RULE 36(A)  
OF THE RULES OF THE COURT OF CHANCERY

The information contained herein is for the use by the Court for statistical and administrative purposes. Nothing in this document shall be deemed binding for purposes of the merits of the case.

1. Case caption:

*Alameda Research Ltd. v. Grayscale Investments, LLC, Digital Currency Group, Inc., Michael Sonnenshein and Barry Silbert*

2. Date filed:

**March 6, 2023**

3. Name and address of counsel for plaintiff(s):

**Michael A. Barlow (No. 3928)**

**Stephen C. Childs (No. 6711)**

**ABRAMS & BAYLISS LLP**

**20 Montchanin Road, Suite 200**

**Wilmington, Delaware 19807**

4. Short statement and nature of claim(s) asserted:

**Complaint for breach of contract, breach of fiduciary duty and for declaratory judgment.**

5. Substantive field of law involved (check one):

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> Administrative law                                      | <input type="checkbox"/> Labor law            | <input type="checkbox"/> Trusts, Wills and Estates       |
| <input type="checkbox"/> Commercial law  | <input type="checkbox"/> Real Property        | <input type="checkbox"/> Consent trust petitions         |
| <input type="checkbox"/> Constitutional law                                      | <input type="checkbox"/> 348 Deed Restriction | <input type="checkbox"/> Partition                       |
| <input checked="" type="checkbox"/> Corporation law                              | <input type="checkbox"/> Zoning               | <input type="checkbox"/> Rapid Arbitration (Rules 96,97) |
| <input type="checkbox"/> Trade secrets/trade mark/or other intellectual property |   | <input type="checkbox"/> Other                           |

6. Identify any related cases, including any Register of Wills matter. This question is intended to promote jurisdiction efficiency by assigning cases involving similar parties or issues to a single judicial officer. By signing this form, an attorney represents that the attorney has done reasonable diligence sufficient to respond to this question.

*Fir Tree Value Master Fund, L.P., et al. v. Grayscale Investments, LLC, et al., 2022-1126-PAF (Del. Ch.)*

7. State all bases for the court’s exercise of subject matter jurisdiction by citing to the relevant statute. Specify if 8 *Del. C.* § 111, 6 *Del. C.* § 17-111, or 6 *Del. C.* § 18-111. State if the case seeks monetary relief, even if secondarily or in the alternative, under a merger agreement, asset purchase agreement, or equity purchase agreement.

**10 *Del. C.* §§ 341, 342, 6501, 12 *Del. C.* § 3804(g)**

8. If the complaint initiates a summary proceeding under Sections 8 *Del. C.* §§ 145(k), 205, 211(c), 220, or comparable statutes, check here . (If #8 is checked, you must either (i) file a motion to expedite with a proposed form of order identifying the schedule requested or (ii) submit a letter stating that you do not seek an expedited schedule and the reason(s)—e.g., you have filed to preserve standing and do not seek immediate relief.)

9. If the complaint is accompanied by a request for a temporary restraining order, a preliminary injunction, a status quo order, or expedited proceedings other than in a summary proceeding, check here . (If #9 is checked, a motion to expedite must accompany the transaction with a proposed form of order identifying the schedule requested.)

10. If counsel believe that the case should not be assigned to a Master in the first instance, check here and attach a statement of good cause.

/s/ Michael A. Barlow  
Michael A. Barlow (No. 3928)

**STATEMENT OF GOOD CAUSE**

I am an attorney at Abrams & Bayliss LLP and a member in good standing of the Bar of the State of Delaware. With my firm, I am counsel to Plaintiff in this action. We respectfully submit that this action is inappropriate for submission to a Master in the first instance because it involves complex issues of corporate, trust, and contract law. Accordingly, this action should proceed directly before the Chancellor or a Vice Chancellor of this Court.

/s/ Michael A. Barlow  
Michael A. Barlow (#2928)  
Stephen C. Childs (#6711)  
ABRAMS & BAYLISS LLP  
20 Montchanin Road, Suite 200  
Wilmington, Delaware 19807  
(302) 778-1000

Dated: March 6, 2023

*Counsel for Plaintiff Alameda Research  
Ltd.*