

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 10-Q

Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the quarterly period ended March 31, 2021.

or

Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the transition period from \_\_\_\_\_ to \_\_\_\_\_.

Primary Standard Industrial Classification Code Number: 6221



**Wilshire wShares Enhanced Gold Trust**

Sponsored by Wilshire Phoenix Funds LLC  
(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

84-6953191  
(I.R.S. Employer  
Identification No.)

2 Park Avenue, 20th Floor  
New York, New York 10016  
(917) 671-9097  
(Address, including Zip Code, and Telephone  
Number, including Area Code, of Registrant's  
Principal Executive Offices)

Securities registered or to be registered pursuant to Section 12(b) of the Act.

Title of each class:	Trading Symbol(s)	Name of each exchange on which registered:
Units of Beneficial Interest	WGLD	NYSE Arca, Inc.

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.  Yes  No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).  Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer", "accelerated filer", "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large Accelerated Filer	<input type="checkbox"/>	Accelerated Filer	<input type="checkbox"/>
Non-accelerated Filer	<input type="checkbox"/>	Smaller Reporting Company	<input checked="" type="checkbox"/>
Emerging Growth Company	<input checked="" type="checkbox"/>		

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act.).  Yes  No

The registrant had 100,001 issued and outstanding Shares as of April 28, 2021.

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Part I. FINANCIAL INFORMATION

Item 1. Financial Statements.

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**Wilshire wShares Enhanced Gold Trust**

**Statements of Financial Condition**

	<b>March 31, 2021</b>	<b>December 31,</b>
	<b>(unaudited)</b>	<b>2020</b>
<b>Assets</b>		
Investment in gold, at fair value (cost \$1,706,797 and \$-, respectively)	\$ 1,624,720	\$ —
Cash	259	18
Gold receivable	26,802	—
Prepaid asset	58,582	—
<b>Total assets</b>	<b>1,710,363</b>	<b>18</b>
<b>Liabilities</b>		
Sponsor's fee payable	961	—
<b>Total liabilities</b>	<b>961</b>	<b>—</b>
<b>Net assets</b>	<b>\$ 1,709,402</b>	<b>\$ 18</b>
Shares issued and outstanding <sup>(1)</sup>	100,001	1
Net asset value per Share	\$ 17.09	\$ 18.00

(1) Authorized share capital is unlimited and the par value of the Shares is \$0.00.

*See notes to unaudited financial statements.*

**Wilshire wShares Enhanced Gold Trust**

**Schedules of Investment**

**March 31, 2021 (unaudited)**

	<b>Fine Ounces of Gold</b>	<b>Cost</b>	<b>Fair Value</b>	<b>% of Net Assets</b>
Investment in gold	960.776	\$ 1,706,797	\$ 1,624,720	95.05%
Total investments	960.776	\$ 1,706,797	\$ 1,624,720	95.05%
Other assets in excess of liabilities			84,682	4.95%
Net assets			\$ 1,709,402	100.00%

**December 31, 2020**

	<b>Fine Ounces of Gold</b>	<b>Cost</b>	<b>Fair Value</b>	<b>% of Net Assets</b>
Investment in gold	—	\$ —	\$ —	0.00%
Total investments	—	\$ —	\$ —	0.00%
Other assets in excess of liabilities			18	100.00%
Net assets			\$ 18	100.00%

*See notes to unaudited financial statements.*

Wilshire wShares Enhanced Gold Trust

Statement of Operations

For the three  
months ended  
March 31, 2021  
(unaudited)

<b>Expenses</b>	
Sponsor's fee	\$ 1,313
Organizational fee	6,368
Total expenses	<u>7,681</u>
<b>Net investment loss</b>	<u>(7,681)</u>
<b>Net realized and change in unrealized gain (loss) on investment in gold</b>	
Net realized gain (loss) from gold sold to pay expenses	(858)
Net change in unrealized appreciation (depreciation) on investment in gold	<u>(82,077)</u>
<b>Net realized and change in unrealized gain (loss) from investment in gold</b>	<u>(82,935)</u>
<b>Net income (loss)</b>	<u>\$ (90,616)</u>

See notes to unaudited financial statements.

**Wilshire wShares Enhanced Gold Trust**

**Statement of Cash Flows**

**For the three  
months ended  
March 31, 2021  
(unaudited)**

**Cash Flows from Operating Activities:**

Net income (loss)	\$ (90,616)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:	
Value of gold received for creation of Shares	(1,734,457)
Value of gold distributed for the redemption of Shares	—
Proceeds from sales of gold to pay expenses	26,802
Net realized gain (loss) from gold sold to pay expenses	858
Net change in unrealized appreciation (depreciation) on investment in gold	82,077
(Increase) decrease in gold receivable	(26,802)
(Increase) decrease in prepaid asset	(58,582)
Increase (decrease) in Sponsor fee payable	961
<b>Net cash provided by (used in) operating activities</b>	<b>(1,799,759)</b>

**Cash Flows from Financing Activities:**

Creation of Shares	1,800,000
Redemption of Shares	—
<b>Net cash provided by (used in) financing activities</b>	<b>1,800,000</b>
<b>Net Increase (Decrease) in Cash</b>	<b>241</b>
<b>Cash beginning of period</b>	<b>18</b>
<b>Cash end of period</b>	<b>\$ 259</b>

*See notes to unaudited financial statements.*

Wilshire wShares Enhanced Gold Trust

Statement of Change in Net Assets

	<b>For the three months ended March 31, 2021 (unaudited)</b>
<b>Net assets, beginning of period<sup>(1)</sup></b>	\$ 18
Creation of 100,000 Shares	1,800,000
Redemption of (-) Shares	—
Net investment loss	(7,681)
Net realized gain (loss) from gold sold to pay expenses	(858)
Net change in unrealized appreciation (depreciation) on investment in gold	(82,077)
<b>Net assets, end of period</b>	<b>\$ 1,709,402</b>

(1) The amount represents the initial deposit.

See notes to unaudited financial statements.



Wilshire wShares Enhanced Gold Trust

Financial Highlights

Per Share Performance (for a Share outstanding throughout each period presented)

	<b>For the three months ended March 31, 2021 (unaudited)</b>	
<b>Net asset value per Share, beginning of period<sup>(1)</sup></b>	\$	18.00
Net investment loss <sup>(a)</sup>		(0.08)
Net realized and unrealized gain (loss) on investment in gold		(0.83)
Net change in net assets from operations		(0.91)
<b>Net asset value per Share, end of period</b>	<b>\$</b>	<b>17.09</b>
<b>Total return, at net asset value<sup>(b)</sup></b>		<b>(5.06)%</b>
<b>Ratio to average net assets<sup>(c)</sup></b>		
Net investment loss		(3.80)%
Net expenses		3.80%

(1) The amount represents the initial deposit.

(a) Calculated using average Shares outstanding.

(b) Not annualized.

(c) Annualized.

See notes to unaudited financial statements.

## Wilshire wShares Enhanced Gold Trust

### Notes to Unaudited Financial Statements March 31, 2021

#### 1. ORGANIZATION

The Wilshire wShares Enhanced Gold Trust (the “Trust”) is an exchange-traded fund formed on January 8, 2020, as a Delaware statutory trust and trades on the NYSE Arca, Inc. (the “Exchange”). The Trust operates pursuant to a trust agreement, dated as of January 8, 2020, as amended by the First Amendment to the Trust Agreement, dated as of August 24, 2020, and further amended and restated on December 17, 2020 (the “Trust Agreement”) between Wilshire Phoenix Funds LLC, a Delaware limited liability company (the “Sponsor”), and Delaware Trust Company (the “Trustee”). The Trust is not registered as an investment company under the Investment Company Act of 1940, as amended (the “Investment Company Act”), and is not a commodity pool for purposes of the Commodity Exchange Act (“CEA”). The Trust issues shares (the “Shares”), which represent units of fractional undivided beneficial interest in the Trust. The Trust will have no assets other than (a) physical gold held by the Trust (“Physical Gold”), and (b) cash. The Trust’s performance, whether positive or negative, will be driven primarily by its investments in Physical Gold. The Trust’s Physical Gold is carried, for financial statement purposes, at fair value, as required by accounting principles generally accepted in the United States (“U.S. GAAP”). The Trust’s Net Asset Value (the “NAV”) is determined by the Administrator, in conformity with U.S. GAAP, on each business day as of 4:00 p.m., (New York City time) or as soon thereafter as practicable. The Trust commenced operations on February 18, 2021.

The investment objective of the Trust is for the Shares to closely reflect the Wilshire Gold Index (the “Index”), less the Trust’s liabilities and expenses. The objective of the Index is to reduce the risk-profile typically associated with the purchase of gold, as measured by the realized volatility of the LBMA Gold Price PM, while maintaining the correlative benefits of gold versus the S&P 500<sup>®</sup> Index. Solactive AG calculates, maintains and publishes information about the Index (the “Index Calculation Agent”).

JPMorgan Chase Bank, N.A. is the gold custodian of the Trust (the “Gold Custodian”). Foreside Fund Services, LLC is the marketing agent for the Shares (the “Marketing Agent”). The Bank of New York Mellon is the custodian for cash (in such capacity, the “Cash Custodian”), the administrator (in such capacity, the “Administrator”), and the transfer agent (in such capacity, the “Transfer Agent”) of the Trust. Exchange Traded Concepts, LLC has been appointed as a representative (in such capacity, the “Representative”) for the purposes of performing certain operational functions, which include effecting the monthly rebalances of the Trust’s assets on the last business day of each month (each, a “Rebalance Date”), and effecting creations, redemptions, sales and other transactions on behalf of the Trust. All net proceeds from the sale of the Shares will be used to purchase Physical Gold to the extent required to track the Index’s allocation to Physical Gold and to pay the expenses of the Trust.

Shares of the Trust are listed on the Exchange under the ticker symbol “WGLD”. The market price of the Shares may be different from the NAV per Share. Shares may be purchased from the Trust only by certain eligible financial institutions called Authorized Participants and only in one or more blocks of 10,000 Shares (“Creation Units”) in exchange for cash. The Trust issues Shares in Creation Units on a continuous basis at the applicable NAV per Share on the creation order date. Except when aggregated in Creation Units, the Shares are not redeemable securities.

The Trust is an “emerging growth company” as that term is used in the Securities Act of 1933, as amended (the “Securities Act”), and, as such, the Trust may elect to comply with certain reduced public company reporting requirements.

Virtu Financial BD LLC, the initial Authorized Participant, purchased 100,000 Shares at a price of \$18.00 per Share on February 17, 2021.

The statement of financial condition and schedule of investments at March 31, 2021 and the statements of operations, change in net assets, and cash flows for the period ended March 31, 2021, have been prepared on behalf of the Trust and are unaudited. In the opinion of management of the Sponsor of the Trust, all adjustments (which include normal recurring adjustments) necessary to present fairly the financial position and results of operations for the period ended March 31, 2021, have been made. In addition, interim period results are not necessarily indicative of results for a full-year period.

The statements of operations, changes in net assets, and cash flows for the period January 8, 2020 through March 31, 2020 are not included as the Trust did not commence operations until February 18, 2021.

The fiscal year of the Trust is December 31<sup>st</sup>.

#### 2. SIGNIFICANT ACCOUNTING POLICIES

In preparing financial statements in conformity with U.S. GAAP, management of the Sponsor makes estimates and assumptions that affect the reported amounts of assets, liabilities and disclosures of contingent assets and liabilities at the date of the financial statements, as well as the reported amount of revenue and expenses reported during the period. Actual results could differ from these estimates.

The following is a summary of significant accounting policies followed by the Trust.

## 2.1. Basis of Presentation

The Sponsor has determined that the Trust falls within the scope of Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) 946, Financial Services - Investment Companies, and has concluded that only for financial reporting purposes, the Trust is classified as an Investment Company (as defined in ASC 946). The Trust is not registered as an investment company under the Investment Company Act and is not required to register under such act.

## 2.2. Valuation of Gold

The Trust follows the provisions of FASB ASC 820, Fair Value Measurements (“ASC 820”). ASC 820 provides guidance for determining fair value and requires increased disclosure regarding the inputs to valuation techniques used to measure fair value. ASC 820 defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.

The Administrator generally values the Physical Gold held by the Trust using that day’s LBMA Gold Price PM. If there is no LBMA Gold Price PM on any day, the Administrator is authorized to use that day’s LBMA Gold Price AM, or the most recently announced LBMA Gold Price PM or LBMA Gold Price AM. LBMA Gold Price is the price per troy ounce, in U.S. dollars, of unallocated gold delivered in London determined by IBA following an electronic auction consisting of one or more 30-second rounds starting at 10:30 a.m. (London time) (in the case of LBMA Gold Price AM) or 3:00 p.m. (London time) (in the case of LBMA Gold Price PM) on each day that the London gold market is open for business, and published shortly thereafter. At the start of each round of auction, IBA publishes a price for that round. Participants then have 30 seconds to enter, change or cancel their orders (*i.e.*, how much gold they want to buy or sell at that price). At the end of each round, order entry is frozen, and the system checks to see if the imbalance (*i.e.*, the difference between buying and selling) is within the threshold (normally 10,000 troy ounces for gold). If the imbalance is outside the threshold at the end of a round, then the auction is not balanced, the price is adjusted, and a new round starts. If the imbalance is within the threshold then the auction is finished, and the price is set as the LBMA Gold Price AM or LBMA Gold Price PM, as appropriate, for that day. Any imbalance is shared equally between all direct participants (even if they did not place orders or did not log in), and the net volume for each participant trades at the final price. The prices during the auction are determined by an algorithm that takes into account current market conditions and activity in the auction. Each auction is actively supervised by IBA staff. As of the date of this prospectus, information publicly available on IBA’s website indicates that the direct participants currently qualified to submit orders during the electronic auctions used for the daily determination of the LBMA Gold Price are Bank of China, Bank of Communications, Coins ‘N Things Inc., Goldman Sachs, HSBC Bank USA NA, Industrial and Commercial Bank of China (ICBC), INTL FC Stone, Jane Street Global Trading, LLC, JPMorgan Chase Bank N.A., Koch Supply and Trading LP, Marex Financial Limited, Morgan Stanley, Standard Chartered Bank, The Bank of Nova Scotia and Toronto Dominion Bank.

Neither the Trustee nor the Sponsor are liable to any person for the determination that the most recently announced LBMA PM Gold Price (or other benchmark price) is not appropriate as a basis for evaluation of the gold held or receivable by the Trust or for any determination as to the alternative basis for evaluation, provided that such determination is made in good faith.

Once the value of the Trust’s Physical Gold has been determined, the Administrator subtracts all accrued expenses and liabilities of the Trust from the total value of the Physical Gold and all other assets of the Trust. The resulting figure is the NAV of the Trust. The Administrator determines the NAV by dividing the NAV of the Trust by the number of Shares outstanding on the day the computation is made.

ASC 820 establishes a hierarchy that prioritizes inputs to valuation techniques used to measure fair value. The three levels of inputs are:

Level 1: Unadjusted quoted prices in active markets for identical assets or liabilities that the Trust has the ability to access.

Level 2: Observable inputs other than quoted prices included in Level 1 that are observable for the asset or liability either directly or indirectly. These inputs may include quoted prices for the identical instrument on an inactive market, prices for similar instruments and similar data.

Level 3: Unobservable inputs for the asset or liability to the extent that relevant observable inputs are not available, representing the Trust’s own assumptions about the assumptions that a market participant would use in valuing the asset or liability, and that would be based on the best information available.

The Sponsor categorizes the Trust’s investment in gold as a Level 1 asset within the ASC 820 hierarchy.

	Level 1	Level 2	Level 3
Investment in gold	\$ 1,624,720	\$ —	\$ —
<b>Total</b>	<b>\$ 1,624,720</b>	<b>\$ —</b>	<b>\$ —</b>

### 2.3. Expenses

The Trust pays the Sponsor a fee that will accrue daily at an annualized rate equal to 0.65% of the daily NAV of the Trust, paid monthly in arrears (the “Sponsor Fee”). The Sponsor Fee is accrued in and payable in U.S. dollars.

The following ordinary and recurring fees of the Trust will be paid by the Administrator out of the Sponsor’s Fee: the Administrator Fee, the Gold Custodian Fee, the Cash Custodian Fee, the Transfer Agent Fee, the Representative Fee, the Trustee Fee, the Partnership Representative Fee, the Trust’s audit fees (including any fees and expenses associated with tax preparation) and up to \$100,000 per year of the Trust’s legal fees and expenses (the “Sponsor-Paid Expenses”).

To pay the Sponsor’s Fee, the Cash Custodian will withdraw from the cash on deposit in the cash account an amount of U.S. dollars equal to the Sponsor’s Fee, determined as described above. Any Sponsor-Paid Expenses will be netted out of the Sponsor’s Fee, and the Cash Custodian will, pursuant to the instruction of the Administrator, directly pay the recipients of such amounts. After netting such Sponsor-Paid Expenses, the Administrator shall instruct the Cash Custodian to pay the remaining amount of the Sponsor’s Fee to the Sponsor. The Sponsor, from time to time, may waive all or a portion of the Sponsor’s Fee in its sole discretion.

The Trust is required to pay certain other fees and expenses that are not contractually assumed by the Sponsor, including, but not limited to, any fees and expenses associated with the Trust’s monthly rebalancing between Physical Gold and cash, any other fees (including commissions and/or exchange fees) associated with the buying and selling of Physical Gold for the Trust, fees and expense reimbursements due to the Marketing Agent, the Trust’s regulatory fees and expenses (including any filing, application or license fees), printing and mailing costs, costs of maintaining the Trust’s website, the Trust’s legal fees and expenses to the extent they exceed \$100,000 per year, any applicable license fees, extraordinary legal fees and expenses of the Sponsor, any service provider or the Trust, taxes and governmental charges, extraordinary expenses (as described below) incurred by the Sponsor or any other service provider on behalf of the Trust, expenses of the service providers and any indemnification obligations of the Trust (collectively, “Additional Trust Expenses”). Extraordinary expenses are fees and expenses incurred not in the ordinary course of the Trust’s business or fees that are unexpected or unusual in nature, such as extraordinary legal fees and expenses of the Sponsor, any service provider or the Trust, legal claims and liabilities, litigation costs, non-recurring expenses or costs incurred by the Sponsor or any other service provider on behalf of the Trust, or other unanticipated expenses.

### 2.4. Gold Receivable or Payable and Revenue Recognition Policy

Gold receivable or payable represents the quantity of gold covered by contractually binding orders for the creation or redemption of Shares respectively, where the gold has not yet been transferred to or from the Trust’s account. Gold receivable or payable also represents the quantity of gold yet to be received from or distributed to the Gold Custodian in conjunction with a rebalance transaction. Generally, ownership of the gold is transferred within two business days of the trade date.

The Sponsor, on each Rebalance Date, shall instruct the Representative to purchase and/or sell Physical Gold. In addition, the Administrator, acting pursuant to instructions from the Sponsor, shall, on the Rebalance Date, instruct the Cash Custodian to pay amounts due and payable by the Trust as of the Determination Date. When selling gold to pay expenses, the Representative will endeavor to sell the smallest amount of gold needed to pay expenses to minimize the Trust’s holdings of assets other than gold. Unless otherwise directed by the Sponsor, the Representative will sell gold to the Custodian at the next LBMA Gold Price PM following the sale order. A gain or loss is recognized based on the difference between the selling price and the average cost of the gold sold, and such amounts are reported as net realized gain/(loss) from investment in gold sold to pay expenses on the statements of operations.

### 2.5. Creations and Redemptions of Shares

The Trust creates and redeems Shares from time to time, but only in one or more Creation Units. A Creation Unit is a block of 10,000 Shares. Creation Units may be created or redeemed only by Authorized Participants. Except when aggregated in Creation Units, the Shares are not redeemable securities. Authorized Participants pay a transaction fee of \$500 in connection with each order to create or redeem a Creation Unit and are subject to an additional processing charge for failure to timely deliver such orders. From time to time, the Sponsor, in its sole discretion, may reimburse Authorized Participants for all or a portion of the processing fees from the Sponsor’s own assets. Authorized Participants may sell the Shares included in the Creation Units they purchase from the Trust to other investors. The transfer of Creation Units is only made in exchange for the delivery to the Trust or the distribution by the Trust of the cash, the amount of which is based on the combined NAV determined on the day the order to create or redeem Creation Units is properly received of the number of Shares included in a Creation Unit (each, a “Basket”). Creations of Baskets may only be settled after the requisite cash is deposited in the cash account of the Trust.

Authorized Participants must be (i) registered broker-dealers or other securities market participants, such as banks and other financial institutions, which are not required to register as broker-dealers to engage in securities transactions, and (ii) participants in the Depository Trust Company (the “DTC”). To become an Authorized Participant, a person must enter into an Authorized Participant Agreement with the Trust and the Sponsor. The Authorized Participant Agreement sets forth the procedures for the creation and redemption of Creation Units and for the payment of cash required for such creations and redemptions. The Sponsor may delegate its duties and obligations under the Authorized Participant Agreement to the Marketing Agent, the Administrator, or the Transfer Agent, without consent from any Shareholder or Authorized Participant. The Authorized Participant Agreement may be amended by the Sponsor only with the consent of the Authorized Participant, while the procedures attached thereto may be amended with notice to the Authorized Participant by following the procedures specified in the Authorized Participant Agreement. Shareholder consent is not required in either case. To compensate the Transfer Agent for services in processing the creation and redemption of Creation Units, an Authorized Participant is required to pay a transaction fee of \$500 per order to create or redeem Creation Units. There was 1 share created and outstanding in 2020.

There were 100,001 Shares outstanding at March 31, 2021.

Changes in the Shares for the three months ended March 31, 2021 are:

	<u>Shares</u>	<u>Amount</u>
Balance at January 1, 2021	1	\$ 18
Creation of Shares	100,000	1,800,000
Redemption of Shares	—	—
Balance at March 31, 2021	<u>100,001</u>	<u>\$ 1,800,018</u>

## 2.6. Organizational Costs

The costs of the Trust’s organization were borne directly by the Sponsor. The Trust is obligated to pay, or reimburse the Sponsor for, Additional Trust Expenses and any fees and expenses that are specified in the Trust Agreement as payable by the Trust.

## 2.7. Income Taxes

The Trust is classified as a “partnership” for United States federal income tax purposes. As a result, the Trust itself is not subject to United States federal income tax. Instead, the Trust’s income, gain, losses, and expenses will “flow through” to the Shareholders, and the Trustee reports these to the Internal Revenue Service on that basis.

The Sponsor evaluates tax positions taken or expected to be taken in the course of preparing the Trust’s tax returns to determine whether the tax positions are “more-likely-than-not” to be sustained by the applicable tax authority. Tax positions not deemed to meet that threshold would be recorded as an expense in the current year. The Trust is required to analyze all open tax years. Open tax years are those years that are open for examination by the relevant income taxing authority. As of March 31, 2021, no tax years are open for examination. There is no examination in progress at period end.

## 3. INVESTMENT IN GOLD

The following represents the changes in fine ounces of gold and the respective fair value during the three months ended March 31, 2021:

	<u>Amount in fine ounces</u>	<u>Amount in US\$</u>
Balance at January 1, 2021	—	\$ —
Gold received for creation of Shares	976.626	1,800,018
Gold distributed for redemption of Shares	—	—
Value of gold sold to pay expenses	—	(7,681)
Net realized gain (loss) from gold sold to pay expenses	(15.850)	(858)
Change in unrealized appreciation (depreciation) on investment in gold	—	(82,077)
Balance at March 31, 2021	<u>960.776</u>	<u>\$ 1,709,402</u>

There were no investments held during 2020.

#### **4. RELATED PARTIES – SPONSOR, TRUSTEE, GOLD CUSTODIAN, CASH CUSTODIAN, ADMINISTRATOR AND TRANSFER AGENT**

The Sponsor was formed on May 14, 2018, and established, coordinated, and paid the organizational expenses of the Trust. The Sponsor, together with the Administrator, the Gold Custodian, the Cash Custodian, the Transfer Agent, the Representative, and their respective agents are generally responsible for the administration of the Trust under the provisions of their respective governing agreements. Some of the responsibilities of the Sponsor include (i) selecting the Trust's service providers and, from time to time, engaging additional, successor or replacement service providers, which shall also include negotiating each service provider agreement and related fees on behalf of the Trust, (ii) facilitating registration of the Shares in book-entry form to be held in the name of Cede & Co. at the facilities of DTC in consultation with the Transfer Agent, and (iii) performing such other services as the Sponsor believes the Trust may require. The Sponsor is generally not involved in the day-to-day activities of the Trust.

The Trustee is appointed to serve as the trustee of the Trust in the State of Delaware for the sole purpose of satisfying the requirement of Section 3807(a) of the Delaware Statutory Trust Act ("DSTA") that the Trust have at least one trustee with a principal place of business in the State of Delaware. The Trustee's duties and liabilities with respect to the offering of Shares and management of the Trust are limited to its express obligations under the Trust Agreement. The Trustee shall not be liable under any circumstances, except for its own willful misconduct, bad faith, or gross negligence with respect to its express duties under the Trust Agreement. The Trustee will have no obligation to monitor or supervise the obligations of the Sponsor, Transfer Agent, Administrator, Gold Custodian, Cash Custodian, or any other person. The Trustee will be compensated by the Trust, out of the Sponsor's Fee, for the Trustee's fees. The Trustee will be reimbursed by the Trust for reasonable legal expenses it incurs in connection with consultation with its counsel (who may be counsel for the Sponsor or the Trustee) in relation to indemnification under the Trust Agreement.

The Gold Custodian serves as a custodian on the Trust's behalf, and the Physical Gold in the Trust's account maintained by the Gold Custodian is considered an asset that remains the Trust's property at all times. The Gold Custodian is responsible for receiving and safekeeping the Trust's Physical Gold. The Gold Custodian will store Physical Gold in its own vaulting facilities, generally in London, New York, or such other locations where the Gold Custodian may maintain vaulting facilities from time to time. The Gold Custodian may appoint sub-custodians from time to time for the custody and safekeeping of Physical Gold, but the Gold Custodian remains liable for the custody and safekeeping of Physical Gold and for any loss suffered by the Trust as a result of any act or omission or insolvency of any sub-custodian. The Gold Custodian has agreed to maintain insurance in support of its custodial obligations under the Gold Custodian Agreement, including covering any loss of Physical Gold held in allocated form.

Under the Cash Custody Agreement, the Cash Custodian will be responsible for maintaining the cash account in which the Cash Custodian will hold U.S. dollars in the name of the Trust. The Cash Custodian will be compensated out of the Sponsor's Fee for the Cash Custodian's services under the Cash Custody Agreement.

The Administration Agreement establishes the rights and responsibilities of the Administrator and the Trust with respect to the administration, accounting, and recordkeeping of the Trust. The responsibilities of the Administrator will include duties and obligations set forth in the Administration Agreement in connection with (i) the Trust's payment of fees and expenses on each Rebalance Date, (ii) providing information to the Sponsor in order for the Sponsor to determine the monthly rebalancing of the Trust's holdings in Physical Gold and cash on each Rebalance Date, (iii) evaluating the Physical Gold holdings and the Cash, determining the Trust's NAV and the NAV per Share and preparing daily reports, and (iv) maintaining books and records on behalf of the Trust. The Administrator will prepare the Trust's required filings under the Exchange Act. The Administrator will be compensated by the Trust, out of the Sponsor's Fee, for the Administrator's fees.

The Transfer Agent records the ownership of the Shares on the books and records of the Trust and coordinates with the Marketing Agent and DTC as necessary. The Transfer Agent will credit or debit the number of Shares owned by holders of record. The Transfer Agent will (i) facilitate purchases and redemptions of Creation Units to be held in the name of DTC or its nominee, Cede & Co., at the facilities of DTC; (ii) prepare and transmit by means of DTC's book-entry system payments on or with respect to the Shares declared by the Trust; (iii) maintain the record of the name and address of the Shareholder and the number of Shares issued by the Trust and held by the Shareholder; (iv) record the issuance of Shares of the Trust and maintain a record of the total number of Shares of the Trust which are outstanding, and, based upon data provided to it by the Trust, the total number of authorized Shares; (v) prepare and transmit to the Trust and the Administrator and to any applicable securities exchange information with respect to purchases and redemptions of Shares; (vi) extend the voting rights to the Shareholder for extension by DTC to DTC participants and the beneficial owners of Shares in accordance with policies and procedures of DTC for book-entry only securities; and (vii) maintain books and records related to its activities on behalf of the Trust. The Transfer Agent will also perform the customary services of a transfer agent including, but not limited to, maintaining the accounts of the Shareholders. The Transfer Agent will be compensated by the Trust, out of the Sponsor's Fee, for the Transfer Agent's fees.

#### **5. CONCENTRATION OF RISK**

The Trust's sole business activity is the investment in gold bullion and cash to track the Index, less the Trust's liabilities and expenses. Several factors could affect the price of gold: (i) global gold supply and demand, which is influenced by such factors as forward selling by gold producers, purchases made by gold producers to unwind gold hedge positions, central bank purchases and sales, and production and cost levels in major gold-producing countries, and new production projects; (ii) investors' expectations regarding future inflation rates; (iii) currency exchange rate volatility; (iv) interest rate volatility; and (v) political, economic, global or regional incidents. In addition, there is no assurance that gold will maintain its long-term value in terms of purchasing power in the future. In the event that the price of gold declines, the Sponsor expects the value of an investment in the Shares to decline proportionately. Each of these events could have a material effect on the Trust's financial position and results of operations.

## 6. INDEMNIFICATION

The Sponsor and its affiliates, and their respective members, managers, directors, officers, employees, agents and controlling persons (each a “Sponsor Indemnified Party”), will be indemnified by the Trust and held harmless against any loss, judgment, liability, claim, suit, penalty, tax, cost, amount paid in settlement of any claims sustained by it or expense incurred by it arising out of or in connection with the performance of its obligations under the Trust Agreement and under each other agreement entered into by the Sponsor in furtherance of the administration of the Trust, including any costs and expenses incurred by the Sponsor in defending itself against any claim or liability in its capacity as Sponsor; provided that (i) such loss was not the direct result of gross negligence, bad faith or willful misconduct on the part of the Sponsor or a Sponsor Indemnified Party, and (ii) any such indemnification will be recoverable only from the assets of the Trust. Any indemnifiable amounts payable to such indemnified persons may be payable in advance or shall be secured by a lien on the Trust.

The Trustee and any of the officers, directors, affiliates, employees and agents of the Trustee (each, a “Trustee Indemnified Party”) shall be indemnified by the Trust and held harmless against any loss, damage, liability (including liability under state or federal securities laws), claim, action, suit, cost, expense, disbursement (including the reasonable fees and expenses of counsel generally and in connection with its enforcement of its indemnification rights), tax or penalty of any kind and nature whatsoever, to the extent arising out of, imposed upon or asserted at any time against such indemnified person in connection with the execution or delivery of the Trust Agreement, the performance of its obligations under the Trust Agreement, the creation, operation or termination of the Trust or the transactions contemplated therein; provided, however, that (i) the Trust shall not be required to indemnify any such indemnified person for any such expenses which are a result of the willful misconduct, bad faith or gross negligence related to the express duties of the Trustee or Trustee Indemnified Party, and (ii) any such indemnification will be recoverable only from the assets of the Trust. The obligations of the Trust to indemnify such indemnified persons under the Trust Agreement shall survive the resignation or removal of the Trustee and the termination of the Trust Agreement. Any indemnifiable amounts payable to such indemnified persons may be payable in advance or shall be secured by a lien on the Trust.

## Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations.

*This information should be read in conjunction with the financial statements and notes included in Item 1 of Part I of this Form 10-Q. This Form 10-Q contains “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, and such forward-looking statements involve risks and uncertainties. All statements (other than statements of historical fact) included in this Form 10-Q that address activities, events or developments that may occur in the future, including such matters as future gold prices, gold sales, costs, objectives, changes in commodity prices and market conditions (for gold and the shares), the Trust’s operations (including the effects thereon related to the coronavirus (“COVID-19”) pandemic), the Sponsor’s plans and references to the Trust’s future success and other similar matters are forward-looking statements. Words such as “could,” “would,” “may,” “expect,” “intend,” “estimate,” “predict,” and variations on such words or negatives thereof, and similar expressions that reflect our current views with respect to future events and Trust performance, are intended to identify such forward-looking statements. These forward-looking statements are only predictions, subject to risks and uncertainties that are difficult to predict and many of which are outside of our control, and actual results could differ materially from those discussed. Forward-looking statements involve risks and uncertainties that could cause actual results or outcomes to differ materially from those expressed therein. We express our estimates, expectations, beliefs, and projections in good faith and believe them to have a reasonable basis. However, we make no assurances that management’s estimates, expectations, beliefs, or projections will be achieved or accomplished. These forward-looking statements are based on assumptions about many important factors that could cause actual results to differ materially from those in the forward-looking statements. Such factors are discussed in: Part I, Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations of this Form 10-Q; Part II, Item 1A. Risk Factors of this Form 10-Q, and other parts of this Form 10-Q. We do not intend to update any forward-looking statements even if new information becomes available or other events occur in the future, except as required by the federal securities laws.*

### Organization and Trust Overview

The Wilshire wShares Enhanced Gold Trust (the “Trust”) is an exchange-traded fund formed on January 8, 2020, as a Delaware statutory trust and trades on the NYSE Arca, Inc. (the “Exchange”). The Trust operates pursuant to a trust agreement, dated as of January 8, 2020, as amended by the First Amendment to the Trust Agreement, dated as of August 24, 2020, and further amended and restated on December 17, 2020 (the “Trust Agreement”) between Wilshire Phoenix Funds LLC, a Delaware limited liability company (the “Sponsor”), and Delaware Trust Company (the “Trustee”). The Trust is not registered as an investment company under the Investment Company Act of 1940, as amended (the “Investment Company Act”), and is not a commodity pool for purposes of the Commodity Exchange Act (“CEA”). The Trust issues shares (the “Shares”), which represent units of fractional undivided beneficial interest in the Trust. The Trust will have no assets other than (a) Physical Gold, and (b) cash. The Trust’s performance, whether positive or negative, will be driven primarily by its investments in Physical Gold. The Trust’s Physical Gold is carried, for financial statement purposes, at fair value, as required by U.S. GAAP. The Trust’s NAV is determined by the Administrator, on a U.S. GAAP basis, on each business day as of 4:00 p.m., (New York City time) or as soon thereafter as practicable.

The investment objective of the Trust is for the Shares to closely reflect the Wilshire Gold Index (the “Index”), less the Trust’s liabilities and expenses, and the Trust aims to achieve its investment objective by investing in Physical Gold and holding cash in proportions that seek to replicate the proportions in which Physical Gold and cash are represented in the Index. The objective of the Index is to reduce the risk-profile typically associated with the purchase of gold, as measured by the realized volatility of the LBMA Gold Price PM, while maintaining the correlative benefits of gold versus the S&P 500® Index. The purpose of the Index is to seek to outperform a stand-alone investment in gold. Solactive AG calculates the Index (the “Index Calculation Agent”).

The Index systematically rebalances between gold and cash on a monthly basis. Realized volatility, sometimes referred to herein as historical volatility, measures the magnitude of price movements of a given asset over a defined historical time period. The Index generally seeks to reduce its realized volatility relative to the realized volatility of the LBMA Gold Price PM by lowering its exposure to gold during periods of increased realized volatility in the LBMA Gold Price PM. Gold may serve or act as a diversifier and a hedge within a portfolio of assets, especially during times of heightened realized volatility observed in the S&P 500® Index, and therefore the Index will generally calculate an increased gold exposure during periods of heightened realized volatility observed in the S&P 500® Index. The Index has a notional component representing Physical Gold (the “Physical Gold Component”) and cash (the “Cash Component”) based on a cash weighting to the extent that less than 100% of the Index is comprised of the Physical Gold Component (the “Cash Weighting”). In seeking to track the Cash Weighting portion of the Index, the Trust will hold cash.

On each “Determination Date” (the second business day prior to a Rebalance Date), the Index Calculation Agent calculates the new weighting of the Physical Gold Component utilizing a mathematically derived, non-discretionary, objective and passive rules-based methodology that will apply on the Rebalance Date. This methodology adjusts the Index’s exposure to Physical Gold depending on the historical realized volatility and returns of the LBMA Gold Price PM and historical realized volatility of the S&P 500® Index utilizing a look-back period of 45 days, among other parameters. The Index Calculation Agent’s determination of the new weight for the Physical Gold Component will be based on the observed historical realized volatility and returns of the LBMA Gold Price PM and historical realized volatility of the S&P 500® Index.



The new percentage weighting for the Physical Gold Component will generally be lower than the prior month if the historical realized volatility of Physical Gold is higher than during the previous period, and vice versa. In addition, during a period of increased historical realized volatility within the S&P 500® Index, the Index may calculate a higher weighting for the overall exposure to gold. The weightings of the Physical Gold Component and the Cash Weighting will never be negative. The weighting for the Physical Gold Component will not exceed 100%. The combined weightings of the Physical Gold Component and the Cash Weighting will always sum to 100%, and if the weighting of the Physical Gold Component is 100%, then the Cash Weighting will be zero. The calculated weighting for the Physical Gold Component on each Rebalance Date will not be less than 50%.

On each Rebalance Date, the changes to the weightings of the Physical Gold Component and the Cash Weighting as calculated on the Determination Date will be effective for the Index through the next Rebalance Period, and the Trust will rebalance its assets in order to closely replicate the new weightings in the Index. The Index's weight for the Physical Gold Component is always positive and therefore represents a long position in Physical Gold to the extent of the percentage of Physical Gold represented in the Index. Historically, price returns of the Index exhibit high correlation to the returns of gold as represented by the LBMA Gold Price PM. In periods where the weight of the Physical Gold Component is less than 100%, it is expected that the daily Index price movement will be in the same direction as the daily LBMA Gold Price PM movement, albeit to a lesser extent. The Trust's daily performance is expected to exhibit the same relationship to the price of the LBMA Gold Price PM to the extent that the Trust's daily performance tracks that of the Index.

This description of the Index methodology is only a summary, and this and other information about the Index is provided here for informational purposes but is not intended to provide sufficient detail to permit full replication of the Index.

The Trust lists the Shares on the Exchange under the ticker symbol "WGLD". The market price of the Shares may be different from the NAV per Share. Shares may be purchased from the Trust only by certain eligible financial institutions called Authorized Participants (as defined below) and only in one or more blocks of 10,000 Shares ("Creation Units"). The Trust issues Shares in Creation Units on a continuous basis at the applicable NAV per Share on the creation order date. Except when aggregated in Creation Units, the Shares are not redeemable securities.

The Trust pays the Sponsor a fee that will accrue daily at an annualized rate equal to 0.65% of the daily NAV of the Trust, paid monthly in arrears (the "Sponsor Fee"). The Sponsor Fee is accrued in and payable in U.S. dollars.

#### **Valuation of Gold and Computation of Net Asset Value**

The Administrator determines the NAV of the Trust on each day that the Exchange is open for regular trading, as promptly as practical after 4:00 p.m. New York time. The NAV of the Trust is the aggregate value of gold and cash, if any, less liabilities of the Trust, which include estimated accrued but unpaid fees, expenses, and other liabilities. In determining the Trust's NAV, the Administrator values the gold held by the Trust based on the afternoon London gold price per troy ounce of gold for delivery in London through a member of the London Bullion Market Association ("LBMA") authorized to effect such delivery, as calculated and administered by independent service provider(s) and published by the LBMA on its website or by its successor that publicly displays prices (the "LBMA PM Gold Price"), or, if such day's afternoon price is not available, the morning LBMA Gold Price (the "LBMA AM Gold Price"). If no LBMA Gold Price is available for the day, the Administrator will value the Trust's gold based on the most recently announced LBMA PM Gold Price or LBMA AM Gold Price. If the Sponsor determines that such price is inappropriate to use, it shall identify an alternate basis for evaluation to be employed by the Administrator. The Sponsor may instruct the Administrator to use a different publicly available price, which the Sponsor determines to fairly represent the value of the Trust's gold.

#### **Results of Operations**

Three Months Ended March 31, 2021

For the three months ended March 31, 2021, 100,001 Shares (inclusive of 10 Baskets that were created upon the launch of the Trust and 1 share that was purchased by the Sponsor in a private placement prior to the Trust's launch) were issued in exchange for cash that was used to purchase 976.626 fine ounces of gold, and 15.850 fine ounces of gold were sold to pay expenses. The Trust's NAV per Share ended the period at \$17.09 compared to \$18.00 at February 17, 2021. The decrease in NAV per Share was due to a lower price of gold of \$1,691.05 at period end, which represented a decrease of 5.03% from \$1,780.70 at February 17, 2021. The decrease in the price of gold and the percentage weighting of gold in the Index contributed to a decrease of 4.70% in the level of the Index during that period. The difference in return of the Trust's NAV compared to that of the Index was (0.33)%.

**Comparison of Share Price, NAV and Wilshire Phoenix Gold Index.**



At March 31, 2021, the Gold Custodian held 960.776 fine ounces of gold on behalf of the Trust in its vault, with a market value of \$1,624,720 (cost: \$1,706,797) based on the LBMA PM Gold Price at period end.

The change in net assets from operations for the three months ended March 31, 2021, was \$(90,616), which was due to (i) the Sponsor Fee of \$1,313 and (ii) organizational fees of \$6,368, and (iii) a net realized and unrealized gain/(loss) of \$(82,935) from operations, which in turn resulted from a net realized gain/(loss) on gold transferred to pay expenses of \$(858) and a net change in unrealized appreciation/(depreciation) on investments in gold bullion of \$ (82,077).

For the period ended March 31, 2021, the price of the Shares traded on the Exchange decreased from \$18.00 per Share to \$17.25 per Share. The percentage change of the Share price over the course of the period was a decrease of 4.17%. The difference in return of the price of the Shares compared to the performance of the Index was 0.53%.

**Historical Information Regarding Movements in the Price of Gold (as Represented by the LBMA Gold Price PM), the Return of the Index and Realized Volatility of the LBMA Gold Price PM and the S&P 500® Index**

	<i>Three Months Ended March 31, 2021</i>	<i>Three Months Ended December 31, 2020</i>
Aggregate Return of the LBMA Gold Price PM	(10.58)%	0.22%
Aggregate Return of the Index	(9.27)%	0.05%
Realized Volatility of LBMA Gold Price PM	15.60%	17.61%
Realized Volatility of the S&P 500® Index	15.99%	16.47%

*Past performance should not be considered indicative of future performance, and current performance may be lower or higher than the performance quoted. The Index has limited historical data and no operating history. The Index's historical data may not be representative of the Index's potential performance under other market conditions. Back-tested performance prior to the launch of the Index refers to simulated performance data over the time periods indicated created by applying the Index's calculation methodology to historical gold prices and, with respect to rebalancings, the levels of the S&P 500® Index. The back-tested performance data does not represent the investment performance of the Trust or the actual accounts of any investors or investment funds. This back-tested performance is designed to allow investors to understand and evaluate the Index methodology by seeing how it would have performed hypothetically during certain time periods. Such simulated performance data may not account for all factors that affect gold prices and the equities markets and are neither an indicator or guarantor of future performance. The back-tested performance data may not reflect the impact that any material market or economic factors might have had on the use of the Index's methodology if the methodology had been used during the period for the Index. The back-tested Index data only reflects the application of that methodology in hindsight, since the Index was not actually calculated and published prior to November 3, 2020. The back-tested Index data cannot completely account for the impact of financial risk in actual trading. Consequently, you should not rely on that data as a reflection of what the actual Index performance would have been had the Index been in existence or in forecasting future Index performance. Any hypothetical or actual historical upward or downward trend in the level of the Index during any period shown is not an indication that the level of the Index is more or less likely to increase or decrease at any time.*

The price of gold is volatile and gold prices and realized volatility of gold prices are impacted by a variety of factors. These factors include, but are not limited to: announcements from central banks regarding a country's reserve gold holdings, fluctuations in the value of the U.S. dollar, gold supply and demand, global or regional political, economic or financial events and situations, especially those unexpected in nature, interest rates in fiat currencies, currency exchange rates, investment and trading activities of large investors, including private and registered trusts, hedge funds and commodity funds, commodity pools, that may directly or indirectly invest in gold, changes in economic variables such as economic output and growth and monetary policies, changes in global gold supply and demand and investor and speculator attitude and confidence toward gold. Further, movements in the price of gold in the past, and any past or present trends, are not a reliable indicator of future movements. Such factors will impact the performance of the Trust and the results of operations on an ongoing basis. The Sponsor cannot predict the impact of such factors.

The returns of the S&P 500® Index are volatile and realized volatility of S&P 500® Index values are impacted by a variety of factors. These factors include, but are not limited to: market fluctuations caused by such factors as economic and political developments, changes in interest rates, perceived trends in securities prices, war, acts of terrorism, the spread of infectious disease or other public health issues, local, regional or global events such as war, acts of terrorism, recessions, changes in the financial condition of the issuers of securities underlying the S&P 500® Index, the value of equity securities generally, market confidence in and perceptions of securities underlying the S&P 500® Index, expectations regarding government, economic, monetary and fiscal policies, inflation and interest rates, economic expansion or contraction, global or regional political, economic and banking crises. Further, movements in the realized volatility of the S&P 500® Index values in the past, and any past or present trends, are not a reliable indicator of future movements. Such factors will impact the performance of the Trust and the results of operations on an ongoing basis. The Sponsor cannot predict the impact of such factors.

The realized volatility of the LBMA Gold Price PM for the table above is calculated using prices from the LBMA, which are made publicly available at the LBMA's website ([www.lbma.org.uk](http://www.lbma.org.uk)). Realized volatility of the S&P 500® Index for the table above is calculated using prices from S&P Dow Jones Indices LLC ("S&P"), which are publicly available on S&P's website ([www.spglobal.com/spdji/en/](http://www.spglobal.com/spdji/en/)). The Trust and the Sponsor are not affiliated with the LBMA or S&P and do not accept responsibility for, or guarantee the accuracy and/or completeness of, the data included on their websites. Realized volatility is calculated using standard calculation of realized volatility on a price timeseries of an asset, which is shown below.

"Price" = price time series

"Lookback" = number of days in the lookback period

252 is used as the normalizing constant to convert the realized volatility to an annualized equivalent (i.e., it represents the number of trading days in any given year)

√ = Square root operator

Σ = Summation operator, addition of all of the inputs calculated by iterating over the business days in the lookback period

<sup>2</sup> = Squared operator, the value multiplied by itself

$$\begin{aligned}
 \text{Return}_i &= \text{Price}_i / \text{Price}_{i-1} - 1; \\
 \text{Average Return for Lookback Period} &= \frac{\sum_{i=1}^{\text{Lookback}} \text{Return}_i}{\text{Lookback}} \\
 \text{Realized Variance} &= \frac{\sum_{i=1}^{\text{Lookback}} (\text{Return}_i - \text{Average Return for Lookback Period})^2}{\text{Lookback} - 1} \\
 \text{Realized Volatility} &= \sqrt{\text{Realized Variance}} \cdot \sqrt{252}
 \end{aligned}$$

#### Liquidity and Capital Resources

The Trust is not aware of any trends, demands, commitments, events, or uncertainties that are reasonably likely to result in material changes to its liquidity needs. The Sponsor Fee accrues daily at an annualized rate equal to 0.65% of the daily NAV of the Trust and is payable in U.S. dollars monthly in arrears.

The Administrator, acting pursuant to instructions from the Sponsor, will direct the Cash Custodian to withdraw from the cash account on each Rebalance Date, an amount of U.S. dollars sufficient to pay the Trust's fees and expenses provided for in the Trust Agreement, and pay such amount to the recipients thereof; provided however that the Sponsor shall separately instruct the Administrator with respect to the timing for distribution of amounts in respect of redemptions. At March 31, 2021, the Trust had a cash balance of \$259.

### **Rebalancing of the Trust's Assets**

On each Rebalance Date, following the calculation of the weighting of the components of the Index, the Trust shall rebalance the Trust's holdings in Physical Gold and cash in order to closely replicate the Index. In order to affect the monthly rebalancing, the Index Calculation Agent shall provide the percentage weight of the Physical Gold Component and the Cash Component as of the Determination Date to the Administrator and the Sponsor. The Sponsor, based on information provided by the Administrator and the Index Calculation Agent, shall make such determinations and calculations as of each Determination Date (taking into account amounts on deposit in the cash account as of such Rebalance Date and the amount of U.S. dollars necessary to, on such Rebalance Date, pay amounts due and payable by the Trust) as are necessary in order to determine the amount of Physical Gold to purchase or sell.

The Sponsor, on each Rebalance Date, shall instruct the Gold Custodian and the Cash Custodian, respectively, to purchase and/or sell Physical Gold, as applicable. The Administrator shall, on the Rebalance Date, instruct the Cash Custodian to pay amounts due and payable by the Trust as of the Determination Date; provided however that the Sponsor shall separately instruct the Administrator with respect to the timing for distribution of amounts in respect of redemptions.

In addition, the Representative interacts with the Cash Custodian, the Gold Custodian, the Administrator, the Trustee, the Index Calculation Agent and any other third-party service providers to the Trust for the purpose of effecting monthly rebalances of the Trust's assets on a Rebalance Date, and effecting creations and redemptions.

The Sponsor may exercise discretion in connection with the amount of cash and Physical Gold to hold, purchase and/or sell on each Rebalance Date compared to their weightings in the Index, based on market value fluctuations or other factors occurring between the Determination Date and the Rebalance Date, in order to have the assets of the Trust more closely replicate the Index on such Rebalance Date and shall have no liability in connection therewith so long as it has exercised such discretion in good faith. The Sponsor and the applicable service providers shall use commercially reasonable efforts to effect the purchases, sales and/or payments contemplated on the Rebalance Date, provided that if any such purchases, sales and/or payments are unable to be made on the Rebalance Date, such purchases, sales and/or payments shall be made as soon as practicable thereafter.

### **Off-Balance Sheet Arrangement**

The Trust does not have any off-balance sheet arrangements.

### **Item 3. Quantitative and Qualitative Disclosures About Market Risk.**

The Trust is a passive investment vehicle. It is not actively managed. The Trust's investment objective is to closely reflect the Index, which varies allocations between gold and cash, less the Trust liabilities and expenses. Accordingly, fluctuations in the price of gold will affect the value of the Shares. Fluctuations in realized volatility of the LBMA Gold Price and the S&P 500<sup>®</sup> Index will affect the Index's allocations to gold and cash accounting to the Index methodology and will affect the Trust's exposure to gold. The Trust does not use derivatives or leverage to increase its exposure to gold. The maximum weight of the physical gold in the Trust is 100%.

### **Item 4. Controls and Procedures.**

#### *Disclosure Controls and Procedures*

The duly authorized officers of the Sponsor, performing functions equivalent to those a principal executive officer and principal financial officer of the Trust would perform if the Trust had any officers, have evaluated the effectiveness of the Trust's disclosure controls and procedures, and have concluded that the disclosure controls and procedures of the Trust were effective as of the end of the period covered by this report. Such disclosure controls and procedures are designed to provide reasonable assurance that information required to be disclosed in the reports that the Trust files or submits under the Securities Exchange Act of 1934, as amended, are recorded, processed, summarized and reported, within the time period specified in the applicable rules and forms, and that such information is accumulated and communicated to the duly authorized officers of the Sponsor performing functions equivalent to those a principal executive officer and principal financial officer of the Trust would perform if the Trust had any officers, and to the Sponsor, as appropriate, to allow timely decisions regarding required disclosure.

#### *Internal Control over Financial Reporting*

There has been no change in the internal control over financial reporting that occurred during the fiscal period that has materially affected, or is reasonably likely to materially affect, the Trust's internal control over financial reporting.

**Part II. OTHER INFORMATION.**

**Item 1. Legal Proceedings.**

The Trust is not aware of any existing or pending legal proceedings against it, nor is it involved as a plaintiff in any proceeding or pending litigation.

**Item 1A. Risk Factors.**

You should carefully consider the risks and uncertainties described in the Trust's amended and restated prospectus filed on April 16, 2021 (file no. 333-235913) pursuant to Rule 424(b)(3) under the Securities Act (the "Prospectus") and the other information contained in the Prospectus before making an investment decision. The risks set forth in the Prospectus are not only ones facing the Trust. Additional risks and uncertainties may exist that could also adversely affect the Trust.

**Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.**

a) None.

b) Not applicable.

c) The Trust does not purchase Shares directly from its Shareholders. In connection with its redemption of baskets held by Authorized Participants, the Trust redeemed 0 baskets (comprising 0 Shares) during the three months ended March 31, 2021. The following table summarizes the redemptions by Authorized Participants during the period:

<b>Period</b>	<b>Total Number of Shares Redeemed</b>	<b>Average Price Per Share</b>
1/1/21 to 1/31/21	—	\$ —
2/1/21 to 2/28/21	—	\$ —
3/1/21 to 3/31/21	—	\$ —
Total	—	—

**Item 3. Defaults Upon Senior Securities.**

None.

**Item 4. Mine Safety Disclosures.**

None.

**Item 5. Other Information.**

None.

**Item 6. Exhibits.**

See the Exhibit Index below, which is incorporated by reference herein.

## EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description of Exhibit</u>
1.1**	<a href="#">Form of Authorized Participant Agreement</a>
4.1	<a href="#">Amended and Restated Trust Agreement</a>
4.1.1**	<a href="#">Second Amended and Restated Trust Agreement</a>
4.2**	Certificate of Trust ( <a href="#">attached as Exhibit A to the Second Amended and Restated Trust Agreement</a> )
5.1	<a href="#">Form of Opinion of Seward &amp; Kissel LLP as to legality of Shares</a>
8.1	<a href="#">Form of Opinion of Seward &amp; Kissel LLP as to tax matters</a>
10.1*	Gold Custodian Agreement (Allocated Gold)
10.2*	Gold Custodian Agreement (Unallocated Gold)
10.3	<a href="#">Cash Custodian Agreement</a>
10.4*	Index Calculation Agreement
10.5	<a href="#">Fund Administration and Accounting Agreement</a>
10.6*	Marketing Agent Agreement
10.7	<a href="#">First Amendment to Marketing Agent Agreement</a>
10.8	<a href="#">Transfer Agency and Service Agreement</a>
10.9*	Sponsor Representative Services Agreement
10.10	<a href="#">Sublicense Agreement</a>
23.2	Consent of Seward & Kissel LLP (included in <a href="#">Exhibit 5.1</a> )
23.3	Consent of Seward & Kissel LLP (included in <a href="#">Exhibit 8.1</a> )
<a href="#">31.1</a>	<a href="#">Certification of Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>
<a href="#">31.2</a>	<a href="#">Certification of Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>
<a href="#">32.1</a>	<a href="#">Certification of Principal Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>
<a href="#">32.2</a>	<a href="#">Certification of Principal Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.LAB	XBRL Taxonomy Extension Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document

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\* Portions of these exhibits have been omitted as permitted by the rules and regulations of the SEC.

\*\* Filed herewith.

**Signatures**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned in the capacities\* indicated thereunto duly authorized.

Wilshire Phoenix Funds, LLC  
Sponsor of the Trust

By:           /s/ William Herrmann\*  
          William Herrmann  
          Managing Partner  
          (serving in the capacity of principal executive officer)

Date: May 17, 2021

\* The registrant is a trust and the person is signing in his capacity as an officer of Wilshire Phoenix Funds, LLC, the Sponsor of the Registrant.

**WILSHIRE wSHARES ENHANCED GOLD TRUST  
FORM OF AUTHORIZED PARTICIPANT AGREEMENT**

This Authorized Participant Agreement (the “Agreement”), dated as of \_\_\_\_\_, 20\_\_ is entered into by and among \_\_\_\_\_ (the “Authorized Participant”), Wilshire wShares Enhanced Gold Trust (the “Trust”), and Wilshire Phoenix Funds LLC, as sponsor of the Trust (the “Sponsor”).

**SUMMARY**

As provided in the Amended and Restated Declaration of Trust, as it may be amended from time to time (the “Trust Agreement”) as currently in effect and described in the Prospectus (defined below), units of beneficial interest in and ownership of the Trust (the “Shares”) may be created or redeemed by the Sponsor for an Authorized Participant in aggregations of a minimum of ten thousand (10,000) Shares (each aggregation, a “Creation Unit”). Creation Units are offered only pursuant to a registration statement of the Trust on Form S-1, as amended (currently, registration no.: 333- 235913), as declared effective by the Securities and Exchange Commission (“SEC”) and as the same may be amended from time to time thereafter or any successor registration statement in respect of Shares of the Trust (collectively, the “Registration Statement”) together with the prospectus of the Trust in the form filed with the SEC under Rule 424(b) under the Securities Act of 1933, as amended (the “1933 Act”), after the effectiveness of the Registration Statement as supplemented from time to time or any free writing prospectus as defined in Rule 405 of the 1933 Act (a “FWP”) prepared by, for or on behalf of the Sponsor and the Trust intended for general distribution (each Fund’s current prospectus collectively, together with the Fund’s Statement of Additional Information incorporated therein, the “Prospectus”) included therein. Under the Trust Agreement, the Sponsor is authorized to issue Creation Units to, and redeem Creation Units from, authorized participants, only through the facilities of the Depository Trust Company (“DTC”), or a successor depository, and only in exchange for cash. This Agreement and the Procedures (defined below) set forth the specific procedures by which the Authorized Participant may create or redeem Creation Units.

Because new Shares can be created and issued on an ongoing basis, at any point during the existence of the Trust, a “distribution,” as such term is used in the 1933 Act, may be occurring. The Authorized Participant is cautioned that some of its activities may result in its being deemed a participant in a distribution in a manner which would render it a statutory underwriter and subject it to the prospectus delivery and liability provisions of the 1933 Act. The Authorized Participant should review the “Plan of Distribution” portion of the Prospectus and consult with its own counsel in connection with entering into this Agreement and submitting Orders (defined below).

Capitalized terms used but not defined in this Agreement shall have the meanings assigned to such terms in the Trust Agreement or Creation and Redemption Procedures set forth in Attachment A hereto (the “Procedures”).

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To give effect to the foregoing premises and in consideration of the mutual covenants and agreements set forth below, the parties hereto agree as follows:

**Section 1. Order Placement.** To place orders for the Sponsor (or its agent) to create or redeem one or more Creation Units, the Authorized Participant must follow the procedures for creation and redemption referred to in Section 3 of this Agreement, the Trust Agreement, and the Procedures described in Attachment A, as each may be amended, modified or supplemented from time to time. This Agreement is intended to set forth certain premises and the procedures by which the Authorized Participant may purchase and/or redeem (i) through the Continuous Net Settlement (“CNS”) clearing processes of National Securities Clearing Corporation (“NSCC”) as such processes have been enhanced to effect purchases and redemptions of Units, such processes being referred to herein as the “CNS Clearing Process,” or (ii) outside the CNS Clearing Process (*i.e.*, through the manual process of DTC) (the “DTC Process”).

Solely with respect to Purchase Orders or Redemption Orders effected through the CNS Clearing Process, the Authorized Participant hereby authorizes the Transfer Agent to transmit to the NSCC on behalf of the Authorized Participant such instructions consistent with the instructions issued by the Authorized Participant to the Transfer Agent. The Authorized Participant agrees to be bound by the terms of such instructions issued by the Transfer Agent and reported to NSCC as though such instructions were issued by the Authorized Participant directly to NSCC.

**Section 2. Status, Representations and Warranties of the Parties.**

(a) The Authorized Participant represents and warrants and covenants, so long as this Agreement is in full force and effect, the following:

(i) The Authorized Participant is a participant of DTC (as such a participant, a “DTC Participant”). If the Authorized Participant ceases to be a DTC Participant, the Authorized Participant shall give prompt notice to the Sponsor of such event, and this Agreement shall terminate immediately as of the date the Authorized Participant ceased to be a DTC Participant.

(ii) Unless Section 2(a)(iii) applies, the Authorized Participant either: (i) is registered as a broker-dealer under the Securities Exchange Act of 1934, as amended (“1934 Act”), and is a member in good standing of the Financial Industry Regulatory Authority, Inc. (“FINRA”), or (ii) is exempt from being, or otherwise is not required to be, licensed as a broker-dealer or a member of FINRA, and in either case is qualified to act as a broker or dealer in the states or other jurisdictions where the nature of its business so requires. In connection with the purchase or redemption of Creation Units and any related offers or sales of Shares, the Authorized Participant will maintain any such registrations, qualifications and membership in good standing and in full force and effect throughout the term of this Agreement. The Authorized Participant will comply with all applicable U.S. federal laws, the laws of the states or other jurisdictions concerned, and the rules and regulations promulgated thereunder, and with the FINRA By-Laws and Conduct Rules of FINRA if it is a FINRA member, to the extent the foregoing relates to and are applicable to the Authorized Participant’s transactions in and activities with respect to Shares. The Authorized Participant will not offer or sell Shares in any state or jurisdiction where they may not lawfully be offered and/or sold.

(iii) If the Authorized Participant is offering or selling Shares in jurisdictions outside the several states, territories and possessions of the United States and is not otherwise required to be registered, qualified or a member of FINRA as set forth in Section 2(a)(ii) above, the Authorized Participant will, in connection with such offers and sales, (i) observe the applicable laws of the jurisdiction in which such offer and/or sale is made, (ii) comply with the prospectus delivery requirements of the 1933 Act, and the regulations promulgated thereunder applicable to it, and (iii) if the Authorized Participant is not otherwise required to be registered, qualified or a member of FINRA as set forth in Section 2(a)(ii) above, conduct its business in accordance with the FINRA Conduct Rules, in each case, to the extent the foregoing relates to and is applicable to the Authorized Participant’s transactions in, and activities with respect to, Shares.

(iv) The Authorized Participant has policies, procedures, and internal controls in place that are reasonably designed to comply with applicable anti-money laundering, counter-terrorist financing and economic sanctions, laws, rules, regulations, executive orders and requirements (including the U.S. Bank Secrecy Act, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "USA PATRIOT Act"), and regulations of the U.S. Treasury Department which implement such acts) administered by any governmental authority of the United States (including the Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury) that apply to transactions contemplated by this Agreement taken on behalf of the Authorized Participant or its customers.

(v) The Authorized Participant will deliver the then-current Prospectus upon any sale by it of Shares or, if applicable, a notice consistent with Rule 173 under the 1933 Act in lieu of a Prospectus to the extent so required under the prospectus delivery and disclosure requirements of the 1933 Act. The Sponsor agrees that if it becomes aware of any new delivery or disclosure requirement under the 1933 Act relating to Shares, it shall use best efforts to notify the Authorized Participant of such requirement(s).

(vi) The Authorized Participant agrees not to enforce against the Trust and Sponsor any patent rights with respect to the business of the Trust. For avoidance of doubt, this provision will only be effective during time periods in which the Agreement is in effect and shall not survive termination thereof.

(b) The Sponsor represents and warrants that on the date hereof and at each time of purchase by the Authorized Participant of a Creation Unit from the Trust (each such time, the "Time of Purchase"), that:

(i) on the effective date of the Registration Statement and at each Time of Purchase, the Trust's Registration Statement and each Prospectus included therein shall be effective and no stop order of the SEC with respect thereto shall have been issued and no proceedings for such purpose shall have been instituted or, to the Sponsor's knowledge, will then be contemplated by the SEC; the Registration Statement and each Prospectus included therein complied when it became effective and complies at the Time of Purchase in all material respects with the requirements of the 1933 Act and the rules and regulations of the SEC thereunder, and the Prospectus complied as of its effective date, and complies at the Time of Purchase, in all material respects with the requirements of the 1933 Act and the rules and regulations of the SEC thereunder; and the conditions to the use of Form S-1 or Form S-3, as applicable, have been satisfied; the Registration Statement and any amendment thereto, did not when it became effective and does not at the Time of Purchase contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, and the Prospectus and any amendment or supplement thereto did not, as of its effective date and does not at the Time of Purchase, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and the documents comprising the Disclosure Package (as defined below) did not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that the Sponsor makes no warranty or representation with respect to any statement contained in the Registration Statement, the Prospectus or the Disclosure Package in reliance upon and in conformity with information concerning the Authorized Participant and furnished in writing by the Authorized Participant to the Sponsor expressly for use therein. The "Disclosure Package" is the Prospectus and any amendments and supplements thereto at the Time of Purchase and any FWP prepared by, for or on behalf of the Sponsor before the Time of Purchase and intended for general distribution;

(ii) the Sponsor has been duly organized and, on the effective date of the Registration Statement and at each Time of Purchase, will be validly existing as a limited liability company in good standing under the laws of the State of Delaware, with full power and authority to act as the sponsor of the Trust as described in the Registration Statement and the Prospectus, and has all requisite power and authority to execute and deliver this Agreement;

(iii) at the time the Sponsor makes an offer of Shares following the filing of the Registration Statement, neither the Trust nor the Sponsor will be an “ineligible issuer” as defined in Rule 405 of the 1933 Act; and

(iv) the Sponsor shall provide to the Authorized Participant copies of the then current Prospectus and any promotional materials or sales literature in reasonable quantities upon request, the Sponsor will promptly notify the Authorized Participant when a revised, supplemented or amended Prospectus is available, the Sponsor will deliver or otherwise make available to the Authorized Participant copies of such revised, supplemented or amended Prospectus at such time and in such numbers as to enable the Authorized Participant to comply with any obligation the Authorized Participant may have to deliver such Prospectus to customers or in response to the Authorized Participant’s reasonable request, the Sponsor will make such revised, supplemented or amended Prospectus available to the Authorized Participant no later than the effective date thereof, and the Sponsor will be deemed to have complied with any request made by the Authorized Participant under this paragraph when the Authorized Participant has received such revised, supplemented or amended Prospectus at the address indicated below the signature line of the Authorized Participant in such number of hard copies, or via e-mail, as it may have reasonably requested.

(c) The Sponsor, on its own behalf and in its capacity as sponsor of the Trust, agrees:

(i) upon receipt of request from the Authorized Participant therefor, to file a post-effective amendment or supplement, as applicable, to the Registration Statement removing any reference to the Authorized Participant thereunder; and

(ii) to notify the Authorized Participant promptly, confirming such notice in writing if the original notice was oral, of any request by the SEC for amendments or supplements to the Registration Statement or the Prospectus or for additional information with respect thereto, or of notice of institution of proceedings for, or the entry of, a stop order suspending the effectiveness of the Registration Statement, and, if the SEC should enter a stop order suspending the effectiveness of the Registration Statement, the Sponsor shall use its best efforts to obtain the lifting or removal of such order as soon as possible.

**Section 3. Orders.**

(a) All orders to create or redeem Creation Units shall be made in accordance with the terms of the Trust Agreement, this Agreement and the Procedures. Each party will comply with such foregoing terms and procedures to the extent applicable to it. The Sponsor may issue, or caused to be issued, additional or other procedures from time to time relating to the manner of creating or redeeming Creation Units which are not related to the Procedures; provided that the Sponsor shall provide the Authorized Participant with prior notice of any revised procedures and any revised procedures shall not apply retroactively to orders submitted prior to such change in procedures or prior to the time at which the Authorized Participant received notice of any such change. To the extent the Authorized Participant purchases or sells any Shares, it will comply with such procedures of which it has received notice delivered in accordance with Section 17(c) of this Agreement within a commercially reasonable time following receipt of such notice.

(i) The Authorized Participant acknowledges and agrees that each order to create a Creation Unit (a "Purchase Order") and each order to redeem a Creation Unit (a "Redemption Order", and, together with a Purchase Order, each an "Order") delivered to the Sponsor, or the Sponsor's designee, may not be revoked by the Authorized Participant after the specified Order Cut-Off Time.

(ii) The Sponsor may, in its discretion, suspend creations, or postpone the settlement date of a Purchase Order, (i) for any period during which the NYSE Arca, Inc. (the "Exchange") is closed other than for customary holidays or weekend closings or when trading is suspended or restricted; (ii) for any period during which an emergency exists as a result of which the fulfillment of a purchase order is not reasonably practicable; or (iii) for such other period as the Sponsor determines to be necessary for the protection of owners of Shares ("Shareholders"). The Sponsor will not be liable to any person or in any way for any loss or damages that may result from any such suspension or postponement.

The Authorized Participant understands and agrees that in the event the Basket Payment is not transferred to the Trust by the time specified for the Purchase Order, or Shares are not delivered to the Transfer Agent by the time specified for the Redemption Order and, in each such case, in compliance with the Trust Agreement, the Procedures and this Agreement, the Purchase Order or Redemption Order may be cancelled by the Sponsor and the Authorized Participant will be responsible for all costs and expenses incurred by the Trust, the Sponsor or the Transfer Agent related to the cancelled Order. The Authorized Participant will not, however, be responsible for costs and expenses incurred by the Trust, the Sponsor or the Transfer Agent related to cancelled Orders to the extent the failure to transfer the Basket Payment to the Trust is due to the gross negligence, bad faith or willful misconduct of the Transfer Agent or the Sponsor. The foregoing provisions notwithstanding, the Authorized Participant shall not be liable for any failure or delay in making a Basket Payment in respect of a Purchase Order or for any failure or delay in surrendering Shares for redemption arising from any events set forth in, or similar to those contemplated in, Section 15 hereto. In the event of any such delay, the time to complete Delivery in respect of a Purchase Order or Redemption Order will be extended as determined by the Sponsor in its sole discretion.

The Sponsor, or its designee, shall also have the absolute right, but shall have no obligation, to reject any Order if: (i) it is determined by the Sponsor, or its designee, not to be in proper form; (ii) the Sponsor, or its designee, believes the acceptance or receipt of the Order would have adverse tax consequences to the Trust or its Shareholders; (iii) the acceptance or receipt of the Order would, in the opinion of counsel to the Sponsor, be unlawful; or (iv) if circumstances outside the control of the Sponsor, or its designee, make it for all practical purposes not feasible to process Orders. Neither the Sponsor nor any designee shall be liable to any person by reason of the rejection of any Order. The Sponsor will promptly return to the Authorized Participant upon rejection of an Order all cash and any other property or assets tendered by the Authorized Participant, as well as all fees paid to the Sponsor, the Trust's administrator or marketing agent by the Authorized Participant, including, without limitation, any transaction fees, with respect to such rejected Order.

(d) The Sponsor may, in its discretion, suspend the Redemptions, or postpone the settlement date of a Redemption Order: (i) for any period during which the Exchange is closed other than for customary holidays or weekend closings or when trading is suspended or restricted; (ii) for any period during which an emergency exists as a result of which the fulfillment of a Redemption Order is not reasonably practicable; or (iii) for such other period as the Sponsor determines to be necessary for the protection of the Shareholders. The Sponsor will not be liable to any person or in any way for any loss or damages that may result from any such suspension or postponement.

(e) The Authorized Participant hereby consents to the use of recorded telephone lines whether or not such use is reflected in the Procedures. The Authorized Participant also consents to the Sponsor's or the Trust's provision of information received from the Authorized Participant in connection with this Agreement to the Transfer Agent or the Custodian related to their responsibilities with respect to anti-money laundering, counter-terrorist financing and economic sanctions laws, rules, regulations, executive orders and requirements (including the U.S. Bank Secrecy Act, the USA PATRIOT Act, and regulations of the U.S. Treasury Department which implement such acts) administered by any governmental authority of the United States (including OFAC of the U.S. Department of the Treasury) or any other applicable domestic or foreign authority over the Trust. In the event that the Sponsor, the Trust, or any of their affiliated persons becomes legally compelled to disclose to any third party any recording involving communications with the Authorized Participant, the Sponsor agrees to provide the Authorized Participant with reasonable advance written notice identifying the recordings to be so disclosed, together with copies of such recordings, so that the Authorized Participant may seek a protective order or other appropriate remedy with respect to the recordings or waive its right to do so. In the event that such protective order or other remedy is not obtained, or the Authorized Participant waives its right to seek such protective order or remedy, the Sponsor, the Trust, or any of their affiliated persons, as the case may be, agrees to furnish only that portion of the recorded conversation that, according to legal counsel, is legally required to be furnished and will exercise its best efforts to obtain a protective order or other reliable assurance that confidential treatment will be accorded the recorded conversation. The Sponsor, the Trust, and their affiliated persons shall not otherwise disclose to any third party any recording involving communications with the Authorized Participant without the Authorized Participant's express written consent, except the Sponsor and the Trust may disclose to a regulatory or self-regulatory organization, to the extent required by applicable rule or law, recordings involving communications with the Authorized Participant.

**Section 4. Fees.** To offset some or all of the Trust's transaction costs in fulfilling Orders, an Authorized Participant is required to pay a fixed transaction fee that is described in the Prospectus, and may be required by the Sponsor or the Transfer Agent to pay additional fees to reimburse the Trust for any and all expenses and costs incurred in connection with an Order, including any potential tax liabilities noted in Section 10(a) hereof. An Order may include multiple Creation Units. The transaction fee(s) may be reduced, increased or otherwise changed as provided for in the Prospectus.

**Section 5. Authorized Persons.** Concurrently with the execution of this Agreement and as requested in writing from time to time thereafter, the Authorized Participant shall deliver to the Sponsor, or its designee, a certificate, duly certified as appropriate by its secretary or other duly authorized person, in the form of Exhibit A, setting forth the names and signatures of all persons authorized to give instructions relating to activity contemplated hereby or by any other notice, request or instruction given on behalf of the Authorized Participant (each, an "Authorized Person"). The Sponsor may accept and rely upon such certificate as conclusive evidence of the facts set forth therein and shall consider such certificate to be in full force and effect until the Sponsor, or its designee, receives a superseding certificate or of written notice (via e-mail is permissible) bearing a subsequent date and duly certified as described above from the Authorized Participant that one or more individuals should be added or removed from the certificate. Upon the termination or revocation of authority of any Authorized Person by the Authorized Participant, the Authorized Participant shall give prompt written notice of such fact to the Sponsor (via e-mail is permissible) and such notice shall be effective upon receipt by the Sponsor. The Sponsor shall issue, or caused to be issued, to each Authorized Person a unique personal identification number (the "PIN Number") by which such Authorized Person shall be identified and by which instructions issued by the Authorized Participant hereunder shall be authenticated. The PIN Number shall be kept confidential by the Authorized Participant and shall only be provided to the Authorized Person; provided that certain employees of the Authorized Participant, such as those who work in legal, compliance, risk management, or other supervisory roles may have a reasonable need to know or may have incidental access to one or more PIN Numbers, and further provided that the Authorized Participant agrees to ensure that each such employee is restricted from using any such PIN Number. If, after issuance, the Authorized Person's PIN Number is changed, the new PIN Number shall become effective on a date mutually agreed upon by the Authorized Participant and the Sponsor.

**Section 6. Redemption.** The Authorized Participant represents and warrants that, as of the close of Business Day on which it has placed a Redemption Order (as described in the Procedures) with the Sponsor for the purpose of redeeming any Creation Units of any Fund, it, or any party for which it is acting (whether a customer or otherwise, a "Participant Client"), as the case may be, (i) will own (within the meaning of Rule 200 of Regulation SHO) the requisite number of Shares of the relevant Fund or (ii) will have reasonable grounds to believe that the requisite number of Shares of the relevant Fund can be borrowed (as contemplated by Rule 203(b)(1) of Regulation SHO) such that, in either case, the Authorized Participant can make good delivery of the Shares to the Trust two days following the redemption order date ("Redemption Settlement Date"). In either case, the Authorized Participant acknowledges that: (i) it or, if applicable, its Participant Client, has or will have full legal authority and legal right to tender for redemption the requisite number of Shares of the relevant Fund to be redeemed as a Creation Unit on the Redemption Settlement Date; (ii) it or, if applicable, its Participant Client, has full and legal authority and legal right to receive the entire proceeds of the redemption order on the Redemption Settlement Date; and (iii) if such Shares submitted for redemption have been loaned or pledged to another party or are the subject of a repurchase agreement, securities lending agreement or any other arrangement affecting legal or beneficial ownership of such Shares being submitted for redemption, there are no restrictions precluding the delivery of such Shares (including borrowed Shares, if any) for redemption, free and clear of liens, on the Redemption Settlement Date.

To the extent that the Authorized Participant posts collateral on the Redemption Settlement Date in connection with a portion of the Shares that were unable to be delivered on the Redemption Settlement Date, the Trust agrees that it will not use any such collateral to purchase the Shares without giving the Authorized Participant reasonable advance notice and an opportunity to deliver the missing Shares.

***Section 7. Role of Authorized Participant.***

(a) The Authorized Participant acknowledges that, for all purposes of this Agreement and the Trust Agreement, the Authorized Participant shall have no authority to act as agent for the Trust or the Sponsor in any matter or in any respect.

(b) The Authorized Participant will make itself and its employees available, upon reasonable request and with reasonable notice, during normal business hours to consult with the Sponsor or its designees concerning the performance of the Authorized Participant's responsibilities under this Agreement.

(c) The Authorized Participant will, to the extent required by applicable law, maintain records of all sales of Creation Units made by or through it and, upon reasonable request of the Sponsor, except if prohibited by applicable law and subject to any privacy obligations or other obligations arising under federal or state securities laws it may have to its customers, will furnish the Sponsor with the names and addresses of the purchasers of such Creation Units and the number of Creation Units purchased if and to the extent that the Sponsor or the Trust has been requested to provide such information to the a governmental agency or self-regulatory organization.

(d) The Authorized Participant, as a DTC Participant, agrees that it shall be bound by all of the applicable obligations of a DTC Participant in addition to any applicable obligations that it undertakes hereunder or in accordance with the Prospectus.

(e) The Authorized Participant agrees, subject to any privacy, confidentiality or other obligations it may have to its customers arising under federal or state securities laws or the applicable rules of any self-regulatory organization, to assist the Sponsor in ascertaining certain information regarding sales of Shares made by or through the Authorized Participant upon reasonable request of the Trust or the Sponsor that is necessary for the Trust to comply with its obligations to distribute information to its Shareholders under applicable state or federal securities laws; provided that consistent with market practice, the Authorized Participant may undertake to deliver prospectuses, proxy material, annual and other reports of the Trust or other similar information that the Trust is obligated to deliver to its Shareholders to the Authorized Participant's customers that custody Shares with the Authorized Participant, after receipt from the Trust or the Sponsor of sufficient quantities to allow mailing thereof to such customers. The Sponsor agrees that the names and addresses and other information concerning the Authorized Participant's customers are and shall remain the sole property of the Authorized Participant, and none of the Sponsor, the Trust or any of their respective affiliates shall use such names, addresses or other information for any purposes except in connection with the performance of their duties and responsibilities hereunder and except for servicing and informational mailings related to the Trust referred to in this Section 7(e) of this Agreement.

***Section 8. Indemnification.***

(a) The Authorized Participant hereby indemnifies and holds harmless the Sponsor, the Transfer Agent, the Trust, and their respective direct or indirect affiliates (as defined below) and their respective directors, sponsors, partners, members, managers, officers, employees and agents and each person, if any, who controls such persons within the meaning of Section 15 of the 1933 Act (each, an "AP Indemnified Party") from and against any losses, liabilities, damages, costs and expenses (including reasonable attorney's fees and the reasonable cost of investigation) ("Losses") incurred by such AP Indemnified Party as a result of: (i) any material breach by the Authorized Participant of any provisions of this Agreement that relates to the Authorized Participant, including its representations, warranties and covenants, unless such breach occurred as a result of the Authorized Participant's strict adherence to instructions reasonably given to it by such AP Indemnified Party; (ii) any material failure on the part of the Authorized Participant to perform any of its obligations set forth in this Agreement, unless such failure occurred as a result of the Authorized Participant's strict adherence to instructions reasonably given to it by such AP Indemnified Party; (iii) any failure by the Authorized Participant to comply with applicable laws and the rules and regulations of any governmental entity or any self-regulatory organization ("SRO") to the extent the foregoing relates to the Authorized Participant's transactions in, and activities with respect to, Shares under this Agreement; (iv) any actions of such AP Indemnified Party in reasonable reliance upon any instructions issued by the Authorized Participant in accordance with the Procedures believed by the AP Indemnified Party to be genuine and to have been given by the Authorized Participant, except to the extent that the Authorized Participant had previously revoked a PIN Number used in giving such instructions or representations (where applicable) and such revocation was given by the Authorized Participant and received by the Trust in accordance with the terms of Section 5 hereto; or (v)(A) any representation by the Authorized Participant, its employees or its agents or other representatives about the Shares, any AP Indemnified Party or the Trust that is not consistent with the Trust's then-current Prospectus made in connection with the offer or the solicitation of an offer to buy or sell Shares and (B) any untrue statement or alleged untrue statement of a material fact contained in any research reports, marketing material and sales literature described in Section 13(b) or any alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein when read together with the Prospectus, in the light of the circumstances under which they were made, not misleading to the extent that such statement or omission relates to the Shares or any AP Indemnified Party, unless, in either case, such representation, statement or omission was made or included by the Authorized Participant at the written direction of the Sponsor or is based upon any omission or alleged omission by the Sponsor to state a material fact in connection with such representation, statement or omission necessary to make such representation, statement or omission not misleading. The Authorized Participant shall not be liable under its indemnity agreement contained in this paragraph with respect to any claim made against any AP Indemnified Party unless the AP Indemnified Party shall have notified the Authorized Participant in writing of the claim within a reasonable time after the summons or other first written notification giving information of the nature of the claim shall have been served upon the AP Indemnified Party (or after the AP Indemnified Party shall have received notice of service on any designated agent). However, failure to notify the Authorized Participant of any claim shall not relieve the Authorized Participant from any liability which it may have to any AP Indemnified Party against whom such action is brought otherwise than on account of its indemnity agreement contained in this paragraph and shall only release it from such liability under this paragraph to the extent it has been materially prejudiced by such failure to give notice. The Authorized Participant shall be entitled to participate at its own expense in the defense, or, if it so elects, to assume the defense of any suit brought to enforce any claims, but if the Authorized Participant elects to assume the defense, the defense shall be conducted by counsel chosen by it and satisfactory to the AP Indemnified Party in the suit, and who shall not, except with the consent of the AP Indemnified Parties, be counsel to the Authorized Participant. If the Authorized Participant does not elect to assume the defense of any suit, it will reimburse the AP Indemnified Party for the reasonable fees and expenses of any counsel retained by them.



(b) The Sponsor hereby agrees to indemnify and hold harmless the Authorized Participant, its respective direct or indirect affiliates, directors, officers, employees and agents, and each person, if any, who controls such persons within the meaning of Section 15 of the 1933 Act (each, a “Sponsor Indemnified Party”) from and against any Losses incurred by such Sponsor Indemnified Party as a result of (i) any material breach by the Sponsor of any provision of this Agreement that relates to the Sponsor, unless such breach occurred as a result of the Sponsor’s strict adherence to instructions reasonably given to it by such Sponsor Indemnified Party; (ii) any material failure on the part of the Sponsor to perform any obligation of the Sponsor set forth in this Agreement unless such failure occurred as a result of the Sponsor’s strict adherence to instructions reasonably given to it by such Sponsor Indemnified Party; (iii) any failure by the Sponsor to comply with applicable laws and the rules and regulations of any governmental entity or any SRO to the extent that such laws, rules and regulations are applicable to the Sponsor’s duties and obligations under this Agreement; (iv) any untrue statements or omissions made in any Marketing Materials (as defined in Section 13(a) herein) furnished to the Authorized Participant or otherwise approved in writing by the Trust; (v) actions of such Sponsor Indemnified Party in reasonable reliance upon any instructions issued or representations made by the Sponsor or the Trust in accordance with this Agreement or Attachment A hereto reasonably believed by the Authorized Participant to be genuine and to have been given by the Sponsor or the Trust; or (vi) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement of the Trust as originally filed with the SEC or in any amendment thereof, or in the Prospectus, or in any amendment thereof or supplement thereto, or arising out of or based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, except those statements in the Registration Statement or the Prospectus based on information furnished in writing by the Authorized Participant expressly for use in the Registration Statement or the Prospectus. The Sponsor shall not be liable under its indemnity agreement contained in this paragraph with respect to any claim made against any Sponsor Indemnified Party unless the Sponsor Indemnified Party shall have notified the Sponsor in writing of the claim within a reasonable time after the summons or other first written notification giving information of the nature of the claim shall have been served upon the Sponsor Indemnified Party (or after the Sponsor Indemnified Party shall have received notice of service on any designated agent). However, failure to notify the Sponsor of any claim shall not relieve the Sponsor from any liability which it may have to any Sponsor Indemnified Party against whom such action is brought otherwise than on account of its indemnity agreement contained in this paragraph and shall only release it from such liability under this paragraph to the extent it has been materially prejudiced by such failure to give notice. The Sponsor shall be entitled to participate at its own expense in the defense, or, if it so elects, to assume the defense of any suit brought to enforce any claims, but if the Sponsor elects to assume the defense, the defense shall be conducted by counsel chosen by it and satisfactory to the Sponsor Indemnified Party in the suit and who shall not, except with the consent of the Sponsor Indemnified Party, be counsel to the Sponsor. If the Sponsor does not elect to assume the defense of any suit, it will reimburse the Sponsor Indemnified Party in the suit for the reasonable fees and expenses of any counsel retained by them.

(c) This Section 8 shall not apply to the extent any such Losses are incurred as a result of or in connection with any gross negligence, bad faith or willful misconduct on the part of the AP Indemnified Party or the Sponsor Indemnified Party, as the case may be. The term “affiliate” in this Section 8 shall include, with respect to any person, entity or organization, any other person, entity or organization which directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such person, entity or organization.

(d) No indemnifying party, as described in paragraphs (a) and (b) above, shall, without the written consent of the AP Indemnified Party or the Sponsor Indemnified Party, as the case may be, effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened action or claim in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified party is an actual or potential party to such action or claim) unless such settlement, compromise or judgment (i) includes an unconditional release of the AP Indemnified Party or Sponsor Indemnified Party, as the case may be, from all liability arising out of such action or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of any AP Indemnified Party or Sponsor Indemnified Party, as the case may be.

(e) The Sponsor and the Authorized Participant agree promptly to notify each other of the commencement of any proceedings or litigation against it and, in the case of the Sponsor, against any of the Sponsor’s officers or directors, in connection with the issuance and sale of the Shares or in connection with the Registration Statement or the Prospectus.

**Section 9. Limitation of Liability.** In the absence of gross negligence, bad faith or willful misconduct, neither the Sponsor nor the Authorized Participant shall be liable to each other or to any other person for any losses, liabilities, damages, costs or expenses arising out of any mistake or error in data or other information provided to any of them by each other or a third party or out of any interruption or delay in the electronic means of communications used by them.

**Section 10. Tax Matters.**

(a) *Tax Liability.* The Authorized Participant shall be responsible for the payment of any transfer tax, sales or use tax, stamp tax, recording tax, value added tax and any other similar tax or government charge applicable to the Authorized Participant's purchases or redemptions of any Creation Units made pursuant to this Agreement, regardless of whether or not such tax or charge is imposed directly on the Authorized Participant. To the extent the Sponsor or the Trust is required by law to pay any such tax or charge, the Authorized Participant agrees, upon written request, to promptly indemnify such party for any such payment, together with any applicable penalties, additions to tax or interest thereon upon reasonable notice thereof; provided, however, that the Authorized Participant shall not indemnify the Trust or the Sponsor for any tax or charge or any penalties, additions to tax or interest thereon to the extent that such payments result from the Sponsor's, the Trust's, or their designee's willful misconduct, negligence, or bad faith.

The Authorized Participant acknowledges on behalf of itself and any client that, to the extent that the Authorized Participant or its client is subject to the mark-to-market rules of Section 475 of the Internal Revenue Code of 1986, as amended (the "Code"), the basis of Shares and of any assets of the Trust shall be determined for purposes of Sections 734(b) and 743(b) of the Code and for the purposes of the provisions of this Section 10 by treating such mark-to-market as having no effect on such basis.

(b) *Tax Reporting.* An Authorized Participant will provide tax reporting information with respect to the Trust to or for the benefit of taxpayers for whom the Authorized Participant holds Shares as a nominee as required by law.

An Authorized Participant will furnish information to the Trust with respect to any taxpayer for whom the Authorized Participant holds Shares as a nominee as required under Treasury Regulation Section 1.6031(c)-1T or any successor thereto in addition to any information required by other provisions of this Section 10.

An Authorized Participant will use commercially reasonable efforts to ensure that any taxpayer for whom the Authorized Participant holds Shares as a nominee has provided Internal Revenue Service Form W-9, W-8BEN-E, or other forms or documentation qualifying as a withholding certificate or documentary evidence or other appropriate documentation within the meaning of Treasury Regulation Section 1.1441-1(c) or any successor thereto, as necessary to establish an exemption from withholding tax and backup withholding tax with respect to income of the Trust allocable to such investor. The Authorized Participant will act as an agent of the Trust in collecting and holding such forms or documentation, and annually will provide a copy of such forms to the Trust or its agent. Upon reasonable request by the Trust or its agent, the Authorized Participant will provide the originals of such forms or documentation to the extent held by the Authorized Participant at that time and will assist the Trust in obtaining such original forms or documentation (or, to the extent originals are not available, copies thereof) from investors or other nominees to the extent not held by the Authorized Participant. The provisions of this Section 10(c) are subject to, and may be modified by, any agreements between the Sponsor, on behalf of the Trust, and the Authorized Participant separate and apart from this Agreement, that provide otherwise.

**Section 11. Acknowledgment.** The Authorized Participant acknowledges receipt of a (i) copy of the Trust Agreement and (ii) the current Prospectus of the Trust, and represents that it has had an opportunity to ask questions with respect to the terms thereof. The Sponsor and the Trust agree to process Orders, or cause its agents to process Orders, in accordance with the provisions of the Prospectus of the Trust, the Trust Agreement, and the Procedures.

**Section 12. Effectiveness and Termination.** Upon the execution of this Agreement by the parties hereto, this Agreement shall become effective in this form as of the date first set forth above, and may be terminated at any time by any party upon thirty (30) days prior written notice to the other parties unless earlier terminated: (i) in accordance with Section 2(a)(i); (ii) upon written notice to the Authorized Participant or the Sponsor by the other party in the event of a material breach by the Authorized Participant or the Sponsor, as the case may be, of this Agreement or the procedures described or incorporated herein; (iii) immediately in the circumstances described in Section 17(j); or (iv) at such time as the Trust is terminated pursuant to the Trust Agreement. This Agreement supersedes any prior agreement between the parties hereto with respect to the subject matter contained herein.

**Section 13. Marketing Materials; Representations Regarding Shares; Identification in Registration Statement.**

(a) The Authorized Participant represents, warrants and covenants that (i) it will not, in connection with any sale or solicitation of a sale of Shares, make, or permit any of its representatives to make, any representations concerning the Shares or any AP Indemnified Party other than representations not inconsistent with (A) the then-current Prospectus of the Trust, or (B) any promotional materials or sales literature, advertisements, press releases, announcements, statements, posters, signs or other similar materials furnished to the Authorized Participant by the Sponsor (“Marketing Materials”), and (ii) will not furnish or cause to be furnished to any person or display or publish any information or materials relating to the Shares or any AP Indemnified Party, except for information and materials that are provided by the Sponsor or approved in writing by the Sponsor. Copies of the then-current Prospectus of the Trust and any such Marketing Materials will be supplied by the Sponsor to the Authorized Participant in reasonable quantities upon request.

(b) Notwithstanding the foregoing or anything to the contrary in this Agreement, the Authorized Participant and its affiliates may without the written approval of the Sponsor or the Trust prepare and circulate in the regular course of their businesses research, sales literature, reports, and other similar materials that include information, opinions or recommendations relating to the Shares, provided that such research, sales literature, reports, and other similar materials comply with applicable federal securities laws and regulations and FINRA rules. The Authorized Participant agrees that any representation or statement in such reports, sales literature, correspondence, communications or other similar materials will not contain any untrue statement of a material fact related to Shares or omit to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading and, to the extent such materials include statements of fact regarding Shares, such statements of fact will be consistent with the Prospectus.

(c) The Sponsor will provide, or cause to be provided, to the Authorized Participant copies of the then current Prospectus and any Marketing Materials in reasonable quantities upon request. The Sponsor will notify the Authorized Participant when a revised, supplemented or amended Prospectus for the Shares is available, and make available to the Authorized Participant copies of such revised, supplemented or amended Prospectus at such time and in such quantities as may be reasonable to permit the Authorized Participant to comply with any obligation the Authorized Participant may have to deliver such Prospectus to its customers. The Sponsor shall be deemed to have complied with this Section 13(c) when the Authorized Participant has received such revised, supplemented or amended Prospectus by e-mail, in printable form, with such number of hard copies as may be agreed from time to time by the parties promptly thereafter.

(d) For as long as this Agreement is effective, if required by the SEC, the Authorized Participant agrees to be identified as an authorized participant of the Trust (i) in the section of the Prospectus included within the Registration Statement entitled "Plan of Distribution" and in any other section as may be required by the SEC and (ii) on the Trust's website. Upon the termination of this Agreement, (i) during the period prior to when the Trust qualifies and in its sole discretion elects to file on Form S-3, the Trust will remove such identification from the Prospectus in the amendment of the Registration Statement next occurring after the date of the termination of this Agreement and, during the period after when the Sponsor qualifies and in its sole discretion elects to file on Form S-3, the Sponsor will promptly file a current report on Form 8-K indicating the withdrawal of the Authorized Participant as an authorized participant of the Trust and (ii) the Sponsor will promptly update the Trust's website to remove any identification of the Authorized Participant as an authorized participant of the Trust.

**Section 14. Certain Covenants of the Sponsor.** The Sponsor, on its own behalf and as sponsor of the Trust, covenants and agrees:

(a) to notify the Authorized Participant promptly of the happening of any event during the term of this Agreement which could require the making of any change in the Prospectus then being used so that the Prospectus would not include an untrue statement of material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they are made, not misleading, and, during such time, to prepare and furnish, at the expense of the Trust, to the Authorized Participant promptly such amendments or supplements to such Prospectus as may be necessary to reflect any such change; and

(b) to furnish directly or cause to be furnished to the Authorized Participant, at each time (i) the Registration Statement or the Prospectus is amended or supplemented by the filing of a post-effective amendment, (ii) a new Registration Statement is filed to register additional Shares and a single Prospectus is used in reliance on Rule 429 under the 1933 Act, and (iii) there is financial information incorporated by reference into the Registration Statement or the Prospectus, such customary documents and certificates in form and content as reasonably requested and agreed.

**Section 15. Force Majeure.** No party to this Agreement shall incur any liability for any delay in performance, or for the non-performance, of any of its obligations under this Agreement by reason of any cause beyond its reasonable control. This includes nuclear fission or fusion, radioactivity, war, terrorist event, invasion, epidemic or pandemic, insurrection, civil commotion, riot, strike, act of government, public authority, public service or utility problems, power outages resulting in telephone, telecopy and computer failures, acts of God, such as fires, floods, extreme weather conditions, market conditions or activities causing trading halts, systems failures involving computer or other information systems affecting the Sponsor, any of the Sponsor's designees for purposes of fulfilling Orders, the Trust, the Transfer Agent, or Authorized Participant, any breakdown, malfunction or failure of transmission in connection with or other unavailability of any wire or communication facilities, any transport, port, or airport disruption, industrial action, acts and regulations and rules of any governmental or supra-national bodies or authorities or regulatory or self-regulatory organization or failure of any such body, authority or organization for any reason, to perform its obligations, or similar extraordinary events beyond the a party's reasonable control.

**Section 16. Ambiguous Instructions.** If a Purchase Order Form or a Redemption Order Form contains order terms that differ from the information provided in the telephone call at the time of issuance of the applicable order number, the Sponsor will use commercially reasonable efforts to contact one of the Authorized Persons of the Authorized Participant to request confirmation of the terms of the Order. If an Authorized Person confirms the terms as they appear in the Order, then the Order will be accepted and processed. If an Authorized Person contradicts the Order terms, the Order will be deemed invalid, and a corrected Order must be received by the Sponsor. If the Sponsor is not able to contact an Authorized Person, then the Order shall be accepted and processed in accordance with its terms notwithstanding any inconsistency from the terms of the telephone information. In the event that an Order contains terms that are not complete or are illegible, the Order will be deemed invalid and the Sponsor will attempt to contact one of the Authorized Persons of the Authorized Participant to request retransmission of the Order.

**Section 17. Miscellaneous.**

(a) **Amendment and Modification.** This Agreement may not be amended except by a writing signed by all the parties hereto. The Procedures attached as Attachment A and the Exhibits hereto may be amended, modified or supplemented by the Trust and the Sponsor, without consent of the Authorized Participant from time to time by the following procedure. After the amendment, modification or supplement has been agreed to, the Sponsor will mail a copy of the proposed amendment, modification or supplement to the Authorized Participant in accordance with Section 17(c) below. For the purposes of this Agreement, mail will be deemed received by the recipient thereof on the third (3rd) day following the deposit of such mail into the United States postal system and e-mail will be deemed received on the day the message was sent. Within fifteen (15) calendar days after its deemed receipt, the amendment, modification or supplement will become part of this Agreement, the Attachments or the Exhibits, as the case may be, in accordance with its terms. If at any time there is any material amendment, modification or supplement of any Wilshire wShares Enhanced Gold Trust Authorized Participant Agreement (other than this Agreement), the Sponsor will promptly mail a copy of such amendment, modification or supplement to the Authorized Participant.

(b) *Waiver of Compliance.* Any failure of any of the parties to comply with any obligation, covenant, agreement or condition herein may be waived by the party entitled to the benefits thereof only by a written instrument signed by the party granting such waiver, but any such written waiver, or the failure to insist upon strict compliance with any obligation, covenant, agreement or condition herein, shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

(c) *Notices.* Except as otherwise specifically provided in this Agreement, all notices required or permitted to be given pursuant to this Agreement shall be given in writing and delivered by e-mail or personal delivery, by postage prepaid registered or certified United States first class mail, return receipt requested, by nationally recognized overnight courier (delivery confirmation received) or by telex, telegram or telephonic facsimile, e-mail or similar means of same day delivery (transmission confirmation received), with a confirming copy regular mail, postage prepaid. Unless otherwise notified in writing, all notices to the Trust shall be given or sent to the Sponsor. All notices shall be directed to the appropriate contact information indicated below the signature line of the parties on the signature page hereof.

(d) *Successors and Assigns.* This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

(e) *Assignment.* Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any party without the prior written consent of the other parties, which shall not be unreasonably withheld, except that any entity into which a party hereto may be merged or converted or with which it may be consolidated or any entity resulting from any merger, conversion, or consolidation to which such party hereunder shall be a party, or any entity succeeding to all or substantially all of the business of the party, shall be the successor of the party under this Agreement and except that the Sponsor may delegate its obligations hereunder to the Transfer Agent by advance written notice to the Authorized Participant. The party resulting from any such merger, conversion, consolidation or succession shall notify the other parties hereto of the change in writing. Any purported assignment in violation of the provisions hereof shall be null and void. Notwithstanding the foregoing, this Agreement shall be automatically assigned to any successor trustee or Sponsor at such time such successor qualifies as a successor trustee or Sponsor under the terms of the Trust Agreement. Furthermore, the Authorized Participant may assign its rights, interests or obligations hereunder to an affiliate without mutual written consent of any other party.

(f) *Governing Law; Consent to Jurisdiction.* This Agreement shall be governed by and construed in accordance with the laws of the State of New York (regardless of the laws that might otherwise govern under applicable New York conflict of laws principles) as to all matters, including matters of validity, construction, effect, performance and remedies. Each party hereto irrevocably consents to the jurisdiction of the courts of the State of New York and of any federal court located in the Borough of Manhattan in such State in connection with any action, suit or other proceeding arising out of or relating to this Agreement or any action taken or omitted hereunder, and waives any claim of forum non conveniens and any objections as to laying of venue. Each party further waives personal service of any summons, complaint or other process and agrees that service thereof may be made by certified or registered mail directed to such party at such party's address for purposes of notices hereunder. Each party hereby waives its right to a trial by jury of any claim arising under or in connection with this Agreement.

(g) *Counterparts.* This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement, and it shall not be necessary in making proof of this Agreement as to any party hereto to produce or account for more than one such counterpart executed and delivered by such party.

(h) *Interpretation.* The article and section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Agreement.

(i) *Entire Agreement.* This Agreement (including any schedules, attachments or exhibits attached hereto), along with any other agreement or instrument delivered pursuant to this Agreement, supersedes all prior agreements and understandings between the parties with respect to the subject matter hereof, provided, however, that the Authorized Participant shall not be deemed by this provision to be a party to the Trust Agreement.

(j) *Severance.* If any provision of this Agreement is held by any court or any act, regulation, rule or decision of any other governmental or supra national body or authority or regulatory or self-regulatory organization to be invalid, illegal or unenforceable for any reason, it shall be invalid, illegal or unenforceable only to the extent so held and shall not affect the validity, legality or enforceability of the other provisions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter of this Agreement and the deletion of such portion of this Agreement will not substantially impair the respective benefits, obligations, or expectations of the parties to this Agreement. If this Agreement as so modified substantially impairs the respective benefits, obligations, or expectations of the parties to this Agreement, it shall be subject to immediate termination upon written notice by the terminating party delivered in accordance with Section 17(c) of this Agreement.

(k) *No Strict Construction.* The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.

(l) *Survival.* Sections 8 (Indemnification) and 18 (No Promotion) hereof shall survive the termination of this Agreement.

(m) *Other Usages.* The following usages shall apply in interpreting this Agreement: (i) references to a governmental or quasigovernmental agency, authority or instrumentality shall also refer to a regulatory body that succeeds to the functions of such agency, authority or instrumentality; and (ii) "including" means "including, but not limited to."

(n) *Privacy Policies and Procedures.* The Authorized Participant affirms that it has policies and procedures in place reasonably designed to protect the privacy of non-public personal consumer/customer financial information to the extent required by applicable law, rule and regulation.



**Section 18. No Promotion.** Except as provided in Section 13(d) of this Agreement, each of the Trust and the Sponsor agrees that it will not, without the prior written consent of the Authorized Participant in each instance, (i) use in advertising, publicity or otherwise the name of the Authorized Participant or any affiliate of the Authorized Participant, or any partner or employee of the Authorized Participant, nor any trade name, trademark, trade device, service mark, symbol or any abbreviation, contraction or simulation thereof owned by the Authorized Participant or its affiliates, or (ii) represent, directly or indirectly, that any product or any service provided by the Trust or the Sponsor has been approved or endorsed by the Authorized Participant.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Authorized Participant, the Trust and the Sponsor, on behalf of the Trust, have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

WILSHIRE PHOENIX FUNDS LLC

By: \_\_\_\_\_  
Name:  
Title:

WILSHIRE wSHARES ENHANCED GOLD TRUST

By: WILSHIRE PHOENIX FUNDS LLC, its Sponsor

By: \_\_\_\_\_  
Name:  
Title:

AUTHORIZED PARTICIPANT

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**

**CERTIFICATE OF AUTHORIZED PERSONS OF AUTHORIZED PARTICIPANT**

The following are the names, titles and signatures of all persons (each an "Authorized Person") authorized to give instructions relating to any activity contemplated by the Authorized Participant Agreement or any other notice, request or instruction on behalf of the Authorized Participant pursuant to the Wilshire wShares Enhanced Gold Trust Authorized Participant Agreement.

Authorized Participant: \_\_\_\_\_

Name: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Name: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Name: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Name: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Certified By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ATTACHMENT A

**WILSHIRE wSHARES ENHANCED GOLD TRUST  
CREATION AND REDEMPTION PROCEDURES**

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**WILSHIRE wSHARES ENHANCED GOLD TRUST**

**CREATION AND REDEMPTION PROCEDURES**

ARTICLE I

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.01 Definitions. For purposes of these Creation and Redemption Procedures (the “Procedures”), unless the context otherwise requires, the following terms will have the following meanings:

“**Applicable Transaction Fee**” shall mean, for any date of determination, the nonrefundable transaction fee applicable to an Order, as described in the Prospectus as of such date.

“**Authorized Participant**” shall have the meaning ascribed to the term in the introductory paragraph of the Authorized Participant Agreement.

“**Authorized Participant Agreement**” or “**Agreement**” shall mean the Authorized Participant Agreement to which these Procedures are attached as Attachment A.

“**Basket**” shall mean 10,000 Shares (or such number as shall be designated pursuant to the Trust Agreement).

“**Basket Payment**” shall mean an amount of Cash equal to the aggregate NAV of Shares included in one or more Baskets that are part of an Order.

“**Business Day**” shall mean any day other than: (i) a Saturday, Sunday or other day on which the Exchange is closed for regular trading, and, in respect of any action to be taken by the Trustee, on which the Trustee is not open for business; or (ii) a day on which banking institutions in the United Kingdom are authorized or permitted by law to close or a day on which the London gold market is closed; or (iii) a day on which banking institutions in the United Kingdom are authorized or permitted to be open for less than a full day or the London gold market is open for trading for less than a full day and transaction procedures required to be executed or completed before the close of the day may not be so executed or completed.

“**Cash**” shall mean U.S. dollars.

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

“**Creation**” shall mean the process that begins when an Authorized Participant first indicates to the Creation and Redemption Agent its intention to purchase one or more Baskets pursuant to these Procedures and concludes with the issuance by the Trust and Delivery to such Authorized Participant of the corresponding number of Baskets.

“**Creation and Redemption Agent**” shall mean The Bank of New York Mellon, a New York corporation authorized to do banking business, or any successor thereto engaged by the Trust as the Trust’s agent for effecting Creations and Redemptions with Authorized Participants.

“**Creation and Redemption Line**” shall mean a telephone number for the BNYM ETF Order Desk Administrator designated as such by the Creation and Redemption Agent and communicated to each Authorized Participant in compliance with the notice provisions of the respective Authorized Participant Agreement.

“**Delivery**” shall mean full delivery of constituents of a Basket to or from (as the context may require) the Trust’s account at the Creation and Redemption Agent.

“**DTC**” shall mean The Depository Trust Company, its nominees and their respective successors.

“**Exchange**” shall mean the applicable national securities exchange where the Shares are listed, or any successor thereto. The Shares will be listed on NYSE Arca, Inc.

“**LBMA Gold Price PM**” means the price of physical gold obtained from auctions conducted by ICE Benchmark Administration, a benchmark administrator appointed by the London Bullion Market Association, at 3:00 p.m., London Time on a Business Day.

“**NAV**” shall mean the net asset value of a Share of the Trust on an Order Date, calculated in accordance with the valuation procedures described in the Prospectus.

“**Order**” shall mean a Purchase Order or a Redemption Order.

“**Order Cut-Off Time**” shall mean 9:15 a.m. (New York time) on a Business Day.

“**Order Date**” shall mean the Business Day on which a Purchase Order or Redemption Order was received prior to the Order Cut-Off Time.

“**Prospectus**” shall have the meaning ascribed to the term in the Authorized Participant Agreement.

“**Purchase Order**” shall mean an order to purchase one or more Baskets.

“**Redemption**” shall mean the process that begins when an Authorized Participant first indicates to the Creation and Redemption Agent its intention to redeem one or more Baskets pursuant to these Procedures and concludes with Delivery by the Creation and Redemption Agent of the corresponding Basket Payment or cash to such Authorized Participant.

“**Redemption Order**” shall mean an order to redeem one or more Baskets.

“**Shareholders**” shall mean owners of Shares.

“**Shares**” shall mean shares issued by the Trust representing units of beneficial interest in the Trust.

“**Sponsor**” shall mean Wilshire Phoenix Funds LLC, a Delaware limited liability company, in its capacity as sponsor under the Trust Agreement, and any successor thereto in compliance with the provisions thereof.

“**Trust**” shall mean the Wilshire wShares Enhanced Gold Trust, a Delaware statutory trust governed by the provisions of the Trust Agreement.

“**Trust Agreement**” shall have the meaning set forth in the Authorized Participant Agreement.

“**Trustee**” shall mean Delaware Trust Company, as Delaware trustee.

Section 1.02 Interpretation. In these Procedures:

Unless otherwise indicated, all references to Sections, clauses, paragraphs, schedules or exhibits, are to Sections, clauses, paragraphs, schedules or exhibits in or to these Procedures.

The words “hereof”, “herein”, “hereunder” and words of similar import shall refer to these Procedures as a whole, and not to any individual provision in which such words may appear.

A reference to any statute, law, decree, rule, regulation or other applicable norm shall be construed as a reference to such statute, law, decree, rule, regulation or other applicable norm as re-enacted, re-designated or amended from time to time.

A reference to any agreement, instrument or document shall be construed as a reference to such agreement, instrument or document as the same may have been amended from time to time in compliance with the provisions thereof.

Section 1.03 Conflicts. In case of conflict between any provision of these Procedures and the terms of the Trust Agreement, the terms of the Trust Agreement shall control.

## ARTICLE II

### CREATION PROCEDURES

Section 2.01 Creations of Shares. From and after the date hereof, the issuance and Delivery of Shares shall take place only in integral numbers of Baskets in compliance with the following rules:

(a) Authorized Participants wishing to acquire from the Trust one or more Baskets shall place a Purchase Order with the Creation and Redemption Agent on any Business Day. Purchase Orders received by the Creation and Redemption Agent prior to the Order Cut-Off Time on a Business Day shall have such Business Day as the Order Date. Purchase Orders received by the Creation and Redemption Agent on or after the Order Cut-Off Time on a Business Day shall be considered received at the opening of business on the next Business Day and shall have as their Order Date such next Business Day. Purchase Orders are not accepted on a particular Business Day if the LBMA Gold Price PM or other applicable benchmark price is not announced on that Business Day.

The Sponsor may, in its discretion, suspend Creations, or postpone the settlement date of a Purchase Order, (i) for any period during which the Exchange is closed other than for customary holidays or weekend closings or when trading is suspended or restricted; (ii) for any period during which an emergency exists as a result of which the fulfillment of a Purchase Order is not reasonably practicable; or (iii) for such other period as the Sponsor determines to be necessary for the protection of Shareholders. The Sponsor will not be liable to any person or in any way for any loss or damages that may result from any such suspension or postponement.



(b) For purposes of Section 2.01(a) above, a Purchase Order shall be deemed “received” by the Creation and Redemption Agent only when each of the following has occurred:

(i) An Authorized Person shall have either: (1) placed a telephone call to the Creation and Redemption Line informing the Creation and Redemption Agent that the Authorized Participant wishes to place a Purchase Order for a specified number of Baskets, which is confirmed by a faxed order form within 15 minutes of the telephone call; or (2) placed a Purchase Order through the electronic order entry system portal BNYM ETF Center Interface, the use of which shall be subject to the terms and conditions of the Order Entry System Terms and Conditions attached hereto as Annex I.

(ii) The Creation and Redemption Agent shall have sent a confirmation to the Authorized Participant that a Purchase Order for a specified number of baskets has been received by the Creation and Redemption Agent from an Authorized Person for the Authorized Participant’s account.

THE AUTHORIZED PARTICIPANT SHOULD NOTE THAT WHEN THE TELEPHONIC METHOD OF SUBMITTING ORDERS IS USED, THE TELEPHONE CALL IN WHICH THE ORDER NUMBER IS ISSUED INITIATES THE ORDER PROCESS BUT DOES NOT ALONE CONSTITUTE THE ORDER. A TELEPHONIC ORDER OR REQUEST CAN ONLY COMPLETED AND PROCESSED UPON RECEIPT OF THE FAXED ORDER FORM SUBMISSION.

(c) The Creation and Redemption Agent (acting in consultation with, the Sponsor) shall have the absolute right, but shall have no obligation, to reject any Purchase Order if: (i) the Purchase Order is determined by the Creation and Redemption Agent or the Sponsor not to be in proper form, (ii) the Creation and Redemption Agent or the Sponsor believes that the acceptance or receipt of the Purchase Order would have adverse tax consequences to the Trust or to owners of Shares, (iii) the acceptance or receipt of the Purchase Order would, in the opinion of counsel to the Sponsor, be unlawful, or (iv) if circumstances outside of the control of the Sponsor or the Creation and Redemption Agent make it for all practical purposes not feasible to process Purchase Orders. Neither the Creation and Redemption Agent nor the Sponsor shall be liable to any person for rejecting a Purchase Order. Prior to the transmission of the Creation and Redemption Agent’s confirmation of acceptance, a Purchase Order will only represent the Authorized Participant’s unilateral offer to deposit the Basket Payment in exchange for one or more Baskets and will have no binding effect upon the Trust, the Sponsor or the Creation and Redemption Agent or any other party. Upon the delivery of any such confirmation of acceptance of a Purchase Order in accordance with the foregoing, the Trust and the Authorized Participant shall be bound thereby and each of the Authorized Participant, the Trust, the Sponsor and the Creation and Redemption Agent shall be bound by the terms of these Procedures, the Authorized Participant Agreement and the Trust Agreement applicable to it with respect to such Purchase Order.

After the calculation of NAV on the Order Date of a Purchase Order, the Creation and Redemption Agent shall communicate the amount of the Basket Payment to be paid by the Authorized Participant to the Authorized Participant no later than 7:00 p.m. (New York time) on the Order Date of a Purchase Order.

(d) On the first Business Day following the Order Date corresponding to a Purchase Order, or on such other date as the Sponsor in its discretion may agree, the Trust shall issue the aggregate number of Shares corresponding to the Baskets ordered by the Authorized Participant and the Creation and Redemption Agent shall deliver them by credit to the account at DTC which the Authorized Participant shall have identified for such purpose in written instructions to the Creation and Redemption Agent, provided that on the date such issuance is to take place:

(i) the Creation and Redemption Agent shall have received from the Authorized Participant delivery of the Basket Payment and the Applicable Transaction Fee; and

(ii) any other conditions to the issuance under the Trust Agreement shall have been satisfied.

(e) Unless the Sponsor has agreed with the Authorized Participant to extend the settlement date of a Purchase Order until the second Business Day following the Order Date of a Purchase Order, in the event that, by 11:00 a.m. (New York time) on the first Business Day following the Order Date of a Purchase Order governed by Section 2.01(d) above, the Creation and Redemption Agent is unable to confirm the Authorized Participant's transfer of the Basket Payment pursuant to such Purchase Order, the Sponsor may, or cause the Creation and Redemption Agent to, cancel such Purchase Order and will send via fax or electronic mail message notice of such cancellation to the respective Authorized Participant and the Creation and Redemption Agent.

(f) In all other cases, the Trust shall issue the aggregate number of Shares corresponding to the Baskets ordered by the Authorized Participant and the Sponsor shall instruct the Creation and Redemption Agent to deliver them by credit to the account at DTC which the Authorized Participant shall have identified for such purpose in written instructions to the Creation and Redemption Agent on the Business Day on which the conditions set forth in clauses (i) to (ii) of Section 2.01(d) above shall have been met.

### ARTICLE III

#### REDEMPTION PROCEDURES

Section 3.01 Redemption of Shares. Redemption of Shares shall take place only in integral numbers of Baskets in compliance with the following rules:

(a) Authorized Participants wishing to redeem one or more Baskets shall place a Redemption Order with the Creation and Redemption Agent on any Business Day. Only Redemption Orders received by the Creation and Redemption Agent prior to the Order Cut-Off Time on a Business Day shall have such Business Day as the Order Date. Redemption Orders received by the Creation and Redemption Agent on or after the Order Cut-Off Time on any Business Day shall be considered received at the opening of business on the next Business Day and shall have as their Order Date such next Business Day. Redemption Orders are not accepted if the LBMA Gold Price PM or other applicable benchmark price is not announced on that Business Day.

The Sponsor may, in its discretion, suspend Redemptions, or postpone the settlement date of a Redemption Order, (i) for any period during which the Exchange is closed other than for customary holidays or weekend closings or when trading is suspended or restricted, (ii) for any period during which an emergency exists as a result of which the fulfillment of a Redemption Order is not reasonably practicable; or (iii) for such other period as the Sponsor determines to be necessary for the protection of the Shareholders. The Sponsor will not be liable to any person or in any way for any loss or damages that may result from any such suspension or postponement.

(b) For purposes of Section 3.01(a) above, a Redemption Order shall be deemed "received" by the Creation and Redemption Agent only when each of the following has occurred:

(i) An Authorized Person shall have either (1) placed a telephone call to the Creation and Redemption Line informing the Creation and Redemption Agent that the Authorized Participant wishes to place a Redemption Order for a specified number of Baskets, which is confirmed by a faxed order form within 15 minutes of the telephone call; or (2) placed a Redemption Order through the electronic order entry system portal BNYM ETF Center Interface, the use of which shall be subject to the terms and conditions of the Order Entry System Terms and Conditions attached hereto as Annex I.

(ii) The Creation and Redemption Agent shall have sent a confirmation to the Authorized Participant that a Redemption Order for a specified number of Baskets has been received by the Creation and Redemption Agent from an Authorized Person for the Authorized Participant's account.

THE AUTHORIZED PARTICIPANT SHOULD NOTE THAT WHEN THE TELEPHONIC METHOD OF SUBMITTING ORDERS IS USED, THE TELEPHONE CALL IN WHICH THE ORDER NUMBER IS ISSUED INITIATES THE ORDER PROCESS BUT DOES NOT ALONE CONSTITUTE THE ORDER. A TELEPHONIC ORDER OR REQUEST CAN ONLY BE COMPLETED AND PROCESSED UPON RECEIPT OF THE FAXED ORDER FORM SUBMISSION.

(c) The Creation and Redemption Agent (acting in consultation with, the Sponsor) shall have the absolute right, but shall have no obligation, to reject any Redemption Order if: (i) the Redemption Order is determined by the Creation and Redemption Agent or the Sponsor not to be in proper form, (ii) the Creation and Redemption Agent or the Sponsor believes that the acceptance or receipt of the Redemption Order would have adverse tax consequences to the Trust or to owners of Shares, (iii) the acceptance or receipt of the Redemption Order would, in the opinion of counsel to the Sponsor, be unlawful, or (iv) if circumstances outside of the control of the Sponsor or the Creation and Redemption Agent make it for all practical purposes not feasible to process Redemption Orders. Neither the Creation and Redemption Agent nor the Sponsor shall be liable to any person for rejecting a Redemption Order. Prior to the transmission of the Creation and Redemption Agent's confirmation of acceptance, a Redemption Order will only represent the Authorized Participant's unilateral offer to redeem the Shares specified in such Redemption Order in exchange for the related Basket Payment and will have no binding effect upon the Trust, the Sponsor, the Creation and Redemption Agent or any other party. Upon the delivery of any such confirmation of acceptance of a Redemption Order in accordance with the foregoing, the Trust and the Authorized Participant shall be bound thereby and each of the Authorized Participant, the Trust, the Sponsor and the Creation and Redemption Agent shall be bound by the terms of these Procedures, the Authorized Participant Agreement and the Trust Agreement applicable to it with respect to such Redemption Order.

After the calculation of NAV on the Order Date for a Redemption Order, the Creation and Redemption Agent shall communicate the amount of the Basket Payment to be paid by the Trust to the Authorized Participant no later than 7:00 p.m. (New York time) on the Order Date of a Redemption Order.

(d) Provided that on the first Business Day following the Order Date of a Redemption Order:

(i) the Authorized Participant has delivered to the Creation and Redemption Agent's account at DTC the total number of Shares to be redeemed by such Authorized Participant pursuant to such Redemption Order; and

(ii) any other conditions to the redemption under the Trust Agreement have been satisfied,

the Creation and Redemption Agent will, as applicable, on such day, at the locations and in the amounts specified in the communication sent in compliance with Section 3.01(c) above, credit the account(s) of the redeeming Authorized Participant specified in such confirmation with the applicable Basket Payment. Upon such Delivery, the Creation and Redemption Agent will then cancel the Shares so redeemed on behalf of the Trust.

(e) In connection with any Redemption Order, the Authorized Participant authorizes the Creation and Redemption Agent to deduct the Applicable Transaction Fee from the applicable Basket Payment credited to the applicable account of the redeeming Authorized Participant.

(f) Unless the Sponsor has agreed with the Authorized Participant to extend the settlement date of a Redemption Order until the second Business Day following the Order Date of a Redemption Order, in the event that, by 11:00 a.m. (New York time) on the first Business Day following the Order Date of a Redemption Order governed by Section 3.01(d) above, Creation and Redemption Agent's account at DTC shall not have been credited with the total number of Shares corresponding to the total number of Baskets to be redeemed pursuant to such Redemption Order, the Sponsor may, or cause the Creation and Redemption Agent to, cancel such Redemption Order and will send via fax or electronic mail message notice of such cancellation to the respective Authorized Participant and the Creation and Redemption Agent.

**ANNEX I TO AUTHORIZED PARTICIPANT AGREEMENT FOR  
WILSHIRE WSHARES ENHANCED GOLD TRUST**

**ORDER ENTRY SYSTEM TERMS AND CONDITIONS**

This Annex shall govern use by an Authorized Participant of the electronic order entry system for placing Purchase Orders and Redemption Orders for Shares (the "System"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement or the Procedures. In the event of any conflict between the terms of this Annex I and either the Agreement or the Procedures with respect to the placing of Purchase Orders and Redemption Orders, the terms of this Annex I shall control.

1. (a) Authorized Participant shall provide to The Bank of New York Mellon, a New York corporation authorized to do banking business (the "Transfer Agent") a duly executed authorization letter, in a form satisfactory to Transfer Agent, identifying those Authorized Persons who will access the System. Authorized Participant shall notify the Transfer Agent promptly in writing, including, but not limited to, by electronic mail, in the event that any person's status as an Authorized Person is revoked or terminated, in order to give the Transfer Agent a reasonable opportunity to terminate such Authorized Person's access to the System. The Transfer Agent shall promptly revoke access of such Authorized Person to the electronic entry systems through which Purchase Orders and Redemption are submitted by such person on behalf of the Authorized Participant.

(b) It is understood and agreed that each Authorized Person shall be designated as an authorized user of Authorized Participant for the purpose of the Agreement. Upon termination of the Agreement, the Authorized Participant's and each Authorized Person's access rights with respect to System shall be immediately revoked.

2. Transfer Agent grants to Authorized Participant a personal, nontransferable and nonexclusive license to use the System solely for the purpose of transmitting Purchase Orders and Redemption Orders and otherwise communicating with Transfer Agent in connection with the same. Authorized Participant shall use the System solely for its own internal and proper business purposes. Except as set forth herein, no license or right of any kind is granted to Authorized Participant with respect to the System. Authorized Participant acknowledges that Transfer Agent and its suppliers retain and have title and exclusive proprietary rights to the System. Authorized Participant further acknowledges that all or a part of the System may be copyrighted or trademarked (or a registration or claim made therefor) by Transfer Agent or its suppliers. Authorized Participant shall not take any action with respect to the System inconsistent with the foregoing acknowledgments. Authorized Participant may not copy, distribute, sell, lease or provide, directly or indirectly, the System or any portion thereof to any other person or entity without Transfer Agent's prior written consent. Authorized Participant may not remove any statutory copyright notice or other notice included in the System. Authorized Participant shall reproduce any such notice on any reproduction of any portion of the System and shall add any statutory copyright notice or other notice upon Transfer Agent's request.

3. (a) Authorized Participant acknowledges that any user manuals or other documentation (whether in hard copy or electronic form) (collectively, the "Material"), which is delivered or made available to Authorized Participant regarding the System is the exclusive and confidential property of Transfer Agent. Authorized Participant shall keep the Material confidential by using the same care and discretion that Authorized Participant uses with respect to its own confidential property and trade secrets, but in no event less than reasonable care. Authorized Participant may make such copies of the Material as is reasonably necessary for Authorized Participant to use the System and shall reproduce Transfer Agent's proprietary markings on any such copy. The foregoing shall not in any way be deemed to affect the copyright status of any of the Material which may be copyrighted and shall apply to all Material whether or not copyrighted. TRANSFER AGENT AND ITS SUPPLIERS MAKE NO WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE MATERIAL OR ANY PRODUCT OR SERVICE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(b) Upon termination of the Agreement for any reason, Authorized Participant shall return to Transfer Agent all copies of the Material which is in Authorized Participant's possession or under its control.

4. Authorized Participant agrees that it shall have sole responsibility for maintaining adequate security and control of the user IDs, passwords and codes for access to the System, which shall not be disclosed to any third party without the prior written consent of Transfer Agent. Transfer Agent shall be entitled to rely on the information received by it from the Authorized Participant and Transfer Agent may assume that all such information was transmitted by or on behalf of an Authorized Person regardless of by whom it was actually transmitted, unless the Authorized Participant shall have notified the Transfer Agent a reasonable time prior that such person is not an Authorized Person.

5. Transfer Agent shall have no liability in connection with the use of the System, the access granted to the Authorized Participant and its Authorized Persons hereunder, or any transaction effected or attempted to be effected by the Authorized Participant hereunder, except for damages incurred by the Authorized Participant as a direct result of Transfer Agent's negligence or willful misconduct. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IT IS HEREBY AGREED THAT IN NO EVENT SHALL TRANSFER AGENT OR ANY MANUFACTURER OR SUPPLIER OF EQUIPMENT, SOFTWARE OR SERVICES BE RESPONSIBLE OR LIABLE FOR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHICH THE AUTHORIZED PARTICIPANT MAY INCUR OR EXPERIENCE BY REASON OF ITS HAVING ENTERED INTO OR RELIED ON THIS AGREEMENT, OR IN CONNECTION WITH THE ACCESS GRANTED TO THE AUTHORIZED PARTICIPANT HEREUNDER, OR ANY TRANSACTION EFFECTED OR ATTEMPTED TO BE EFFECTED BY THE AUTHORIZED PARTICIPANT HEREUNDER, EVEN IF TRANSFER AGENT OR SUCH MANUFACTURER OR SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, NOR SHALL TRANSFER AGENT OR ANY SUCH MANUFACTURER OR SUPPLIER BE LIABLE FOR ACTS OF GOD, MACHINE OR COMPUTER BREAKDOWN OR MALFUNCTION, INTERRUPTION OR MALFUNCTION OF COMMUNICATION FACILITIES, LABOR DIFFICULTIES OR ANY OTHER SIMILAR OR DISSIMILAR CAUSE BEYOND SUCH PERSON'S REASONABLE CONTROL.

6. Transfer Agent reserves the right to revoke Authorized Participant's access to the System, with written notice, upon any breach by the Authorized Participant of the terms and conditions of this Annex I.

7. Transfer Agent shall acknowledge through the System its receipt of each Purchase Order or Redemption Order communicated through the System, and in the absence of such acknowledgment Transfer Agent shall not be liable for any failure to act in accordance with such orders and Authorized Participant may not claim that such Purchase Order or Redemption Order was received by Transfer Agent. Transfer Agent may in its discretion decline to act upon any instructions or communications that are insufficient or incomplete or are not received by Transfer Agent in sufficient time for Transfer Agent to act upon, or in accordance with such instructions or communications.

8. Authorized Participant agrees to use reasonable efforts consistent with its own procedures used in the ordinary course of business to prevent the transmission through the System of any software or file which contains any viruses, worms, harmful component or corrupted data and agrees not to use any device, software, or routine to interfere or attempt to interfere with the proper working of the Systems.

9. Authorized Participant acknowledges and agrees that encryption may not be available for every communication through the System, or for all data. Authorized Participant agrees that Transfer Agent may deactivate any encryption features at any time, without notice or liability to Authorized Participant, for the purpose of maintaining, repairing or troubleshooting its systems.



WILSHIRE PHOENIX FUNDS LLC,

as Sponsor

and

DELAWARE TRUST COMPANY,

as Delaware Trustee

SECOND AMENDED AND RESTATED TRUST AGREEMENT

WILSHIRE wSHARES ENHANCED GOLD TRUST

Dated as of May 13, 2021

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## SECOND AMENDED AND RESTATED TRUST AGREEMENT

This Second Amended and Restated Trust Agreement (this “**Agreement**”), dated as of May 10, 2021, is between Wilshire Phoenix Funds LLC, a Delaware limited liability company, as sponsor (the “**Sponsor**”) and Delaware Trust Company, a Delaware trust company, as Delaware trustee (the “**Delaware Trustee**”).

### WITNESSETH:

WHEREAS, the Wilshire wShares Enhanced Gold Trust (the “**Trust**”) was created on January 8, 2020 under the provisions of the Delaware Statutory Trust Act, Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. § 3801 et seq. (as it may be amended from time to time, or any successor legislation, the “**Act**”); and

WHEREAS, in connection with the creation of the Trust, a trust agreement was executed by the Sponsor and the Delaware Trustee as of January 8, 2020, as amended on August 24, 2020 (as so amended, the “**Original Trust Agreement**”); and

WHEREAS, the Original Trust Agreement was amended and restated on December 17, 2020 (the “**Amended and Restated Trust Agreement**”);

WHEREAS, the parties hereto wish to further amend and restate the Amended and Restated Trust Agreement to reflect the provisions reflected herein.

NOW, THEREFORE, it being the intention of the parties hereto that, effective as of the date hereof, this Agreement constitute the governing instrument of the Trust, and the provisions of the Amended and Restated Trust Agreement shall have no longer any force or effect and shall be superseded entirely by the provisions hereof, the parties hereto agree as follows:

### ARTICLE I

#### DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.1 Definitions. Except as otherwise specified in this Agreement or as the context may otherwise require, the following terms have the respective meanings set forth below for all purposes of this Agreement.

“**Act**” has the meaning specified in the recitals hereto.

“**Administrator**” means The Bank of New York Mellon, acting in its capacity as the Trust’s administrator, together with its permitted successors and assigns.

“**Adjusted Net Asset Value**” has the meaning specified in Section 4.1(b).

“**Adjusted Property**” means any property the book value of which has been adjusted as provided by Section 1(d) of Annex I.

“**Affiliate**” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such Person.

“**Agreement**” means this Amended and Restated Trust Agreement, including Exhibit A, Exhibit B and Annex I hereto, as amended, modified, supplemented and restated from time to time in accordance with its terms.

“**Auditor**” means Citrin Cooperman & Company LLP, or any other auditor appointed by the Sponsor in connection with the Trust.

“**Authorized Participant**” means a Person that, at the time of submitting to the Trust a Purchase Order or a Redemption Order (a) is a broker-dealer registered under the Exchange Act and a member in good standing of the Financial Industry Regulatory Authority, Inc. or is a securities market participant that is exempt from registration as a broker-dealer, (b) is a DTC Participant and (c) has in effect a valid Authorized Participant Agreement or has entered into a dealer or similar agreement with an Authorized Participant that has executed an Authorized Participant Agreement.

“**Authorized Participant Agreement**” means an agreement among the Trust, the Sponsor and an Authorized Participant that provides the procedures for the creation and redemption of Shares.

“**Basket**” means 10,000 Shares, as such number may be increased or decreased, from time to time, by the Sponsor in its sole discretion or in accordance with Section 2.12.

“**Basket Amount**” is the amount of cash that an Authorized Participant must Deliver in exchange for one Basket, or that an Authorized Participant is entitled to receive in exchange upon Surrender of one Basket. The Basket Amount will be determined as provided in Section 2.5(e).

“**Beneficial Owner**” means any Person owning a beneficial interest in any Shares, including a person who holds Shares through or on behalf of any Registered Owner.

“**Book-Tax Disparity**” means, with respect to any property, as of any date of determination, the difference between the book value of such property (as initially determined under Section 7 of Annex I in the case of contributed property, and as adjusted from time to time in accordance with Section 2(c) of Annex I) and the adjusted basis thereof for U.S. federal income tax purposes, as of such date of determination. A Beneficial Owner’s share of the Trust’s Book-Tax Disparities will be reflected by the difference between such Beneficial Owner’s Capital Account balance, as maintained pursuant to Section 1 of Annex I, and the hypothetical balance of the Capital Account computed as if it had been maintained strictly in accordance with U.S. federal income tax accounting principles.

“**Business Day**” means any day other than (i) a Saturday, Sunday or other day on which the Exchange is closed for regular trading, and, in respect of any action to be taken by the Delaware Trustee, on which the Delaware Trustee is not open for business; or (ii) for purposes of the creation and redemption process, a day on which banking institutions in the United Kingdom are authorized or permitted by law to close or a day on which the London gold market is closed; or (iii) a day on which banking institutions in the United Kingdom are authorized or permitted to be open for less than a full day or the London gold market is open for trading for less than a full day and transaction procedures required to be executed or completed before the close of the day may not be so executed or completed.

“**Capital Account**” has the meaning specified in Section 1 of Annex I.

“**Cash**” means U.S. dollars.

“**Certificate of Trust**” means the Certificate of Trust, as filed with the Secretary of State pursuant to Section 3810 of the Act, as amended and restated from time to time, attached hereto as Exhibit A.

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

“**Conflicting Provisions**” has the meaning specified in Section 7.9.

“**Corporate Trust Office**” means the Delaware Trustee’s office located at 251 Little Falls Drive, Wilmington, DE 19808, Attn: Trust Administration.

“**Covered Person**” means the Delaware Trustee, the Sponsor and their respective Affiliates.

“**Custodian**” has the meaning specified in Section 5.11.

“**Delaware Trustee**” means the Person named as such in the introductory paragraph hereto, solely in such Person’s capacity as the Delaware trustee of the Trust created hereunder and not in such Person’s individual capacity, and includes any successor Delaware trustee under this Agreement.

“**Deliver,**” “**Delivered**” or “**Delivery**” means one or more book-entry transfers of such Shares to an account or accounts at DTC designated by the Person entitled to such delivery for further credit as specified by such Person.

“**DTC**” means The Depository Trust Company, or its successor.

“**DTC Participant**” means a Person that has an account with DTC.

“**Exchange**” means NYSE Arca, Inc., a Delaware corporation and a registered U.S. national securities exchange, or any other regulated securities market where the Sponsor may from time to time decide to list the Shares for trading in the United States or otherwise.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

“**Indemnified Amounts**” has the meaning specified in Section 5.12(a).

“**Indemnitee**” has the meaning specified in Section 5.12(c).

“**Indemnitor**” has the meaning specified in [Section 5.12\(c\)](#).

“**Index**” means the Wilshire Gold Index.

“**Index Calculation Agent**” means Solactive AG, or any successor index calculation agent for the Index.

“**Indirect Participant**” means a Person that has access to the DTC clearing system by clearing securities through, or maintaining a custodial relationship with, a DTC Participant.

“**Initial Contributions**” has the meaning specified in [Section 1](#) of [Annex I](#).

“**LBMA**” means the London Bullion Market Association or any successor or assigns.

“**LBMA Gold Price**” means the price of Physical Gold that is based on the LBMA daily auctions.

“**LBMA Gold Price PM**” means the price of Physical Gold that is based on the LBMA daily afternoon auction.

“**Liquidating Trustee**” has the meaning specified in [Section 6.2\(c\)](#).

“**Marketing Agent**” means Foreside Fund Services, LLC and its permitted successors and assigns.

“**Net Asset Value per Basket**” means, as of any date of determination the number obtained by multiplying (x) the Net Asset Value per Share on the date on which the determination is being made by (y) the number of Shares that constitute a Basket on the date on which the determination is being made.

“**Net Asset Value per Share**” means the net asset value of a Share, as determined in accordance with [Section 4.1\(b\)](#).

“**Net Asset Value of the Trust**” has the meaning specified in [Section 4.1\(b\)](#).

“**Offering Documents**” means the Trust’s prospectus included in its effective registration statement on Form S-1 or Form S-3 (or any successor forms) as filed with the SEC, and any amendments or supplements thereto.

“**Order Cut-Off Time**” means, with respect to any Business Day, shall mean (a) 9:15 a.m. (New York time) or (b) any other time agreed to by the Sponsor and the Transfer Agent and of which all existing Authorized Participants have been previously notified by the Sponsor or the Transfer Agent.

“**Order Date**” means, with respect to a Purchase Order, the date specified in [Section 2.5\(b\)](#) and, with respect to a Redemption Order, the date specified in [Section 2.8](#).

“**Partnership Representative**” means the Sponsor, its designee or any successor thereto in its capacity as the “partnership representative” for the Trust, as such term is defined in Section 6223 of the Code, and includes the “designated individual” described in Treasury regulation section 1.6223-1(b). Initially the Partnership Representative shall be Corporation Service Company, a Delaware corporation.



“**Percentage Interest**” means as to each Beneficial Owner, the portion (expressed as a percentage) of the total outstanding Shares held by such Beneficial Owner.

“**Person**” means any natural person or any limited liability company, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

“**Physical Gold**” means physical gold held by the Trust.

“**Proceeding**” has the meaning specified in [Section 5.12\(c\)](#).

“**Purchase Order**” has the meaning specified in [Section 2.5\(b\)](#).

“**Redemption Order**” has the meaning specified in [Section 2.8](#).

“**Registered Owner**” means a Person in whose name Shares are registered on the books of the Registrar maintained for that purpose, initially Cede & Co.

“**Registrar**” means the Transfer Agent or any bank or trust company that is appointed to register Shares and transfers of Shares as herein provided.

“**Representative**” means Exchange Traded Concepts, LLC, an Oklahoma limited liability company, in its capacity as Sponsor Representative, together with its permitted successors and assigns.

“**SEC**” means the U.S. Securities and Exchange Commission, or any successor governmental agency in the United States.

“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations thereunder.

“**Service Provider**” means any of the Administrator, the Representative, the Transfer Agent, the Delaware Trustee, the Custodians and any other service provider named in the Offering Documents or which has been engaged by the Trust to provide services.

“**Shares**” means units of fractional undivided beneficial interest in the net assets of the Trust.

“**Sponsor**” means the Person named as such in the introductory paragraph hereto, solely in such Person’s capacity as sponsor of the Trust and not in such Person’s individual capacity, or any successor thereto which shall have executed such documents and other instruments as shall be necessary to assume all of the duties and responsibilities of the Sponsor hereunder.

“**Sponsor’s Fee**” has the meaning specified in Section 5.14(a).

“**Sponsor Indemnified Party**” has the meaning specified in Section 5.12(b).

“**Surrender**” means, when used with respect to Shares, one or more book-entry transfers of Shares to the DTC account of the Trust established by the Transfer Agent as agent for the Trust.

“**Transaction Fee**” has the meaning specified in Section 2.5(c).

“**Transfer Agent**” means The Bank of New York Mellon, acting in its capacity as the Trust’s transfer agent, together with its permitted successors and assigns.

“**Trust**” has the meaning specified in the recitals hereto.

“**Trust Property**” means, at any time, the assets of the Trust at such time, regardless of whether such assets are held by a Custodian or any agent or other custodian for the Trust.

“**Trustee Indemnified Persons**” has the meaning specified in Section 5.12(a).

“**Unrealized Gain**” attributable to any Trust property means, as of any date of determination, the excess, if any, of the fair market value of such property (as determined for purposes of Section 1(d) of Annex I) as of such date of determination over the adjusted basis of such property as of such date of determination.

“**Unrealized Loss**” attributable to any Trust property means, as of any date of determination, the excess, if any, of the adjusted basis of such property as of such date of determination over the fair market value of such property (as determined for purposes of Section 1(d) of Annex I) as of such date of determination.

“**Withdrawal Event**” has the meaning specified in Section 5.9.

Section 1.2 Rules of Construction. Unless the context otherwise requires:

- (a) a term has the meaning assigned to it;
- (b) an accounting term not otherwise defined herein has the meaning assigned to it in accordance with generally accepted accounting principles as then in effect in the United States;
- (c) “or” is not exclusive;
- (d) the words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision;

- (e) “including” means including without limitation; and
- (f) words in the singular include the plural and words in the plural include the singular.

## ARTICLE II

### CREATION AND DECLARATION OF TRUST

#### Section 2.1 Creation and Declaration of Trust; Business of the Trust.

(a) The Trust will hold all Trust Property for the benefit of the Registered Owners for the purposes of, and subject to the terms and conditions set forth in, this Agreement. The trust governed by this Agreement shall be known as “Wilshire wShares Enhanced Gold Trust.” The Delaware Trustee filed or caused to be filed the original Certificate of Trust on January 8, 2020 and Amendment No. 1 thereto on August 24, 2020, and is hereby authorized and directed to file any amendment thereto or restatement thereof as may be necessary or appropriate from time to time.

(b) Consistent with the investment objective set forth in Section 2.1(c), the Trust shall have full power and authority (i) to engage in such business or activities as set forth in, or contemplated by, this Agreement, the Offering Documents, the Authorized Participant Agreements and any other agreements or instruments to which, in compliance with the provisions of this Agreement, it shall become a party to or by which it may be bound, (ii) to engage in activities incidental and necessary to carry out the duties and responsibilities as set forth in, or contemplated by, this Agreement, the Offering Documents, the Authorized Participant Agreements and such other agreements or instruments and (iii) subject to the following sentence, to engage in any other lawful business, purpose or activity for which statutory trusts may be formed under the Act. Other than the Shares, the Trust shall not issue or sell any beneficial interests or other obligations or otherwise incur, assume or guarantee any indebtedness for money borrowed.

(c) The Trust’s investment objective shall be for the Shares to closely reflect the Index, less the Trust’s liabilities and expenses.

Section 2.2 Legal Title. Legal title to all of the Trust Property 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 Property to be vested otherwise, the Trust may cause legal title to the Trust Property or any portion thereof to be held by or in the name of the Sponsor or any other Person (other than a Registered Owner or a Beneficial Owner) as nominee.

#### Section 2.3 Book-Entry System; Transferability of Shares.

(a) The ownership of Shares shall be recorded on the books of the Trust or the Transfer Agent. No certificates certifying the ownership of Shares shall be issued except as the Sponsor may otherwise determine from time to time. The Sponsor may make such rules as it considers appropriate for the issuance of Share certificates, transfer of Shares and similar matters. The record books of the Trust as kept by the Trust, or the Transfer Agent, as the case may be, shall be conclusive as to the identity of the Registered Owners and as to the number of Shares held from time to time by each.

(b) The Transfer Agent in consultation with the Sponsor will apply to DTC for acceptance of the Shares in its book-entry settlement system.

(c) So long as the Shares are eligible for book-entry settlement with DTC and such settlement is available, unless otherwise required by law, (i) no Beneficial Owner will be entitled to receive a separate certificate evidencing those Shares, (ii) the interest of a Beneficial Owner in Shares will be shown only on, and transfer of that interest will be effected only through, records maintained by DTC or a DTC Participant or Indirect Participant through which the Beneficial Owner holds that interest and (iii) the rights of a Beneficial Owner with respect to Shares will be exercised only to the extent allowed by, and in compliance with, the arrangements in effect between such Beneficial Owner and DTC or the DTC Participant or Indirect Participant through which that Beneficial Owner holds an interest in Shares.

(d) If DTC ceases to make its book-entry settlement system available for such Shares, the Sponsor in consultation with the Transfer Agent may select a comparable depository for the book-entry settlement of the Shares. If the Sponsor in consultation with the Transfer Agent determine that no such successor depository is available, the Trust will terminate as set forth in Section 6.2(a)(vi) hereof.

Section 2.4 Issuance and Redemption of Shares; General. Subject to the terms of this Agreement, the Transfer Agent shall have the power and authority, and is hereby authorized, without the approval or action of any Registered Owner or Beneficial Owner, to issue and redeem Shares from time to time. The number of Shares authorized shall be unlimited. All Shares when so issued on the terms contemplated by this Agreement shall be fully paid and non-assessable. Every Registered Owner or Beneficial Owner, by virtue of having purchased or otherwise acquired a Share or a beneficial interest in a Share, shall be deemed to have expressly consented and agreed to be bound by the terms of this Agreement.

Section 2.5 Purchase Orders.

(a) From and after the date hereof, Deliveries of Shares will take place only in integral numbers of Baskets and in compliance with the provisions of this Agreement, as supplemented by any procedures attached to an applicable Authorized Participant Agreement, to the extent those procedures are consistent with this Agreement.

(b) Authorized Participants wishing to acquire one or more Baskets must place an order (a “**Purchase Order**”) with the Transfer Agent on any Business Day. Purchase Orders received by the Sponsor or its designee on a Business Day prior to the Order Cut-Off Time will have that Business Day as the Order Date. Purchase Orders received by the Sponsor or its designee on a Business Day on or after the Order Cut-Off Time, or on a day that is not a Business Day, will have the next Business Day as the Order Date. As consideration for each Basket to be acquired pursuant to a Purchase Order, an Authorized Participant must Deliver the Basket Amount (determined as described in Section 2.5(c) below) announced by the Trust on the Order Date (determined as described above) of such corresponding Purchase Order.

(c) The Representative shall determine the Basket Amount for each Business Day. The Basket Amount shall be an amount of cash equal to (i) the Net Asset Value Per Basket as announced by the Trust (x) on the date the related Purchase Order was received, in the case of a Purchase Order for cash received by Order Cut-Off Time on any Business Day, or (y) on the following Business Day, in the case of a Purchase Order for cash received after the Order Cut-Off Time on any Business Day, plus (ii) the applicable transaction fee specified in the Offering Documents and any additional amounts necessary to reimburse the Trust and the Sponsor and its designee(s) for any and all expenses and costs incurred in connection with such Purchase Order or Redemption Order, including the applicable fees and expenses specified in Section 2.6 and Section 2.8 hereof for Purchase Orders or Redemption Orders, respectively (the “**Transaction Fee**”). The Transaction Fee may be increased in the Sponsor’s discretion, and will be effective two (2) Business Days following the filing of an amendment or supplement to the Offering Documents or as otherwise specified therein. The Sponsor intends to publish, or may designate other persons to publish, for each Business Day, the Net Asset Value Per Share.

Section 2.6 Delivery of Shares. Upon receipt by the Representative of any Delivery of the Basket Amount in accordance with Section 2.5, together with a Purchase Order and the other required documents, if any, as specified above and a confirmation that the Basket Amount has been Delivered for each Basket, the Transfer Agent, subject to the terms and conditions of this Agreement and any procedures attached to an applicable Authorized Participant Agreement, shall Deliver to, or as directed by, the Authorized Participant the number of Baskets issuable in respect of such Delivery as requested in the corresponding Purchase Order, but only upon reimbursement to the Trust of any applicable extraordinary costs or expenses incurred in connection with the execution of trades related to such Purchase Order, and the payment of the fees and expenses incurred in respect of any taxes and governmental charges and fees payable in connection with such Delivery and the issuance and Delivery of the Baskets.

Section 2.7 Registration and Registration of Transfer of Shares. The Transfer Agent shall keep or cause to be kept a register of Registered Owners and shall provide for the registration of Shares and the registration of transfers of Shares.

Section 2.8 Redemption of Shares and Withdrawal of Trust Property.

(a) Authorized Participants wishing to redeem one or more Baskets must place an order with the Transfer Agent on a Business Day (a “**Redemption Order**”). Upon the Transfer Agent’s receipt of a Redemption Order, the Surrender by an Authorized Participant of any integral number of Baskets for the purpose of withdrawal of the amount of Trust Property represented thereby and the Authorized Participant’s payment of the Transaction Fee (including reimbursement to the Trust of any applicable extraordinary costs or expenses incurred in connection with the execution of trades related to such Redemption Order, and the payment to the Sponsor or its designee(s) of the fees and expenses of the Sponsor and its designee(s) relating to any taxes and governmental charges and fees payable in connection with such Delivery), subject to the terms and conditions of this Agreement, including Section 2.9, and any procedures attached to an applicable Authorized Participant Agreement, such Baskets shall be redeemed by the Trust, and such Authorized Participant, as, or acting on authority of, the Registered Owner of those Shares will be entitled to Delivery, in accordance with the provisions of this Agreement, as supplemented by any procedures attached to an applicable Authorized Participant Agreement, to the extent those procedures are consistent with this Agreement, of the Basket Amounts corresponding to such Baskets (determined in accordance with Section 2.9) on the applicable Order Date (determined as provided below).

(b) Redemption Orders received by the Transfer Agent prior to the Order Cut-Off Time on a Business Day will have that Business Day as the Order Date. Redemption Orders received by the Transfer Agent on or after the Order Cut-Off Time on a Business Day, or on a day that is not a Business Day, will have the next Business Day as the Order Date.

Section 2.9 Limitations on Issuance and Delivery, Registration of Transfer and Surrender of Shares. As a condition precedent to the Delivery, registration of transfer, split-up, combination or Surrender of any Shares or withdrawal of any Trust Property, the Transfer Agent may require payment from the Authorized Participant Surrendering the Shares of a sum sufficient to reimburse it for any tax or other governmental charge and any stock transfer or registration fee with respect thereto (including any such tax or charge and fee with respect to any securities being withdrawn) and payment of any applicable fees as herein provided, may require the production of proof satisfactory to it as to the identity and genuineness of any signature or other information that it deems to be necessary and may also require compliance with any regulations the Transfer Agent may establish consistent with the provisions of this Agreement, including this Section 2.9.

Section 2.10 Splits and Reverse Splits of Shares.

(a) If requested in writing by the Sponsor, the Transfer Agent shall effect a split or reverse split of the Shares as of a record date set by the Transfer Agent in accordance with procedures determined by the Transfer Agent.

(b) The Transfer Agent is not required to distribute any fraction of a Share in connection with a split or reverse split of the Shares. The Transfer Agent may sell the aggregated fractions of Shares that would otherwise be distributed in a split or reverse split of the Shares or liquidate the amount of Trust Property that would be represented by those Shares and distribute the net proceeds of those Shares or that Trust Property to the Registered Owners entitled to such proceeds. The amount of Trust Property represented by each Share shall be adjusted, and the number of Shares comprising a Basket and the Basket Amount may be adjusted, as appropriate as of the open of business on the Business Day following the record date for a split or reverse split of the Shares.

### ARTICLE III

#### CERTAIN OBLIGATIONS OF REGISTERED OWNERS

Section 3.1 Limitation on Liability. Registered Owners and Beneficial Owners shall be entitled to the same limitation on personal liability extended to stockholders of private corporations for profit organized under the general corporation law of the State of Delaware.

Section 3.2 Liability of Registered Owner for Taxes and Other Governmental Charges. If any tax or other governmental charge shall become payable by the Transfer Agent with respect to any transfer or redemption of Shares, such tax or other governmental charge shall be payable by the Registered Owner of such Shares to the Transfer Agent. The Transfer Agent may refuse to effect any registration of transfer of such Shares or any withdrawal of Trust Property represented by such Shares until such payment is made and may withhold any distributions, or may sell for the account of the Registered Owner thereof Trust Property or Shares, and may apply such distributions or the proceeds of any such sale in payment of such tax or other governmental charge, and the Registered Owner of such Shares shall remain liable for any deficiency. The Transfer Agent shall distribute any net proceeds of a sale made under the preceding sentence that remain, after payment of the tax or other governmental charge, to the Registered Owners entitled thereto as in the case of a distribution in cash.

#### ARTICLE IV

##### ADMINISTRATION OF THE TRUST

###### Section 4.1 Valuation of Trust Property.

(a) The Administrator has been granted the exclusive authority to determine the Net Asset Value of the Trust and the Net Asset Value per Share, to be exercised as set forth below, until such time as the Sponsor revokes such delegation in its sole discretion. On each Business Day on which the Exchange is open for regular trading, the Administrator shall determine the Net Asset Value of the Trust and the Net Asset Value per Share as of 4:00 p.m. (New York City time). The Administrator, on behalf of the Trust, shall value each item of Trust Property and shall use such valuation on each such Business Day in the determination of the Net Asset Value of the Trust. The Administrator shall not be liable to any Person for the determination that the most recently communicated Net Asset Value of the Trust Property is not appropriate or for any determination as to the alternative basis for valuation; *provided* that such determination is made in good faith.

(b) In calculating the Net Asset Value of the Trust, the Administrator shall subtract all fees (other than fees computed by reference to the value of the Trust or its assets), accrued expenses and other liabilities of the Trust from the total value of the Trust Property as of the time of calculation. The resulting figure is the “**Adjusted Net Asset Value**” of the Trust. All fees computed by reference to the value of the Trust or its assets shall be calculated on the Adjusted Net Asset Value. The Administrator shall subtract from the Adjusted Net Asset Value all accrued fees so calculated. The resulting figure is the “**Net Asset Value of the Trust**”. The Administrator shall divide the Net Asset Value of the Trust by the number of Shares outstanding as of the time of the calculation, which figure is the “**Net Asset Value per Share**”. All fees, expenses and other liabilities of the Trust that are or will be incurred or accrued through the close of business on a Business Day shall be included in the calculations required by this Section 4.1(b) for that Business Day. Shares deliverable under a Purchase Order shall be considered to be outstanding for purposes of the calculations required by this Section 4.1(b) beginning on the Business Day following the Order Date of such Purchase Order. Shares deliverable under a Redemption Order shall be considered to no longer be outstanding for purposes of the calculations required by this Section 4.1(b) on and after the Business Day following the Order Date of such Redemption Order.

(c) The Administrator may (and under extraordinary circumstances as identified by the Sponsor in consultation with the Administrator, shall) value any asset of the Trust pursuant to such other principles as the Administrator deems fair and equitable so long as such principles are consistent with industry standards. For purposes of the foregoing, “extraordinary circumstances” shall include, but not be limited to, periods during which a price for Physical Gold or another asset held by the Trust is not available due to *force majeure*-type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance or due to a trading or other restriction imposed by any relevant markets.

Section 4.2 Responsibility of the Sponsor for Determinations. The determinations made by the Sponsor under this Agreement shall be made in good faith upon the basis of information reasonably available to it, and the Sponsor shall not be liable for any errors contained in such information. The Sponsor shall have no liability to the Authorized Participants, the Registered Owners, the Beneficial Owners or the Service Providers for errors in judgment.

Section 4.3 Cash Distributions. The Transfer Agent shall have the exclusive authority to cause the Trust to distribute any Trust Property to the Registered Owners in accordance with this Agreement. Whenever the Trust distributes any cash to the Registered Owners, the Transfer Agent shall distribute the amount available for distribution to the Registered Owners entitled thereto, in proportion to the number of Shares held by them respectively. The Transfer Agent shall distribute only such amount, however, as can be distributed without attributing to any Registered Owner a fraction of one cent. Any such fractional amounts shall be rounded down to the nearest whole cent.

Section 4.4 Other Distributions. Whenever the Trust distributes any non-cash proceeds (including claims and other intangibles) in respect of Trust Property other than property subject to distribution in accordance with the creation and redemption procedures set forth herein, as supplemented by the Authorized Participant Agreements, the Transfer Agent shall cause such non-cash proceeds received by the Trust to be distributed to the Registered Owners entitled thereto, in proportion to the number of Shares held by them respectively, after deduction or upon payment of applicable expenses of the Service Providers.

Section 4.5 Fixing of Record Date. Whenever any distribution will be made, or whenever the Sponsor or the Transfer Agent receives notice of any solicitation of proxies or consents from Registered Owners, or whenever for any reason there is a split, reverse split or other change in the outstanding Shares, or whenever the Sponsor or the Liquidating Trustee shall find it necessary or convenient in respect of any matter, the Sponsor, or the Liquidating Trustee, as applicable, in consultation with the Transfer Agent, shall fix a record date for the determination of the Registered Owners who shall be (a) entitled to receive such distribution or the net proceeds of the sale thereof, (b) entitled to give such proxies or consents in respect of any such solicitation or (c) entitled to act in respect of any other matter for which the record date was set.



Section 4.6 Payment of Expenses; Sales of Trust Property.

(a) The following charges will be accrued and shall be paid by the Trust:

(i) any expenses of the Trust not assumed by the Sponsor specified in Section 4.6(b), including any fees and expenses associated with the Trust's monthly rebalancing between Physical Gold and Cash, any other fees (including commissions and/or exchange fees) associated with the buying and selling of Physical Gold for the Trust;

(ii) fees and expense reimbursements due to the Marketing Agent;

(iii) the Trust's regulatory fees and expenses (including any filing, application or license fees);

(iv) printing and mailing costs;

(v) costs of maintaining the Trust's website;

(vi) the Trust's legal fees and expenses in excess of \$100,000 annually;

(vii) any applicable license fees;

(viii) extraordinary legal fees and expenses of the Sponsor, any Service Provider or the Trust;

(ix) any taxes and other governmental charges (including any value added tax) that may fall on the Trust or the Trust Property;

(x) any expenses of any extraordinary services performed by the Sponsor (or other Service Provider) on behalf of the Trust or expenses of any action taken by the Sponsor to protect the Trust or the interests of Registered Owners or the Beneficial Owners;

(xi) any expenses of the Service Providers;

(xii) any indemnification obligations of the Trust, including indemnification of a Trustee Indemnified Person and Sponsor Indemnified Party as provided in Section 5.12; and

(xiii) the fee payable to the Sponsor pursuant to Section 5.14.

(b) The Sponsor will be responsible for paying, out of the fee payable to the Sponsor pursuant to Section 5.14, the fees owed to the Administrator, the Gold Custodian, the Cash Custodian, the Transfer Agent, the Representative, the Delaware Trustee, the Index Calculation Agent, the Partnership Representative, the Trust's audit fees (including any fees and expenses associated with tax preparation) and up to \$100,000 per year of the Trust's legal fees and expenses.

(c) The Representative shall sell or liquidate, or cause to be sold or liquidated, Trust Property in such quantity and at such times as may be necessary to permit payment of any fees or expenses under this Agreement or any other agreements to which the Trust is a party. Neither the Sponsor nor the Representative shall have any liability for loss or depreciation resulting from sales of Trust Property so made. Neither the Sponsor nor the Representative shall be liable or responsible in any way for depreciation or loss incurred by reason of any sale made pursuant to the Sponsor's or the Representative's direction or otherwise in accordance with this Section 4.6 or as contemplated in Section 4.8.

(d) Except as provided in this Agreement, the Trust shall have no obligation to make any distribution to any Registered Owners or Beneficial Owners.

Section 4.7 Statements and Reports.

(a) After the end of each fiscal year and within the time period required by applicable laws, rules and regulations, the Trust shall send to the Registered Owners at the end of such fiscal year an annual report of the Trust containing financial statements that will be audited by independent accountants designated by the Sponsor and such other information as may be required by such laws, rules and regulations or otherwise. The annual report may be distributed by any means acceptable to such Registered Owners, including posting the annual report on the Trust's publicly available website.

(b) The Administrator shall provide the Sponsor with such certifications, supporting documents and other evidence regarding the internal control over financial reporting established and maintained by the Trust, and used by the Administrator in connection with its preparation of the financial statements of the Trust, as may be reasonably necessary in order to enable the Sponsor to prepare and file or furnish to the SEC any certifications regarding such matters that may be required to be included with the Trust's periodic reports under the Exchange Act.

Section 4.8 Further Provisions for Sales of Trust Property. In addition to selling Trust Property in accordance with Section 4.6, the Representative shall sell Trust Property in the following circumstances:

- (a) the Sponsor has notified the Representative that such sale is required by applicable law or regulation;
- (b) to rebalance the Trust's assets on the last Business Day of each month to be consistent with the allocations of assets in the Index, as appropriate;
- (c) to satisfy Redemption Orders; or

(d) this Agreement has been terminated and the Trust Property is to be liquidated in accordance with Section 6.2.

Neither the Sponsor nor the Representative shall be liable or responsible in any way for depreciation or loss incurred by reason of any sale made pursuant to this Section 4.8.

Section 4.9 Counsel. The Sponsor may, from time to time, employ counsel to act on behalf of the Trust and perform any legal services in connection with the Trust Property and the Trust, including any legal matters relating to the possible disposition or acquisition of any Trust Property. The fees and expenses of such counsel shall be paid by the Sponsor; *provided, however*, that the Sponsor shall not be responsible for the payment of any such legal fees and expenses in excess of \$100,000 annually, nor shall the Sponsor be responsible for any extraordinary legal fees and expenses of the Trust; provided further that the foregoing annual limitation shall not apply to any amounts payable by the Sponsor pursuant to Section 5.12(a).

Section 4.10 Tax Matters.

(a) The Auditor or its designee shall prepare or cause to be prepared all federal, state, and local tax returns of the Trust for each year for which such returns are required to be filed and shall file or cause such returns to be timely filed and the Administrator, at the direction of the Sponsor, shall timely pay (or cause to be timely paid) any tax, assessment or other governmental charge owing with respect to the Trust out of Trust Property. A third-party shareholder tax reporting agent (“**Agent**”), by itself or through its affiliates (or any other entity engaged by the Sponsor on behalf of the Trust for such purpose) shall, pursuant to the applicable agreement with such Agent, deliver or cause to be delivered to each Beneficial Owner, or the broker or nominee through which a Beneficial Owner owns its Shares, a Schedule K-1 and such other information, if any, with respect to the Trust as may be necessary for the preparation of the federal income tax or information returns of such Beneficial Owner including a statement showing each Beneficial Owner’s share of income, gain, loss, expense, deductions and credits for such fiscal year for U.S. federal income tax purposes as soon as practicable following each fiscal year but generally not later than March 15. The Sponsor has obtained a taxpayer identification number for the Trust. The Trust hereby indemnifies, to the full extent permitted by law, the Sponsor, Agent and each Service Provider from and against any damages or losses (including attorneys’ fees) arising out of or incurred in connection with any action taken or omitted to be taken by it in carrying out its responsibilities under this Section 4.10(a), to the extent that such action taken or omitted to be taken does not constitute fraud, gross negligence or willful misconduct. Each Beneficial Owner agrees that it shall not, except as required by applicable law, (i) treat, on its own income or information tax returns or any information returns that it provides to any Beneficial Owner, or to any broker or nominee through which the Beneficial Owner owns its Shares, any item of income, gain, loss, deduction, credit, basis or any other tax item relating to its Shares in a manner inconsistent with the treatment of such items by the Trust as reflected on the Schedule K-1 or other information statement furnished to such Beneficial Owner pursuant to this Section 4.10(a), or (ii) file any claim for a refund relating to any such item based on, or which would result in, such inconsistent treatment.

(b) The parties hereto and, by its acceptance or acquisition of a Share or a beneficial interest therein and continued ownership thereof, a Beneficial Owner and the broker or nominee through which the Beneficial Owner owns its Share (i) agree to furnish the Sponsor, the Administrator and the Auditor with such representations, forms, documents or information as may be necessary to enable the Trust to comply with its U.S. federal income tax reporting obligations in respect of such Share and to allow the Trust to make the basis adjustments permitted by Section 754 of the Code, including information regarding such Beneficial Owner's secondary market transactions in Shares, as well as creations or redemptions of Shares and including information required by Treasury Regulations Section 1.6031(c)-1T and any successor thereto and (ii) direct brokers and nominees to report to the Administrator the Beneficial Owner's name and address and such other information as may be reasonably requested by the Administrator for purposes of complying with the Trust's U.S. federal income tax reporting obligations or as necessary to allow the Trust to make the basis adjustments permitted by Section 754 of the Code, including information required by Treasury Regulations Section 1.6031(c)-1T and any successor thereto.

(c) Except as provided herein, the Trust may make, or refrain from making, any income or other tax elections that may reasonably be deemed necessary or advisable, including, but not limited to, an election pursuant to Section 754 of the Code. The Trust intends to make the election under Section 754 of the Code. The Beneficial Owners recognize and intend that the Trust will be classified as a partnership for U.S. income tax purposes, and will not cause the Trust to make an election to be treated as an association taxable as a corporation for U.S. federal income tax purposes pursuant to Treasury Regulations Section 301.7701-3, or any successor provision, or a similar election under any analogous provision for purposes of state or local law. To the extent necessary, the Trust or the Beneficial Owners (as appropriate) will make any election necessary to obtain treatment consistent with the foregoing.

(d) If the Trust makes an election pursuant to Section 754 of the Code, the Beneficial Owners agree that the basis of Shares and property of the Trust shall be determined taking into account the provisions of Sections 734(b) and 743(b) of the Code, and except as required by applicable law the Beneficial Owners shall report the basis of their Shares or any property of the Trust distributed to the Beneficial Owners or their agents in a redemption as equal to the basis reported by the Trust or its agents to such Beneficial Owners. The Beneficial Owners acknowledge that, to the extent any Beneficial Owner is subject to the mark-to-market rules of Section 475 of the Code, the basis of Shares and of any property of the Trust, including property distributed to a Beneficial Owner in a redemption, shall be determined, including for purposes of Sections 734(b) and 743(b) of the Code, by treating such mark-to-market as having no effect on such basis.

(e) Each Beneficial Owner acknowledges that the Trust may report gain or loss and other tax items, including the allocation of basis and adjustments to basis, in reliance upon the assumption that any redemption of a Beneficial Owner's Share is a distribution other than in liquidation of the Beneficial Owner's Share (a "**partial redemption**"), unless it notifies the Trust or its agent prior to such distribution that such distribution is in liquidation of the Beneficial Owner's Share (a "**complete redemption**"). The Beneficial Owner agrees to notify the Trust or its agent within five (5) Business Days of any distribution of (i) any gain or loss arising from a redemption of a Share by the Beneficial Owner or its agent in exchange for such property, and (ii) any difference between the tax basis of such property on the books of the Trust immediately prior to the redemption, as such amount is reported to the Beneficial Owner or its agent, and the basis of the distributed property to the Beneficial Owner or its agent (such gain or loss or basis difference, "**Section 734(b) items**") in a manner sufficient for the Trust to adjust the basis of undistributed property held by the Trust under Section 734(b) of the Code if the Trust makes an election pursuant to Section 754 of the Code. Each Beneficial Owner agrees to determine its basis for tax purposes in any property it or its agent receives from the Trust in consideration for a redemption of Shares by reference to the tax basis of such property on the books of the Trust immediately prior to the redemption, as such amount is reported to the Beneficial Owner or its agent by the Trust, subject to adjustment as required under Section 732 or other applicable law.

(f) The Trust shall comply with all applicable withholding and backup withholding tax requirements. The Trust shall request, and each Beneficial Owner shall provide to the Trust, and direct any broker or nominee through which the Beneficial Owner owns its Shares to provide to the Trust, such forms or other documentation as are necessary to establish an exemption from or reduction in withholding tax and backup withholding with respect to each Beneficial Owner, and any representations, forms and documents as shall reasonably be requested by the Trust to assist it in determining the extent of, and in fulfilling, its withholding and backup withholding tax obligations. The Trust shall file any required forms with applicable jurisdictions and, unless an exemption from withholding and backup withholding tax is properly established by a Beneficial Owner, shall remit amounts withheld with respect to the Beneficial Owner to the applicable tax authorities. To the extent that the Sponsor reasonably believes that the Trust is required to withhold and pay over any amounts (including taxes, interest, penalties, assessments or additions to tax) to any tax authority with respect to distributions or allocations to any Beneficial Owner, and the Trust does withhold such amounts, the amounts withheld shall be treated as a distribution of cash to the Beneficial Owner in the amount of the withholding and shall thereby reduce the amount of cash or other property otherwise distributable to such Beneficial Owner. If an amount required to be withheld is not withheld, the Trust may reduce subsequent distributions by the amount of such required withholding. The consent of the Beneficial Owners shall not be required for any such withholding. In the event of any claimed over-withholding, Beneficial Owners shall be limited to an action against the applicable jurisdiction.

(g) By its acceptance of a beneficial interest in a Share, a Beneficial Owner waives all confidentiality rights, including all confidentiality rights provided by Section 3406(f) of the Code and Treasury Regulations Section 31.3406(f)-1, with respect to any representations, forms, documents or information, and any information contained in such representations, forms or documents, that the Beneficial Owner provides, or has previously provided, to any broker or nominee through which it owns its Shares, to the extent such representations, forms, documents or information may be necessary to (i) assist the Trust in complying with its withholding tax and backup withholding tax obligations pursuant to Section 4.10(f) of this Agreement or (ii) enable the Trust to comply with its U.S. federal income tax reporting obligations, or to allow the Trust to make the basis adjustments under Section 754 of the Code with respect to such Share, pursuant to Section 4.10(d) of this Agreement. Furthermore, the parties hereto and, by its acceptance of a beneficial interest in a Share, a Beneficial Owner, acknowledge and agree that any broker or nominee through which a Beneficial Owner holds its Shares shall be a third party beneficiary to this Agreement for the purposes set forth in Sections 4.10(b), 4.10(f) and 4.10(g).

(h) The Partnership Representative shall exercise any authority permitted the Partnership Representative under the Code and Treasury Regulations, and take whatever steps the Partnership Representative, in its reasonable discretion, deems necessary or desirable to perfect such designation, including (i) filing any forms and documents with the Internal Revenue Service, and (ii) taking such other action as may from time to time be required under the Code or Treasury Regulations.

## ARTICLE V

### THE DELAWARE TRUSTEE AND THE SPONSOR

#### Section 5.1 Management of the Trust.

(a) Except as otherwise expressly provided in this Agreement, the Trust's business shall be conducted by the Sponsor in accordance with this Agreement and by each Service Provider in accordance with the agreements governing the appointment of such Service Provider. Except as otherwise provided in this Agreement, each Service Provider shall have the power on behalf of and in the name of the Trust to carry out any and all of the objects and purposes of the Trust and to perform such acts and enter into and perform such contracts and other undertakings on behalf of the Trust, in each case, as are set forth in the agreements governing the appointment of such Service Provider.

(b) The Administrator and the Transfer Agent shall maintain all books, records and supporting documents that are necessary to comply with any and all aspects of its duties under this Agreement, which, to the extent that they relate to the registration of Shares or the registration of transfers of Shares, shall, at all reasonable times, be available for inspection by the Registered Owners.

#### Section 5.2 Maintenance of Office and Transfer Books by the Transfer Agent.

(a) Until termination of this Agreement in accordance with its terms, the Transfer Agent shall maintain facilities for the execution and Delivery, registration, registration of transfers and Surrender of Shares in accordance with the provisions of this Agreement.

(b) The Transfer Agent shall keep books for the registration of Shares and registration of transfers of Shares.

(c) The Transfer Agent may, and at the reasonable written request of the Sponsor shall, close the transfer books at any time or from time to time if such action is deemed to be necessary or advisable in the reasonable judgment of the Transfer Agent or the Sponsor.

(d) If any Shares are listed on one or more stock exchanges in the United States, the Transfer Agent shall act as Registrar or, with the written approval of the Sponsor (which approval shall not be unreasonably withheld), appoint a registrar or one or more co-registrars for registry of such Shares in accordance with any requirements of such exchange or exchanges.

Section 5.3 Authority of the Sponsor. The Sponsor is hereby granted the exclusive authority, and shall initially appoint the Administrator, the Transfer Agent, the Custodians, and the other Service Providers, to manage the Trust in accordance with their respective governing agreements. The Sponsor shall have the exclusive authority to direct the Service Providers in the performance of their respective obligations under this Agreement and their respective governing agreements. Without limiting the foregoing, the Sponsor shall have the authority to execute and deliver this Agreement and to enter into and perform such contracts and other undertakings on behalf of the Trust and any amendment thereto, as the Sponsor may deem necessary or advisable, and the Trust is hereby authorized and shall have the power and authority to enter into such agreements and perform its obligations thereunder.

Section 5.4 Prevention or Delay in Performance by the Sponsor or the Delaware Trustee. Neither the Sponsor nor the Delaware Trustee, any of their respective directors, employees, agents or affiliates shall incur any liability to any Registered Owner, Beneficial Owner, or Authorized Participant if, by reason of any provision of any present or future law or regulation of the United States or any other country, or of any governmental or regulatory authority or stock exchange, or by reason of any act of God, war, terrorism, pandemics or government responses thereto, or other circumstances beyond its control, the Sponsor or the Delaware Trustee is prevented or forbidden from, or would be subject to any civil or criminal penalty on account of, or is delayed in, doing or performing any act or thing that, by the terms of this Agreement, it is provided shall be done or performed, and, accordingly, the Sponsor or the Delaware Trustee does not do that thing or does that thing at a later time than would otherwise be required. Neither the Delaware Trustee nor the Sponsor will incur any liability to any Registered Owner or Beneficial Owner, or Authorized Participant by reason of any non-performance or delay in the performance of any act or thing that, by the terms of this Agreement, it is provided may be done or performed, or by reason of any exercise of, or failure to exercise, any discretion provided for in this Agreement.

Section 5.5 Liability of Covered Persons.

(a) The Delaware Trustee shall not be liable for the acts or omissions of the Sponsor, any Service Provider (other than the Delaware Trustee) or any other Person, nor shall the Delaware Trustee be liable for supervising or monitoring the performance and the duties and obligations of the Sponsor, any Service Provider (other than the Delaware Trustee) or any other Person, or the Trust under this Agreement. The Delaware Trustee shall not be personally liable under any circumstances, except for its own willful misconduct, bad faith or gross negligence. In particular, but not by way of limitation:

(i) the Delaware Trustee shall not be personally liable for any error of judgment made in good faith, except to the extent such error of judgment constitutes gross negligence on its part;

(ii) no provision of this Agreement shall require the Delaware Trustee to expend or risk its personal funds or otherwise incur any financial liability in the performance of its rights or powers hereunder, if the Delaware Trustee shall have reasonable grounds for believing that the payment of such funds or adequate indemnity against such risk or liability is not reasonably assured or provided to it;

(iii) under no circumstances shall the Delaware Trustee be personally liable for any representation, warranty, covenant, agreement, or indebtedness of the Trust;

(iv) the Delaware Trustee shall not be personally responsible for or in respect of the validity or sufficiency of this Agreement or for the due execution hereof by the Sponsor;

(v) the Delaware Trustee shall incur no liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper reasonably believed by it to be genuine and reasonably believed by it to be signed by the proper party or parties and need not investigate or verify any information contained therein. The Delaware 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 manner of ascertainment of which is not specifically prescribed herein, the Delaware Trustee may for all purposes hereof rely on a certificate, signed by the Sponsor, as to such fact or matter, and such certificate shall constitute full protection to the Delaware Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon;

(vi) in the exercise or administration of the trust hereunder, the Delaware Trustee (a) may act directly or through agents or attorneys pursuant to agreements entered into with any of them at the expense of the Trust, and the Delaware Trustee shall not be liable for the default or misconduct of such agents or attorneys if such agents or attorneys shall have been selected by the Delaware Trustee in good faith and with due care and (b) may consult with counsel, accountants and other skilled persons at the expense of the Trust, to be selected by it in good faith and with due care and employed by it, and it shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion of any such counsel, accountants or other skilled persons;

(vii) except as expressly provided in this Section 5.5(a), in accepting and performing the trust hereby created the Delaware Trustee acts solely as Delaware Trustee hereunder and not in its individual capacity, and all persons having any claim against the Delaware Trustee by reason of the transactions contemplated by this Agreement shall look only to the Trust's property for payment or satisfaction thereof;



(viii) the Delaware Trustee shall not be liable for punitive, indirect, exemplary, consequential, special or other similar damages (including without limitation lost profits) for a breach of this Agreement under any circumstances;

(ix) the Delaware Trustee shall not be obligated to give any bond or other security for the performance of any of its duties hereunder; and

(x) The Delaware Trustee shall not be required to take any action hereunder or under any document if the Delaware Trustee shall have reasonably determined, or shall have been advised by counsel, that such action is likely to result in liability on the part of the Delaware Trustee or is contrary to the terms hereof or is otherwise contrary to law.

(b) The Sponsor and its Affiliates shall have no liability to the Trust or to any Registered Owner, Beneficial Owner, Authorized Participant or to any other Covered Person for any loss suffered by the Trust that arises out of any action or inaction or errors in judgment of the Sponsor or its Affiliates if such Covered Person acted in good faith and such course of conduct did not constitute willful misconduct, bad faith or gross negligence of such Covered Person in the performance of the Covered Person's duties. Subject to the foregoing, neither the Sponsor nor any of its Affiliates shall be personally liable for the return or repayment of all or any portion of the capital or profits of any Registered Owner, Beneficial Owner, Authorized Participant or assignee thereof, it being expressly agreed that any such return of capital or profits made pursuant to this Agreement shall be made solely from the assets of the Trust without any rights of contribution from any of the Sponsor or its Affiliates.

Section 5.6 Duties.

(a) The parties hereto agree to perform their duties under this Agreement in good faith upon the express terms of this Agreement. The parties hereto shall not have any implied duties (including fiduciary duties) or liabilities otherwise existing at law or in equity with respect to the Trust or any other Person. To the extent that, at law or in equity, the Sponsor has duties and liabilities relating thereto to the Trust, the Registered Owners, the Beneficial Owners, the Authorized Participants, or any other Person, the Sponsor acting under this Agreement shall not be liable to the Trust, the Registered Owners, the Beneficial Owners, the Authorized Participants, or any other Person for its good faith reliance on the provisions of this Agreement subject to the standard of care in Section 5.5. The provisions of this 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. For the avoidance of doubt, no Person other than the parties hereto shall have any duties or obligations hereunder to the Trust, any Registered Owner, any Beneficial Owner, or the Authorized Participants.

(b) Unless otherwise expressly provided herein:

(i) whenever a conflict of interest exists or arises between the Sponsor or any of their respective Affiliates, on the one hand, and the Trust or any Registered Owner, Beneficial Owner, Authorized Participant, or other Person, on the other hand; or

(ii) whenever this 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 Registered Owner, Beneficial Owner, Authorized Participant, or 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 the Sponsor shall not constitute a breach of this Agreement or any other agreement contemplated herein or of any duty or obligation of the Sponsor at law or in equity or otherwise.

(c) Notwithstanding any other provision of this Agreement or of applicable law, whenever in this Agreement Sponsor is permitted or required to make a decision:

(i) in its “discretion” or under a grant of similar authority, the Sponsor shall be entitled to consider such interests and factors as it desires, including its own interests, and, to the fullest extent permitted by applicable law, shall have no duty or obligation to give any consideration to any interest of or factors affecting the Trust, any Registered Owner, any Beneficial Owner, any Authorized Participant, or any other Person; or

(ii) in its “good faith” or under another express standard, the Sponsor 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 Agreement shall mean subjective good faith as such term is understood and interpreted under Delaware law.

(d) The Sponsor and any of its Affiliates 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 or its Affiliates. 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 Registered Owners, the Beneficial Owners, or the Authorized Participants 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 Registered Owner, Beneficial Owner, or Authorized Participant shall have any rights or obligations by virtue of this 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 activities of the Trust, shall not be deemed to be 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 Registered Owners, the Beneficial Owners, the Authorized Participants, or any Affiliate of the Trust or the Beneficial Owners.

Section 5.7 Obligations of the Sponsor.

(a) The Sponsor does not assume any obligation nor shall it be subject to any liability under this Agreement to any Registered Owner or Beneficial Owner, or Authorized Participant (including liability with respect to the worth of the Trust Property), except that each of them agrees to perform its obligations specifically set forth in this Agreement without gross negligence, bad faith or willful misconduct.

(b) The Sponsor shall not be under any obligation to prosecute any action, suit or other proceeding in respect of any Trust Property or in respect of the Shares on behalf of a Registered Owner, Beneficial Owner, Authorized Participant or other Person.

(c) The Sponsor shall not be liable for any action or non-action by it in reliance upon the advice of or information from legal counsel, accountants, any Authorized Participant, any Registered Owner or any other person believed by it in good faith to be competent to give such advice or information.

(d) The Sponsor shall have no obligation to comply with any direction or instruction from any Registered Owner or Beneficial Owner, or Authorized Participant regarding Shares except to the extent specifically provided in this Agreement.

Section 5.8 Delegation of Obligations of the Sponsor. The Sponsor may, and is hereby authorized to, at any time delegate all or a portion of its duties and obligations under this Agreement to another entity, including the Administrator, the Transfer Agent, the Representative, a Custodian or another Service Provider, as applicable, without the consent of any Registered Owner or any Beneficial Owner; provided, that any such delegees shall be appointed with reasonable care. The Sponsor shall not be liable for the conduct or misconduct of, any delegee selected by the Sponsor with reasonable care. The Sponsor may terminate any such delegee at any time and is not required to appoint a replacement therefor. For the avoidance of doubt, no Service Provider is a party to this Agreement. To the extent any contract to which a Service Provider is a party specifically references this Agreement (including any such reference to this Agreement in the Offering Documents) for a description of actions or services to be performed by that Service Provider under that contract, the performance of those actions or provision of those services shall be governed by that contract.

Section 5.9 Appointment of Successor Sponsor or Sponsors.

(a) Registered Owners, other than the Sponsor and its Affiliates, holding at least fifty-one percent (51%) of the outstanding Shares of the Trust (not including the Sponsor and its Affiliates) may agree in writing to appoint one or more successor sponsors if: (i) there is an admission of bankruptcy by the Sponsor or a court of competent jurisdiction has determined the Sponsor to be bankrupt or insolvent, or (ii) the Sponsor has identified a qualified successor sponsor and given notice of its voluntary withdrawal to each Registered Owner and the Delaware Trustee (each, a “**Withdrawal Event**”). The notice given by the Sponsor for a voluntary withdrawal must be given at least one hundred and twenty (120) days before the effective date of the withdrawal. The Sponsor may not withdraw unless the conditions in Section 5.9(a) and (b) are satisfied.

(b) Registered Owners, other than the Sponsor and its Affiliates, holding at least fifty-one percent (51%) of the outstanding Shares of the Trust (not including the Sponsor and its Affiliates) must agree in writing to appoint one or more successor sponsors within ninety (90) days of a Withdrawal Event.

(c) Notwithstanding Section 5.9(a), if the Sponsor is dissolved or has ceased to exist as a legal entity for any reason or is deemed to have resigned because (i) it fails to undertake or perform, or becomes incapable of undertaking or performing, any of the duties required by this Agreement, and such failure or incapacity is not cured, or (ii) the Sponsor is adjudged bankrupt or insolvent, or a receiver of the Sponsor or of its property is appointed, or a trustee or liquidator or any public officer takes charge or control of the Sponsor or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, then the Liquidating Trustee may, among other actions, terminate and liquidate the Trust.

(d) Any corporation into which the Sponsor may be merged, consolidated or converted in a transaction in which the Sponsor is not the surviving corporation shall be the successor of the Sponsor without the execution or filing of any document or any further act.

Section 5.10 Resignation or Removal of the Delaware Trustee; Appointment of Successor Delaware Trustee.

(a) The Delaware Trustee may at any time resign as the Delaware Trustee hereunder by written notice of its election so to do, delivered to the Sponsor, and such resignation shall take effect upon the appointment of a successor Delaware Trustee and its acceptance of such appointment as hereinafter provided.

(b) The Sponsor may remove the Delaware Trustee in its discretion by written notice delivered to the Delaware Trustee in the manner provided in Section 7.4 at any time. If at any time the Delaware Trustee is in material breach of its obligations under this Agreement and the Delaware Trustee fails to cure such breach within thirty (30) days after receipt by the Delaware Trustee of written notice from the Sponsor, or Registered Owners acting on behalf of at least twenty-five percent (25%) of the outstanding Shares, specifying such default and requiring the Delaware Trustee to cure such default, the Sponsor may remove the Delaware Trustee by written notice delivered to the Delaware Trustee in the manner provided in Section 7.4, and such removal shall take effect upon the appointment of a successor Delaware Trustee and its acceptance of such appointment as hereinafter provided.

(c) If the Delaware Trustee acting hereunder resigns or is removed, the Sponsor shall use its reasonable efforts to appoint a successor Delaware Trustee. Every successor Delaware Trustee shall execute and deliver to its predecessor and to the Sponsor an instrument in writing accepting its appointment hereunder, and thereupon such successor Delaware Trustee, without any further act or deed, shall become fully vested with all the rights, powers, duties and obligations of its predecessor; but such predecessor, nevertheless, upon payment of all sums due to it and on the written request of the Sponsor, shall execute and deliver an instrument transferring to such successor all rights and powers of such predecessor hereunder, shall duly assign, transfer and deliver all right, title and interest in the Trust Property to such successor and shall deliver to such successor a list of the Registered Owners of all outstanding Shares. Such successor Delaware Trustee shall promptly mail notice of the appointment of such successor Delaware Trustee to the Registered Owners.

(d) Any corporation into which the Delaware Trustee may be merged, consolidated or converted in a transaction in which the Delaware Trustee is not the surviving corporation shall be the successor of the Delaware Trustee without the execution or filing of any document or any further act. During the 90-day period following the effectiveness of a merger, consolidation or conversion described in the immediately preceding sentence, the Sponsor may, by written notice to the Delaware Trustee, remove the Delaware Trustee and designate a successor Delaware Trustee in compliance with the provisions of Section 5.10(c).

Section 5.11 Custodians. The Sponsor may at any time appoint one or more custodians (each, a “**Custodian**”) to hold assets of the Trust, without the consent of any Registered Owner and any Beneficial Owner. The Sponsor is further authorized to appoint any successor or replacement Custodian or terminate any previously appointed Custodian, in accordance with the terms of the applicable custodial or other agreements entered into by the Trust with such Custodian or Custodians.

Section 5.12 Indemnification.

(a) The Delaware Trustee or any officer, affiliate, director, employee, or agent of the Delaware Trustee (each, a “**Trustee Indemnified Person**”) shall be entitled to indemnification from the Trust, to the fullest extent permitted by law, from and against any and all losses, claims, taxes, damages, reasonable expenses, (including reasonable legal and consultants’ fees and expenses, including legal fees and expenses of counsel related to enforcement of its rights hereunder), unpaid fees and liabilities (including liabilities under state or federal securities laws) of any kind and nature whatsoever (collectively, “**Indemnified Amounts**”), to the extent that such Indemnified Amounts arise out of or are imposed upon or asserted against such Trustee Indemnified Persons with respect to the creation, operation or termination of the Trust, the execution, delivery or performance of this Agreement or the transactions contemplated hereby; provided, however, that the Trust shall not be required to indemnify any Trustee Indemnified Person for any Indemnified Amounts which are a result of the willful misconduct, bad faith or gross negligence of such Trustee Indemnified Person. To the extent that the Trust has not satisfied any indemnification obligation set forth in the foregoing sentence with respect to Indemnified Amounts of any Trustee Indemnified Person, by the thirtieth (30<sup>th</sup>) day following written demand therefor, the Sponsor shall indemnify and hold harmless such Trustee Indemnified Person from and against any and all Indemnified Amounts and shall pay on demand any such Indemnified Amounts which remain unpaid. The obligations of the Trust and the Sponsor to indemnify the Trustee Indemnified Persons as provided herein shall survive the termination of this Agreement and the resignation or removal of the Delaware Trustee.

(b) The Sponsor and its Affiliates, and their respective members, managers, directors, officers, employees, agents and Affiliates (each, a “**Sponsor Indemnified Party**”) shall be indemnified by the Trust and held harmless against any Indemnified Amounts arising out of or in connection with the performance of its obligations under this Agreement, any actions taken in accordance with the provisions of this Agreement and the performance of obligations under any other agreement entered into by the Sponsor in furtherance of the administration of the Trust; provided that any such Indemnified Amount was not the direct result of: (1) gross negligence, bad faith or willful misconduct on the part of such Sponsor Indemnified Party or (2) reckless disregard on the part of the Sponsor of its obligations and duties under this Agreement. Such indemnity shall include payment from the Trust of the costs and expenses incurred by such Sponsor Indemnified Party in defending itself against any claim or liability in its capacity as Sponsor and any amounts paid by the Sponsor to any Trustee Indemnified Person pursuant to Section 5.12(a). Any amounts payable to a Sponsor Indemnified Party under this Section 5.12(b) may be payable in advance or shall be secured by a lien on the Trust. The Sponsor may, in its discretion, undertake any action, that it may deem to be necessary or desirable in respect of this Agreement and the rights and duties of the parties hereto and the interests of the Registered Owners, including prosecuting, defending, settling or comprising actions or claims at law or in equity that it considers necessary or proper to protect the Trust or the interests of the Registered Owners, and, in such event, the legal expenses and costs of any such actions shall be expenses and costs of the Trust, and the Sponsor shall be entitled to be reimbursed therefor by the Trust.

(c) If an action, proceeding (including, but not limited to, any governmental investigation), claim or dispute (collectively, a “**Proceeding**”) in respect of which indemnity may be sought hereunder, the party seeking indemnification (the “**Indemnitor**”) shall promptly (and in no event more than seven (7) days after receipt of notice of such Proceeding) notify the party obligated to provide such indemnification (the “**Indemnitee**”) of such Proceeding. The failure of the Indemnitee to so notify the Indemnitor shall not impair the Indemnitee’s ability to seek indemnification from the Indemnitor unless such failure adversely affects the Indemnitor’s ability to adequately oppose or defend such Proceeding. Upon receipt of such notice from the Indemnitee, the Indemnitor shall be entitled to participate in such Proceeding and, to the extent that it shall so desire and provided no conflict of interest exists as specified in clause (i) below and there are no other defenses available to Indemnitee as specified in clause (iii) below, to assume the defense thereof with counsel reasonably satisfactory to the Indemnitor (in which case all attorney’s fees and expenses shall be borne by the Indemnitor, and the Indemnitor shall in good faith defend the Indemnitee). The Indemnitee shall have the right to employ separate counsel in any such Proceeding and to participate in the defense thereof, but, in such case, no fees and expenses of such counsel shall be borne by the Indemnitor unless such fees and expenses are otherwise required to be indemnified under Section 5.12(a) or (b), as applicable, and (i) there is such a conflict of interest between the Indemnitor and the Indemnitee as would preclude, in compliance with the ethical rules in effect in the jurisdiction in which the Proceeding was brought, one lawyer from representing both parties simultaneously, (ii) the Indemnitor fails, within the earlier of (x) twenty (20) days following receipt of notice of the Proceeding from the Indemnitee or (y) seven (7) days prior to the date the first response or appearance is required to be made in such Proceeding, to assume the defense of such Proceeding with counsel reasonably satisfactory to the Indemnitee or (iii) there are legal defenses available to Indemnitee that are different from or are in addition to those available to the Indemnitor. No compromise or settlement of such Proceeding may be effected by either party without the other party’s consent unless (m) there is no finding or admission of any violation of law and no effect on any other claims that may be made against such other party and (n) the sole relief provided is monetary damages that are paid in full by the party seeking the settlement. Neither party shall have any liability with respect to any compromise or settlement effected without its consent, which shall not be unreasonably withheld. The Indemnitor shall have no obligation to indemnify and hold harmless the Indemnitee from any loss, expense or liability incurred by the Indemnitee as a result of a default judgment entered against the Indemnitee unless such judgment was entered after the Indemnitor agreed, in writing, to assume the defense of such Proceeding.

Section 5.13 Reserved.

Section 5.14 Charges of the Sponsor.

(a) The Sponsor is entitled to receive from the Trust, as an expense of the Trust, a fee for services that will accrue daily and be paid monthly in arrears at an annualized rate of up to 0.65% of the Adjusted Net Asset Value of the Trust (the “**Sponsor’s Fee**”), which the Sponsor may adjust in its discretion and may further adjust above 0.65% in accordance with Section 6.1(a).

(b) The Sponsor is entitled to receive reimbursement from the Trust for all expenses and disbursements incurred by it under the last sentence of Section 5.12(b) or that are of the type described in paragraphs (ix), (x) or (xi) of Section 4.6(a) of this Agreement (including the fees and disbursements of legal counsel), except that the Sponsor is not entitled to charge the Trust for fees and expenses that the Sponsor is required to bear under Section 4.6(b) of this Agreement.

Section 5.15 Retention of Trust Documents. The Sponsor is authorized to destroy those documents, records, bills and other data compiled during the term of this Agreement at the times permitted by the laws or regulations governing the Sponsor.

Section 5.16 Federal Securities Law Filings. The Sponsor has prepared and filed a registration statement with the SEC and shall (i) take such action as is necessary to qualify the Shares for offering and sale under the federal securities laws of the United States, including the preparation and filing of amendments and supplements to such registration statement, and, if the Sponsor so determines, under the laws of any other relevant jurisdiction, and (ii) prepare, file and distribute, if applicable, any periodic reports or updates that may be required under the Exchange Act, or the rules and regulations thereunder.

Section 5.17 Prospectus Delivery. The Transfer Agent will comply with the requirements to provide copies of the current prospectus for the Trust to Authorized Participants as provided in the relevant Authorized Participant Agreements.

Section 5.18 Discretionary Actions by Sponsor; Consultation. The Sponsor may (without obligation) undertake any action that it deems to be necessary or desirable to protect the Trust or the interests of the Registered Owners.

Section 5.19 Delaware Trustee.

(a) The Delaware Trustee shall be a legal entity that has its principal place of business in the State of Delaware, otherwise meets the requirements of applicable Delaware law and shall act through one or more persons authorized to bind such entity. If at any time the Delaware Trustee shall cease to be eligible in accordance with the provisions of this Section 5.19, it shall resign immediately in the manner and with the effect hereinafter specified in this Section 5.19. The initial Delaware Trustee shall be Delaware Trust Company.

(b) The Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities, of the Sponsor, any Service Provider (other than the Delaware Trustee) or any other Person that are set forth herein. The Delaware Trustee shall be one of the trustees of the Trust for the sole and limited purpose of fulfilling the requirements of Section 3807 of the Act and for taking such actions as are required to be taken by a Delaware trustee under the Act. Subject to the foregoing, the duties, liabilities and obligations of the Delaware Trustee shall be limited to (i) accepting legal process served on the Trust in the State of Delaware, (ii) executing any certificates required to be filed with the Delaware Secretary of State that the Delaware Trustee is required to execute under Section 3811 of the Act, and (iii) such other actions, pursuant to direction, as may be agreed upon between the Sponsor and the Delaware Trustee from time to time, provided that the Delaware Trustee shall have no obligation to perform any such additional actions, shall not be liable for the decision not to perform any such additional actions and reserves the right to charge additional fees for any such additional actions. Other than the foregoing, the Delaware Trustee shall have no other duties (including fiduciary duties) or obligations, express or implied, at law or in equity.

(c) The Delaware Trustee shall serve until such time as the Sponsor removes the Delaware Trustee or the Delaware Trustee resigns and a successor Delaware Trustee is appointed by the Sponsor in accordance with the terms of this Section 5.19. The Delaware Trustee may resign at any time upon the giving of at least sixty (60) days' advance written notice to the Sponsor; *provided*, that such resignation shall not become effective unless and until a successor Delaware Trustee shall have been appointed by the Sponsor in accordance with Section 5.19. If the Sponsor does not act within such sixty (60) day period, the Delaware Trustee may apply to any court of competent jurisdiction for the appointment of a successor Delaware Trustee at the expense of the Trust.

(d) Upon the resignation or removal of the Delaware Trustee, the Sponsor shall appoint a successor Delaware Trustee. Any successor Delaware Trustee must satisfy the requirements of Section 3807 of the Act. Any resignation or removal of the Delaware Trustee and appointment of a successor Delaware Trustee shall not become effective until a written acceptance of appointment is delivered by the successor Delaware Trustee to the outgoing Delaware Trustee and the Sponsor and any fees and expenses due to the outgoing Delaware Trustee are paid. Following compliance with the preceding sentence, the successor Delaware Trustee (i) shall file an amendment to the Certificate of Trust reflecting the change of Delaware Trustee and (ii) shall become fully vested with all of the rights, powers, duties and obligations of the outgoing Delaware Trustee under this Agreement, with like effect as if originally named as Delaware Trustee, and the outgoing Delaware Trustee shall be discharged of its duties and obligations under this Agreement. Any business entity into which the Delaware 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 Delaware Trustee shall be a party, or any entity succeeding to all or substantially all of the corporate trust business of the Delaware Trustee, shall be the successor of the Delaware Trustee hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto except as may be required by law.



Section 5.20 Compensation and Expenses of the Delaware Trustee. The Delaware Trustee (or any successor Delaware Trustee) shall be entitled to receive compensation from the Trust for its services in accordance with such schedules as shall have been separately agreed to from time to time by the Delaware Trustee and the Trust. The Delaware Trustee may consult with counsel (who may be counsel for the Sponsor or for the Delaware Trustee). The reasonable legal fees incurred in connection with such consultation shall be reimbursed to the Delaware Trustee pursuant to this Section, provided that no such fees shall be payable to the extent that they are incurred as a result of the Delaware Trustee's gross negligence, bad faith or willful misconduct.

## ARTICLE VI

### AMENDMENT AND TERMINATION

#### Section 6.1 Amendment.

(a) Except as provided below, the Sponsor may amend any provision of this Agreement without the consent of any Registered Owner or Beneficial Owner. Any amendment that imposes or increases any fees or charges (other than the Sponsor's Fee, to the extent it does not exceed 0.65% of the Adjusted Net Asset Value, and other than taxes and other governmental charges) or prejudices a substantial existing right of the Registered Owners will not become effective until thirty (30) days after notice of such amendment is given by the Sponsor or its designee to the Registered Owners. Every Registered Owner and Beneficial Owner, at the time any such amendment becomes effective, shall be deemed, by continuing to hold any Shares or an interest therein, to consent and agree to such amendment and to be bound by this Agreement as amended thereby. In no event shall any amendment impair the right of a Registered Owner to Surrender Baskets and receive therefor the amount of Trust Property represented thereby, except in order to comply with mandatory provisions of applicable law. Notwithstanding any other provision of this Agreement, no amendment to this Agreement may be made if, as a result of such amendment, it would adversely affect the status of the Trust as a partnership for United States federal income tax purposes.

(b) No amendment shall be made to this Agreement without the consent of the Delaware Trustee (which may be granted or withheld in the Delaware Trustee's discretion) if such amendment affects any of its rights, duties or liabilities.

(c) Registered Owners holding at least fifty-one percent (51%) of the outstanding Shares of the Trust must consent, in the manner provided for in Section 6.1(e) below, to material changes to the Trust's investment objective specified in Section 2.1(c). For the avoidance of doubt, for purposes of this Section 6.1(a), any change to the Index methodology or other governing document relating to the administration, valuation or calculation of the Index shall not be considered a material change.

(d) The appointment of a successor sponsor or sponsors under Section 5.9 or a Liquidating Trustee pursuant to Section 6.2(c) shall be deemed to amend this Agreement to refer to such successor sponsor(s) or Liquidating Trustee, as applicable, in place of the Sponsor to the extent such sponsor(s) or the Liquidating Trustee succeeds to the rights, duties or liabilities of the Sponsor.

(e) Any action required or permitted to be taken by Registered Owners by vote or consent may be taken without a meeting by written consent setting forth the actions so taken. Such written consents shall be treated for all purposes to have the same validity 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 Agreement, is solicited by the Sponsor, the solicitation shall be effected by notice to each Shareholder given in the manner provided in Section 7.4(c). 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 7.4(c) below and actually received by the Trust within twenty (20) days after the notice of solicitation is effected. The Sponsor and all 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 Registered Owners shall not be void or voidable by reason of timely communication made by or on behalf of all or any of such Registered Owners in any manner other than as expressly provided in Section 7.4(c).

Section 6.2 Termination.

(a) The term for which the Trust will exist commenced on the date of the filing of the Certificate of Trust and shall continue until terminated pursuant to the provisions hereof. If the Sponsor determines in its sole discretion to dissolve the Trust, the Sponsor shall set a date on which the Trust shall dissolve and mail notice of that dissolution to the Registered Owners at least thirty (30) days prior to the date set for dissolution. In addition, the Sponsor shall set a date on which the Trust shall dissolve and mail notice of that dissolution to the Registered Owners at least thirty (30) days prior to the date set for dissolution if any of the following occurs:

(i) upon a Withdrawal Event, unless within ninety (90) days of such Withdrawal Event, Registered Owners holding at least fifty-one percent (51%) of the outstanding Shares of the Trust as of the Record Date (not including Shares held by the Sponsor or its affiliates) agree in writing to continue the Trust and to select, effective as of the date of such Withdrawal Event, one or more successor sponsors;

- (ii) Shares are delisted from the Exchange and are not approved for listing on another national securities exchange within five (5) Business Days of their delisting;
- (iii) the Trust becomes insolvent or bankrupt;
- (iv) all of the Trust's assets are sold;
- (v) the SEC determines that the Trust is an investment company under the Investment Company Act of 1940, as amended, and the Sponsor made the determination that dissolution of the Trust is advisable;
- (vi) sixty (60) days have elapsed since DTC or another depository has ceased to act as depository with respect to the Shares, and the Sponsor has not identified another depository that is willing to act in such capacity; or
- (vii) after any Service Provider resigns or otherwise ceases to act in such capacity with respect to the Trust, and no replacement Service Provider is engaged, the Sponsor makes a determination that dissolution of the Trust is advisable.

(b) On and after the dissolution of the Trust, the Sponsor shall, in accordance with Section 3808(e) of the Act, wind up the business and affairs of the Trust. Subject to the payment or the reasonable provision of such payment by the Trust of the claims and obligations of the Trust as required by Section 3808(e) of the Act, the Registered Owners will be entitled to delivery of the amount of Trust Property represented by their Shares as hereinafter provided. The Sponsor shall not accept any Purchase Order or Redemption Order after the date of dissolution. If any Shares remain outstanding after the date of dissolution of the Trust, the Trust thereafter shall (i) discontinue the registration of transfers of Shares; (ii) continue to collect distributions pertaining to Trust Property and hold the proceeds thereof uninvested, without liability for interest; and (iii) pay pursuant to Section 3808(e) of the Act the Trust's expenses, and may sell Trust Property as necessary to meet those expenses. After the dissolution of the Trust, the Representative shall sell or otherwise liquidate the Trust Property then held under this Agreement and, after complying with Section 3808(e) of the Act and deducting any fees, expenses, taxes or other governmental charges payable by the Trust and any expenses for the account of the Registered Owner of such Shares in accordance with the terms and conditions of this Agreement and any applicable taxes or other governmental charges, the Transfer Agent shall promptly distribute the net proceeds from such sale to the Registered Owners. After making such distribution, the Trust and this Agreement shall terminate and the Sponsor shall direct the Delaware Trustee to execute and cause a certificate of cancellation of the Certificate of Trust to be filed in accordance with the Act at the expense of the Trust. After making such filing and termination of this Agreement, the Sponsor and the Delaware Trustee shall be discharged from all obligations under this Agreement except for the Sponsor's obligations that expressly survive termination of the Agreement.

(c) Upon the occurrence of an event listed in Section 6.2(a), the Trust shall liquidate under the direction of such person as the Registered Owners holding at least fifty-one percent (51%) of the outstanding Shares of the Trust as of the Record Date (not including Shares held by the Sponsor or its Affiliates) may propose and approve (the "**Liquidating Trustee**"). Any Liquidating Trustee that is appointed will have the same powers and limitations as applicable to the Sponsor, and the Liquidating Trustee will have the same limitations on liability and entitlement to indemnification as the Sponsor that are contained in Section 5.5(b) and Section 5.12 hereof. Upon termination of the Trust, following completion of winding up of its business, the Liquidating Trustee shall direct the Delaware Trustee to execute and file a certificate of cancellation of the Trust's Certificate of Trust to be filed in accordance with applicable Delaware law at the expense of the Trust. After making such filing and termination of this Agreement, the Liquidating Trustee shall be discharged from all obligations under this Agreement except for its obligations that expressly survive termination of the Agreement.

(d) 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 estate, custodian or personal representative shall have no right to withdraw or value such Shareholder's Shares. Each Shareholder (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.

(e) In respect of termination events that rely on the Sponsor's determinations to terminate the Trust, the Sponsor may make any such determination in its sole discretion. To the extent that the Sponsor determines to continue operation of the Trust following a determination of a termination event, the Trust may be required to alter its operations to comply with the termination event. In such case, the Sponsor shall not be liable for its determination of whether to continue or to terminate the Trust.

## ARTICLE VII

### MISCELLANEOUS

Section 7.1 Counterparts. This Agreement may be executed in any number of counterparts, each of which is deemed to be an original and all of such counterparts constitute one and the same agreement. Copies of this Agreement are filed with the Delaware Trustee and are open to inspection upon reasonable notice by any Registered Owner during the Delaware Trustee's business hours.

Section 7.2 Derivative Actions; Third-Party Beneficiaries.

(a) Derivative Actions. No Registered Owner 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 Registered Owners who (i) are not affiliates of one another and (ii) collectively hold at least 25% of outstanding Shares join in the bringing or maintaining of such action, suit or other proceeding. The foregoing limitation shall not apply to any derivative action, suit or other proceeding brought on behalf of the Trust for claims under the federal securities laws and the rules and regulations thereunder.

(b) Third-Party Beneficiaries. Subject to Section 5.8, this Agreement is for the exclusive benefit of the parties hereto and the Covered Persons and other indemnified parties referred to in Section 5.12, and the Registered Owners, Beneficial Owners and Authorized Participants from time to time, and shall not be deemed to give any legal or equitable right, remedy or claim whatsoever to any other Person.

Section 7.3 Severability. In case any one or more of the provisions contained in this Agreement are or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Agreement shall in no way be affected, prejudiced or disturbed thereby.

Section 7.4 Notices.

(a) All notices given under this Agreement must be in writing.

(b) Any notice to be given to the Sponsor or the Delaware Trustee shall be deemed to have been duly given (i) when it is actually delivered by a messenger or a recognized courier service, (ii) five (5) days after it is mailed by registered or certified mail, postage paid or (iii) when receipt of an electronic mail is acknowledged via a return receipt or receipt confirmation as requested by the original transmission, in each case to or at the address or email address set forth below:

To the Sponsor:

Wilshire Phoenix Funds LLC  
2 Park Avenue, 20th Floor  
New York, New York 10016  
Attention: William Cai, Partner  
Email: funds@wilshirephoenix.com

To the Delaware Trustee:

Delaware Trust Company  
251 Little Falls Drive  
Wilmington DE 19808  
Attention: Corporate Trust Administration  
Email: trust@delawaretrust.com

(c) Any notice to be given to a Registered Owner shall be deemed to have been duly given (i) when actually delivered by messenger or a recognized courier service, (ii) when mailed, postage prepaid or (iii) when sent by electronic mail or facsimile transmission confirmed by letter, in each case at or to the address of such Registered Owner as it appears on the transfer books of the Transfer Agent, or, if such Registered Owner shall have filed with the Transfer Agent a written request that any notice or communication intended for such Registered Owner be delivered to some other address, at the address designated in such request.

Section 7.5 Governing Law; Consent to Jurisdiction.

(a) This Agreement is governed by and is to be construed in accordance with the laws of the State of Delaware.

(b) The parties hereto hereby (i) irrevocably submit to the exclusive jurisdiction of any Delaware state court or federal court sitting in Wilmington, Delaware in any action arising out of or relating to this Agreement and (ii) consent to the service of process by mail. Nothing herein shall affect the right of any party to serve legal process in any manner permitted by law or affect its right to bring any action in any other court. Each party agrees that, in the event that any dispute arising from or relating to this Agreement becomes subject to any judicial proceeding, such party waives any right that it may otherwise have to (x) seek punitive or consequential damages or (y) request a trial by jury.

Section 7.6 Headings. The titles of the Articles and the headings of the Sections of this Agreement are for convenience of reference only and are not to be considered in construing the terms and provisions of this Agreement.

Section 7.7 Binding Effect; Entire Agreement. Except as otherwise provided in this Agreement, every covenant, term and provision of this Agreement is binding upon and inures to the benefit of the parties hereto and their respective personal representatives, successors and permitted assigns. This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether written or oral, relating to such subject matter in any way.

Section 7.8 Provisions in Conflict With Law or Regulations. The provisions of this Agreement are severable, and if the Sponsor determines, with the advice of counsel, that any one or more of such provisions (the "Conflicting Provisions") are in conflict with the Code, the Act or other applicable U.S. federal or state laws, the Conflicting Provisions shall be deemed never to have constituted a part of this Agreement, even without any amendment of this Agreement pursuant to this Agreement; *provided, however*, that such determination by the Sponsor shall not affect or impair any of the remaining provisions of this Agreement or render invalid or improper any action taken or omitted prior to such determination. The Sponsor shall not be liable for making or failing to make such a determination.

Section 7.9 Conditions to Effectiveness of Amendments. The amendments to the Existing Trust Agreement set forth herein shall become effective upon execution by the Sponsor and the Delaware Trustee.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have duly executed this Amended and Restated Trust Agreement as of the day and year first set forth above.

**WILSHIRE PHOENIX FUNDS LLC,**  
as Sponsor

By: /s/ William Cai  
Name: William Cai

Title: Partner

**DELAWARE TRUST COMPANY,**  
as Delaware Trustee

By: /s/ Alan Halpern  
Name: Alan Halpern  
Title: Vice President

Signature Page to Amended and Restated Trust Agreement of  
Wilshire wShares Enhanced Gold Trust

**EXHIBIT A**

**CERTIFICATE OF TRUST**  
**OF**  
**UNITED STATES GOLD AND TREASURY INVESTMENT TRUST**

THIS Certificate of Trust of United States Gold and Treasury 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 by this Certificate of Trust is United States Gold and Treasury Investment Trust.
2. Delaware Trustee. The name and address of the trustee of the Trust with a principal place of business in the State of Delaware are Delaware Trust Company, 251 Little Falls Drive, Wilmington DE 19808, Attention: Corporate Trust Administration.
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 Delaware Trustee of the Trust

By: /s/ Alan R. Halpern  
Name: Alan R. Halpern  
Title: Vice Present



**CERTIFICATE OF AMENDMENT TO CERTIFICATE OF TRUST**  
**OF**  
**UNITED STATES GOLD AND TREASURY INVESTMENT TRUST**

THIS Certificate of Amendment to the Certificate of Trust of United States Gold and Treasury Investment Trust (the "Trust") is being duly executed and filed on behalf of the Trust by the undersigned, as trustee, to amend the certificate of trust of a statutory trust formed under the Delaware Statutory Trust Act (12 Del. C. § 3801 et seq.) (the "Act") pursuant to § 3810(b) of the Act.

1. Name. The name of the statutory trust amended hereby is United States Gold and Treasury Investment Trust.
2. Amendment to Certificate of Trust. The Trust's Certificate of Trust is hereby amended by changing the name of the Trust to Wilshire wShares Enhanced Gold Trust.
3. Effective Date. This Certificate of Amendment shall be effective upon filing.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment on the 24<sup>th</sup> day of August, 2020.

DELAWARE TRUST COMPANY, not in its individual capacity  
but solely as Delaware Trustee of the Trust

By: /s/ James L. Grier  
Name: James L. Grier  
Title: Assistant Vice President

ANNEX I

CAPITAL ACCOUNTS, DISTRIBUTIONS AND ALLOCATIONS

Section 1. Capital Accounts.

(a) The Trust shall establish and maintain a separate account (the "Capital Account") for each Beneficial Owner's<sup>1</sup> Shares in accordance with the following provisions (references to Sections in this Annex I will be to Sections in this Annex I unless otherwise stated and references to Sections of the Agreement will be indicated as such):

(i) Initial Contribution. A Beneficial Owner's "Initial Contribution" will be equal to the amount of cash contributed to the Trust by the Beneficial Owner or its agent on the first issuance of Shares to the Beneficial Owner or its agent as described in Article II.

(ii) Initial Capital Account. The initial balance of the Capital Account of each Beneficial Owner shall be such Beneficial Owner's Initial Contribution.

(iii) Adjustments to Capital Accounts.

(A) Each Beneficial Owner's Capital Account shall be increased by the amount of additional cash contributed to the Trust by such Beneficial Owner or its agent, and by any income or gain (including income and gain exempt from tax) computed in accordance with Section 1(b) and allocated to such Beneficial Owner pursuant to Section 2.

(B) Each Beneficial Owner's Capital Account shall be decreased by the amount of cash distributed to such Beneficial Owner or its agent pursuant to any provision of this Agreement, and by any expenses, deductions or losses computed in accordance with Section 1(b) and allocated to such Beneficial Owner pursuant to Section 2.

(iv) Contributions; Distributions; Redemptions. Each Beneficial Owner agrees that it (or its agent) will contribute property to the Trust only if such property has, to the best of that Beneficial Owner's knowledge after reasonable inquiry, a basis for tax purposes equal to the fair market value of such property, and acknowledges that the Trust will rely upon such fair market value basis for purposes of determining and allocating items of income, gain, loss, deduction, basis and other tax items. For this purpose, Section 7 shall apply to determine fair market value.

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<sup>1</sup> In this Annex I, all references to "Beneficial Owner" shall be deemed a reference to the broker or nominee through which such Beneficial Owner owns its Shares.

(b) For purposes of computing the amount of any item of income, gain, deduction, expense or loss to be reflected in a Beneficial Owner's Capital Account, the determination, recognition and classification of any such item shall be the same as its determination, recognition and classification for U.S. federal income tax purposes; *provided that*:

(i) Items described in Section 705(a)(2)(B) of the Code shall be treated as items of deduction. All fees and other expenses incurred by the Trust to promote the sale of (or to sell) a Share that can neither be deducted nor amortized under Section 709 of the Code shall, for purposes of Capital Account maintenance, be treated as an item described in Section 705(a)(2)(B) of the Code.

(ii) Except as otherwise provided in Treasury Regulations Section 1.704-1(b)(2)(iv)(m), the computation of all items of income, gain, loss and deduction shall be made without regard to any election under Section 754 of the Code.

(iii) In computing income, gain, deduction, expense or loss for Capital Account purposes, the amount of such item shall be determined taking into account the book value of the Trust's property, as adjusted pursuant to Section 1(d).

(c) In the event any Beneficial Owner's Shares are transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of such Beneficial Owner to the extent such Capital Account relates to the transferred Shares.

(d) Consistent with the provisions of Treasury Regulations Section 1.704-1(b)(2)(iv)(f), upon an issuance or redemption of Shares, in connection with the dissolution, liquidation or termination of the Trust, or otherwise as appropriate pursuant to generally accepted industry accounting practices, the Capital Accounts of all Beneficial Owners may, immediately prior to such issuance, redemption, dissolution, liquidation, termination, or otherwise, be adjusted (consistent with the provisions hereof) upwards or downwards to reflect any Unrealized Gain or Unrealized Loss attributable to Trust property, as if such Unrealized Gain or Unrealized Loss had been recognized upon an actual sale of such property, immediately prior to such issuance, redemption, dissolution, liquidation, termination, or otherwise, and had been allocated to the Beneficial Owners at such time pursuant to Section 2. Pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(g), appropriate adjustments shall be made to the book value of Trust property with Unrealized Gain or Unrealized Loss. Proper adjustment shall be made to the amount of any Capital Account adjustment under this Section 1(d) to take into account any prior Capital Account adjustment under this Section 1.

Section 2. Allocations for Capital Account Purposes.

(a) For purposes of maintaining Capital Accounts and in determining the rights of the Beneficial Owners among themselves, except as otherwise provided in this Section 2, each item of income, gain, loss, expense and deduction (computed in accordance with Section 1(b)) shall be allocated to the Beneficial Owners in accordance with their respective Percentage Interests.

(b) Pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(g), items of depreciation, depletion, amortization and gain or loss attributable to Adjusted Property that has a Book-Tax Disparity shall be allocated among the Beneficial Owners in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g)(3).

(c) If any Beneficial Owner unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) or 1.704-1(b)(2)(ii)(d)(6), then items of Trust income and gain (consisting of a pro rata portion of each item of Trust income, including gross income, and gain for such year) shall be specially allocated to such Beneficial Owner in an amount and manner sufficient to eliminate a deficit balance in its Capital Account (after decreasing such Beneficial Owner's Capital Account balance by the items described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6)) created by such adjustments, allocations or distributions as quickly as possible. This Section 2(c) is intended to constitute a "qualified income offset" within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(d).

Section 3. Allocations for Tax Purposes.

(a) For U.S. federal income tax purposes, except as otherwise provided in this Section 3, each item of income, gain, loss, deduction and credit of the Trust shall be allocated among the Beneficial Owners in accordance with their respective Percentage Interests.

(b) In an attempt to eliminate Book-Tax Disparities, items of income, gain, loss, or deduction shall be allocated for U.S. federal income tax purposes among the Beneficial Owners under the remedial allocation method of Treasury Regulations Section 1.704-3(d).

(c) If any Beneficial Owner unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) or 1.704-1(b)(2)(ii)(d)(6), then items of income and gain shall be specially allocated to such Beneficial Owner in an amount and manner consistent with the allocations of income and gain pursuant to Section 2(c).

(d) The provisions of this Annex 1 and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulations Section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such Regulations. The Sponsor shall be authorized to make appropriate amendments to the allocations of items pursuant to this Section 3 if necessary in order to comply with Section 704 of the Code or applicable Treasury Regulations promulgated thereunder.

Section 4. Tax Conventions.

(a) For purposes of Sections 1, 2 and 3, the Sponsor shall cause the Trust to adopt such conventions as may be necessary or appropriate in the Sponsor's reasonable discretion in order to comply with applicable law, including Section 706 of the Code and the Treasury Regulations or rulings promulgated thereunder, or to allocate items of the Trust's income, gain, loss, expenses, deductions and credits in a manner that reflects Beneficial Owner's Shares. The Sponsor may revise, alter or otherwise modify such conventions in accordance with the standard established in the prior sentence.

(b) Unless the Sponsor determines that another convention is necessary or appropriate in the Sponsor's reasonable discretion in order to comply with applicable law, or to allocate items of the Trust's income, gain, loss, expenses, deductions and credits in a manner that more accurately reflects Sponsor's Shares, the Trust shall use the monthly convention described in this Section 4(b).

(i) All issuances, redemptions and transfers of Shares or beneficial interests therein shall be deemed to take place at a price equal to the value of such Share or beneficial interest therein at the end of the Business Day during the month in which the issuance, redemption or transfer takes place on which the value of a Share is lowest (such price, the "single monthly price"). Accordingly, in determining Unrealized Gain or Unrealized Loss and in making the adjustments provided for by Section 1(d), the fair market value of all Trust property immediately prior to the issuance, redemption or transfer of Shares shall be deemed to be equal to the lowest value of such property (as determined under Section 7) during the month in which such Shares are issued or redeemed. In the event that the Trust makes an election under Section 754 of the Code, adjustments to be made under Sections 734(b) and 743(b) of the Code will be made using the same monthly convention, including by reference to the single monthly price.

(ii) All contributed property shall be deemed to be contributed at a price equal to the weighted average value of such property (as determined under Section 7) during the month in which such property is contributed. All purchases and sales of property, however, shall be treated as taking place at a price equal to the purchase or sales price of the property, respectively.

(iii) Each item of Trust income, gain, expense, loss, deduction and credit attributable to transferred Shares shall, for U.S. federal income tax purposes, be determined on a monthly basis and shall be allocated to the Beneficial Owners who own Shares as of the close of the last day of the month preceding the month in which the transfer occurs, *provided* that, for the initial period beginning on the date hereof and ending on the last day of the month following the month in which this Agreement becomes effective, such items shall be allocated to the Beneficial Owners who own the Shares as of the close of the last day of the month in which such items arose; and *provided further* that, unless the Sponsor determines that another method is necessary or appropriate in the Sponsor's reasonable discretion, gain or loss on a sale or other disposition of all or a substantial portion of the assets of the Trust (or, in the Sponsor's sole discretion, other sales or dispositions of assets if appropriate to more accurately allocate such gain and loss to Beneficial Owners in a manner that corresponds to their economic gain and loss) shall be allocated to the Beneficial Owners who own Shares as of the close of the day in which such gain or loss is recognized for U.S. federal income tax purposes.

(iv) All such allocations are intended to constitute a reasonable method of allocation in accordance with Treasury Regulations Section 1.706-1(c)(2)(ii) and to take into account a Beneficial Owner or Beneficial Owner's varying Shares during the taxable year of any issuance, redemption or transfer of Shares or beneficial interests therein. Any person who is the transferee of Shares shall be deemed to consent to the methods of determination and allocation set forth in this Section 4 as a condition of receiving such Shares.

Section 5. Shares as Personal Property. Each Beneficial Owner hereby agrees that its Shares shall for all purposes be personal property. The Trust shall be the sole owner of the property and rights conveyed to it. No Beneficial Owner has any interest in specific Trust property, including property conveyed to the Trust by a Beneficial Owner.

Section 6. Interest on Capital Contributions. No Beneficial Owner shall be entitled to any interest on its capital contribution.

Section 7. Valuation.

(a) Unless otherwise provided in this Agreement, the value, on any day, of Physical Gold, Cash Equivalents and any other property, other than cash, under this Agreement shall be determined as of 4:00 p.m. (New York City time) on that day, as follows:

(i) The Administrator will determine the LBMA Gold Price to be used to value the Trust's Physical Gold, and multiply the applicable LBMA Gold Price by the number of troy ounces of Physical Gold held by the Trust. The Administrator generally values the Physical Gold held by the Trust using that day's LBMA Gold Price PM. If there is no LBMA Gold Price PM on any day, the Administrator is authorized to use the LBMA Gold Price AM on that day. If no LBMA Gold Price is available on any day, the Administrator is authorized to value the Trust's gold based on the most recently announced LBMA Gold Price PM or LBMA Gold Price AM. If the Administrator determines that such price is inappropriate as a basis for the valuation of the Trust's Physical Gold, the Administrator shall value such Physical Gold as described in paragraph (ii) below.

(ii) The Administrator will value all other property at (A) its current market value, if quotations for such property are readily available or (B) its fair value, as reasonably determined by the Administrator, if no quotations for such property are readily available.

(b) The Administrator may (but is not required to) employ the services of, and rely upon the reports of, a recognized pricing service (including a pricing service that is an Affiliate of the Administrator). If the Administrator determines that the procedures in this Section 7 are an inappropriate basis for the valuation of the Trust's assets, it shall determine an alternative basis to be employed. The Administrator shall not be liable to any Person for any determination as to the alternative basis for evaluation; *provided* that such determination is made in good faith.

Section 8. Distributions.

(a) Distributions from the Trust upon the occurrence of a redemption or upon dissolution, liquidation or termination pursuant to Section 2.8 or Section 6.2 of the Agreement, will be in the form of Physical Gold, Cash Equivalents and/or cash as determined by such sections, as applicable; *provided* that, in the case of a distributions upon dissolution, liquidation or termination, amounts received by Beneficial Owners shall be in accordance with Capital Accounts as provided in Treasury Regulations Section 1.704-1(b)(2)(ii)(b).

(b) Notwithstanding any provision to the contrary contained in this Agreement, the Trust, and the Sponsor on behalf of the Trust, shall not be required to make a distribution with respect to Shares if such distribution would violate the Act or any other applicable law. A determination that a distribution is not prohibited under this Section 8 or the Act shall be made by the Sponsor and, to the fullest extent permitted by applicable law, may be based either on financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances or on a fair valuation or any other method that is reasonable under the circumstances. Unless otherwise agreed to by the Beneficial Owners, a Beneficial Owner shall be entitled only to the distributions expressly provided for in this Agreement.

(c) Notwithstanding anything to the contrary contained in this Agreement, the Beneficial Owners understand and acknowledge that a Beneficial Owner (or its agent) may be compelled to accept a distribution of any asset in kind from the Trust despite the fact that the percentage of the asset distributed to such Beneficial Owner (or its agent) exceeds the percentage of that asset which is equal to the percentage in which such Beneficial Owner shares in distributions from the Trust.

**Certification of Principal Executive Officer  
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, William Herrmann, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Wilshire wShares Enhanced Gold Trust (the "Trust" or "registrant");
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

By: /s/ William Herrmann\*  
William Herrmann\*\*  
Managing Partner  
(serving in the capacity of principal executive officer)

Date: May 17, 2021

\* The originally executed copy of this Certification will be maintained at the Sponsor's offices and will be made available for inspection upon request.

\*\* The registrant is a trust and the person is signing in his capacity as an officer of Wilshire Phoenix Funds, LLC, the Sponsor of the Registrant.



**Certification of Principal Financial Officer  
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, William Cai, certify that:

6. I have reviewed this Quarterly Report Form 10-Q of Wilshire wShares Enhanced Gold Trust (the "Trust" or "registrant");
7. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
8. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
9. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
10. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

By: /s/ William Cai\*  
William Cai\*\*  
Partner  
(serving in the capacity of principal financial and accounting officer and director)

Date: May 17, 2021

\* The originally executed copy of this Certification will be maintained at the Sponsor's offices and will be made available for inspection upon request.

\*\* The registrant is a trust and the person is signing in his capacity as an officer of Wilshire Phoenix Funds, LLC, the Sponsor of the Registrant.



**Certification of Principal Financial Officer  
Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with this Quarterly Report on Form 10-Q for the quarter ended March 31, 2021 (the "Report") of Wilshire wShares Enhanced Gold Trust (the "Registrant") as filed with the U.S. Securities and Exchange Commission on the date hereof, I, William Cai, the Principal Financial Officer of the Registrant, hereby certify, to the best of my knowledge, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

By:           /s/ William Cai\*  
          William Cai\*\*  
          Partner  
          (serving in the capacity of principal financial and accounting officer and  
          director)

Date: May 17, 2021

\* The originally executed copy of this Certification will be maintained at the Sponsor's offices and will be made available for inspection upon request.

\*\* The registrant is a trust and the person is signing in his capacity as an officer of Wilshire Phoenix Funds, LLC, the Sponsor of the Registrant.

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