

# ATANASKOVIC HARTNELL

LAWYERS

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27 April 2022

The Manager  
Company Announcements  
Australian Securities Exchange Limited  
20 Bridge Street  
SYDNEY NSW 2000

Dear Sir/Madam,

## **Notice of ceasing to be substantial holder (From 605)**

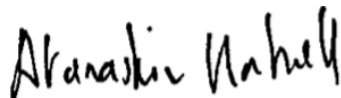
We attach a Notice of ceasing to be substantial holder (From 605) in relation to ordinary shares in TORO ENERGY LIMITED (ASX:TOE).

This notice is given by Exchange Traded Concepts Trust for North Shore Global Uranium Mining ETF, Exchange Traded Concepts LLC, Cottonwood ETF Holdings LLC, and Richard Hogan.

This letter together with the notice appended hereto has twenty-six (26) pages including this one.

Please contact Lawson Jepps of this office of 02 9224 7091 in case of problems with the transmission.

Yours faithfully,



ATANASKOVIC HARTNELL

## Form 605

Corporations Act 2001  
Section 671B

## Notice of ceasing to be substantial holder

To Company Name/Scheme

TORO ENERGY LIMITED (ASX: TOE)

ACN/ARSN

117 127 590

## 1. Details of substantial holders (1)

Names

EXCHANGE TRADED CONCEPTS TRUST for  
NORTH SHORE GLOBAL URANIUM MINING ETFEXCHANGE TRADED CONCEPTS, LLCCOTTONWOOD ETF HOLDINGS LLCRICHARD HOGAN

ACN/ARSN (if applicable)

Not applicable

The holders ceased to be substantial holders on

22 April 2022The previous notice was given to the company  
on8 April 2022

The previous notice was dated

6 April 2022

## 2. Changes in relevant interests

Particulars of each change in, or change in the nature of, a relevant interest (2) of the substantial holder or an associate (3) in voting securities of the company or scheme, since the substantial holder last gave a substantial holding notice to the company or scheme are as follows:

Date of change	Person whose relevant interest changed	Nature of change (4)	Consideration given in relation to change (5) A\$*	Class (6) and number of securities affected	Person's votes affected
06/04/22	EXCHANGE TRADED CONCEPTS TRUST for NORTH SHORE GLOBAL URANIUM MINING ETF/ COTTONWOOD ETF HOLDINGS LLC / RICHARD HOGAN	Acquisition	68,136	2,962,442 Ordinary Fully Paid Shares	EXCHANGE TRADED CONCEPTS TRUST for NORTH SHORE GLOBAL URANIUM MINING ETF
07/04/22	As above	As above	40,628	1,692,824 Ordinary Fully Paid Shares	As above
08/04/22	As above	As above	220,914	7,617,708 Ordinary Fully Paid Shares	As above
13/04/22	As above	As above	91,412	3,385,648 Ordinary Fully Paid Shares	As above

22/04/22	As above	Disposal	Shares in Sprott Uranium Miners ETF (SUME) for distribution to shareholders calculated in accordance with section 1 of Agreement and Plan of Reorganisation (Annexure 1) and assumption of liabilities by SUME	221,336,814 Ordinary Fully Paid Shares	As above
22/04/2022	EXCHANGE TRADED CONCEPTS, LLC	Relinquishment of interest pursuant to section 608(1)(b) and (c) of the Corporations Act upon change of investment adviser	Nil	221,336,814 Ordinary Fully Paid Shares	As above
22/04/22	COTTONWOOD ETF HOLDINGS LLC	As above	Nil	As above	As above
22/04/22	RICHARD HOGAN	As above	Nil	As above	As above

\*Persons from whom the relevant interest was acquired may have become entitled to receive units in the North Shore Global Uranium Mining ETF at prevailing subscription price by FOP (free of payment) Non-DVP delivery.

### 3. Changes in association

The persons who have become associates (3) of, ceased to be associates of, or have changed the nature of their association (7) with, the substantial holder in relation to voting interests in the company or scheme are as follows:

Name and ACN/ARSN (if applicable)	Nature of association
EXCHANGE TRADED CONCEPTS TRUST for NORTH SHORE GLOBAL URANIUM MINING ETF and EXCHANGE TRADED CONCEPTS, LLC	Ceased to be associates by virtue of no longer acting in concert for the purposes of Corporations Act s12(2)(c) by EXCHANGE TRADED CONCEPTS, LLC no longer acting as investment adviser
EXCHANGE TRADED CONCEPTS TRUST for NORTH SHORE GLOBAL URANIUM MINING ETF and COTTONWOOD ETF HOLDINGS LLC	Ceased to be associates by virtue of EXCHANGE TRADED CONCEPTS TRUST for NORTH SHORE GLOBAL URANIUM MINING ETF and EXCHANGE TRADED CONCEPTS, LLC no longer being associates

### 4. Addresses


The addresses of persons named in this form are as follows:

Name	Address
EXCHANGE TRADED CONCEPTS TRUST for NORTH SHORE GLOBAL URANIUM MINING ETF EXCHANGE TRADED CONCEPTS, LLC COTTONWOOD ETF HOLDINGS LLC RICHARD HOGAN	295 Madison Avenue 26 <sup>th</sup> Floor New York NY 10017 United States of America

Print Name: DENNIS LOWENFELS	Capacity: CHIEF COMPLIANCE OFFICER for EXCHANGE TRADED CONCEPTS, LLC
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Date: April 26, 2022

sign here



**ANNEXURE 1**

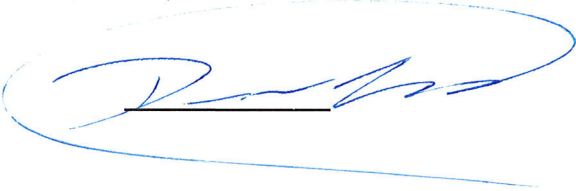
**TORO ENERGY LTD (ASX: TOE) ACN 117 127 590**

*This is Annexure 1 of 22 pages referred to in Form 605 – Notice of ceasing to be substantial holder*

This Annexure constitutes a true copy setting out the terms of the agreement and plan of reorganization constituting details of any and all benefits, money and other, that Exchange Traded Concepts Trust for North Shore Global Uranium Mining ETF has, or may, become entitled to receive in relation to the acquisition of its relevant interests in TOE.

DENNIS LOWENFELS Chief Compliance Officer EXCHANGE TRADED CONCEPTS TRUST for NORTH SHORE GLOBAL URANIUM MINING ETF.

26 April 2022



## DIRECTIONS

- (1) If there are a number of substantial holders with similar or related relevant interests (eg. a corporation and its related corporations, or the manager and trustee of an equity trust), the names could be included in an annexure to the form. If the relevant interests of a group of persons are essentially similar, they may be referred to throughout the form as a specifically named group if the membership of each group, with the names and addresses of members is clearly set out in paragraph 6 of the form.
- (2) See the definition of "relevant interest" in sections 608 and 671B(7) of the Corporations Act 2001.
- (3) See the definition of "associate" in section 9 of the Corporations Act 2001.
- (4) Include details of:
  - (a) any relevant agreement or other circumstances because of which the change in relevant interest occurred. If subsection 671B(4) applies, a copy of any document setting out the terms of any relevant agreement, and a statement by the person giving full and accurate details of any contract, scheme or arrangement, must accompany this form, together with a written statement certifying this contract, scheme or arrangement; and
  - (b) any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers or disposal of the securities to which the relevant interest relates (indicating clearly the particular securities to which the qualification applies).See the definition of "relevant agreement" in section 9 of the Corporations Act 2001.
- (5) Details of the consideration must include any and all benefits, money and other, that any person from whom a relevant interest was acquired has, or may, become entitled to receive in relation to that acquisition. Details must be included even if the benefit is conditional on the happening or not of a contingency. Details must be included of any benefit paid on behalf of the substantial holder or its associate in relation to the acquisitions, even if they are not paid directly to the person from whom the relevant interest was acquired.
- (6) The voting shares of a company constitute one class unless divided into separate classes.
- (7) Give details, if appropriate, of the present association and any change in that association since the last substantial holding notice.

## AGREEMENT AND PLAN OF REORGANIZATION

This AGREEMENT AND PLAN OF REORGANIZATION ("**Agreement**"), is made as of January 14, 2022, by and between Sprott Funds Trust ("**SFT**"), a statutory trust created under the laws of the State of Delaware, with its principal place of business at 200 Bay Street, Suite 2600, Toronto, Ontario M5J2J1, on behalf of its investment portfolio, Sprott Uranium Miners ETF (the "**Acquiring Fund**"), and Exchange Traded Concepts Trust ("**ETCT**"), a statutory trust created under the laws of the State of Delaware, with its principal place of business at 10900 Hefner Pointe Drive, Suite 400, Oklahoma City, Oklahoma 73120, on behalf of its investment portfolio, North Shore Global Uranium Mining ETF (the "**Acquired Fund**"). Other than the Acquiring Fund and the Acquired Fund, no other series of either SFT or ETCT are parties to this Agreement. Sprott Asset Management LP ("**Sprott**"), a limited partnership formed under the laws of the Province of Ontario, Canada, joins this Agreement solely for the purposes of Sections 3.2, 7.4, 8.3, 9.2 and 10.2. Exchange Traded Concepts, LLC ("**ETC**"), an Oklahoma limited liability company, joins this Agreement solely for the purposes of Sections 8.3, 9.2 and 10.2.

This Agreement is intended to be, and is adopted as, a plan of reorganization within the meaning of Section 368(a) of the United States Internal Revenue Code of 1986, as amended (the "**Code**"), and the Treasury Regulations promulgated under Section 368 of the Code. The reorganization contemplated by this Agreement ("**Reorganization**") will consist of (i) the transfer of all of the assets, property and goodwill as set forth in Section 1.2 of this Agreement ("**Assets**") of the Acquired Fund in exchange solely for voting shares of beneficial interest, no par value per share, of the Acquiring Fund ("**Acquiring Fund Shares**"); (ii) the assumption by the Acquiring Fund of the **Obligations** (as hereinafter defined) of the Acquired Fund; and (iii) the distribution, after the closing date provided in Section 3.1 (the "**Closing Date**"), of Acquiring Fund Shares and the termination, dissolution and complete liquidation of the Acquired Fund as provided herein, all upon the terms and conditions hereinafter set forth in this Agreement. The Acquiring Fund is a shell series, without assets or liabilities, created for the purpose of acquiring the Assets and assuming the Obligations (as defined below) of the Acquired Fund.

The parties hereto therefore covenant and agree as follows:

1. TRANSFER OF ASSETS OF THE ACQUIRED FUND IN EXCHANGE FOR ACQUIRING FUND SHARES AND ASSUMPTION BY THE ACQUIRING FUND OF OBLIGATIONS AND LIQUIDATION OF THE ACQUIRED FUND.

1.1 Subject to the terms and conditions hereof and on the basis of the representations and warranties contained herein:

- (a) ETCT, on behalf of the Acquired Fund, agrees to assign, convey, deliver and otherwise transfer to the Acquiring Fund, and SFT, on behalf of the Acquiring Fund, will acquire, on the Closing Date, all of the Assets of the Acquired Fund, as set forth in Section 1.2.
- (b) SFT, on behalf of the Acquiring Fund, shall, on the Closing Date, (i) issue and deliver to the Acquired Fund the number of Acquiring Fund Shares determined by dividing (A) the amount of the assets of the Acquired Fund attributable to the Acquiring Fund Shares, less the amount of the liabilities of the Acquired Fund attributable to such shares, computed in the manner and as of the time and date set forth in Section 2.2, by (B) the net asset value of one Acquiring Fund Share, computed in the manner set forth in Section 2.3, and (ii) assume, with respect to the Acquiring Fund, all of the Acquired Fund's liabilities and obligations (the "**Obligations**"). Such transactions shall take place at the closing provided for in Section 3 (the "**Closing**"). The Acquired Fund shall use its best efforts to discharge all of its Obligations prior to the Closing consistent with its obligation to continue to pursue its investment objective and strategies in accordance with the terms of its current prospectus and statement of additional information

(collectively, as amended or supplemented from time to time, the "**Acquired Fund Prospectus**") and to continue to manage the day-to-day operations of the Acquired Fund without disruption to shareholders.

- (c) Upon consummation of the transactions described in subsections (a) and (b) above, the Acquired Fund in complete liquidation shall distribute to its shareholders of record as of the Closing Date the Acquiring Fund Shares received by it. Each shareholder of the Acquired Fund shall be entitled to receive that number of Acquiring Fund Shares equal to the value of the Acquired Fund shares immediately prior to the Closing.

- 1.2 The Assets of the Acquired Fund to be acquired by the Acquiring Fund shall consist of all cash, securities, commodities and futures interests, dividends and all receivables for shares sold and all other assets which are owned by the Acquired Fund on the Closing Date. The Acquired Fund will use commercially reasonable efforts to identify and discharge all of its accrued fees and expenses and payables for securities transactions (consistent with its obligation to continue to pursue its investment objective and strategies in accordance with the terms of the Acquired Fund Prospectus) or for share redemptions prior to the Closing Date.
- 1.3 As provided in Section 3.4, as soon after the Closing Date as is conveniently practicable, ETCT agrees that the Acquired Fund will liquidate and distribute to its shareholders of record the Acquiring Fund Shares received by the Acquired Fund as contemplated by Section 1.1 (such date, the "**Liquidation Date**"). Such liquidation and distribution will be accomplished by the transfer of the Acquiring Fund Shares then credited to the account of the Acquired Fund on the books of the Acquiring Fund to open accounts on the share records of the Acquiring Fund in the names of Acquired Fund shareholders and representing the respective number of Acquiring Fund Shares due to such shareholders. The Acquiring Fund shall not be obligated to issue certificates representing the Acquiring Fund Shares in connection with such exchange.
- 1.4 As soon as practicable after the Closing Date, ETCT agrees that the Acquired Fund shall make all filings and take all other steps as shall be necessary and proper to effect its complete liquidation, dissolution and termination of its registration with the Securities and Exchange Commission (the "**Commission**") and NYSE Arca, Inc. ETCT further agrees that any reporting responsibility relating to such liquidation of the Acquired Fund including, without limitation, the responsibility for filing of regulatory reports, tax returns, or other documents with the Commission, any state securities commission, and any federal, state or local tax authorities or any other relevant regulatory authority, is and shall remain the responsibility of ETCT and the Acquired Fund, up to and including the Closing Date and thereafter.
- 1.5 Any and all obligations or liabilities arising under or in respect of this Agreement with respect to the Acquired Fund or the Acquiring Fund shall be those of the Acquired Fund or the Acquiring Fund, as the case may be, and shall not otherwise be obligations or liabilities of ETCT or SFT generally, and, for clarity, under no circumstances will any other series of ETCT or SFT have any obligation or liability under or in respect of this Agreement or the transactions contemplated hereby.

## 2. VALUATION.

- 2.1 On the Closing Date, the Acquiring Fund will deliver to the Acquired Fund a number of Acquiring Fund Shares determined as provided in Section 1.



- 2.2 The value of the Acquired Fund's Assets and liabilities to be acquired by the Acquiring Fund shall be computed using the valuation procedures of ETCT adopted by the Board of Trustees of ETCT (the "**ETCT Board**") in effect as of the Closing Date, as of the close of regular trading on the New York Stock Exchange, on the business day immediately preceding the Closing Date, or such earlier date as may be mutually agreed upon in writing by the parties hereto (the "**Valuation Date**"), unless any event set forth in Section 3.3 hereof occurs, in which case the Valuation Date shall be postponed as provided for in Section 3.3.
- 2.3 The net asset value per share of Acquiring Fund Shares shall be the net asset value per share computed as of the Valuation Date, using the valuation procedures of SFT adopted by the Board of Trustees of SFT (the "**SFT Board**") (in effect as of the Closing Date) which are agreed to be equivalent to those described in Section 2.2, above.
- 2.4 SFT agrees that the Acquiring Fund shall issue Acquiring Fund Shares to the Acquired Fund on one share deposit receipt registered in the name of the Acquired Fund. The Acquired Fund shall distribute in liquidation the Acquiring Fund Shares received by it hereunder to its shareholders as contemplated by Section 1.1, by redelivering such share deposit receipt to SFT's transfer agent which will as soon as practicable open accounts for Acquired Fund shareholders.
- 2.5 The Acquired Fund will pay or cause to be paid to the Acquiring Fund any interest, cash or such dividends, rights and other payments received by it on or after the Closing Date with respect to the **Investments** (as defined below) and other properties and assets of the Acquired Fund, whether accrued or contingent, received by it on or after the Closing Date. Any such distribution shall be deemed included in the Assets transferred to the Acquiring Fund at the Closing Date and shall not be separately valued, unless the securities in respect of which such distribution is made shall have gone "ex" prior to the Valuation Date, in which case any such distribution which remains unpaid at the Closing Date shall be included in the determination of the value of the Assets of the Acquired Fund acquired by the Acquiring Fund.

### 3. CLOSING AND CLOSING DATE.

- 3.1 The Closing Date shall be on or about February 25, 2022 or any such other date as the parties may agree. The Closing shall be effective as of 9:30 A.M. Eastern Time on the Closing Date for all accounting, tax and other financial reporting purposes. All acts taking place at the Closing shall be deemed to take place simultaneously as of immediately prior to the opening of regular trading on NYSE Arca, Inc., on the Closing Date, unless otherwise agreed to by the parties.
- 3.2 On the Closing Date, the Assets of the Acquired Fund, including all of its cash and other assets described in Section 1.2, shall be delivered by ETCT to State Street Bank and Trust Company, the custodian for the Acquiring Fund (the "**Custodian**") for the account of the Acquiring Fund, and all portfolio securities shall be duly endorsed in proper form for transfer in such manner and condition as to constitute good delivery thereof in accordance with the custom of brokers or, in the case of portfolio securities held in the U.S. Treasury Department's book-entry system or by the Depository Trust Company, Participants Trust Company or other third party depositories, by transfer to the account of the Custodian in accordance with Rule 17f-4, Rule 17f-5 or Rule 17f-7, as the case may be, under the Investment Company Act of 1940, as amended (the "**1940 Act**"). The cash delivered shall be transferred to the account of the Acquiring Fund at the Custodian in a manner acceptable to SFT. Sprott shall be responsible for paying any and all necessary taxes in connection with the delivery of the Assets, including all applicable federal, state and foreign stock transfer stamps and/or financial transaction taxes. Neither ETCT nor the Acquired Fund shall be responsible for the payment of any such taxes or fees.



- 3.3 In the event that on the Valuation Date (a) the New York Stock Exchange, shall be closed to trading or trading thereon shall be restricted, or (b) trading or the reporting of trading on the New York Stock Exchange, or elsewhere shall be disrupted, in a manner set forth in the Acquired Fund Prospectus , so that accurate appraisal of the values of the net assets of the Acquired Fund or the Acquiring Fund is impracticable, the Valuation Date shall be postponed until the first business day after the day when trading shall have been fully resumed and reporting shall have been restored; provided that if trading shall not be fully resumed and reporting restored within three business days after the original Valuation Date, this Agreement may be terminated by either of SFT or ETCT upon the giving of written notice to the other party.
- 3.4 On the Closing Date, the Acquiring Fund Shares issuable pursuant to Section 1.1 shall promptly be credited by the Acquiring Fund to the Acquired Fund's account on the books of the Acquiring Fund.
- 3.5 At the Closing, each party shall deliver to the other such bills of sale, instruments of assumption of liabilities, checks, assignments, stock certificates, receipts or other documents as such other party or its counsel may reasonably request in connection with the transfer of Assets, assumption of Obligations, and liquidation contemplated by Section 1.

#### 4. REPRESENTATIONS AND WARRANTIES.

- 4.1 Representations and Warranties of ETCT, on behalf of the Acquired Fund. ETCT, on behalf of the Acquired Fund, represents and warrants the following to SFT as of the date hereof and agrees to confirm the continuing accuracy and completeness in all material respects of the following on the Closing Date:
- (a) ETCT is a statutory trust created under the laws of the State of Delaware.
  - (b) The Acquired Fund has all necessary federal, state and local authorizations to carry on its business as now being conducted and meets the definition of "exchange-traded fund" as defined in Rule 6c-11 under the 1940 Act.
  - (c) ETCT is duly registered under the 1940 Act as a management company of the open-end type and the issued and outstanding shares of the Acquired Fund have been duly registered under the Securities Act of 1933, as amended (the "**1933 Act**"), and such registrations have not been revoked or rescinded and are in full force and effect.
  - (d) The Acquired Fund is a separate series of ETCT duly constituted in accordance with the applicable provisions of the Declaration of Trust of ETCT and the 1940 Act and other applicable law.
  - (e) The Acquired Fund is not in violation in any material respect of any material provisions of ETCT's Declaration of Trust or code of regulations or any material agreement, indenture, instrument, contract, lease or other undertaking to which the Acquired Fund is a party or by which the Acquired Fund or its assets are bound, and the execution, delivery and performance of this Agreement will not result in any such violation.
  - (f) The Acquired Fund Prospectus conforms in all material respects to the applicable requirements of the 1933 Act, the 1940 Act and the rules and regulations of the

Commission thereunder and does not include any untrue statement of a material fact or omit to state any material fact relating to any of ETCT or the Acquired Fund required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

- (g) At the Closing Date, the Acquired Fund will have good and marketable title to its Assets to be transferred to the Acquiring Fund pursuant to Section 1.2.
- (h) Except as has been disclosed on Schedule II, if applicable, no material litigation, administrative or other proceedings or investigation is presently pending or, to the knowledge of ETCT or the Acquired Fund, threatened against the Acquired Fund or any of its properties or assets or any person whom the Acquired Fund may be obligated directly or indirectly to indemnify in connection with such litigation, proceedings or investigation, and the Acquired Fund is not a party to or subject to the provisions of any order, decree or judgment of any court or governmental body, which materially and adversely affects its business or its ability to consummate the transactions contemplated hereby and ETCT agrees to provide a representation letter to that effect.
- (i) Since the last day of the Acquired Fund's most recently completed fiscal year, there has not been any material adverse change in the Acquired Fund's financial condition, assets, liabilities or business (other than changes caused by changes in market conditions generally or those occurring in the ordinary course of business), or any incurrence by the Acquired Fund of indebtedness (other than in the ordinary course of business). For the purposes of this subparagraph (i), (i) distributions of net investment income and net realized capital gains, changes in portfolio securities, changes in the market value of portfolio securities or net redemptions shall be deemed to be in the ordinary course of business and (ii) the effects of investment underperformance, negative investment performance or net redemptions shall not, individually or in the aggregate, be deemed to give rise to any such change.
- (j) (A) All federal, state, foreign and other returns, dividend and information reporting forms and other Tax (as defined below) related reports of the Acquired Fund required by applicable law to have been filed by or with respect to the Acquired Fund on or prior to the Closing Date have been or shall be filed in a timely manner, or in the case of reporting organizational actions affecting the basis of securities, timely posted in an area of a public website dedicated to this purpose, and are or will be true, correct and complete as of the time of their filing in all material respects and accurately state the amount of Tax (if any) owed for the periods covered by such returns, forms and reports, or, in the case of dividend and information reporting forms, the amount and character of income or other information required to be reported by the Acquired Fund, (B) all Taxes shown as due or required to be shown as due on such returns, forms and reports, or any other Taxes due, and any interest and/or penalties, shall have been paid or provision shall have been made on the Acquired Fund's books for the payment thereof, (C) the Acquired Fund is not under audit and no assessment for Taxes has been asserted in writing with respect to Acquired Fund, (D) there are no known actual or proposed deficiency assessments with respect to any Taxes payable by the Acquired Fund, (E) there are no levies, liens or encumbrances relating to Taxes existing, or threatened in writing, with respect to the assets of the Acquired Fund, (F) the amounts set up as provisions for Taxes in the books and records of the Acquired Fund as of the close of business on the Valuation Date will, to the extent required by generally accepted accounting principles, be sufficient for the payment of all Taxes of any kind, whether accrued, due,

absolute, contingent or otherwise, which were or which may be payable by the Acquired Fund for any periods or fiscal years prior to and including the close of business on the Valuation Date, including, but not limited to, all Taxes imposed before or after the close of business on the Valuation Date that are attributable to any such period or fiscal year, and (G) the Acquired Fund has materially complied with the requirements for collection and maintenance of Forms W-9 and/or Forms W-8, as applicable, and its obligations as a withholding agent. As used in this Agreement, "Tax" or "Taxes" means all federal, state, local and foreign (whether imposed by a country or political subdivision or authority thereunder) income, gross receipts, excise, sales, use, value added, employment, franchise, profits, property, ad valorem, fees, assessments, charges or other taxes, stamp taxes and duties, whether payable directly or by withholding, together with any interest and any penalties, additions to tax or additional amounts imposed by any taxing authority (foreign or domestic) with respect thereto.

- (k) The Acquired Fund has elected to be treated as a "regulated investment company" ("RIC") under Part I of Subchapter M of Chapter 1 of Subtitle A of the Code. The Acquired Fund is a "fund" as defined in Section 851(g) of the Code, has qualified for all taxable years since inception as a RIC, and has complied or will comply in all material respects with all provisions of applicable law necessary to preserve and retain such qualification and will continue to so qualify at all times through the Closing Date.
- (l) The authorized capital of ETCT consists of an unlimited number of shares of beneficial interest, no par value, of such number of different series as the Trustees of ETCT may authorize from time to time. All issued and outstanding shares of the Acquired Fund are, and at the Closing Date will be, validly issued, fully paid and non-assessable (except as set forth in the Acquired Fund Prospectus) by ETCT, and will have been issued in material compliance with all applicable registration or qualification requirements of federal and state securities laws. No options, warrants or other rights to subscribe for or purchase, or securities convertible into, any shares of the Acquired Fund are outstanding.
- (m) The Acquired Fund's investment operations, from inception to the date hereof, have been in compliance in all material respects with the investment policies and investment restrictions set forth in the Acquired Fund Prospectus, as in effect from time to time, except, if applicable, as previously disclosed in writing to SFT and attached hereto.
- (n) The execution, delivery and performance of this Agreement have been duly authorized by the Trustees of ETCT and by all other necessary action on the part of ETCT and the Acquired Fund, other than shareholder approval as required by Section 8.1 hereof. Subject to shareholder approval as required by Section 8.1 hereof, this Agreement constitutes the valid and binding obligation of ETCT, on behalf of the Acquired Fund, enforceable against ETCT and the Acquired Fund in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and other equitable principles.
- (o) Any information provided in writing by ETCT in respect of the Acquired Fund or by the Acquired Fund for use, to the extent applicable, in the proxy statement of the Acquired Fund (the "**Proxy Statement/Prospectus**"), to be included in a Registration Statement on Form N-14 of SFT (the "**Registration Statement**"), does not, and from the date provided through and until the Closing Date will not,

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 light of the circumstances under which such statements were made, not misleading, provided, however, that the representations and warranties of this Subsection shall not apply to statements or omissions from the Proxy Statement/Prospectus made in reliance upon and in conformity with information that was furnished by the Acquiring Fund for use therein.

- (p) No consent, approval, authorization or order of any court or governmental authority is required for the consummation by ETCT, on behalf of the Acquired Fund, of the transactions contemplated by this Agreement, except such as may be required under the 1933 Act, the Securities Exchange Act of 1934, as amended (the "**1934 Act**"), the 1940 Act, the rules and/or regulations of NYSE Arca, Inc., and/or state securities or Blue Sky laws (which term as used herein shall include the laws of the District of Columbia and Puerto Rico).
- (q) As of the Closing Date, ETCT and the Acquired Fund will have full right, power and authority to sell, assign, transfer and deliver the Investments and any other assets and liabilities of the Acquired Fund to be transferred to the Acquiring Fund pursuant to this Agreement. At the Closing Date, subject only to the delivery of the Investments and any such other assets and liabilities as contemplated by this Agreement, the Acquiring Fund will acquire the Investments and any such other assets subject to no encumbrances, liens or security interests in favor of any third party creditor of the Acquired Fund, and without any restrictions upon the transfer thereof, other than such restrictions as might arise under the 1933 Act or which were previously disclosed to and accepted by the Acquiring Fund. As used in this Agreement, the term "**Investments**" shall mean the Acquired Fund's investments shown on the schedule of its portfolio investments as of August 31, 2021, as supplemented with such changes as Acquired Fund shall make after August 31, 2021, which changes shall be disclosed to SFT and the Acquiring Fund in an updated schedule of investments, and changes resulting from stock dividends, stock split-ups, mergers and similar corporate actions through the Closing Date.
- (r) The books and records of the Acquired Fund, including FASB ASC 740-10-25 (formerly FIN 48) workpapers and supporting statements, made available to SFT and/or its counsel are substantially true and correct and contain no material misstatements or omissions with respect to the operations of the Acquired Fund.
- (s) To the best of ETCT's and the Acquired Fund's knowledge and without independent investigation, all of the issued and outstanding shares of the Acquired Fund shall have been offered for sale and sold in material conformity with all applicable federal and state securities laws (including any applicable exemptions therefrom), or the Acquired Fund has taken any action necessary to remedy any prior failure to have offered for sale and sold such shares in material conformity with such laws. There have been no known miscalculations of the net asset value of the Acquired Fund or the net asset value per share of the Acquired Fund which would have a material adverse effect on the Acquired Fund at the time of this Agreement or on the Acquired Fund's Assets at the time of this Agreement.
- (t) The Acquired Fund will not be subject to corporate-level taxation on the sale of any assets currently held by it as a result of the application of Section 337(d) of the Code and the Treasury Regulations thereunder.

- (u) The Acquired Fund has not been granted any waiver, extension, or comparable consent regarding the application of the statute of limitations with respect to any Taxes or Tax return that is outstanding, nor has any request for such waiver or consent been made with respect to any such Taxes or Tax return.
- (v) Neither ETCT nor the Acquired Fund is under the jurisdiction of a Court in a Title 11 or similar case within the meaning of Section 368(a)(3)(A) of the Code.
- (w) The Acquired Fund has not changed its taxable year end since its inception, nor does it intend to change its taxable year end prior to the Closing.
- (x) Neither ETCT nor the Acquired Fund has received written notification from any taxing authority that asserts a position contrary to any of the above Tax representations.

4.2 Representations and Warranties of SFT, on behalf of the Acquiring Fund. SFT, on behalf of the Acquiring Fund, represents and warrants the following to the Acquired Fund and ETCT as of the date hereof and agrees to confirm the continuing accuracy and completeness in all material respects of the following on the Closing Date:

- (a) SFT is a statutory trust created under the laws of the State of Delaware and is validly existing and in good standing under the laws of that State.
- (b) The Acquiring Fund has all necessary federal, state and local authorizations to carry on its business.
- (c) SFT is duly registered under the 1940 Act as a management company of the open-end type and the issued and outstanding shares of the Acquiring Fund have been or will be duly registered under the 1933 Act, and such registrations have not been revoked or rescinded and are in full force and effect.
- (d) As of the Closing Date, the Acquiring Fund will be a separate series of SFT duly constituted in accordance with the applicable provisions of the Declaration of Trust of SFT and the 1940 Act and other applicable law.
- (e) As of the Closing Date, the Acquiring Fund will not be in violation in any material respect of any material provisions of SFT's Declaration of Trust or bylaws or any agreement, indenture, instrument, contract, lease or other undertaking to which the Acquiring Fund is a party or by which the Acquiring Fund or its assets are bound, and the execution, delivery and performance of this Agreement will not result in any such violation.
- (f) As of the Closing Date, the Acquiring Fund's current prospectus and statement of additional information (collectively, the "**Acquiring Fund Prospectus**") will conform in all material respects to the applicable requirements of the 1933 Act and the 1940 Act and the rules and regulations of the Commission thereunder and will not include any untrue statement of a material fact or omit to state any material fact relating to SFT or the Acquiring Fund required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

- (g) Except as has been disclosed on Schedule III, if applicable, no material litigation, administrative or other proceedings or investigation is presently pending or, to the knowledge of SFT or the Acquiring Fund, threatened as to the Acquiring Fund or any of their respective properties or assets or any person whom the Acquiring Fund may be obligated directly or indirectly to indemnify in connection with such litigation, proceedings or investigation, and the Acquiring Fund is not a party to or subject to the provisions of any order, decree or judgment of any court or governmental body, which materially and adversely affects its business or its ability to consummate the transactions contemplated hereby.
- (h) Immediately prior to the Closing Date, the Acquiring Fund will have no assets or liabilities, contingent or otherwise and will have not conducted any investment operations.
- (i) The Acquiring Fund was established in order to effect the transactions described in this Agreement. The Acquiring Fund has not yet filed its first federal income tax return and thus has not yet elected to be treated as a RIC for federal income tax purposes. However, upon filing its first federal income tax return following the completion of its first taxable year, the Acquiring Fund will elect to be a RIC and, from the beginning of its first taxable year, will take all steps necessary to ensure that it qualifies and will be treated as a "regulated investment company" under Sections 851 and 852 of the Code.
- (j) The authorized capital of SFT consists of an unlimited number of shares of beneficial interest, no par value, of such number of different series as the SFT Board may authorize from time to time. All issued and outstanding shares of the Acquiring Fund, including the Acquiring Fund Shares issued hereunder, are, and at the Closing Date will be, validly issued, fully paid and non-assessable (except as set forth in the Acquiring Fund Prospectus) by SFT, and will have been issued in material compliance with all applicable registration or qualification requirements of federal and state securities laws. No options, warrants or other rights to subscribe for or purchase, or securities convertible into, any shares of the Acquiring Fund are outstanding.
- (k) On the Closing Date, the Acquiring Fund will be a newly created series of SFT, without assets or liabilities, formed for the sole purpose of receiving the Assets, and assuming the Obligations of, the Acquired Fund in connection with the Reorganization and will not carry on any business activities (other than such activities as are customary to the organization of a new series of a registered investment company prior to its commencement of investment operations). Accordingly, the Acquiring Fund has not prepared books of account and related records or financial statements, or issued any shares except those issued in a private placement to an affiliate of the Acquiring Fund to secure any required initial shareholder approvals.
- (l) The execution, delivery and performance of this Agreement have been duly authorized by the SFT Board and by all other necessary action on the part of SFT and the Acquiring Fund and constitutes the valid and binding obligation of the Acquiring Fund enforceable against SFT and the Acquiring Fund in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and other equitable principles.

- (m) As of the effective date of the Registration Statement, through and until the Closing Date, the Proxy Statement/Prospectus, including the documents contained or incorporated therein by reference, insofar as it relates to SFT and the Acquiring Fund, will not 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 light of the circumstances under which such statements were made, not misleading, provided, however, that the representations and warranties of this Subsection shall not apply to statements or omissions made in reliance upon and in conformity with information that was furnished by the Acquired Fund for use therein.
- (n) All books and records of the Acquiring Fund made available to ETCT and/or its counsel are substantially true and correct and contain no material misstatements or omissions with respect to the operations of the Acquiring Fund.
- (o) No consent, approval, authorization or order of any court or governmental authority is required for the consummation by the Acquiring Fund of the transactions contemplated by this Agreement, except such as may be required under the 1933 Act, the 1934 Act, the 1940 Act, the rules and/or regulations of NYSE Arca, Inc., and/or state securities or Blue Sky laws.
- (p) Neither SFT nor the Acquiring Fund is under the jurisdiction of a Court in a Title 11 or similar case within the meaning of Section 368(a)(3)(A) of the Code.
- (q) As of the Closing Date, no federal, state or other Tax returns of the Acquiring Fund will have been required by law to be filed and no federal, state or other Taxes will be due by the Acquiring Fund; the Acquiring Fund will not have been required to pay any assessments; and the Acquiring Fund will not have any Tax liabilities or Tax attributes. Consequently, as of the Closing Date, the Acquiring Fund will not have any Tax deficiency or liability asserted against it or question with respect thereto raised, and the Acquiring Fund will not be under audit by the Internal Revenue Service or by any state or local Tax authority for Taxes in excess of those already paid.
- (r) The Acquiring Fund is, and will be at the time of Closing, a shell series created for the purpose of acquiring the Assets and assuming the Obligations of the Acquired Fund, and, prior to the Closing, (i) will not commence operations or carry on any business activities (other than such activities as are customary to the organization of a new series of a RIC prior to its commencement of investment operations); (ii) will not have held any property, and immediately following the Reorganization, the Acquiring Fund will possess solely assets and liabilities that were possessed by the Acquired Fund immediately prior to the Reorganization and (iii) will not have prepared books of account and related records or financial statements or issued any shares except those issued in a private placement to the initial shareholder of the Acquiring Fund. Immediately following the liquidation of the Acquired Fund as contemplated herein, 100% of the issued and outstanding shares of beneficial interest of the Acquiring Fund will be held by the former holders of Acquired Fund shares.

## 5. COVENANTS OF THE PARTIES.

- 5.1 ETCT covenants that the Acquired Fund will operate its business in the ordinary course between the date hereof and the Closing Date, it being understood that such ordinary course of business will include purchases and sales of portfolio securities, creation and



redemption transactions of the Acquired Fund shares with Authorized Participants, and regular and customary periodic dividends and distributions. SFT covenants that Acquiring Fund will not carry on any business activities between the date hereof and the Closing Date (other than such activities as are customary to the organization of a new registered investment company prior to its commencement of operations, including holding and redeeming the initial investment of the initial shareholder of the Acquiring Fund prior to the Closing Date).

- 5.2 ETCT will either call a meeting of shareholders for the Acquired Fund to be held prior to the Closing Date to consider and act upon this Agreement and the transactions contemplated herein, including the liquidation of the Acquired Fund, or solicit the written consent of the shareholders with respect to such transaction and take all other reasonable action necessary to obtain the required shareholder approval of the transaction contemplated hereby.
- 5.3 In connection with the Acquired Fund shareholders' meeting or written consent, as the case may be, referred to in Section 5.2, SFT will prepare the Registration Statement and Proxy Statement/Prospectus for such meeting, which SFT will file for registration under the 1933 Act of the Acquiring Fund Shares to be distributed to the Acquired Fund's shareholders pursuant hereto, all in compliance with the applicable requirements of the 1933 Act, the 1934 Act and the 1940 Act, provided, however, that neither SFT nor the Acquiring Fund shall be responsible for the accuracy or completeness of information relating to ETCT or the Acquired Fund that was furnished by ETCT or the Acquired Fund for use therein.
- 5.4 Each of ETCT, the Acquired Fund, SFT and the Acquiring Fund will cooperate with the others, and each will furnish to the others the information relating to itself required by the 1933 Act, the 1934 Act and the 1940 Act and the rules and regulations thereunder to be set forth in the Registration Statement, including the Proxy Statement/Prospectus. Without limiting the foregoing, ETCT and the Acquired Fund will assist the Acquiring Fund in obtaining such information as the Acquiring Fund reasonably requests concerning the beneficial ownership of Acquired Fund shares.
- 5.5 Subject to the provisions of this Agreement, ETCT, the Acquired Fund, SFT and the Acquiring Fund will each take, or cause to be taken, all actions, and do or cause to be done, all things, reasonably necessary, proper or advisable to cause the conditions to the other parties' obligations to consummate the transactions contemplated hereby to be met or fulfilled and otherwise to consummate and make effective such transactions.
- 5.6 ETCT will, as promptly as practicable, but in any case within sixty days after the Closing Date, provide SFT with:
  - (a) A statement of the respective adjusted tax basis of all Assets to be transferred by the Acquired Fund to the Acquiring Fund;
  - (b) A copy of any other Tax books and records of the Acquired Fund necessary for purposes of preparing any Tax returns, schedules, forms, statements or related documents (including but not limited to any income, excise or information returns, as well as any transfer statements (as described in Sections 1.6045A-1 and 1.6045B-1(a) of the Treasury Regulations) required by law to be filed by Acquiring Fund after the Closing;
  - (c) All FASB ASC 740-10-25 (formerly, FIN 48) work papers and supporting statements pertaining to the Acquired Fund.

- (d) A management representation letter directed to, and in the form and manner acceptable to, SFT and its independent registered public accounting firm, Tait, Weller & Baker LLP (“TWB”), covering the period from the end of the Acquired Fund most recent fiscal year end through the Closing Date, for the purposes of permitting SFT to issue its own management representation letter to TWB, in connection with the audit of the Acquiring Fund’s financial statements.
  - (e) A letter from counsel directed to, and in the form and manner acceptable to, SFT and TWB, that confirms (i) such party has no knowledge of any litigation, claim, or assessment against the Acquired Fund from the date of the Acquired Fund’s most recent fiscal year end through the Closing Date, that constitutes a loss contingency (as defined by ASC 450 Contingencies) that is required to be disclosed or recorded in the Acquired Fund’s financial statements; and, (ii) there has been no knowledge of or advice given to the Acquired Fund related to the existence of any unasserted claim that is material to the presentation of such fund’s financial statements and which, in such counsel’s opinion, is probably or reasonably possible of assertion and should be so recorded or disclosed in accordance with ASC 450.
- 5.7 As promptly as practicable, but in any case within sixty days after the Closing Date, the Acquired Fund shall furnish the Acquiring Fund, in such form as is reasonably satisfactory to the Acquiring Fund, a statement of the earnings and profits of the Acquired Fund for federal income tax purposes that will be carried over by the Acquiring Fund as a result of Section 381 of the Code, and which will be certified by ETCT’s President and Treasurer.
- 5.8 The Acquiring Fund will use all reasonable efforts to obtain the approvals and authorizations required by the 1933 Act, the 1940 Act and such of the state securities or Blue Sky laws as it may deem appropriate in order to continue its operations after the Closing Date.
- 5.9 ETCT shall cause the liquidation and termination of the Acquired Fund to be effected in the manner provided in ETCT’s Declaration of Trust and By-Laws in accordance with applicable law and, on and after the Closing Date, the Acquired Fund shall not conduct any business except in connection with its liquidation and termination.
- 5.10 ETCT shall timely file or cause to be timely filed all Tax returns required to be filed (including extensions) with respect to the Acquired Fund for tax periods ending on or before the Closing Date, and SFT shall timely file or cause to be timely filed all Tax returns required to be filed with respect to the Acquired Fund and any Tax returns required to be filed with respect to the Acquiring Fund for any period ending after the Closing Date; provided, however, ETCT shall file with the relevant taxing authorities, and make available to SFT, promptly after filing, all income Tax returns (e.g., Form 1120-RIC) required to be filed by the Acquired Fund for their fiscal year ended August 31, 2021.
- 5.11 ETCT and the Acquired Fund will not acquire Acquiring Fund Shares with a view towards distribution of such shares other than to the shareholders of the Acquired Fund.
- 5.12 [Reserved].
- 5.13 The Acquiring Fund will advise the Acquired Fund promptly if at any time prior to the Closing Date the Acquiring Fund becomes aware that the Assets of the Acquired Fund include any securities which the Acquiring Fund is not permitted to acquire.

- 5.14 It is the intention of the parties that the Reorganization will qualify as a reorganization within the meaning of Section 368(a)(1)(F) of the Code. None of the parties to the Reorganization shall take any action or cause any action to be taken (including, without limitation the filing of any Tax Return) that is inconsistent with such treatment or results in the failure of the Reorganization to qualify as a reorganization within the meaning of Section 368(a)(1)(F) of the Code.

6. CONDITIONS PRECEDENT TO OBLIGATIONS OF SFT AND THE ACQUIRING FUND.

The respective obligations of SFT and the Acquiring Fund to complete the transactions provided for herein with respect to the Reorganization shall be subject, at their election, to the performance by ETCT, on behalf of itself and the Acquired Fund, of all the obligations to be performed by it hereunder on or before the Closing Date and, in addition thereto, to the following further conditions with respect to the Reorganization:

- 6.1 ETCT, on behalf of the Acquired Fund, shall have delivered to SFT a certificate executed on its behalf by ETCT's President or any Vice President and its Treasurer or any Assistant Treasurer, in form and substance reasonably satisfactory to SFT and dated as of the Closing Date, to the effect that the representations and warranties of ETCT and the Acquired Fund made in this Agreement are true and correct in all material respects at and as of the Closing Date, except as they may be affected by the transactions contemplated by this Agreement, and that ETCT and the Acquired Fund have complied in all material respects with all the covenants and agreements and satisfied all of the conditions on the parts to be performed or satisfied in all material respects by them under this Agreement at or prior to the Closing Date.
- 6.2 ETCT shall have furnished to SFT (i) a statement of the Acquired Fund's assets and liabilities, with values determined as provided in Section 2 of this Agreement, together with a list of Investments, all as of the Valuation Date, and (ii) a certificate of ETCT's President or any Vice President and Treasurer or any Assistant Treasurer, dated the Closing Date, to the effect that as of the Valuation Date and as of the Closing Date there has been no material adverse change in the financial position of the Acquired Fund since the last day of the Acquired Fund's most recently completed fiscal year (other than changes caused by changes in market conditions generally and those occurring in the ordinary course of business).
- 6.3 ETCT shall have furnished to SFT a certificate, signed on its behalf by the President or any Vice President and the Treasurer or any Assistant Treasurer of ETCT, as to the adjusted tax basis in the hands of the Acquired Fund of the securities delivered to the Acquiring Fund pursuant to this Agreement, together with any such other evidence as to such adjusted tax basis as the Acquiring Fund may reasonably request within a reasonable time prior to the Closing Date.
- 6.4 ETCT's custodian shall have delivered to SFT a certificate identifying all of the assets of the Acquired Fund held by such custodian as of the Valuation Date.
- 6.5 SFT, on behalf of the Acquiring Fund or its designated agent, shall have received from ETCT a record specifying the number of shares of the Acquired Fund outstanding as of the Valuation Date.
- 6.6 SFT shall have received a favorable opinion of counsel to ETCT, with respect to the Acquired Fund for the transactions contemplated hereby, dated the Closing Date, with such assumptions and limitations as shall be in the opinion of counsel appropriate to render the opinions expressed therein, and in a form satisfactory to SFT, substantially to the following effect:

- (a) ETCT is a statutory trust validly existing and in good standing under the laws of the State of Delaware, and the Acquired Fund is a separate series of ETCT duly constituted under the Declaration of Trust and By-Laws of ETCT.
- (b) The Agreement has been duly authorized, executed and delivered by ETCT, on behalf of the Acquired Fund, and assuming due authorization, execution and delivery by the other parties thereto, constitutes the valid and binding obligation of the Acquired Fund, enforceable against ETCT and the Acquired Fund in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and other equitable principles.
- (c) To the knowledge of such counsel, under the laws of the State of Delaware and the federal laws of the United States, no consent, approval, license or exemption by, or order or authorization of, or filing, recording or registration with, any governmental authority is required to be obtained by ETCT or the Acquired Fund in connection with the execution and delivery of the Agreement or the consummation of the Reorganization, except (i) such as have been obtained or made prior to the date hereof or (ii) such as may be required under state securities or Blue Sky laws (as to which counsel to ETCT expresses no opinion).
- (d) The execution and delivery of this Agreement by ETCT, on behalf of the Acquired Fund, did not, and the performance by ETCT and the Acquired Fund of their obligations hereunder will not, violate ETCT's Declaration of Trust, By-Laws, or any material contract of ETCT listed in the Acquired Fund's current registration statement.

## 7. CONDITIONS PRECEDENT TO OBLIGATIONS OF ETCT AND THE ACQUIRED FUND.

The respective obligations of ETCT and Acquired Fund to complete the transactions provided for herein with respect to the Reorganization shall be subject, at its election, to the performance by SFT, on behalf of itself and the Acquiring Fund, of all the obligations to be performed by it hereunder on or before the Closing Date and, in addition thereto, to the following further conditions with respect to the Reorganization:

- 7.1 SFT shall have delivered to ETCT a certificate executed on its behalf by SFT's President or any Vice President and its Treasurer or any Assistant Treasurer, in form and substance satisfactory to ETCT and dated as of the Closing Date, to the effect that the representations and warranties of the Acquiring Fund made in this Agreement are true and correct in all material respects at and as of the Closing Date, except as they may be affected by the transactions contemplated by this Agreement, and that SFT has complied in all material respects with all the covenants and agreements and satisfied all of the conditions to be performed or satisfied in all material respects by it under this Agreement at or prior to the Closing Date.
- 7.2 SFT, on behalf of the Acquiring Fund, shall have executed and delivered to ETCT an Assumption of Liabilities dated as of the Closing Date pursuant to which the Acquiring Fund will assume all of the Obligations of the Acquired Fund existing at the Valuation Date in accordance with Section 1 hereof in connection with the transactions contemplated by this Agreement.
- 7.3 ETCT shall have received a favorable opinion of counsel to SFT, with respect to the Acquiring Fund, for the transactions contemplated hereby, dated the Closing Date, with such assumptions and limitations as shall be in the opinion of counsel appropriate to

render the opinions expressed therein, and in a form satisfactory to ETCT, substantially to the following effect:

- (a) SFT is a statutory trust validly existing and in good standing under the laws of the State of Delaware, and the Acquiring Fund is a separate series of SFT duly constituted under the Declaration of Trust and Bylaws of SFT.
- (b) The Agreement has been duly authorized, executed and delivered by SFT, on behalf of the Acquiring Fund, and assuming due authorization, execution and delivery by the other parties thereto, constitutes the valid and binding obligation of the Acquiring Fund, enforceable against SFT and the Acquiring Fund in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and other equitable principles.
- (c) Assuming that consideration therefor of not less than the net asset value thereof has been paid, the shares of the Acquiring Fund to be issued and delivered to the Acquired Fund on behalf of the shareholders of the Acquired Fund as provided by the Agreement are duly authorized and, upon such issuance and delivery, will be validly issued and outstanding and fully paid and nonassessable shares of beneficial interest in the Acquiring Fund (except as described in the Registration Statement), and no shareholder of the Acquiring Fund has any preemptive right to subscription or purchase in respect thereof pursuant to the laws of the State of Delaware and the federal laws of the United States or SFT's Declaration of Trust or Bylaws.
- (d) To the knowledge of such counsel, under the laws of the State of Delaware and the federal laws of the United States, no consent, approval, license or exemption by, or order or authorization of, or filing, recording or registration with, any governmental authority is required to be obtained by SFT or the Acquiring Fund in connection with the execution and delivery of the Agreement or the consummation of the Reorganization, except (i) such as have been obtained or made prior to the date hereof or (ii) such as may be required under state securities or Blue Sky laws (as to which counsel to SFT expresses no opinion).
- (e) The execution and delivery of this Agreement by SFT, on behalf of the Acquiring Fund, did not, and the performance by SFT and the Acquiring Fund of their obligations hereunder will not, violate SFT's Declaration of Trust, Bylaws, or any material contract of SFT listed in the Acquiring Fund's current registration statement.

- 7.4 Prior to the Closing, (a) the trustees of SFT shall have authorized the issuance of, and the Acquiring Fund shall have issued, one share to the initial shareholder in consideration of the payment of an amount determined by the officers of SFT, and (b) each of Sprott and the initial shareholder(s) (as the sole initial shareholder(s)) shall have approved the investment advisory agreement between SFT, on behalf of the Acquiring Fund, and Sprott and then redeemed its shares.

#### 8. FURTHER CONDITIONS PRECEDENT TO OBLIGATIONS OF THE PARTIES.

With respect to the Reorganization, the respective obligations of SFT and the Acquiring Fund and ETCT and the Acquired Fund hereunder are subject to the further conditions that on or before the Closing Date:

- 8.1 This Agreement shall have been approved by the shareholders of the Acquired Fund in the manner required by ETCT's Declaration of Trust, By-Laws and applicable law, and the parties shall have received reasonable evidence of such approval.
- 8.2 [Reserved].
- 8.3 On the Closing Date, the Commission shall not have issued an unfavorable report under Section 25(b) of the 1940 Act, nor instituted any proceeding seeking to enjoin the consummation of the transactions contemplated by this Agreement under Section 25(c) of the 1940 Act, and no action, suit or other proceeding instituted by anyone other than ETCT, SFT, ETC or its affiliates or Sprott or its affiliates shall be threatened or pending before any court or governmental agency in which it is sought to restrain or prohibit, or obtain damages or other relief in connection with, this Agreement or the transactions contemplated herein.
- 8.4 All consents of other parties and all other consents, orders and permits of federal, state and local regulatory authorities (including those of the Commission, NYSE Arca, Inc., and of state Blue Sky and securities authorities) deemed necessary by ETCT or SFT to permit consummation, in all material respects, of the transactions contemplated hereby shall have been obtained, except where failure to obtain any such consent, order or permit would not involve a risk of a material adverse effect on the assets or properties of the Acquiring Fund or the Acquired Fund.
- 8.5 The Registration Statement shall have become effective under the 1933 Act and no stop order suspending the effectiveness thereof shall have been issued and, to the best knowledge of the parties hereto, no investigation or proceeding for that purpose shall have been instituted or be pending, threatened or contemplated under the 1933 Act.
- 8.6 The post-effective amendment to the registration statement of SFT on Form N-1A relating to shares of the Acquiring Fund shall have become effective and no stop order suspending the effectiveness thereof shall have been issued.
- 8.7 ETCT and SFT shall have received an opinion of Thompson Hine LLP, dated on the Closing Date (which opinion will be subject to certain qualifications) and satisfactory to both parties, substantially to the effect that, provided the acquisition contemplated hereby is carried out in accordance with the applicable laws of the State of Delaware, the terms of this Agreement and in accordance with customary representations provided by SFT and ETCT in certificates delivered to each other and to Thompson Hine LLP, as to the Acquired Fund and the Acquiring Fund:
- (a) The Reorganization as described in Section 1 hereof will constitute a reorganization within the meaning of Section 368(a)(1)(F) of the Code, and the Acquired Fund and the Acquiring Fund each will be "a party to a reorganization" within the meaning of Section 368(b) of the Code.
  - (b) Under Sections 361 and 357(a) of the Code, the Acquired Fund will not recognize gain or loss upon the transfer of its assets to the Acquiring Fund solely in exchange for the Acquiring Fund Shares and the assumption by the Acquiring Fund of all Obligations of the Acquired Fund, or upon the distribution of the Acquiring Fund Shares by the Acquired Fund to its shareholders in liquidation.
  - (c) Under Section 1032 of the Code, the Acquiring Fund will not recognize gain or loss upon the receipt of the assets of the Acquired Fund solely in exchange for the Acquiring Fund Shares and the assumption by the Acquiring Fund of all the Obligations of the Acquired Fund.

- (d) Under Section 362(b) of the Code, the Acquiring Fund's tax basis in the assets of the Acquired Fund transferred to the Acquiring Fund in the Reorganization will be the same as Acquired Fund's tax basis immediately prior to the transfer.
- (e) Under Section 1223(2) of the Code, the Acquiring Fund's holding period of each asset of the Acquired Fund transferred to the Acquiring Fund in the Reorganization will include the period during which such asset was held or treated for federal income tax purposes as held by the Acquired Fund (except where the Acquiring Fund's investment activities have the effect of reducing or eliminating an asset's holding period).
- (f) Under Section 354 of the Code, shareholders of the Acquired Fund will not recognize gain or loss upon the exchange of their shares of the Acquired Fund for Acquiring Fund Shares in complete liquidation of the Acquired Fund pursuant to the Reorganization.
- (g) Under Section 358 of the Code, the aggregate tax basis of the Acquiring Fund Shares received by each Acquired Fund shareholder in the Reorganization will be the same as the aggregate tax basis of the Acquired Fund shares held by such shareholder immediately prior to the Reorganization.
- (h) Under Section 1223(1) of the Code, the holding period of the Acquiring Fund Shares received by each Acquired Fund shareholder in the Reorganization will include the period during which the Acquired Fund shares exchanged therefor were held by such shareholder, provided that the shareholder held those Acquired Fund shares as capital assets on the date of the Reorganization.
- (i) The Acquiring Fund will succeed to and take into account the items of the Acquired Fund described in Section 381(c) of the Code, subject to the conditions and limitations specified in Sections 381, 382, 383 and 384 of the Code and the Treasury Regulations thereunder. In particular, under Treasury Regulations § 1.381(b)-1(a)(2), the Acquiring Fund will be treated for purposes of section 381 of the Code just as the Acquired Fund would have been treated if there had been no Reorganization, and the taxable year of the Acquired Fund will not end on the date of the Reorganization merely because of the closing of the Reorganization.

The opinion will be based on certain factual certifications made by officers of ETCT and SFT and will also be based on customary assumptions. The opinion is not a guarantee that the tax consequences of the Reorganization will be as described above. There is no assurance that the Internal Revenue Service or a court would agree with the opinion.

- 8.8 At any time prior to the Closing, any of the foregoing conditions of this Section 8 (except for Sections 8.1 and 8.7) may be jointly waived by the ETCT Board and the SFT Board, if, in the judgment of the ETCT Board, such waiver will not have a material adverse effect on the interests of the shareholders of the Acquired Fund, and, in the judgment of the SFT Board, such waiver will not have a material adverse effect on the interests of the shareholders of the Acquiring Fund.

## 9. BROKERAGE FEES AND EXPENSES.

- 9.1 Each of ETCT, on behalf of the Acquired Fund, and SFT, on behalf of the Acquiring Fund, represents that there is no person who has dealt with it who by reason of such



dealings is entitled to any broker's or finder's or other similar fee or commission from it arising out of the transactions contemplated by this Agreement.

- 9.2 Sprott will pay the expenses incurred by the Acquiring Fund and Acquired Fund in connection with the Reorganization ("**Expenses**"), regardless of whether the Reorganization is consummated. Expenses include, without limitation: (a) expenses associated with the preparation and filing of the Registration Statement, Proxy Statement/Prospectus and other proxy materials; (b) postage; (c) printing; (d) solicitation costs of the transaction; (e) accounting fees; (f) legal fees of ETCT, SFT, and ETC; (g) expenses associated with the special meeting of the ETCT Board; and (h) other related administrative or operational costs. Notwithstanding any of the foregoing, expenses will in any event be paid by any party directly incurring such expenses if and to the extent that the payment by another party of such expenses would result in the disqualification of the Acquiring Fund or the Acquired Fund, as the case may be, as a "regulated investment company" within the meaning of Section 851 of the Code. In the event the transactions contemplated by this Agreement are not consummated for any reason, Sprott nonetheless shall bear the costs, fees and expenses in the manner provided in this Section. ETCT or ETC shall be solely responsible for any costs or expenses incurred in connection with the termination, dissolution and complete liquidation of the Acquired Fund.

10. ENTIRE AGREEMENT; SURVIVAL OF WARRANTIES.

- 10.1 Each of ETCT, on behalf of the Acquired Fund, and SFT, on behalf of the Acquiring Fund, agrees that it has not made any representation, warranty or covenant not set forth herein with respect to the Reorganization and that this Agreement constitutes the entire agreement between the parties with respect to the Reorganization.
- 10.2 No representation, warranty or covenant contained in this Agreement or in any document, certificate or other instrument required to be delivered under this Agreement shall survive the Closing or termination of this Agreement (except as provided in Section 11.3 hereof), and no party shall, therefore, have any recourse against any other party in connection therewith; provided that this Section 10.2 shall not limit any covenant contained herein that by its terms contemplates performance after Closing nor shall it limit any covenants contained in Section 9.2.

11. TERMINATION.

- 11.1 This Agreement may be terminated by the mutual agreement of ETCT and SFT prior to the Closing Date.
- 11.2 In addition, either of ETCT or SFT may at its option terminate this Agreement, with respect to the Reorganization at or prior to the Closing Date because:
- (a) Of a material breach by the other of any representation, warranty, covenant or agreement contained herein to be performed by the other party at or prior to the Closing Date;
  - (b) A condition herein expressed to be precedent to the obligations of the terminating party has not been met and it reasonably appears that it will not or cannot be met prior to the Closing Date;
  - (c) Any governmental authority of competent jurisdiction shall have issued any judgment, injunction, order, ruling or decree or taken any other action restraining, enjoining or otherwise prohibiting this Agreement or the consummation of any of

the transactions contemplated herein and such judgment, injunction, order, ruling, decree or other action becomes final and non-appealable; provided that the party seeking to terminate this Agreement pursuant to this Section 11.2(c) shall have used its reasonable best efforts to have such judgment, injunction, order, ruling, decree or other action lifted, vacated or denied; or

- (d) The ETCT Board or the SFT Board has resolved to terminate this Agreement after determining in good faith that circumstances have developed that would make proceeding with a Reorganization not in the best interests of the Acquired Fund's shareholders or the Acquiring Fund's shareholders, respectively.

- 11.3 In the event of the termination of this Agreement and abandonment of the transactions contemplated hereby pursuant to this Section 11, this Agreement shall become void and have no effect except that Sections 9.2, 10, 11.3, 13, 14 and 15 shall survive any termination of this Agreement.

## 12. TRANSFER TAXES.

Any transfer taxes payable upon issuance of the Acquiring Fund Shares in a name other than the registered holder of the shares of the Acquired Fund on the books of the Acquired Fund as of that time shall, as a condition of such issuance and transfer, be paid by the person to whom such Acquiring Fund Shares are to be issued and transferred.

## 13. AMENDMENTS.

This Agreement may be amended, modified or supplemented in such manner as may be jointly agreed upon in writing by ETCT and SFT (and, for purposes of amendments to Sections 3.2, 7.4, 8.3, 9.2 and 10.2, Sprott and ETC, as applicable).

## 14. NOTICES.

Any notice, report, statement or demand required or permitted by any provisions of this Agreement shall be in writing.

## 15. MISCELLANEOUS.

- 15.1 The article and section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- 15.2 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original.
- 15.3 This Agreement shall be governed by and construed in accordance with the domestic substantive laws of the State of Delaware, without giving effect to any choice or conflicts of law rule or provision that would result in the application of the domestic substantive laws of any other jurisdiction.
- 15.4 This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns, but no assignment or transfer hereof or of any rights or obligations hereunder shall be made by any party without the written consent of the other parties hereto. Nothing herein expressed or implied is intended or shall be construed to confer upon or give any person, firm or corporation, other than the parties hereto and their respective successors and assigns, any rights or remedies under or by reason of this Agreement.

- 15.5 ETCT acknowledges and agrees that all obligations of SFT under this Agreement are binding only with respect to the Acquiring Fund; that any liability of SFT under this Agreement with respect to the Acquiring Fund, or in connection with the transactions contemplated herein with respect to the Acquiring Fund, shall be discharged only out of the assets of the Acquiring Fund; that no other series (other than the Acquiring Fund) of SFT shall be liable with respect to this Agreement or in connection with the transactions contemplated herein; and that neither ETCT nor the Acquired Fund shall seek satisfaction of any such obligation or liability of the Acquiring Fund from the shareholders of SFT, the trustees, officers, employees or agents of SFT, or any of them.
- 15.6 SFT acknowledges and agrees that all obligations of ETCT under this Agreement are binding only with respect to the Acquired Fund; that any liability of ETCT under this Agreement with respect to the Acquired Fund, or in connection with the transactions contemplated herein with respect to the Acquired Fund, shall be discharged only out of the assets of the Acquired Fund; that no other series (other than the Acquired Fund) of ETCT shall be liable with respect to this Agreement or in connection with the transactions contemplated herein; and that neither SFT nor the Acquiring Fund shall seek satisfaction of any such obligation or liability of the Acquired Fund from the shareholders of ETCT, the trustees, officers, employees or agents of ETCT, or any of them.

16. COOPERATION AND EXCHANGE OF INFORMATION

ETCT and SFT will provide each other and their respective representatives with such cooperation, assistance and information as either of them reasonably may request of the other in filing any Tax returns, amended return or claim for refund, determining a liability for Taxes or a right to a refund of taxes requesting a closing agreement or similar relief from a taxing authority or participating in or conducting any audit or other proceeding in respect of Taxes, or in determining the financial reporting of any material Tax position. Each party or their respective agents will either retain for a period of six (6) years following the Closing or deliver to the other party or its respective agent all returns, schedules and work papers and all material records or other documents relating to Tax matters and financial reporting of Tax positions of the Acquired Fund and Acquiring Fund for their taxable period first ending after the Closing and for prior taxable periods for which the party is required to retain records as of the Closing.

*Signature Page Follows*

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officer, as of the date first written above.

**EXCHANGE TRADED CONCEPTS TRUST**

on behalf of the North Shore Global Uranium Mining ETF

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

Name: J. Garrett Stevens

Title: President and Trustee

**SPROTT FUNDS TRUST**

on behalf of the Sprott Uranium Miners ETF

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

Name: John Ciampaglia

Title: President and Trustee

For purposes of Sections 3.2, 7.4, 8.3, 9.2 and 10.2 only:

**SPROTT ASSET MANAGEMENT LP**

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

Name: John Ciampaglia

Title: Chief Executive Officer

For purposes of Sections 8.3, 9.2 and 10.2 only:

**EXCHANGE TRADED CONCEPTS LLC**

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

Name: J. Garrett Stevens

Title: Chief Executive Officer