



December 27, 2023

Ms. Vanessa Countryman

Secretary

Securities and Exchange Commission

100 F Street NE

Washington, DC 20549-1090

Re: Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to List and Trade Shares of the Hashdex Bitcoin Futures ETF

(Release No. 34-99031; File No. SR-NYSEARCA-2023-58)

Dear Ms. Countryman:

XBTO respectfully submits this letter in support of the application by NYSE Arca Inc. pursuant to Rule 19b-4 under the Securities Exchange Act of 1934, as amended (the "Exchange Act") to list and trade shares of Hashdex Bitcoin Futures ETF ("DEFI") under NYSE Arca Rule 8.500-E as an exchange-traded product ("ETP"). XBTO appreciates the opportunity to share its perspective for a spot-based Bitcoin ETP in the marketplace and to encourage the Securities and Exchange Commission (the "Commission") to approve NYSE Arca's application.

### **Overview of the proposal**

XBTO has provided the cryptocurrency marketplace with institutional-grade liquidity solutions since 2015. The digital assets market has evolved significantly. As an active participant, XBTO has noted the increasing adoption of cryptocurrencies and their pivotal role in the financial landscape. While direct ownership suits some Bitcoin traders and investors, others seek the convenience of acquiring indirect exposure through a spot Bitcoin ETP. Despite approvals in other jurisdictions, no such ETP has been authorized in the United States, limiting opportunities for domestic market participants.

From our perspective, DEFI strategically utilizes the CME market to source spot exposure through Exchange for Physical (“EFP”) transactions, aiming to effectively eliminate direct arbitrage between unregulated spot markets and the Fund's market price. Seamlessly integrating with the current market structure, this approach draws on proven methods in other markets, preventing potential market manipulation and ensuring compliance with the regulatory framework. The proposal's commitment to transparency is actively demonstrated through the reporting of EFPs to CME, subjecting prices to ongoing surveillance and review. By incorporating enhanced regulatory standards, such as the Dodd-Frank modernization of EFP transactions, the DEFI proposal exhibits a forward-looking approach to investor protection.

In summary, our understanding indicates that the filing presents a distinctive approach to Bitcoin price exposure and serves as a thoughtful and comprehensive response to the Commission's concerns about fraud and manipulation. As an active market participant deeply committed to promoting market integrity and investor protection, XBTO respectfully urges the Commission to consider the merits of DEFI's application favorably.

### **Exchange for Physical transactions**

*2. Based on data and analysis provided and the academic research cited by the Exchange, what are commenters' views on whether the CME, on which CME bitcoin futures trade and through which the Fund intends to engage in EFP transactions to purchase or sell spot bitcoin, represents a regulated market of significant size related to spot bitcoin? What are commenters' views on whether there is a reasonable likelihood that a person attempting to manipulate the Shares would also have to trade on the CME to manipulate the Shares? Do commenters agree with the Exchange that trading in the Shares would not be the predominant influence on prices in the CME bitcoin futures market?*

RESPONSE: CME is widely recognized as the largest regulated Bitcoin futures market. With BTC/USD currently trading around \$44,000, the December 2023 BTC open interest (“OI”) on the CME has surpassed \$5 billion, marking the highest OI since October 2021 when BTC traded at all-time highs above \$60,000 (Source: CoinGlass, a cryptocurrency futures and trading information platform).

For context, the total November 2023 volume on the spot exchanges for the CME Bitcoin Reference Rate (“BRR”) was approximately \$95 billion (Bitstamp ~ \$4.67 billion; Coinbase ~ \$50 billion; Gemini ~ \$1.25 billion; Itbit ~ \$380 million; Kraken ~ \$25.39 billion; LMAX ~ \$13.08 billion. Source: The Block), while CME Bitcoin futures volume reached \$73 billion in November 2023.

CME's Bitcoin volume not only surpasses the individual volume numbers of each of the six constituent exchanges but may in some months even exceed all of their individual volumes combined (their

individual volumes also include other digital assets although spot Bitcoin would account for most of the trading volume). Such activity would be subject to monitoring by CME's market surveillance group. ETF arbitrageurs specialize in capitalizing on short-term discrepancies between the ETF and futures prices to bring them back to fair value.

Additionally, cash/futures arbitrageurs ensure that the futures leg is accurately valued. Trading DEFI Shares would not exert a dominant influence on prices within the CME Bitcoin futures market. The price discovery and arbitrage mechanisms among these different products would constitute only a subset of activities within the CME Bitcoin futures market. This subset includes participants engaged in cash and carry strategies, option delta hedging, yield-seeking strategies, long hedging, as well as firms seeking leverage, liquidity, and capital efficiency.

*4. The Fund will only use CME EFP transactions to acquire and dispose of spot bitcoin. The Exchange states that "trading activity in EFP transactions is sporadic" but that, "nonetheless, the Sponsor believes that a large number of liquidity providers are ready to execute this type of transaction and can provide enough liquidity to support the [Fund's] demand." Do commenters agree? Why or why not?*

RESPONSE: Yes, we do agree. The CME's website already features a substantial list of liquidity providers for Bitcoin futures and options:

(<https://www.cmegroup.com/trading/bitcoin-brokers-and-block-liquidity-providers.html>).

This list includes a robust and experienced group of EFP liquidity providers, comprising a mix of traditional Wall Street firms and crypto-native companies. As the EFP market grows, so will this list.

CME BTC EFP volumes are currently ~0.4% of BTC transactions with November 2023 being the best month since launch and 2023 the best year. For comparison, year to date ~0.7% of ES (S&P future) volume is traded EFP. Further, prior to launch of BITO, BTC blocks were about 0.2% of volume and post launch they are +6% of volume (Source: XBTO research based on CME data).

EFP activity for BTC will likely increase after the launch of a spot Bitcoin ETFs as ETF providers may use EFPs to transition between spot and futures. Market participants are comfortable with the EFP mechanism to access liquidity as EFPs are readily used across the CME product spectrum.

5. *The value of spot bitcoin held by the Fund would be determined using a futures-based spot price methodology that is derived from the settlement prices of bitcoin futures contracts on the CME. The Exchange presents data that it states, “strongly suggests that [futures-based spot pricing] is a suitable choice for the NAV calculation.” The Exchange states that futures-based spot pricing “could create some level of uncertainty due to the potential divergences between the [futures-based spot price] and the spot prices observed in unregulated markets” but that authorized participants “will always be in a position to hedge their exposure using exclusively the [CME bitcoin futures market], which will make them more likely to provide liquidity to the Fund thus making its market price converge to its NAV.” Do commenters agree with the Exchange? Why or why not?*

RESPONSE: Yes, the CME's Bitcoin futures daily BRR settlement method is a highly robust aggregation of spot prices from major exchanges, including Bitstamp, Coinbase, Gemini, Itbit, Kraken, and LMAX, making it very suitable for Net Asset Value (“NAV”) calculation.

The BRR is calculated as an equally weighted average of volume-weighted medians across 12 partitioned 5-minute windows within a specific one-hour calculation window. ETF arbitrageurs and cash vs. futures arbitrageurs have a strong economic incentive to capitalize on even minor divergences between futures-based spot prices and the fair value relationship between ETFs and futures. However, such opportunities tend to be short-lived. As a result, authorized participants will have access to ample liquidity for hedging exposures through the CME Bitcoin futures market, facilitating liquidity provision to the Fund.

XBTO thanks the Commission for the opportunity to comment on these important issues and respectfully encourages the approval of the filing. Please feel free to contact us with any questions you may have in our comments.

Sincerely,

*/s/ Philippe Bekhazi*

Chief Executive Officer

XBTO Global Ltd.