

January 5, 2024

**VIA E-MAIL**

Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

Re: Securities Exchange Act Rel. 34-98564 (SR-NYSEArca-2023-58)

Dear Secretary:

NYSE Arca, Inc. filed the attached Amendment No. 1 to the above-referenced filing on January 5, 2024.

Sincerely,



Encl. (Amendment No.1 to SR-NYSEArca-2023-58)

**Martha Redding**  
**Corporate Secretary**

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11 Wall Street  
New York, NY 10005  
Tel: +1 212.656. 2938 | Fax: +1 212.656.8101  
**ice.com**

Required fields are shown with yellow backgrounds and asterisks.

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SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No. \* SR 2023 - \* 58

Amendment No. (req. for Amendments \*) 1

Filing by NYSE Arca, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input type="checkbox"/>	Amendment * <input checked="" type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010  
Section 806(e)(1) \*

Section 806(e)(2) \*

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934  
Section 3C(b)(2) \*

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposal to reflect a change in the name and investment objective of the Hashdex Bitcoin Futures ETF

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Le-Anh Last Name \* Bui

Title \* Senior Counsel, NYSE Group Inc.

E-mail \* Le-Anh.Bui@ice.com

Telephone \* (202) 661-8953 Fax (212) 656-8101

**Signature**

Pursuant to the requirements of the Securities Exchange of 1934, NYSE Arca, Inc. has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 01/05/2024 (Title \*)

By Martha Redding (Name \*)

Corporate Secretary

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Martha Redding

Digitally signed by Martha Redding  
Date: 2024.01.05 15:34:35 -05'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

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

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

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

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Ex. 1 SEC Sub of Am. 1 NYSE Arca F

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

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

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

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

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

Exhibit Sent As Paper Document

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

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

Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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

**Exhibit 5 - Proposed Rule Text**

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

**Partial Amendment**

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

1. Text of the Proposed Rule Change

- (a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) proposes to list and trade shares of the Hashdex Bitcoin ETF under NYSE Arca Rule 8.500-E (“Trust Units”).

This Amendment No. 1 to SR-NYSEARCA-2023-58 replaces SR-NYSEARCA-2023-58 as originally filed and supersedes such filing in its entirety.

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

- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change is being submitted by Exchange staff to the Securities and Exchange Commission (“Commission”) pursuant to authority delegated by the Exchange’s Board of Directors and the NYSE Arca Board of Directors.

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

Le-Anh Bui  
Senior Counsel  
NYSE Group, Inc.  
(202) 661-8953

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

- (a) Purpose

The Exchange proposes to list and trade shares (“Shares”) of the Hashdex Bitcoin ETF (the “Fund”) under NYSE Arca Rule 8.500-E.

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

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

The Commission previously approved the listing and trading of shares of the Teucrium Bitcoin Futures Fund (the “Predecessor Fund”)<sup>3</sup> pursuant to NYSE Arca Rule 8.200-E, Commentary .02.<sup>4</sup> The Predecessor Fund’s name was subsequently changed to the Hashdex Bitcoin Futures ETF pursuant to an April 18, 2022 amendment to the Predecessor Fund’s registration statement.<sup>5</sup> In connection with the launch of the Predecessor Fund, Tidal Investments LLC (f/k/a Toroso Investments LLC, the “Sponsor”),<sup>6</sup> Teucrium Trading, LLC (the “Prior Sponsor”), and Hashdex Asset Management, Ltd. (“Hashdex”) entered into an agreement pursuant to which the Fund would be the successor and surviving entity from a merger into the Fund of the Predecessor Fund (which is a series of the Predecessor Trust sponsored by the Prior Sponsor).<sup>7</sup>

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<sup>3</sup> The Predecessor Fund is a series of the Teucrium Commodity Trust (the “Predecessor Trust”). The Commission has noticed for immediate effectiveness a separate proposed rule change relating to the transfer of management and control of the Fund from the Predecessor Trust to the Tidal Commodities Trust I (the “Trust”). See Securities Exchange Act Release No. 99164 (December 13, 2023), 88 FR 87825 (December 19, 2023) (SR-NYSEARCA-2023-84) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Make Changes to Certain Representations Relating to the Hashdex Bitcoin Futures Fund).

<sup>4</sup> See Securities Exchange Act Release No. 34-94620 (April 6, 2022), 87 FR 21676 (April 12, 2022) (SR-NYSEArca-2021-53) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the Teucrium Bitcoin Futures Fund Under NYSE Arca Rule 8.200-E, Commentary .02 (Trust Issued Receipts)) (the “Approval Order”). The representations herein supersede and replace the representations in the Exchange’s prior rule filing relating to the Teucrium Bitcoin Futures Fund and Partial Amendment No. 2 thereto. See Securities Exchange Act Release No. 92573 (August 5, 2021), 86 FR 44062 (August 11, 2021) (SR-NYSEArca-2021-53) (Notice of Filing of a Proposed Rule Change To List and Trade Shares of Teucrium Bitcoin Futures Fund Under NYSE Arca Rule 8.200-E) and Partial Amendment No. 2, available at: <https://www.sec.gov/comments/sr-nysearca-2021-53/srnysearca202153-20118884-271701.pdf>.

<sup>5</sup> On April 18, 2022, Teucrium Commodity Trust filed with the Commission Pre-Effective Amendment No. 2 to the registration statement on Form S-1 under the Securities Act of 1933 (the “Securities Act”) (File No. 333-256339) changing the name of the Fund from Teucrium Bitcoin Futures Fund to Hashdex Bitcoin Futures ETF.

<sup>6</sup> The Sponsor is not registered as a broker-dealer or affiliated with a broker-dealer. In the event that (a) the Sponsor becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new sponsor or sub-adviser is registered as a broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or personnel of the broker-dealer affiliate, as applicable, regarding access to information concerning the composition of and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

<sup>7</sup> On July 21, 2023, the Trust, on behalf of the Fund, filed with the Commission a registration statement on Form S-1 under the Securities Act (File No. 333-2773364) , as amended by a Pre-Effective Amendment No. 1 filed with the Commission on November 2, 2023 (“Form S-1”), for the continuous offering and sale of the Fund’s Shares. On October 31, 2023, the Trust filed with the Commission a separate registration statement on Form S-4 (File No. 333-275227) (“Form S-4”) under the Securities Act to register 50,004 shares of the Fund, which was issued in exchange for the outstanding shares of the Predecessor Fund (the “Reorganization”). The Reorganization closed on January 3, 2024. The offering and sale of Fund Shares pursuant to the Form S-1 and the Form S-4 and the trading in such Shares commenced with the closing of the Reorganization, at which time the registration statements on the Form S-1 and the Form S-4 were declared effective.

On August 25, 2023, the Trust on behalf of the Fund, submitted a confidential draft registration statement (the “Draft Registration Statement”) on Form S-1 (File No. 377-06858) to change the Fund’s name to the Hashdex Bitcoin ETF and to modify the Fund’s investment objective and strategy, as further discussed below.<sup>8</sup> On December 22, 2023, the Trust, on behalf of the Fund, filed publicly a registration statement on Form S-1 (File No. 333-276254) (the “Registration Statement”), which supersedes and replaces the Draft Registration Statement.<sup>9</sup>

The Fund is a series of the Trust, a Delaware statutory trust. The Fund is managed and controlled by the Sponsor and administered by Tidal ETF Services LLC (the “Administrator”). The Sponsor is registered as a commodity pool operator (“CPO”) and a commodity trading adviser with the Commodity Futures Trading Commission (“CFTC”) and is a member of the National Futures Association (“NFA”).

U.S. Bancorp Fund Services, LLC (doing business as U.S. Bank Global Fund Services) is the sub-administrator, registrar, and transfer agent for the Fund (“Sub-Administrator” or “Transfer Agent”). U.S. Bank, N.A. will hold the Fund’s cash and/or cash equivalents<sup>10</sup> (“Cash Custodian”). BitGo Trust Company, Inc. will keep custody of all the Fund’s bitcoin as the “Bitcoin Custodian.”<sup>11</sup>

#### The Fund’s Investment Objective and Strategy

According to the Registration Statement, the investment objective of the Fund is to have the daily changes in the net asset value (“NAV”) of the Shares reflect the daily changes in the price of its benchmark, less expenses from the Fund’s operations, by investing in both

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<sup>8</sup> The Trust, on behalf of the Fund, submitted an Amendment No. 1 to the Registration Statement on November 14, 2023 (“DRS Amendment”). The Jumpstart Our Business Startups Act (the “JOBS Act”), enacted on April 5, 2012, added Section 6(e) to the Securities Act. Section 6(e) of the Securities Act provides that an “emerging growth company” may confidentially submit to the Commission a draft registration statement for confidential, non-public review by the Commission staff prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed not later than 15 days before the date on which the issuer conducts a road show, as such term is defined in Securities Act Rule 433(h)(4). An emerging growth company is defined in Section 2(a)(19) of the Securities Act as an issuer with less than \$1,000,000,000 total annual gross revenues during its most recently completed fiscal year. The Trust meets the definition of an emerging growth company and consequently submitted its Draft Registration Statement and DRS Amendment to the Commission on a confidential basis.

<sup>9</sup> A Pre-Effective Amendment No. 1 to the Registration Statement was filed on December 26, 2023 (the “Amendment”). The Amendment was an exhibit-only filing to provide the Fund’s executed bitcoin custodian agreement. The Draft Registration Statement and the DRS Amendment have been made accessible as public filings. The Registration Statement is not yet effective, and the Shares will not trade on the Exchange under the prospectus contained in the Registration Statement until such time that the Registration Statement is effective.

<sup>10</sup> “Cash equivalents” include short-term treasury bills (90 days or less to maturity), money market funds, and demand deposit accounts. The Fund does not hold, invest in, or trade in digital assets that are linked to any fiat currency (i.e., stablecoins).

<sup>11</sup> The Fund may, in the future, engage additional custodians for its bitcoin, each of whom may be referred to as a Bitcoin Custodian.

bitcoin and bitcoin futures contracts traded on the Chicago Mercantile Exchange, Inc. (“CME”).<sup>12</sup> In doing so, the Sponsor expects that the Fund will provide investors with bitcoin exposure that is more resistant to fraud and manipulative practices than comparable products that seek to rely on unregulated trading platforms.<sup>13</sup> In particular, to avoid any exposure to potential manipulation from actors operating on unregulated trading platforms, although the Fund will hold spot bitcoin, the Fund’s NAV will be calculated using a spot bitcoin price derived from the price of CME Bitcoin Futures Contracts (as defined below), and the Fund expects to purchase and sell bitcoin exclusively via Exchange for Physical (“EFP”) transactions on the CME’s bitcoin futures market (the “CME Bitcoin Futures Market”).<sup>14</sup> The Fund will not trade or otherwise rely on information or services from unregulated spot bitcoin trading platforms, but will instead buy CME Bitcoin Futures Contracts with the purpose of using them to acquire physical bitcoin through EFP transactions on the regulated CME Bitcoin Futures Market.

According to the Registration Statement, CME offers two bitcoin futures contracts, one contract representing five (5) bitcoins (“BTC Contract”) and another contract representing one-tenth of one (0.10) bitcoin (“MBT Contract”).<sup>15</sup> Each BTC Contract and MBT Contract settles daily to the BTC Contract volume-weighted average price (“VWAP”) of all trades that occur between 2:59 p.m. and 3:00 p.m., Central Time, the settlement period, rounded to the nearest tradable tick. BTC Contracts and MBT Contracts each expire on the last Friday of the contract month, and the final settlement value for each contract is based on the CME CF Bitcoin Reference Rate (“CME CF BRR”).<sup>16</sup>

BTC Contracts and MBT Contracts each trade six consecutive monthly contracts plus two additional December contract months (if the 6 consecutive months include December, only one additional December contract month is listed). Because BTC

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<sup>12</sup> Consistent with the Approval Order, the Fund currently only invests in BTC Contracts and MBT Contracts (as defined below) and in cash and cash equivalents.

<sup>13</sup> As used in this filing, “unregulated trading platforms” refers to trading venues whose trading rules are not subject to regulatory review or approval by the SEC, CFTC or other federal regulator, whose trading operations are not subject to regulatory examination, and that are not required by law to have anti-manipulation practices that federal securities or commodities regulation would require. See, e.g., Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To List and Trade Shares of the Winklevoss Bitcoin Trust, Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 at 37597 (August 1, 2018) (SR-BatsBZX-2016-30) (the “Winklevoss Order”) (describing lack of regulatory oversight for Gemini trading platform).

<sup>14</sup> The Fund’s futures-based spot pricing methodology and use of EFP transactions are explained in greater detail below in “Futures-Based Spot Price” and “EFP Transactions,” respectively.

<sup>15</sup> BTC Contracts began trading on the CME Globex trading platform on December 15, 2017, and are cash-settled in U.S. dollars. MBT Contracts began trading on the CME Globex trading platform on May 3, 2021, under the ticker symbol “MBT” and are also cash-settled in U.S. dollars. For purposes of this filing, BTC Contracts and MBT Contracts may also be referred to, individually or collectively, as “CME Bitcoin Futures Contracts.”

<sup>16</sup> The CME CF BRR aggregates the trade flow of major bitcoin spot platforms during a specific calculation window into a once-a-day reference rate of the U.S. dollar price of bitcoin.

Contracts and MBT Contracts are exchange-listed, they allow investors to gain exposure to bitcoin without having to hold the underlying cryptocurrency.

The Fund's benchmark, as referenced above, is the Nasdaq Bitcoin Reference Price - Settlement (the "NQBTCS" or "Benchmark"),<sup>17</sup> which ultimately tracks the price of bitcoin. The Sponsor believes that the spot price performance of bitcoin is best measured through the use of a reputable index provided by an established index provider and has selected the NQBTCS as a trustworthy benchmark of bitcoin pricing.

The Sponsor will employ a passive investment strategy that is intended to track the changes in the Benchmark regardless of whether the Benchmark goes up or goes down, meaning that the Sponsor will not try to "beat" the Benchmark. In order to track the Benchmark as closely as possible, the Fund will aim to maximize its investment in bitcoin.

The Fund will gain exposure to physical bitcoin by buying CME Bitcoin Futures Contracts for the primary purpose of using such CME Bitcoin Futures Contracts to acquire physical bitcoin through EFP transactions on the regulated CME Bitcoin Futures Market. The Fund may maintain CME Bitcoin Futures Contracts positions (with related cash reserves to meet applicable margin requirements) if the Sponsor deems it necessary to meet the Fund's liquidity needs for the cash payment of Share redemption settlements and of other applicable expenses borne by the Fund. The Fund will also maintain cash balances or invest in cash equivalents to the extent it is unable to purchase CME Bitcoin Futures Contracts with available cash.

If there are no Share redemption orders or currently due Fund-payable expenses and assuming that the Fund is able to utilize all available cash to purchase CME Bitcoin Futures Contracts, the Fund's portfolio is expected to be composed of at least 95% in bitcoin and up to 5% in cash, cash equivalents, and/or CME Bitcoin Futures Contracts.

The Sponsor expects that the Fund's average daily tracking error against the Benchmark will be less than 10% over any period of 30 trading days. The Fund's passive investment strategy is designed to allow investors to purchase and sell the Shares for the purpose of investing in bitcoin, whether to hedge the risk of losses in their bitcoin-related transactions or gain price exposure to the bitcoin market.

The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. That is, given its passive investment strategy, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2Xs, 3Xs, -2Xs, and -3Xs) of the Fund's Benchmark.

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<sup>17</sup> See <https://indexes.nasdaqomx.com/Index/Overview/NQBTCS>.



### The Fund's Benchmark

According to the Sponsor, the Fund will use the Benchmark as a reference to track and measure its performance compared to the price performance of spot bitcoin. The Fund will not use the Benchmark for valuation purposes when calculating the Fund's NAV.<sup>18</sup>

According to the Sponsor, the NQBTCS is designed to allow institutional investors to track the price of bitcoin by applying a rigorous methodology to trade data captured from cryptocurrency trading platforms that meet the eligibility criteria of the Nasdaq Crypto Index ("NCI"). The NQBTCS is calculated once every trading day by applying a publicly available rules-based pricing methodology to a diverse collection of pricing sources to provide an institutional-grade reference price for bitcoin.<sup>19</sup> The NQBTCS is designed to account for variances in price across a wide range of sources, each of which has been vetted according to criteria identified in the methodology. Specifically, the NQBTCS settlement value is the Time Weighted Average Price ("TWAP") calculated across the VWAPs for each minute in the settlement price window, which is between 2:50:00 and 3:00:00 p.m. New York time. Where there are no transactions observed in any given minute of the settlement price window, that minute is excluded from the calculation of the TWAP.

According to the Sponsor, the NQBTCS also utilizes penalty factors to mitigate the impact of anomalous trading activity such as manipulation, illiquidity, large block trading, or operational issues that could compromise price representation. Three types of penalties are applied: abnormal price penalties, abnormal volatility penalties, and abnormal volume penalties. These penalties are defined as adjustment factors to the weight of information from each trading platform that contributes pricing information based on the deviation of a trading platform's price, volatility, or volume from the median across all trading platforms. For example, if a core trading platform's price is 2.5 standard deviations away from the median price, its price penalty factor will be a 1/2.5 multiplier.

Finally, as a means of achieving the highest degrees of confidence in the reported volume, data is sourced only from "core trading platforms" that are screened, selected, and approved by the Nasdaq Crypto Index Oversight Committee (the "NCIOC"). Core trading platforms must:

- (1) Have strong forking controls;

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<sup>18</sup> As further explained below, the Administrator will employ a methodology based on the settlement prices of the CME Bitcoin Futures Contracts to determine the price of the Fund's spot bitcoin holdings for NAV calculation. The Sponsor believes that this approach enables the Fund to effectively track the Benchmark while also mitigating risks to investors stemming from exposure to unregulated trading platforms and the prices derived from them.

<sup>19</sup> See [https://indexes.nasdaqomx.com/docs/methodology\\_NCI.pdf](https://indexes.nasdaqomx.com/docs/methodology_NCI.pdf).

- (2) Have effective anti-money laundering controls;
- (3) Have a reliable and transparent application programming interface that provides real-time and historical trading data;
- (4) Charge fees for trading and structure trading incentives that do not interfere with the forces of supply and demand;
- (5) Be licensed by a public independent governing body;
- (6) Include surveillance for manipulative trading practices and erroneous transactions;
- (7) Evidence a robust IT infrastructure;
- (8) Demonstrate active capacity management;<sup>20</sup>
- (9) Evidence cooperation with regulators and law enforcement; and
- (10) Have a minimum market representation for trading volume.<sup>21</sup>

Additionally, the NCIOC conducts further diligence to assess a trading platform's eligibility and will consider additional criteria such as the trading platform's organizational and ownership structure, security history, and reputation. The list of existing core trading platforms will be recertified by the NCIOC at a minimum on an annual basis.

The Sponsor believes that the NQBTCS is a suitable Benchmark for the Fund for several reasons. First, it would provide reliable pricing for purposes of tracking the actual performance of bitcoin. Second, it is administered by a reputable index administrator that is not affiliated with the Sponsor or Fund,<sup>22</sup> which provides assurances of accountability

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<sup>20</sup> According to NCI's methodology, to demonstrate active capacity management, core trading platforms must demonstrate that their platform's technical infrastructure is designed in such a way that it is capable of accommodating a sudden, significant increase in trade volume without impacting system functionality. See id. at 4.

<sup>21</sup> According to NCI's methodology, to compute a trading platform's market size, the NCIOC sums the U.S. Dollar ("USD") volume of all eligible digital asset - USD pairs for the month of August each year. A core trading platform must have at least 0.05% of the total volume in eligible trading platforms. See id.

<sup>22</sup> Nasdaq, Inc. ("Nasdaq"), the index provider, adheres to the International Organization of Securities Commissions principles for benchmarks (the "IOSCO Principles") for many of its indexes via an internal control and governance framework that is audited by an external, independent auditor on an annual basis. Although NQBTCS is not currently one of the indexes that is required to comply with IOSCO Principles, as a reference rate index, it is administered in a manner that is generally consistent with both the IOSCO Principles and the elements of Nasdaq's internal control and governance framework pursuant to IOSCO Principles. NQBTCS is administered and governed by the NCIOC in accordance with the publicly available NCI methodology. The NCIOC oversees all aspects of the administration of the NQBTCS, including the defined processes and controls for the selection and monitoring of third parties such as the core trading platforms and core custodians (see "Custody of Bitcoin," infra), as well as the validation and

and independence. Finally, the NQBTCS methodology is designed to resist potential price manipulation from unregulated bitcoin markets by applying the following safeguards:

- (1) Strict eligibility criteria for the NCI core trading platforms from which the NQBTCS data is drawn;
- (2) A diverse collection of trustworthy pricing sources to provide an institutional-grade reference price for bitcoin; and
- (3) The use of adjustment factors to mitigate against the impact of any anomalous trading activity.

### Futures-Based Spot Price

For purposes of calculating the Fund's NAV, the value of the bitcoin held by the Fund will be determined by the Administrator in good faith based on a "Futures-Based Spot Price" or "FBSP" methodology.<sup>23</sup> The Sponsor has selected this pricing approach to value the Fund's bitcoin because it insulates the calculation of the NAV of the Fund from data from unregulated bitcoin trading platforms.

According to the Sponsor, the FBSP methodology allows for the estimation of the spot price of bitcoin by utilizing only market data related to BTC Contracts<sup>24</sup> traded on the CME Bitcoin Futures Market (specifically, settlement prices and time to maturity for such futures contracts). The Administrator is thus able to calculate the Fund's NAV (as further described in "Net Asset Value" below) without relying on market data from unregulated bitcoin trading platforms. The Administrator will apply the FBSP methodology to estimate the price of spot bitcoin daily by using the daily settlement prices of BTC Contracts.

According to the Sponsor, the FBSP methodology is based on well-established academic research,<sup>25</sup> particularly on the topic of term structure of interest rates. As discussed

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reconciliation of index calculations and pricing data. The NCIOC also oversees the identification and mitigation of any potential conflicts of interest, formal complaints, and updates or changes to the index methodology consistent with the IOSCO Principles.

<sup>22</sup> The FBSP is based on extensive academic research on forward yield curves and is further described in the Fund's Registration Statement.

<sup>24</sup> For the calculation of FBSP, the Administrator considers all listed BTC Contracts that have a daily settlement price published by the CME Bitcoin Futures Market on a given date. The Sponsor notes that, although BTC and MBT Contracts have the same settlement prices, the Administrator will only consider BTC Contracts when calculating the FBSP.

<sup>25</sup> See, e.g., Nelson, Charles R., and Andrew F. Siegel, "Parsimonious modeling of yield curves." *Journal of Business* (1987), available at: [https://www.researchgate.net/publication/24103017\\_Parsimonious\\_Modeling\\_of\\_Yield\\_Curves](https://www.researchgate.net/publication/24103017_Parsimonious_Modeling_of_Yield_Curves); Svensson, Lars EO, "Estimating and Interpreting Forward Interest Rates: Sweden 1992-1994." (September 1994), IMF Working Paper No. 94/114, available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=883856](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=883856).

below, the Sponsor has tested the reliability of FBSP-derived prices by comparing them to historical samples of various benchmarks for the prices of physical bitcoin. The Sponsor believes that the FBSP-derived prices very closely adhere to such benchmarks and that the FBSP methodology can fairly price bitcoin while seeking to protect the Fund's NAV from short-term distortions that may arise due to fraud or manipulation attempts by bad actors trading on unregulated trading platforms.

The calculations underlying the FBSP methodology utilize well-understood and simple-to-implement mathematical and statistical techniques, such as multivariate linear regressions and arithmetic operations. The detailed methodology is described in the Fund's Registration Statement and will also be published on the Fund's website (<https://hashdex-etfs.com/>), along with all inputs necessary to replicate the calculation. In the event of any modifications to the FBSP methodology, the Fund will issue a press release notifying the investing public of such change and the date of the change's effectiveness, which press release will be filed with the Commission under a current report on Form 8-K by the Fund, and, with respect changes to the FBSP methodology as described in this filing, file a proposed rule change under Section 19(b) with the Commission.

The FBSP methodology involves calculating a parametric forward curve<sup>26</sup> into prevailing prices for actual BTC Contracts. The parametric forward curve can then be used to derive the spot price of bitcoin by calculating the price to the point of immediate settlement (i.e., setting the BTC Contracts' time to maturity to zero). This process results in a set of calculated weights that are applied to the price of each actual BTC Contract included in the forward curve. The weights are calculated daily and are dependent solely on the number of calendar days until maturity of each active BTC Contract.<sup>27</sup> The spot price for bitcoin derived from FBSP is, in turn, calculated by multiplying each price by its applicable weight and then summing all terms:

$$FBSP = \sum W_i * SP_i$$

*where  $W_i$  is the weight and  
 $SP_i$  is the settlement price of each BTC Contract.*

The chart below visually illustrates the CME Bitcoin Futures Market's forward curve and how the FBSP is determined for a specific date (October 9, 2023). Each dot represents

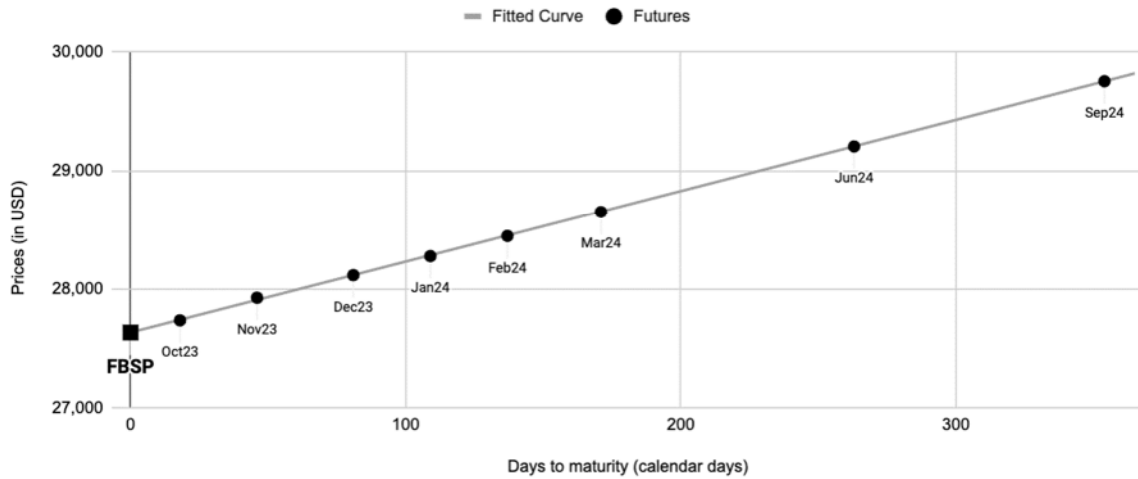
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<sup>26</sup> The forward curve of bitcoin futures contracts is the plot of the prices of individual futures contracts against their respective time to maturity. A parametric forward curve is a mathematical function that produces a price for a futures contract for any maturity, which can be used to generate a theoretical estimate of a futures price for a maturity that does not have contracts negotiated, including a spot price, by setting the time to maturity to zero.

<sup>27</sup> The Sponsor will make these weights publicly available on the Fund's website daily, such that any third party can replicate the calculation.

the settlement price of a specific CME Bitcoin Futures Contract. The line represents the calculated (fitted) forward curve. The dots align closely with the fitted curve line, meaning that the curve accurately tracks the settlement prices of the BTC Contracts. The square is a point on the curve corresponding to a zero-day maturity, representing the spot price for bitcoin for that date.

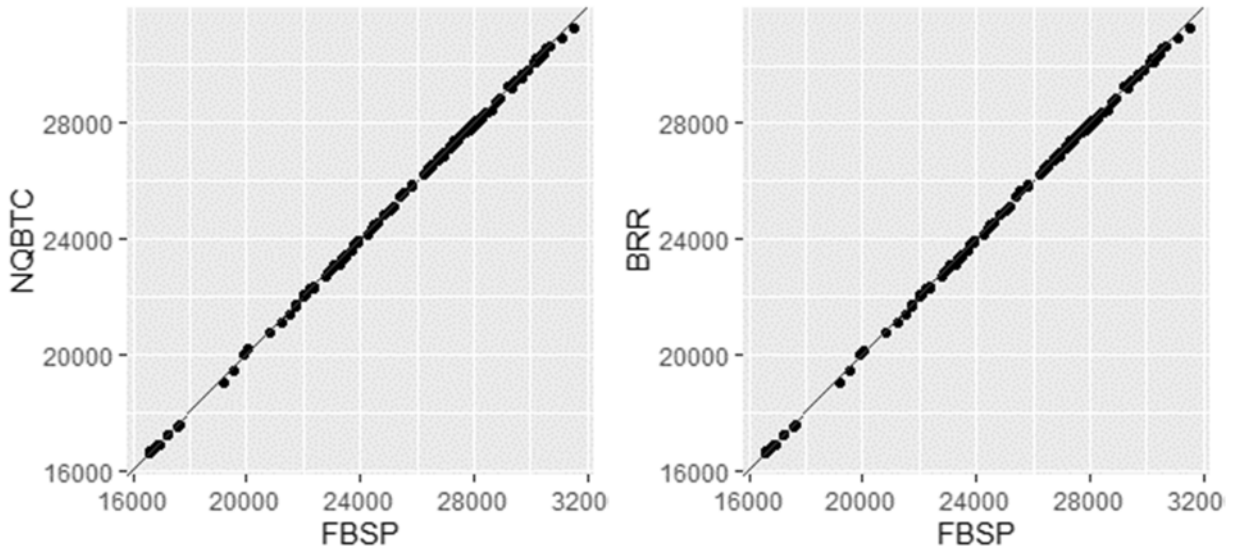
BTC Contracts Forward Curve and FBSP - 10/09/2023



The table below demonstrates the FBSP calculation for the same specific day.

<b>FBSP on 10/09/2023</b>			
<b>Future</b>	<b>Weight (W)</b>	<b>Settlement Price (SP)</b>	<b>Product (W x SP)</b>
Oct23	122.10%	\$27,735.00	\$33,864.44
Nov23	-0.70%	\$27,925.00	-\$195.48
Dec23	-6.70%	\$28,115.00	-\$1,883.71
Jan24	-5.90%	\$28,275.00	-\$1,668.23
Feb24	-4.90%	\$28,445.00	-\$1,393.81
Mar24	-3.70%	\$28,650.00	-\$1,060.05
Jun24	-1.50%	\$29,205.00	-\$438.08
Sep24	-0.30%	\$29,755.00	-\$89.27
Dec24	0.50%	\$30,305.00	\$151.53
Mar25	1.10%	\$30,860.00	\$339.46
<b>FBSP</b>			\$27,626.82
<b>NQBTC</b>			\$27,619.94
<b>Divergence (%)</b>			0.02%

Using data available on Bloomberg on July 10, 2023, the Sponsor compared FBSP to NQBTC and CME CF BRR from December 27, 2022 to July 7, 2023 and concluded that FBSP tracks both indexes with satisfactory accuracy. The following charts show a direct comparison between those two benchmark values and FBSP:



In the above charts, each point indicates one day, and their proximity to the line shows how similar FBSP is to each of NQBTCS and CME CF BRR. The correlations between FBSP and each of NQBTCS and CME CF BRR exceed 99.9%, and the mean absolute percentage divergences are 21 basis points (“bps,” where 1bp = 0.01%) and 22bps, respectively, while the median absolute percentage divergences are 18bps and 17bps, respectively.

The Sponsor believes that this data strongly suggests that FBSP is a suitable choice for NAV calculation purposes.

#### *Mitigation of Manipulation Risks Through Use of the FBSP for NAV Calculation*

While the Commission has raised valid concerns about the potential influence of unregulated bitcoin markets on the daily settlement price of the CME Bitcoin Futures Market, the Sponsor believes that the proposed use of FBSP to calculate the value of the bitcoin held by the Fund for purposes of NAV calculation provides a significant and sufficient degree of insulation from such influences, for the following reasons:

1. **Regulated market influence:** The daily settlement price of CME Bitcoin Futures Contracts, which is the basis for the NAV calculation of both futures contracts and bitcoin holdings of the Fund, is primarily influenced by trading activity within the regulated futures market itself. This market is subject to stringent oversight and surveillance mechanisms designed to detect and deter manipulative and fraudulent practices, thus significantly limiting the possible influence of unregulated bitcoin markets on the daily settlement price.
2. **High liquidity and volume:** The CME Bitcoin Futures Market is characterized by high liquidity and trading volume, such that any attempt to influence the price calculated by the FBSP through trading activity in other, unregulated bitcoin markets would require a significant amount of capital and coordination. The Sponsor thus believes that any such manipulation attempts would be readily detectable by the CME’s market surveillance.
3. **Complex pricing methodology:** The NAV calculation methodology is comprehensive and accounts for both the tenor and final settlement price of each futures contract. In addition, the FBSP method used in the NAV calculation process incorporates all maturities of BTC Contracts, which exhibit a robust price relationship among themselves. As a result, attempting to manipulate these prices in a coordinated manner to generate a substantial impact on NAV would be very challenging for potential manipulators and likely financially unfeasible. The Sponsor thus believes that the complexity of the methodology provides an additional layer of protection against manipulation, as it would be extremely difficult for a manipulator to influence all these factors in a coordinated way to impact the Fund’s NAV without leaving a detectable trail that would alert market surveillance.

4. **Focus on near-term contracts:** The FBSP methodology gives more importance to futures contracts that are due for settlement in the near term because such contracts are more heavily traded, and their prices are more reliable indicators of the current spot price of bitcoin. The Sponsor believes that the methodology's focus on near-term contracts further reduces the potential for manipulation, as these contracts are less susceptible to manipulation due to their higher trading volumes and liquidity.

As detailed above, the Sponsor's proposed investment strategy ensures that no unregulated spot bitcoin trading platform could be considered a "market of relevant size" in relation to the Fund, given that the Fund does not rely on any information or services coming from unregulated markets. All of the Fund's operations, including the purchase and sale of bitcoin and its NAV determination, rely on CME Bitcoin Futures Contracts on the CME Bitcoin Futures Market. Thus, all of the Fund's transactions, whether in CME Bitcoin Futures Contracts or physical bitcoin, are registered and monitored on a regulated exchange, providing an additional layer of security and transparency. Because any attempt to manipulate the Fund would require significant trading on the CME Bitcoin Futures Market, and not on any unregulated bitcoin trading platform, there is significantly reduced potential for manipulation and fraud, further protecting investors and maintaining the integrity of the market.

The Sponsor also believes that it is highly unlikely that a person attempting to manipulate the NAV of the Fund could do so successfully by trading on unregulated spot and derivatives markets. Because of direct arbitrage, it is reasonable to assume that the ETP's market price (in the secondary market) would closely adhere to the Fund's Indicative Fund Value ("IFV"),<sup>28</sup> given that APs can always create and redeem shares of the Fund hedging with a basket of CME Bitcoin Futures Contracts and the value of the creation basket is determined based on the NAV of the Fund, which in turn is calculated using the FBSP method based on such basket of CME Bitcoin Futures Contracts. Consequently, the likelihood that a potential manipulator of the ETP could succeed by exclusively trading in unregulated bitcoin markets would depend on how much the prices in these markets have an impact over CME Bitcoin Futures Contracts prices. The likelihood that a potential manipulator would undertake such an effort is also low when considering the financial burden of manipulating the unregulated markets and the overall expected profitability of any such manipulation.

To further assess such likelihood, the Sponsor carried out the following analysis to investigate the relationship between prices from relevant unregulated bitcoin markets and the prices of CME Bitcoin Futures Contracts, to assess the impact that a manipulation on those markets would have on the CME Bitcoin Futures Market. The Sponsor collected

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<sup>28</sup>

The IFV, as further discussed in the "Indicative Fund Value" section below, is based on the prior day's closing NAV per Share and updated to reflect changes in the Fund's holdings value during the trading day.



one-minute bars data between January 18, 2023 and July 26, 2023<sup>29</sup> of prices for the nearest CME Bitcoin Futures Contract (“Nearest CME Futures”) and the following alternative bitcoin prices (“ABP”): (1) bitcoin (in USD) on each of NQBTC’s core trading platforms,<sup>30</sup> (2) bitcoin (in Tether stablecoin (USDT)), and (3) BTCUSDT USDs-Margined Perpetuals on Binance. For each day and each ABP, a simple regression model was estimated with one-minute Nearest CME Futures log-returns as the dependent variable, and two independent variables: (1) the log Nearest CME Futures closing price of the previous minute (as a control variable) and (2) the difference between the ABP log return and the Nearest CME Futures log return in the previous minute (as the variable of interest).

The estimated coefficients associated with the variable of interest are a measure of the expected response from the Nearest CME Futures (as measured by its returns) to a divergence between its own return information and the one from ABP in the near past (one-minute lagged returns). Such divergences are expected to occur in cases of manipulation. A higher coefficient (closer to one) would indicate that Nearest CME Futures are more sensitive to and strongly influenced by the divergence, while a lower coefficient (closer to zero) would suggest that Nearest CME Futures are less responsive and not significantly influenced by the information coming from ABP. The Sponsor believes that these coefficients can be considered a conservative estimate of the real impact that manipulation in an ABP would have over the Nearest CME Futures price because the estimates are calculated under normal circumstances rather than under a manipulative attack, in which some other indicators, such as abnormal volume and volatility, would warn market participants and undermine their perception of the attacked ABP as a reliable price reference.

The results of the Sponsor’s analysis are summarized in the table below:<sup>31</sup>

ABP	Estimated Parameters				Market Depth	
	Average	1st Decile	Median	9th Decile	+2% Depth	-2% Depth
Coinbase (spot USD)	0.39	0.21	0.41	0.53	\$10,317,109	\$17,320,315
Binance (spot USDT)	0.36	0.15	0.38	0.52	\$17,523,531	\$42,136,404
Kraken (spot USD)	0.22	0.03	0.23	0.40	\$28,189,731	\$30,375,259
Bitstamp (spot USD)	0.17	0.03	0.18	0.33	\$5,083,934	\$4,831,827
Gemini (spot USD)	0.15	-0.01	0.16	0.30		
ItBit (spot USD)	0.08	-0.07	0.07	0.23		
Binance (perpetual USDT)	0.01	-0.07	0.00	0.09		

The Sponsor’s analysis suggests that the influence of ABP over the Nearest CME Futures prices is relatively low. For instance, if a would-be manipulator chose to attack Coinbase, which is an ABP with higher coefficients and thus higher potential to impact

<sup>29</sup> This date range represents days with intraday data available on Bloomberg as of July 27, 2023. Days with less than 40 observations for a given ABP were excluded from the analysis of such ABP.

<sup>30</sup> The core trading platforms as of December 31, 2023 were BitStamp, Coinbase, Gemini, itBit, and Kraken.

<sup>31</sup> The market depth information was obtained from CoinMarketCap on July 19, 2023. The ABPs with blank cells in this table were not included in the July 19, 2023 snapshot.

Nearest CME Futures, the average coefficient of 0.39 means that in order to manipulate Nearest CME Futures prices by 1%, the would-be manipulator would have to distort Coinbase prices by more than 2.5% (i.e., 1% divided by 0.39) on average. To be successful with 90% confidence (1st Decile), this manipulator would have to distort Coinbase prices by more than 4.7% (1% divided by 0.21). The Sponsor believes that its analysis supports that, even considering these conservative estimates, indirect manipulation would be extremely inefficient.

The market depth columns in the above table indicate that substantial financial resources, running into tens of millions of dollars, are present on both sides of the order book for the most influential ABPs (even without including hidden orders, bots, and arbitrageurs that effectively enhance liquidity). The considerable financial commitment that would be required makes the manipulation of these prices an expensive endeavor.

The Sponsor believes that its analysis demonstrates that the low efficiency of attempts to manipulate ABPs, coupled with the significant cost involved in influencing impactful ABPs, makes potential manipulation of spot bitcoin markets an unattractive proposition, and that it is therefore highly unlikely that a potential manipulator of the ETP could succeed by exclusively trading in unregulated bitcoin markets. The combination of the high costs and the inefficiencies associated with manipulation makes it a daunting and unprofitable venture.

The Sponsor acknowledges the potential for influence from trades settled in unregulated bitcoin markets. However, the Sponsor believes that the NAV calculation methodology, coupled with the inherent characteristics of the CME Bitcoin Futures Market, provides a significant degree of protection against such influence being deliberately used to manipulate the Fund's market price or NAV. The Sponsor believes that any such attempt at manipulation very likely would be detected by CME market surveillance.

### EFP Transactions

According to the Sponsor, an EFP transaction, also known as an Exchange for Related Position ("EFRP") transaction,<sup>32</sup> is a type of trade that is available for most CME futures contracts. An EFP trade is a composite transaction that involves the opening of a position in the futures market and the execution of an inverse trade in the underlying physical asset. An EFP trade closes with a physical delivery against a cash settlement.

Because EFP trades require the parties to the transaction to simultaneously trade the futures and the physical legs of the transaction, the futures leg of an EFP trade is not executed at the CME's central limit order book. Rather, an EFP is a CME-regulated, bilaterally negotiated block trade, in which both parties engage in both legs of the composite transaction.

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<sup>32</sup>

See <https://www.cmegroup.com/clearing/operations-and-deliveries/accepted-trade-types/efp-efr-efr-trades.html>. The terms "EFP" and "EFRP" are used interchangeably for purposes of this filing.

According to the Sponsor, the Fund seeks to use EFP transactions to gain exposure to spot bitcoin for the following reasons:

- (1) EFP transactions are reported through the CME Bitcoin Futures Market, which is a regulated market and the relevant regulated market for the Fund for the purposes of the test specified in the Winklevoss Order.
- (2) EFP transactions are subject to the CME's market surveillance program, which helps deter and investigate fraudulent and manipulative misconduct.
- (3) EFP transactions will allow the Fund to gain efficient and regular exposure to physical bitcoin without relying on unregulated bitcoin markets for any purpose, including its creation and redemption processes.

When the Sponsor intends to increase the Fund's bitcoin holdings, the Fund will participate in an EFP transaction to sell futures contracts and buy physical bitcoin, while the liquidity provider ("LP") participating in such transaction will buy futures contracts and sell physical bitcoin.<sup>33</sup> Similarly, when the Sponsor seeks to decrease the Fund's bitcoin holdings, the Fund will participate in an EFP transaction to buy futures contracts and sell physical bitcoin, while the LP on the other side of the transaction will sell futures contracts and buy physical bitcoin.

The most well-established means for buying and selling physical bitcoin in large quantities is through the use of simple cash-for-asset OTC transactions with an LP, such as several market makers active in U.S. capital markets. The Sponsor believes that a key benefit of EFP transactions is that they allow for an OTC transaction to be conducted under the regulatory oversight of the CME.

According to the Sponsor, the Fund will exclusively use CME Bitcoin Futures Market's EFP transactions to purchase and sell its physical bitcoin. Therefore, all trading of the Fund's non-cash (or cash equivalents) assets (i.e., CME Bitcoin Futures Contracts and physical bitcoin) will take place through the CME Bitcoin Futures Market, and the CME Bitcoin Futures Market will be the relevant regulated market for the Fund. Because NYSE Arca and CME are both members of the Intermarket Surveillance Group ("ISG"), information shared by CME with NYSE Arca can be used to assist in detecting and deterring fraudulent or manipulative misconduct.

#### *EFP Transactions through the CME Bitcoin Futures Market*

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<sup>33</sup> The LPs with which the Fund will engage in bitcoin transactions are third parties that are not affiliated with the Fund and Sponsor and are not acting as agents of the Fund, Sponsor, or AP, and all transactions will be done on an arms-length basis. There is no contractual relationship between the Fund, the Sponsor, or the LP. When seeking to sell bitcoin on behalf of the Fund, the Sponsor will seek to sell bitcoin at commercially reasonable prices and terms to any of the approved LPs. Once agreed upon, the transaction will generally occur on an "over-the-counter" basis.

All EFP trades have two legs: a futures leg and a physical leg. In the futures leg of an EFP Transaction through the CME Bitcoin Futures Market, party A sells CME Bitcoin Futures Contracts to party B for a given price.<sup>34</sup> In the physical leg of the same transaction, party A buys physical bitcoins sold by party B by delivering cash consideration for those bitcoins to party B.

When two parties agree to perform a CME Bitcoin Futures Market EFP trade,<sup>35</sup> they must agree on the following terms:

- (1) The contract (maturity) that will be used in the futures leg of the trade;
- (2) The number of futures contracts in the futures leg of the trade;
- (3) The price of the futures contract in the futures leg of the trade;
- (4) The quantity of physical bitcoins in the physical leg of the trade (where the amount of bitcoin traded must be approximately equivalent to the notional amount of the futures contracts traded);<sup>36</sup>
- (5) The basis spread,<sup>37</sup> which is used to determine the price per bitcoin for the cash payment in the physical leg of the EFP trade.

After both parties agree to the terms of an EFP trade, they report the trade details to the CME. The futures leg of the EFP transaction is cleared by CME Clearing. The two parties to the EFP trade are responsible for bilaterally clearing the physical leg of the transaction.

#### *The Fund's Use of EFP Transactions*

According to the Sponsor, the Fund will, under normal market conditions, frequently increase or decrease its holdings of physical bitcoin as Shares are created and redeemed.

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<sup>34</sup> In practice, both parties will simply enter open futures positions on the CME Bitcoin Futures Market (party A will open a short position and party B will open a long position). Both positions will have the exact same size and will be opened at the same price. The CME allows EFP transactions to be executed at a mutually agreed price, but it requires that such price be commercially reasonable. CME's EFRP rules establish that if prices deviate excessively from prevailing market levels, counterparties to the trade may be required to demonstrate that such deviant prices are indeed legitimate. See CME Rule 538.F; note 44, infra.

<sup>35</sup> See <https://www.cmegroup.com/education/articles-and-reports/bitcoin-futures-exchange-for-physical-transactions.html>.

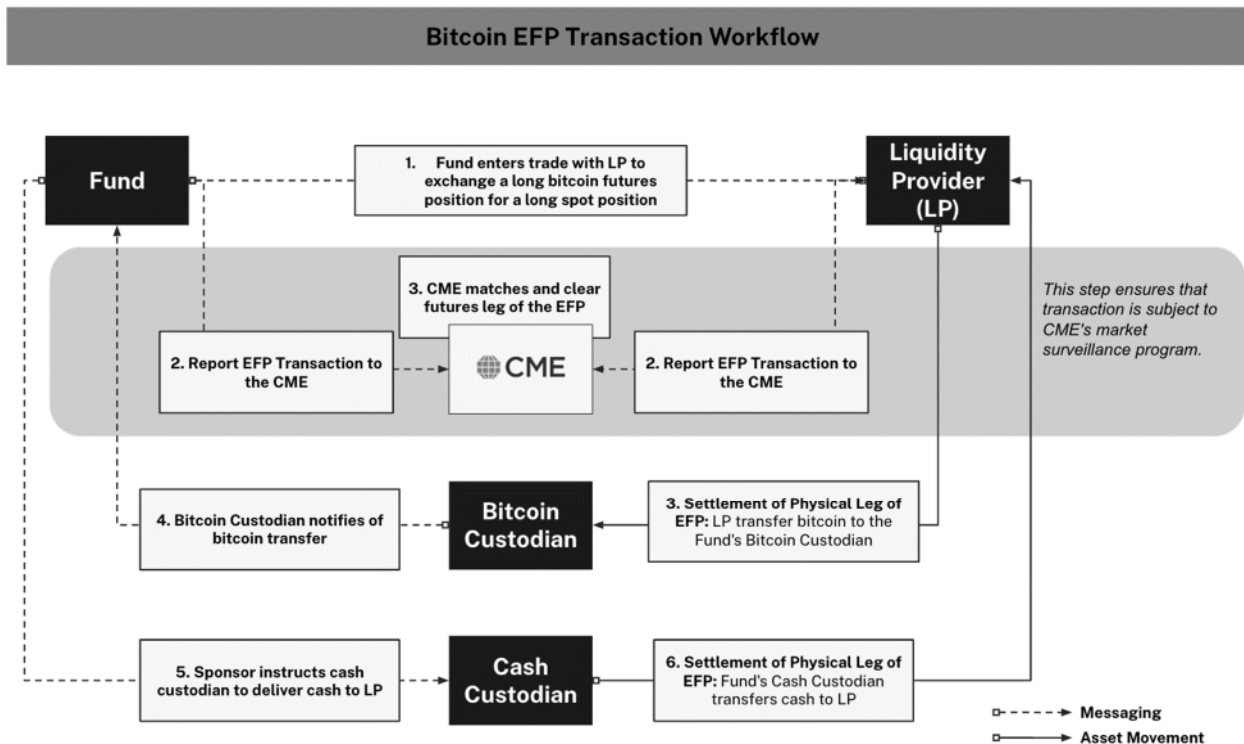
<sup>36</sup> In practice, the quantity of bitcoins in both the futures leg and in the physical leg of a CME Bitcoin Futures Market EFP trade are likely to be exactly the same.

<sup>37</sup> "Basis spread" refers to the difference in price between two related financial instruments. In the context of an EFP transaction, the basis spread is the difference between the futures contract price and the spot price of the underlying bitcoin. This spread is crucial in determining the amount of cash payment in the physical leg of the EFP transaction, essentially setting the price per bitcoin based on the prevailing market conditions in the futures and spot markets.

As noted above, the Fund will acquire and dispose of physical bitcoin only through EFP transactions through the CME Bitcoin Futures Market, which take place under the regulatory oversight of the CME, a CFTC-regulated market.

Pursuant to the Fund's investment objectives, when the Sponsor decides to increase or decrease its holdings of physical bitcoin, it will cause the Fund to execute an EFP trade with an LP. The Fund and the LP will simultaneously exchange a futures position for a corresponding, economically offsetting position in physical bitcoin.

The diagram below illustrates the steps in the execution of a typical EFP trade by the Fund to acquire spot bitcoin in exchange for CME Bitcoin Futures Contracts.



To provide a more concrete example of an EFP transaction that the Fund would undertake to acquire spot bitcoin, assume that the Fund needs to buy 50 bitcoins in exchange for 10 units of the next maturity of BTC Contracts.<sup>38</sup> The Sponsor will select<sup>39</sup> an LP that it

<sup>38</sup> As detailed above, one BTC Contract represents five bitcoins.

<sup>39</sup> As described in the Fund's Registration Statement, the Sponsor will conduct a Request-for-Quote auction with one or more previously identified LPs to determine the best price on the requested quantity for the proposed EFP transaction. The LPs of the Fund are screened, selected, and approved by the Sponsor and should satisfy, at minimum, the following criteria:

- (1) Be licensed as a Money Service Business by the Financial Crimes Enforcement Network;

believes will provide the best execution opportunity for the proposed EFP trade. The LP will provide bid/ask quotes for the EFP transaction as a basis spread against the settlement price of the BTC Contract to determine the price of the physical bitcoin that will be exchanged in the physical leg of the EFP. Then, assume that the Sponsor determines that the best option for the Fund is a bid of +25 bps. Assuming that the daily settlement price of the relevant BTC Contract was \$26,060, the price for the physical leg of the EFP transaction agreed upon by the Fund and the LP is \$25,995.01. Upon completion of the EFP transaction, the Fund and the LP will have different positions, but the same financial exposure:

- Before the transaction, the Fund was long 10 BTC Contracts; after the transaction, it has converted this exposure into 50 physical bitcoins.
- Before the transaction, the LP had 50 bitcoins; after the transaction, it holds an equivalent position long in 10 BTC Contracts.

The table below illustrates the steps in this EFP transaction:

Steps	LP	Fund
1. Starting position	50 bitcoins	10 BTC Contracts
2. EFP transaction is negotiated between the LP and the Fund	The LP and the Fund agree to terms of the EFP, namely: <ul style="list-style-type: none"> <li>• Fund sells / LP buys 10 BTC Contracts at \$26,060</li> <li>• Fund buys / LP sells 50 bitcoins at \$25,995.01 (basis spread of +25bps)</li> </ul>	
3. LP sends bitcoin to the Fund	-50 bitcoins	+50 bitcoins
4. The EFP transaction is reported to CME and the LP assumes the long position in 10 BTC Contracts	+10 BTC Contracts	-10 BTC Contracts
5. Final position	10 BTC Contracts	50 bitcoins

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(2) Registered with the CFTC and a member of the NFA or otherwise comply with applicable CFTC requirements governing eligibility to transact in bitcoin EFPs;

(3) Have anti-money laundering and combating the financing of terrorism policies in place and be compliant with Financial Action Task Force guidance;

(4) Have cybersecurity, disaster recovery and business continuity, and third-party service provider management policies.

EFP transactions must be submitted to the CME “as soon as possible, but no later than the end of the business day on which the EFRP was executed.”<sup>40</sup> The relevant terms reported to the CME are:<sup>41</sup>

- (1) The type of the EFRP (which, for the Fund, will be the CME Bitcoin Futures Market EFP);
- (2) The date and time of the trade (i.e., the time when agreement was reached on the prices and quantities of the transaction);
- (3) The price and quantity of the CME contract (which, for the Fund, will be the CME Bitcoin Futures Contracts); and
- (4) The price and quantity of the corresponding related position (which, for the Fund, will be physical bitcoin).

#### *Mitigation of Manipulation Risks Through Use of EFP Transactions*

The Sponsor believes that EFP transactions help protect against fraud and manipulation because they allow exchanges that share surveillance information with CME to investigate suspicious behavior by market participants. In addition, the Sponsor believes that regulatory requirements pursuant to CME Rule 538<sup>42</sup> pertaining to EFP transactions significantly increase the likelihood that fraud and manipulation will be detected and deterred. These regulatory requirements include:

- **Pricing of EFPs:** Section 538.F (“Prices and Price Increments”) states that while parties to an EFP transaction have discretion to mutually agree on a price, EFPs “may not be priced to facilitate the transfer of funds between parties for any purpose other than as the consequence of legitimate commercial activity.”<sup>43</sup>
- **Reporting:** Section 538.I (“Submission to the Clearing House”) states that parties engaging in an EFP transaction must report each transaction to CME Clearing within the time period and manner specified by the CME.<sup>44</sup> EFP transaction volumes are also required to be reported to the CME with the daily large trader positions by each clearing member, omnibus account, and foreign broker.

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<sup>40</sup> See <https://www.cmegroup.com/rulebook/files/cme-group-Rule-538.pdf> at FAQ 23.

<sup>41</sup> See *id.* at FAQs 23, 24; Section 538.I.

<sup>42</sup> See <https://www.cmegroup.com/rulebook/files/cme-group-Rule-538.pdf>.

<sup>43</sup> EFRPs “may not be priced off-market for the purpose of shifting substantial sums of cash from one party to another, to allocate gains and losses between the futures or options on futures and the cash or OTC derivative components of the EFRP, to evade taxes, to circumvent financial controls by disguising a firm’s financial condition, or to accomplish some other unlawful purpose” and “EFRPs executed at off-market prices are more likely to be reviewed by Market Regulation to determine the purpose for the pricing.” See *id.* at FAQ 11.

<sup>44</sup> See *id.* at FAQs 23, 24; Section 538.I.

- **Recordkeeping:** Section 538.H (“Recordkeeping”) states that “parties to an [EFP] transaction must maintain all records relevant to the [futures] contract and the related position transaction.”<sup>45</sup>

The FAQs relating to CME Rule 538 also state that parties to an EFRP, along with their clearing members, are subject to CME jurisdiction and may be required to produce records and cooperate fully with any investigation.<sup>46</sup>

The Sponsor believes that EFP transactions between the Fund and an LP to trade physical bitcoin are significantly less susceptible to fraud or manipulation because they are subject to a range of CME regulatory requirements regarding pricing, reporting, surveillance, and recordkeeping, as discussed above. Further, EFP transactions are entered into only by CFTC-regulated futures commission merchants and occur through the CME Bitcoin Futures Market, which is a CFTC-regulated market with processes in place to prevent market manipulation, including the monitoring of transaction prices and the investigation of potential manipulations.

According to the Sponsor, the ability of participants to undertake EFP transactions is determined exclusively by the liquidity of the CME Bitcoin Futures Market and by the liquidity of OTC markets for physical bitcoin, both of which are sufficiently large. The Sponsor understands that a significant number of LPs are prepared to execute bitcoin EFP transactions. The CME’s website lists at least 15 LPs that have agreed to be listed as contacts for clients interested in executing block trades and EFP transactions.<sup>47</sup> The Sponsor has consulted with several such LPs and believes that those LPs could provide enough liquidity to support the Fund’s demand for bitcoin when it incorporates physical bitcoin into its strategy. The Sponsor notes that several such LPs already have an ongoing commercial relationship with the Sponsor and/or Hashdex and are active participants in trading the CME Bitcoin Futures Markets, bitcoin, and bitcoin ETPs worldwide.

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<sup>45</sup> The types of records that must be maintained by parties to an EFP include:

- (1) All order tickets, trade blotters, e-mails, instant messages, telephone recordings or other records related to the order placement, negotiation, execution and/or confirmation of the EFRP.
- (2) All cash confirmations and signed contracts corresponding to the cash or derivative component of the EFRP. The documentation must contain all of the relevant terms of the transaction and counterparty information.
- (3) Third party proof of payment evidencing settlement and documentation representing the transfer of ownership of the commodity.
- (4) Futures account statement reflecting confirmation of the EFRP.
- (5) Records reflecting the booking of the cash or derivative transaction in the firm’s internal bookkeeping systems. See id. at FAQ 19.

<sup>46</sup> See id. at FAQ 20.

<sup>47</sup> A list of the LPs is available at: <https://www.cmegroup.com/trading/bitcoin-brokers-and-block-liquidity-providers.html>.



## The Bitcoin and Bitcoin Futures Markets

According to the Registration Statement, bitcoin is a digital asset that serves as the unit of account on an open-source, decentralized, peer-to-peer computer network. It may be used to pay for goods and services, stored for future use, or converted to government-backed currency. As of the date of this prospectus, the adoption of bitcoin for these purposes has been limited. The value of bitcoin is not backed by any government, corporation, or other identified body.

The value of bitcoin depends on its supply (which is limited), and demand for bitcoin in the markets for exchange that have been organized to facilitate the trading of bitcoin. By design, the supply of bitcoin is intentionally limited to 21 million bitcoins. According to the Registration Statement, there are approximately 19 million bitcoins in circulation.

Bitcoin is maintained on a decentralized, open source, peer-to-peer computer network, the “Bitcoin Network.” No single entity owns or operates the Bitcoin Network. The Bitcoin Network is accessed through software and governs bitcoin’s creation and movement. The source code for the Bitcoin Network, often referred to as the “Bitcoin Protocol,” is open-source, and anyone can contribute to its development.

The infrastructure of the Bitcoin Network is collectively maintained by various participants in the Bitcoin Network, which include miners, developers, and users. Miners validate transactions and provide security to the network, and are currently compensated for that service in bitcoin. Developers maintain and contribute updates to the Bitcoin Protocol. Users access the Bitcoin Network using open-source software. Anyone can be a user, developer, or miner.

Bitcoin is “stored” on a digital transaction ledger commonly known as a “blockchain.” A blockchain is a distributed database that is continuously updated and reconciled among certain users and is protected by cryptography. The bitcoin blockchain contains a complete record and history for each bitcoin transaction. New bitcoins are created through a process called “mining.” Miners use specialized computer software and hardware to solve a highly complex mathematical problem presented by the bitcoin Protocol. The first miner to successfully solve the problem is permitted to add a block of transactions to the bitcoin blockchain. The new block is then confirmed through acceptance by a majority of users who maintain versions of the blockchain on their individual computers. Miners that successfully add a block to the bitcoin blockchain are automatically rewarded with a fixed amount of bitcoin for their effort plus any transaction fees paid by transferors whose transactions are recorded in the block. This reward system is the means by which new bitcoin enters circulation and is the mechanism by which versions of the blockchain held by users on a decentralized network are kept in consensus.

The Bitcoin Protocol is an open-source project with no official company or group in control, and anyone can review the underlying code. There are, however, a number of individual developers that regularly contribute to a specific distribution of the bitcoin

software known as the “Bitcoin Core.” Developers of the Bitcoin Core loosely oversee the development of the source code. There are many other compatible versions of the bitcoin software, but Bitcoin Core is the most widely adopted and currently provides the de facto standard for the Bitcoin Protocol. The core developers are able to access, and can alter, the Bitcoin Network source code and, as a result, they are responsible for quasi-official releases of updates and other changes to the Bitcoin Network’s source code. However, because bitcoin has no central authority, the release of updates to the Bitcoin Network’s source code by the core developers does not guarantee that the updates will be automatically adopted by the other purchasers. Users and miners must accept any changes made to the source code by downloading the proposed modification and that modification is effective only with respect to those bitcoin users and miners who choose to download it. As a practical matter, a modification to the source code becomes part of the Bitcoin Network only if it is accepted by purchasers that collectively have a majority of the processing power on the Bitcoin Network. If a modification is accepted by only a percentage of users and miners, a division will occur such that one network will run the pre-modification source code and the other network will run the modified source code. Such a division is known as a “fork.”

The Sponsor notes that individual users, institutional investors and investment funds that want to provide exposure to bitcoin by investing directly in bitcoin, and therefore must transact in bitcoin, must use the Bitcoin Network to download specialized software referred to as a “bitcoin wallet.” This wallet may be used to send and receive bitcoin through users’ unique “bitcoin addresses.” The amount of bitcoin associated with each bitcoin address, as well as each bitcoin transaction to or from such address, is captured on the blockchain. Bitcoin transactions are secured by cryptography known as public-private key cryptography, represented by the bitcoin addresses and digital signature in a transaction’s data file. Each Bitcoin Network address, or wallet, is associated with a unique “public key” and “private key” pair, both of which are lengthy alphanumeric codes, derived together and possessing a unique relationship. The private key is a secret and must be kept in accordance with appropriate controls and procedures to ensure it is used only for legitimate and intended transactions. If an unauthorized third person learns of a user’s private key, that third person could forge the user’s digital signature and send the user’s bitcoin to any arbitrary bitcoin address, thereby stealing the user’s bitcoin. Similarly, if a user loses his private key and cannot restore such access (e.g., through a backup), the user may permanently lose access to the bitcoin contained in the associated address.

The first rule filing proposing to list an exchange-traded product (“ETP”) to provide exposure to bitcoin in the U.S. was submitted by the Cboe BZX Exchange, Inc. on June 30, 2016.<sup>48</sup> At that time, blockchain technology, and digital assets that utilized it, were relatively new to the broader public. The market cap of all bitcoin in existence at that time was approximately \$10 billion. No registered offering of digital asset securities or shares in an investment vehicle with exposure to bitcoin or any other cryptocurrency had yet been conducted, and the regulated infrastructure for conducting a digital asset

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See Winklevoss Order.

securities offering had not begun to develop.<sup>49</sup> Similarly, regulated U.S. bitcoin futures contracts did not exist. The CFTC had determined that bitcoin is a commodity,<sup>50</sup> but had not engaged in significant enforcement actions in the space. The New York Department of Financial Services (“NYDFS”) adopted its final BitLicense regulatory framework in 2015, but had only approved four entities to engage in activities relating to virtual currencies (whether through granting a BitLicense or a limited-purpose trust charter) as of June 30, 2016.<sup>51</sup> While the first over-the-counter bitcoin fund launched in 2013, public trading was limited and the fund had only \$60 million in assets.<sup>52</sup> There were very few, if any, traditional financial institutions engaged in the space, whether through investment or providing services to digital asset companies. In January 2018, the Staff of the Commission noted in a letter to the Investment Company Institute and SIFMA that it was not aware, at that time, of a single custodian providing fund custodial services for digital assets.<sup>53</sup>

The digital assets financial ecosystem, including bitcoin, has progressed and matured significantly. The development of a regulated market for digital asset securities has significantly evolved, with market participants having conducted registered public offerings of both digital asset securities<sup>54</sup> and shares in investment vehicles holding bitcoin futures.<sup>55</sup> Additionally, licensed and regulated service providers have emerged to

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<sup>49</sup> Digital assets that are securities under U.S. law are referred to throughout this proposal as “digital asset securities.” All other digital assets, including bitcoin, are referred to interchangeably as “cryptocurrencies” or “virtual currencies.” The term “digital assets” refers to all digital assets, including both digital asset securities and cryptocurrencies, together.

<sup>50</sup> See “In the Matter of Coinflip, Inc.” (“Coinflip”) (CFTC Docket 15-29 (September 17, 2015)) (order instituting proceedings pursuant to Sections 6(c) and 6(d) of the CEA, making findings and imposing remedial sanctions), in which the CFTC stated: “Section 1a(9) of the CEA defines ‘commodity’ to include, among other things, ‘all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.’ 7 U.S.C. § 1a(9). The definition of a ‘commodity’ is broad. See, e.g., Board of Trade of City of Chicago v. SEC, 677 F.2d 1137, 1142 (7th Cir. 1982). Bitcoin and other virtual currencies are encompassed in the definition and properly defined as commodities.”

<sup>51</sup> A list of virtual currency businesses that are entities regulated by the NYDFS is available on the NYDFS website. See [https://www.dfs.ny.gov/virtual\\_currency\\_businesses#:~:text=A%20business%20must%20obtain%20a,business%20in%20New%20York%20State.](https://www.dfs.ny.gov/virtual_currency_businesses#:~:text=A%20business%20must%20obtain%20a,business%20in%20New%20York%20State.)

<sup>52</sup> See Bitcoin Investment Trust Form S-1, dated May 27, 2016, available at: <https://www.sec.gov/Archives/edgar/data/1588489/000095012316017801/filename1.htm> (data as of March 31, 2016 according to publicly available filings).

<sup>53</sup> See Letter from Dalia Blass, Director, Division of Investment Management, U.S. Securities and Exchange Commission to Paul Schott Stevens, President & CEO, Investment Company Institute and Timothy W. Cameron, Asset Management Group – Head, Securities Industry and Financial Markets Association (January 18, 2018), available at: <https://www.sec.gov/divisions/investment/noaction/2018/cryptocurrency-011818.htm>.

<sup>54</sup> See Prospectus Supplement filed pursuant to Rule 424(b)(1) for INX Tokens (Registration No. 333-233363), available at: [https://www.sec.gov/Archives/edgar/data/1725882/000121390020023202/ea125858-424b1\\_inxlimited.htm](https://www.sec.gov/Archives/edgar/data/1725882/000121390020023202/ea125858-424b1_inxlimited.htm).

<sup>55</sup> See Prospectus filed by Stone Ridge Trust VI on behalf of NYDIG Bitcoin Strategy Fund Registration, available at: <https://www.sec.gov/Archives/edgar/data/1764894/000119312519309942/d693146d497.htm>.

provide fund custodial services for digital assets, among other services. For example, in December 2020, the Commission issued a statement permitting certain special purpose broker-dealers to custody digital asset securities under Rule 15c3-3 under the Act.<sup>56</sup> In September 2020, the Staff of the Commission released a no-action letter permitting certain broker-dealers to operate a non-custodial Alternative Trading System (“ATS”) for digital asset securities, subject to specified conditions.<sup>57</sup> In October 2019, the Staff of the Commission granted temporary relief from the clearing agency registration requirement to an entity seeking to establish a securities clearance and settlement system based on distributed ledger technology;<sup>58</sup> and multiple transfer agents who provide services for digital asset securities have registered with the Commission.<sup>59</sup>

As noted above, CME began offering trading in BTC Contracts in 2017, and in MBT Contracts in 2021. Each of the contracts’ final cash settlement is based on the CME CF BRR.<sup>60</sup> The contracts trade and settle like other cash-settled commodity futures contracts. According to the Sponsor, trading in CME Bitcoin Futures Contracts has increased significantly in recent years, in particular with respect to BTC Contracts. Nearly every measurable metric related to BTC Contracts has trended consistently up since launch and/or accelerated upward in the past year, as the market recovered some of the ground lost since falling from the all-time high activity levels of end 2021. This general upward trend in trading volume and open interest is captured in the following chart.

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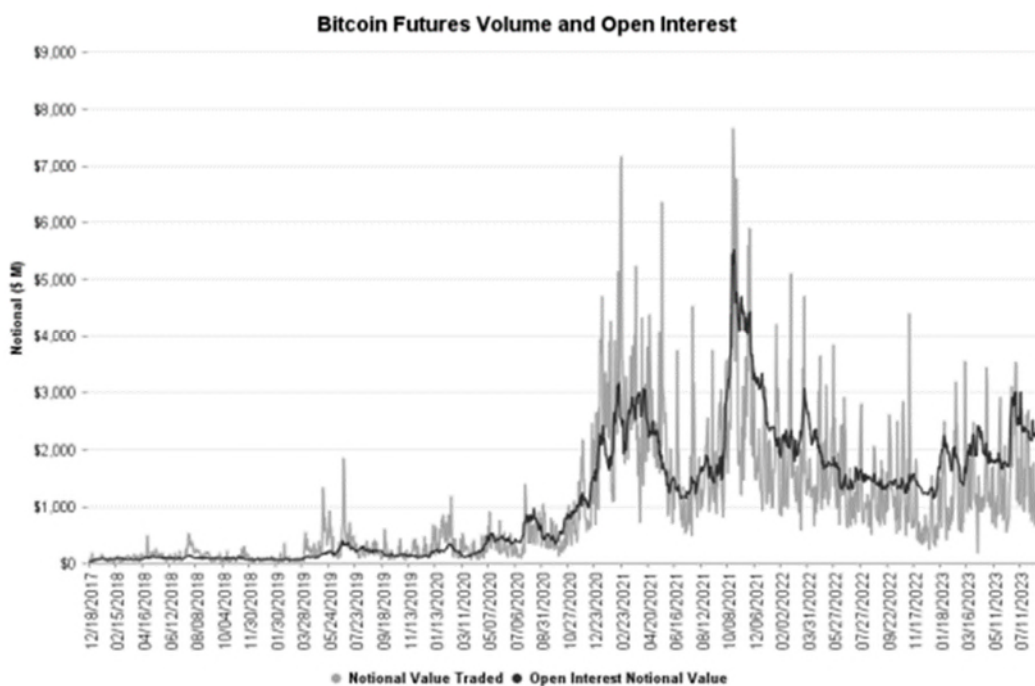
<sup>56</sup> See Securities Exchange Act Release No. 90788, 86 FR 11627 (February 26, 2021) (File Number S7-25-20) (Custody of Digital Asset Securities by Special Purpose Broker-Dealers).

<sup>57</sup> See Letter from Elizabeth Baird, Deputy Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Kris Dailey, Vice President, Risk Oversight & Operational Regulation, Financial Industry Regulatory Authority (September 25, 2020), available at: <https://www.sec.gov/divisions/marketreg/mr-noaction/2020/finra-ats-role-in-settlement-of-digital-asset-security-trades-09252020.pdf>.

<sup>58</sup> See Letter from Jeffrey S. Mooney, Associate Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Charles G. Cascarilla & Daniel M. Burstein, Paxos Trust Company, LLC (October 28, 2019), available at: <https://www.sec.gov/divisions/marketreg/mr-noaction/2019/paxos-trust-company-102819-17a.pdf>.

<sup>59</sup> See, e.g., Form TA-1/A filed by Tokensoft Transfer Agent LLC (CIK: 0001794142) on January 8, 2021, available at: [https://www.sec.gov/Archives/edgar/data/1794142/000179414219000001/xsIFTA1X01/p\\_rimary\\_doc.xml](https://www.sec.gov/Archives/edgar/data/1794142/000179414219000001/xsIFTA1X01/p_rimary_doc.xml).

<sup>60</sup> According to the CME, the CME CF BRR aggregates the trade flow of major bitcoin spot trading platforms during a specific calculation window into a once-a-day reference rate of the U.S. dollar price of bitcoin. Calculation rules are geared toward maximum transparency and real-time replicability in underlying spot markets, including Bitstamp, Coinbase, Gemini, itBit, and Kraken. For additional information, refer to <https://www.cmegroup.com/trading/cryptocurrency-indices/cf-bitcoin-reference-rate.html?redirect=/trading/cf-bitcoin-reference-rate.html>.



Note: The 2023 daily average notional value is for the period through September 1, 2023. Source: CME, <https://www.cmegroup.com/reports/bitcoin-futures-liquidity-report.pdf>

Similarly, the number of large open interest holders<sup>61</sup> has continued to increase even as the price of bitcoin has risen, as have the number of unique accounts trading CME Bitcoin Futures Contracts.

As it pertains specifically to the CME Bitcoin Futures Contracts (those in which the Fund will invest), the statistics are equally as profound. The following table sets forth the approximate daily notional average volume for the CME Bitcoin Futures Contracts, followed by the daily average volume for all of the CME Bitcoin Futures Contracts, the first to expire and the second to expire. With a daily notional average volume of \$1.4 billion in 2023, trading volume in CME Bitcoin Futures Contracts is almost six times the 2019 volume and almost three times the volume in 2020. In addition, despite the bear market, the trading volume in 2023 has been resilient and slightly increasing compared to 2022.

<sup>61</sup> A large open interest holder in BTC Contracts is an entity that holds at least 25 contracts, which is the equivalent of 125 bitcoin. At a price of approximately \$26,025 per bitcoin on 9/7/23, more than 110 firms had outstanding positions of greater than \$3.25 million in BTC Contracts. Source: <https://www.theblock.co/data/crypto-markets/cme-cots/large-open-interest-holders-of-cme-bitcoin-futures>.

	Daily Notional Average Volume for CME Bitcoin Futures Contracts (in \$)	Average Daily Volume for CME Bitcoin Futures Contracts	First-to-Expire CME Bitcoin Futures Contract	Second-to-Expire CME Bitcoin Futures Contract
2019	\$242 million	6,365	5,400	700
2020	\$523 million	8,782	7,100	1,300
2021	\$2,379 million	10,035	7,300	2,100
2022	\$1,426 million	10,735	8,200	2,100
2023	\$1,413 million	10,775	8,400	1,900

Note: The 2023 data is for the period ending on August 31, 2023. Source: CME; Bloomberg.

### Developments in the Bitcoin and Bitcoin Futures Markets

The regulatory landscape for bitcoin and bitcoin markets has changed significantly since 2016. The market for bitcoin grew approximately 100 times larger through 2021, reaching a market cap of \$1.3 trillion at its all-time high. Although bitcoin's market cap is down to \$500 billion (as of September 7, 2023), its market cap is greater than companies<sup>62</sup> such as Visa, Inc., Exxon Mobil Corporation, Walmart, Inc., and JP Morgan Chase & Co. The number of verified users at Coinbase, the largest U.S.-based bitcoin trading platform, has grown to over 110 million at the end of 2022, compared to 43 million at the end of 2020.<sup>63</sup> CFTC-regulated bitcoin futures represented approximately \$42 billion in notional trading on the CME Bitcoin Futures Market in August 2023, compared to \$3.9 billion, \$28 billion, \$60 billion, and \$20 billion in total trading in December 2019, December 2020, December 2021, and December 2022 respectively. CFTC-regulated bitcoin futures represented \$2.2 billion in open interest in August 2023, compared to \$115 million, \$1.29 billion, \$3.27 billion, and \$1.31 billion in December 2019, December 2020, December 2021, and December 2022 respectively.<sup>64</sup> The CFTC

<sup>62</sup> See <https://coinmarketcap.com/largest-companies/>.

<sup>63</sup> See Coinbase 2022 10-K, available at: [https://s27.q4cdn.com/397450999/files/doc\\_financials/2022/q4/86fe25e0-342b-40fa-aacc-ea04faf322cb.pdf](https://s27.q4cdn.com/397450999/files/doc_financials/2022/q4/86fe25e0-342b-40fa-aacc-ea04faf322cb.pdf).

<sup>64</sup> All statistics and charts included in this proposal with respect to the CME Bitcoin Futures Market are sourced from <https://www.cmegroup.com/trading/bitcoin-futures.html>. In addition, as further discussed below, the Sponsor believes the CME Bitcoin Futures Market represents a regulated market of significant

has exercised its regulatory jurisdiction in bringing a number of enforcement actions related to bitcoin and against trading platforms that offer cryptocurrency trading.<sup>65</sup> The U.S. Office of the Comptroller of the Currency (the “OCC”) has made clear that federally-chartered banks are able to provide custody services for cryptocurrencies and other digital assets.<sup>66</sup> NYDFS has granted no fewer than thirty BitLicenses, including to established public payment companies like PayPal Holdings, Inc. and Square, Inc., and limited purpose trust charters to entities providing cryptocurrency custody services. The U.S. Treasury Financial Crimes Enforcement Network (“FinCEN”) has released extensive guidance regarding the applicability of the Bank Secrecy Act (“BSA”) and implementing regulations to virtual currency businesses,<sup>67</sup> and has proposed rules imposing requirements on entities subject to the BSA that are specific to the technological context of virtual currencies.<sup>68</sup> In addition, the Treasury’s Office of Foreign Assets Control (“OFAC”) has brought enforcement actions over apparent violations of the sanctions laws in connection with the provision of wallet management services for digital assets.<sup>69</sup>

In addition to the regulatory developments noted above, more traditional financial market participants appear to be embracing cryptocurrency: large insurance companies,<sup>70</sup>

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size for purposes of addressing the Commission’s concerns about potential manipulation of the bitcoin market.

<sup>65</sup> The CFTC’s annual report for Fiscal Year 2020 (which ended on September 30, 2020) noted that the CFTC “continued to aggressively prosecute misconduct involving digital assets that fit within the CEA’s definition of commodity” and “brought a record setting seven cases involving digital assets.” See CFTC FY2020 Division of Enforcement Annual Report, available at: [https://www.cftc.gov/media/5321/DOE\\_FY2020\\_AnnualReport\\_120120/download](https://www.cftc.gov/media/5321/DOE_FY2020_AnnualReport_120120/download). Additionally, the CFTC filed on October 1, 2020, a civil enforcement action against the owner/operators of the BitMEX trading platform, which was one of the largest bitcoin derivative trading platforms. See CFTC Release No. 8270-20 (October 1, 2020), available at: <https://www.cftc.gov/PressRoom/PressReleases/8270-20>.

<sup>66</sup> See OCC News Release 2021-2 (January 4, 2021), available at: <https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-2.html>.

<sup>67</sup> See FinCEN Guidance FIN-2019-G001 (May 9, 2019) (Application of FinCEN’s Regulations to Certain Business Models Involving Convertible Virtual Currencies), available at: <https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf>.

<sup>68</sup> See U.S. Department of the Treasury Press Release: “The Financial Crimes Enforcement Network Proposes Rule Aimed at Closing Anti-Money Laundering Regulatory Gaps for Certain Convertible Virtual Currency and Digital Asset Transactions” (December 18, 2020), available at: <https://home.treasury.gov/news/press-releases/sm1216>.

<sup>69</sup> See U.S. Department of the Treasury Enforcement Release: “OFAC Enters Into \$98,830 Settlement with BitGo, Inc. for Apparent Violations of Multiple Sanctions Programs Related to Digital Currency Transactions” (December 30, 2020), available at: [https://home.treasury.gov/system/files/126/20201230\\_bitgo.pdf](https://home.treasury.gov/system/files/126/20201230_bitgo.pdf).

<sup>70</sup> On December 10, 2020, Massachusetts Mutual Life Insurance Company (MassMutual) announced that it had purchased \$100 million in bitcoin for its general investment account. See MassMutual Press Release “Institutional Bitcoin provider NYDIG announces minority stake purchase by MassMutual” (December 10, 2020), available at: <https://www.massmutual.com/about-us/news-and-press-releases/press-releases/2020/12/institutional-bitcoin-provider-nydig-announces-minority-stake-purchase-by-massmutual>.

investment banks,<sup>71</sup> asset managers,<sup>72</sup> credit card companies,<sup>73</sup> university endowments,<sup>74</sup> pension funds,<sup>75</sup> and even historically bitcoin skeptical fund managers<sup>76</sup> are allocating to bitcoin. The largest over-the-counter bitcoin fund previously filed a Form 10 registration statement, which the Staff of the Commission reviewed and which took effect automatically, and is now a reporting company.<sup>77</sup> Established companies like Tesla, Inc.,<sup>78</sup> MicroStrategy Incorporated,<sup>79</sup> and Square, Inc.,<sup>80</sup> among others, have recently announced substantial investments in bitcoin in amounts as large as \$1.5 billion (Tesla) and \$425 million (MicroStrategy).

The Sponsor maintains that despite these developments, access for U.S. retail investors to gain exposure to bitcoin via a transparent and regulated exchange-traded vehicle remains limited. As investors and advisors increasingly utilize ETPs to manage diversified portfolios (including equities, fixed income securities, commodities, and currencies) quickly, easily, relatively inexpensively, tax-efficiently, and without having to hold

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<sup>71</sup> See, e.g., “Morgan Stanley to Offer Rich Clients Access to Bitcoin Funds” (March 17, 2021) available at: <https://www.bloomberg.com/news/articles/2021-03-17/morgan-stanley-to-offer-rich-clients-access-to-bitcoin-funds>.

<sup>72</sup> See, e.g., “BlackRock’s Rick Rieder says the world’s largest asset manager has ‘started to dabble’ in Bitcoin” (February 17, 2021), available at: <https://www.cnbc.com/2021/02/17/blackrock-has-started-to-dabble-in-bitcoin-says-rick-rieder.html> and “Guggenheim’s Scott MinerD Says Bitcoin Should Be Worth \$400,000” (December 16, 2020), available at: <https://www.bloomberg.com/news/articles/2020-12-16/guggenheim-s-scott-miner-d-says-bitcoin-should-be-worth-400-000>.

<sup>73</sup> See, e.g., “Visa Moves to Allow Payment Settlements Using Cryptocurrency” (March 29, 2021), available at: <https://www.reuters.com/business/autos-transportation/exclusive-visa-moves-allow-payment-settlements-using-cryptocurrency-2021-03-29/>.

<sup>74</sup> See, e.g., “Harvard and Yale Endowments Among Those Reportedly Buying Crypto” (January 25, 2021), available at: <https://www.bloomberg.com/news/articles/2021-01-26/harvard-and-yale-endowments-among-those-reportedly-buying-crypto>.

<sup>75</sup> See, e.g., “Virginia Police Department Reveals Why its Pension Fund is Betting on Bitcoin” (February 14, 2019), available at: <https://finance.yahoo.com/news/virginia-police-department-reveals-why-194558505.html>.

<sup>76</sup> See, e.g., “Bridgewater: Our Thoughts on Bitcoin” (January 28, 2021) available at: <https://www.bridgewater.com/research-and-insights/our-thoughts-on-bitcoin> and “Paul Tudor Jones says he likes bitcoin even more now, rally still in the ‘first inning’” (October 22, 2020), available at: <https://www.cnbc.com/2020/10/22/-paul-tudor-jones-says-he-likes-bitcoin-even-more-now-rally-still-in-the-first-inning.html>.

<sup>77</sup> See Letter from Division of Corporation Finance, Office of Real Estate & Construction to Barry E. Silbert, Chief Executive Officer, Grayscale Bitcoin Trust (January 31, 2020), available at: <https://www.sec.gov/Archives/edgar/data/1588489/000000000020000953/filename1.pdf>.

<sup>78</sup> See Form 10-K submitted by Tesla, Inc. for the fiscal year ended December 31, 2020 at 23: [https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/00015645902100459\\_9/tsla-10k\\_20201231.htm](https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/00015645902100459_9/tsla-10k_20201231.htm).

<sup>79</sup> See Form 10-Q submitted by MicroStrategy Incorporated for the quarterly period ended September 30, 2020 at 8: [https://www.sec.gov/ix?doc=/Archives/edgar/data/1050446/00015645902004799\\_5/mstr-10q\\_20200930.htm](https://www.sec.gov/ix?doc=/Archives/edgar/data/1050446/00015645902004799_5/mstr-10q_20200930.htm).

<sup>80</sup> See Form 10-Q submitted by Square, Inc. for the quarterly period ended September 30, 2020 at 51: [https://www.sec.gov/ix?doc=/Archives/edgar/data/1512673/00015126732000001\\_2/sq-20200930.htm](https://www.sec.gov/ix?doc=/Archives/edgar/data/1512673/00015126732000001_2/sq-20200930.htm).



directly any of the underlying assets; options for bitcoin exposure for U.S. investors remain limited to: (i) investing in over-the-counter bitcoin funds (“OTC Bitcoin Funds”) that are subject to high premium/discount volatility (and high management fees) to the advantage of more sophisticated investors that are able to purchase shares at NAV directly with the issuing trust; (ii) investing in CFTC-regulated bitcoin futures exchange-traded funds (“ETFs”) that are subject to higher complexity and costs due to need for rolling the futures contracts; (iii) facing the technical risk, complexity, and generally high fees associated with buying and storing bitcoin directly; or (iv) purchasing shares of operating companies that they believe will provide proxy exposure to bitcoin with limited disclosure about the associated risks. Meanwhile, investors in many other countries, including Canada, are able to use more traditional exchange listed and traded products to gain exposure to bitcoin.<sup>81</sup>

For example, the Purpose Bitcoin ETF, a retail physical bitcoin ETP launched in Canada, reportedly reached \$421.8 million in assets under management (“AUM”) in two days, and has achieved \$993 million in assets as of April 14, 2021, demonstrating the demand for a North American market listed bitcoin ETP. The Sponsor believes that the demand for the Purpose Bitcoin ETF is driven primarily by investors’ desire to have a regulated and accessible means of exposure to. The Purpose Bitcoin ETF also offers a class of units that is U.S. dollar bitcoin denominated, which could appeal to U.S. investors. Without an approved bitcoin ETP in the U.S. as a viable alternative, the Sponsor believes U.S. investors will seek to purchase these shares in order to get access to bitcoin exposure, leaving them without the protections of U.S. securities laws. Given the separate regulatory regime and the potential difficulties associated with any international litigation, such an arrangement would create more risk exposure for U.S. investors than they would otherwise have with a U.S. exchange listed ETP. With the addition of more bitcoin ETPs in non-U.S. jurisdictions expected to grow, the Sponsor anticipates that such risks will only continue to grow.

In addition, several funds registered under the Investment Company Act of 1940 (the “1940 Act”) have effective registration statements that contemplate bitcoin exposure through a variety of means, including through investments in bitcoin futures contracts<sup>82</sup> and through OTC Bitcoin Funds.<sup>83</sup> In previous statements, the Staff of the Commission has acknowledged how such funds can satisfy their concerns regarding custody,

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<sup>81</sup> Securities regulators in a number of other countries have either approved or otherwise allowed the listing and trading of bitcoin ETPs. Specifically, these funds (with their respective approximate AUMs as of April 14, 2021) include the Purpose Bitcoin ETF (\$993,000,000), VanEck Vectors Bitcoin ETN (\$209,000,000), WisdomTree Bitcoin ETP (\$407,000,000), Bitcoin Tracker One (\$1,380,000,000), BTCetc Bitcoin ETP (\$1,410,000,000), 21Shares Bitcoin ETP (\$362,000,000), 21Shares Bitcoin Suisse ETP (\$30,000,000), CoinShares Physical Bitcoin ETP (\$396,000,000).

<sup>82</sup> See, e.g., Stone Ridge Trust VI (File No. 333-234055); BlackRock Global Allocation Fund, Inc. (File No. 33-22462); and BlackRock Funds V (File No. 333-224371).

<sup>83</sup> See, e.g., Amplify Transformational Data Sharing ETF (File No. 333-207937); and ARK Innovation ETF (File No. 333-191019).

valuation, and manipulation.<sup>84</sup> The funds that have already invested in bitcoin instruments have no reported issues regarding custody, valuation, or manipulation of the instruments held by these funds. While these funds do offer investors some means of exposure to bitcoin, the Sponsor believes the current offerings fall short of giving investors an accessible, regulated product that provides concentrated exposure to bitcoin and bitcoin prices.

#### Unregulated Exposure to Bitcoin and Investor Protection Concerns

The Sponsor notes that U.S. investor exposure to bitcoin through OTC Bitcoin Funds and other unregulated means has grown into the tens of billions of dollars. With that growth, so too has grown the potential risk to U.S. investors. Investor protection concerns persist, as OTC Bitcoin Funds and other unregulated means of exposure to bitcoin continue to attract investors despite the approval of bitcoin futures-based ETPs by the Commission. The Sponsor appreciates the Commission's previously articulated concerns about potential manipulation when an ETP holds actual bitcoin and believes that the Fund represents an opportunity for U.S. investors to gain price exposure to CME Bitcoin Futures Contracts and bitcoin in a regulated and transparent exchange-traded vehicle that mitigates those concerns through the use of CME Bitcoin Futures Contracts, applying futures-based pricing for spot bitcoin, and limiting the Fund's exposure to spot bitcoin to the CFTC-regulated EFP market. The Sponsor believes that the structure of the Fund accordingly limits risks by: (i) reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks associated with investing in operating companies that are imperfect proxies for bitcoin exposure; and (iv) avoiding regulatory concerns regarding valuation posed by ETFs and ETPs that invest directly in bitcoin rather than in CME Bitcoin Futures Contracts or bitcoin via EFP transactions on the regulated CME Bitcoin Futures Market, a CFTC-regulated exchange that meets regulatory standards that are not met by spot bitcoin trading platforms.

#### Custody of Bitcoin

According to the Registration Statement, institutional purchasers of bitcoin, including other bitcoin funds that provide exposure to bitcoin by investing directly in bitcoin, generally maintain their bitcoin account with a bitcoin custodian. Bitcoin custodians are financial institutions that have implemented a series of specialized security precautions, including holding bitcoin in "cold storage," to try to ensure the safety of an account holder's bitcoin. These bitcoin custodians must carefully consider the design of the physical, operational, and cryptographic systems for secure storage of private keys in an effort to lower the risk of loss or theft, and many use a multi-factor security system under which actions by multiple individuals working together are required to access the private keys necessary to transfer such digital assets and ensure exclusive ownership.

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See Dalia Blass, "Keynote Address—2019 ICI Securities Law Developments Conference" (December 3, 2019), available at: <https://www.sec.gov/news/speech/blas-keynote-address-2019-ici-securities-law-developments-conference>.

The Fund's Bitcoin Custodian(s) will hold the Fund's bitcoin acquired via EFP transactions through the CME Bitcoin Futures Market and will be responsible for maintaining custody of the Fund's bitcoin assets.

The Fund's Bitcoin Custodian(s) must satisfy, at least, the "core custodian" requirements set forth by the NCIOC in the NCI methodology, including:<sup>85</sup>

1. Provide custody accounts whose holders are the legal beneficiaries of the assets held in the account. In case of bankruptcy or insolvency of a Bitcoin Custodian, creditors or the estate should have no rights to the Fund's assets.
2. Offer segregated accounts and store the Fund's bitcoin in separated individual accounts and not in omnibus accounts. The Fund's bitcoin will be held in segregated wallets and not commingled with the Bitcoin Custodian's or other customer assets.
3. Generate account-segregated private keys for digital assets using high entropy random number generation methods and employ advanced security practices.
4. Utilize technology for storing private keys in offline digital vaults and apply secure processes, such as private key segmentation, multi-signature authorization, and geographic distribution of stored assets, to limit access to private keys. The Bitcoin Custodian will use security technology for storing private keys aiming to avoid theft or misappropriation of assets due to online attacks, collusion of agents managing the storage services, or any other threat.
5. Have a comprehensive risk management policy and formalized framework of managing operational and custody risks, including a disaster recovery program that ensures continuity of operations in the event of a system failure. The Bitcoin Custodian will have a business continuity plan to help ensure continued access to the Fund's assets.
6. Have an insurance policy that covers, at least partially, risks such as the loss of Fund assets held in cold storage, including from employee collusion or fraud, physical loss including theft, damage of key material, security breach or hack, and fraudulent transfer.
7. Comply with higher standards of government oversight, external audits, and security to safekeep asset ownership. The Bitcoin Custodian must be licensed or registered as a custodian by a reputable and independent governing body (e.g., the New York State Department of Financial Services, or other state, national or international regulators), as can be ascertained by certain public data sources.

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See [https://indexes.nasdaqomx.com/docs/methodology\\_nci.pdf](https://indexes.nasdaqomx.com/docs/methodology_nci.pdf).

8. Provide third-party audit reports at least annually on operational and security processes. These audits may be completed by having a Systems and Organizational Control certification issued and are intended to provide reasonable assurance that the Bitcoin Custodian's operational processes and private key management controls are in accordance with the expected standards.

The Sponsor will cause the Trust to maintain ownership and control of the Fund's bitcoin in a manner consistent with good delivery requirements for spot commodity transactions.

#### The Structure and Operation of the Fund Satisfies Commission Requirements for Bitcoin-Based Exchange Traded Products

The Sponsor believes that the Fund's holding a combination of CME Bitcoin Futures Contracts, bitcoin, and cash could significantly mitigate the risk of market manipulation while still providing the market with a regulated product that tracks the actual price of bitcoin, creating a secure way for U.S. investors to gain exposure to bitcoin without having to rely on unregulated products, offshore regulated products, or indirect strategies such as investing in publicly traded companies that hold bitcoin.

In determining whether to approve listing and trading of new ETPs, the Commission conducts a thorough analysis to ensure the proposal is consistent with Section 6(b)(5) of the Act. Section 6(b)(5) of the Act mandates that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest. With respect to ETPs, the Commission often considers how the listing exchange would access necessary information to detect and deter market manipulation, illegal trading, and other abuses, which listing exchanges may accomplish by entering into a comprehensive surveillance-sharing agreement with other entities, such as the markets trading the ETP's underlying assets. Historically, for commodity-trust ETPs, there has always been at least one regulated market of significant size for trading futures on the underlying commodity — whether gold, silver, platinum, palladium, or copper. Then, the listing exchange would enter into surveillance-sharing agreements with, or hold ISG membership in common with, that regulated market.<sup>86</sup>

In the context of bitcoin, CME Bitcoin Futures Market is currently the only regulated market in the U.S.

The Commission has previously interpreted the terms “significant market” and “market of significant size” to include a market (or group of markets) where:

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<sup>86</sup> See Winklevoss Order; Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the Bitwise Bitcoin ETF Trust Under NYSE Arca Rule 8.201-E, Securities Exchange Act Release No. 87267 (Oct. 9, 2019), 84 FR 55382 at 55383, 55410 (Oct. 16, 2019) (SR-NYSEArca-2019-01) (the “Bitwise Order”); Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, to Amend NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) and to List and Trade Shares of the United States Bitcoin and Treasury Investment Trust Under NYSE Arca Rule 8.201-E, Securities Exchange Act Release No. 88284 (February 26, 2020), 85 FR 12595 at 12609 (March 3, 2020) (SR-NYSEArca-2019-39) (the “Wilshire Phoenix Order”).

- (1) There is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, such that a surveillance-sharing agreement would assist the ETP listing market in detecting and deterring misconduct; and
- (2) It is unlikely that trading in the ETP would be the predominant influence on prices in that market.<sup>87</sup>

With respect to the first prong of the Commission’s interpretation, the Commission has previously explained that the lead/lag relationship between the bitcoin futures market and the spot market is central to understanding this first prong. With respect to the second prong, the Commission’s prior analysis has focused on the potential size and liquidity of the ETP compared to the size and liquidity of the market.

The Commission recognized in the Approval Order that “the CME is a ‘significant market’ related to CME bitcoin futures contracts,” and thus that the Exchange has entered into the requisite surveillance-sharing agreement with respect to its CME Bitcoin Futures Contracts holdings.<sup>88</sup> However, there is still a lack of consensus on whether the CME is of “significant size” in relation to the spot bitcoin market based on the test historically applied by the Commission.

#### Interrelationship between the CME Bitcoin Futures Market and the Fund

The Commission has previously stated that “the interpretation of the term market of significant size depends on the interrelationship between the market with which the listing exchange has a surveillance-sharing agreement and the proposed ETP.”<sup>89</sup> The Sponsor intends to adopt an innovative approach to mitigate the risks of fraud and manipulation that are unique to the Fund. The core principle of this approach would be to structure the operation of the Fund such that the regulated market of significant size in relation to the Fund is the CME Bitcoin Futures Market because the Fund trades all of its non-cash assets through the CME Bitcoin Futures Market. Therefore, the Sponsor’s strategy aims to establish a comprehensive interrelationship between the CME and the Fund so that the CME Bitcoin Futures Market is the market of significant size in relation to the Fund. The Sponsor notes that, although the Fund may, as proposed, hold bitcoin, it does not rely on any pricing or other information or services from unregulated bitcoin

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<sup>87</sup> See, e.g., Winklevoss Order, 83 FR at 37594. The Commission further noted that “[t]here could be other types of “significant markets” and “markets of significant size,” but this definition is an example that will provide guidance to market participants.” Id.

<sup>88</sup> See Approval Order, 87 FR at 21678 and further discussion at 21678-81.

<sup>89</sup> See Securities Exchange Act Release No. 95180 (June 29, 2022), 87 FR 40299 at 40312 (July 6, 2022) (SR-NYSEArca-2021-90) (Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Shares of Grayscale Bitcoin Trust Under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares)).

spot bitcoin trading platforms. Therefore, no spot bitcoin trading platform could be considered a “market of relevant size” in relation to the Fund.

The Sponsor has designed the Fund to have four novel features that underscore its significant interrelationship with the CME Bitcoin Futures Market:

1. **Investment strategy:** The Fund will only hold bitcoin, CME Bitcoin Futures Contracts, and cash and cash equivalents. Accordingly, the CME Bitcoin Futures Market is the only market on which the Fund’s non-cash assets would trade and is therefore the “significant market” in relation to the Fund, as proposed.
2. **Futures-based pricing for spot bitcoin:** The price determination for bitcoin holdings in the NAV calculation will be derived from the CME’s bitcoin futures curve.<sup>90</sup> As a result, the price of bitcoin holdings will depend solely on bitcoin futures settlement prices on the CME Bitcoin Futures Market and will not depend directly on price information from unregulated spot bitcoin markets (as further discussed below).
3. **Physical bitcoin purchases through the CME Bitcoin Futures Market:** The Fund will solely use the CME Bitcoin Futures Market’s EFP transactions to acquire and dispose of bitcoin, instead of transactions on unregulated spot bitcoin trading platforms. Accordingly, the only non-cash assets held by the Fund (CME Bitcoin Futures Contracts and bitcoin obtained from EFP transactions) would be traded, reported, and cleared through the CME Bitcoin Futures Market, such that CME and NYSE Arca can share information pursuant to their common ISG membership to detect and deter fraudulent or manipulative misconduct related to those assets.
4. **Creations and redemptions:** The Fund will use cash creations and redemptions<sup>91</sup> to deter intraday Share price manipulation that could originate from in-kind creation or redemption from bitcoin sourced in unregulated spot markets. Investment in bitcoin thus would not be directly related to creation/redemptions, but would instead be adjusted dynamically based on target portfolio exposure.<sup>92</sup> Trading for bitcoin could thus be accomplished in smaller sizes and at unpredictable times, reducing the risk of manipulation in the creation or redemption processes.

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<sup>90</sup> The “futures curve” is a representation of the relationship between futures contract prices and their respective expiration dates.

<sup>91</sup> In a cash creation/redemption format, the Authorized Participant delivers cash to the Fund instead of bitcoin. The Fund’s creation and redemption processes are further discussed below.

<sup>92</sup> The portfolio’s exposure to bitcoin will be dynamic because the Sponsor will assess market conditions (e.g., expected level of creation and redemption based on historic trends, the futures curve, market liquidity and volatility) in allocating the Fund’s portfolio among the assets that it may hold (bitcoin, CME Bitcoin Futures Contracts, cash and cash equivalents). The Sponsor will manage the Fund to minimize transaction costs related to the conversion between CME Bitcoin Futures Contracts and bitcoin that would be necessary to process redemptions. The Sponsor will generally aim to maximize the allocation to bitcoin to better track the Fund’s Benchmark.

The Sponsor believes that these features of the Fund are designed to provide a robust framework for mitigating the risks of market manipulation, thereby protecting investors and maintaining the integrity of the market. The Sponsor further believes that, given these features of the Fund, the CME Bitcoin Futures Market should be considered the regulated market of significant size in relation to the Fund.

The Sponsor further believes that the proposed novel approach is in line with the first prong of the Commission’s interpretation of the definition of “regulated market of significant size” as to the CME Bitcoin Futures Market because (i) the CME Bitcoin Futures Market is the only market where the Fund trades its non-cash assets,<sup>93</sup> and (ii) there is a reasonable likelihood that a person attempting to manipulate the Fund would also have to trade on the CME Bitcoin Futures Market to successfully manipulate the ETP (and, accordingly, CME’s common ISG membership would aid NYSE Arca in detecting and deterring potential misconduct).

The Sponsor has designed its approach so that any attempt to manipulate the Fund would require trading on the CME Bitcoin Futures Market, for the following reasons:

1. **Futures-based pricing for spot bitcoin:** The price of the Fund’s bitcoin holdings would be determined based on settlement prices of CME Bitcoin Futures Contracts for purposes of calculating NAV (as explained in the discussion of FBSP above). Accordingly, any attempt to manipulate the price of the Fund would require influencing the futures curve on the CME Bitcoin Futures Market because the spot price (which could be a target for manipulation) does not directly influence the price of the Fund. There is thus a direct lead/lag relationship in which CME Bitcoin Futures Market prices lead both the spot price used by the Fund to determine its NAV and the Fund’s market price.
2. **Spot bitcoin operations via EFP transaction through the CME Bitcoin Futures Market:** Because the Fund’s bitcoin operations would take place via CME Bitcoin Futures Market EFP transactions, any attempt to manipulate the Fund’s transactions in bitcoin holdings would require the would-be manipulator to trade on the CME Bitcoin Futures Market. Accordingly, any potential manipulation of the Fund would require extensive operations on the heavily regulated CME Bitcoin Futures Market.
3. **Cash creations and redemptions:** The Fund’s use of cash creations and redemptions also reduces the potential for manipulation through the creation and redemption processes by eliminating the direct arbitrage between unregulated spot

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In the Approval Order, the Commission stated that if the proposed “significant” regulated market (in this case, the CME Bitcoin Futures Market) with which the listing exchange has a surveillance-sharing agreement is the same market on which the ETP trades its non-cash assets, then (i) it is unnecessary for the listing exchange to establish a reasonable likelihood that the would-be manipulator would have to trade on said listing exchange to manipulate the proposed ETP (thereby satisfying the first prong of the Commission’s standard for “market of significant size”), and (ii) it is unnecessary to establish a “lead-lag” relationship between said listing exchange and other markets. 87 FR at 21679 n. 47 & 21680.

markets and the Fund's market price. Any significant creation or redemption activity aimed at manipulating the Fund would likely influence the CME Bitcoin Futures Market, given that the cash received in the creation is used to buy CME Bitcoin Futures Contracts and the cash generated for redemption distribution comes from the sale of CME Bitcoin Futures Contracts.

Given these factors, the Sponsor believes that the common membership of NYSE Arca and CME in the ISG would be an effective tool in assisting NYSE Arca in detecting and deterring potential misconduct. The exchanges' ability to share information would provide the Exchange with access to relevant trading data from the CME Bitcoin Futures Market, which is intrinsically linked to the Fund, allowing for appropriate oversight and facilitating the ability to identify and investigate any suspicious trading activity.

The Approval Order stated that the CME "comprehensively surveils futures market conditions and price movements on a real-time and ongoing basis in order to detect and prevent price distortions, including price distortions caused by manipulative efforts" and that the "CME's surveillance can reasonably be relied upon to capture the effects on the CME [Bitcoin Futures Market] caused by a person attempting to manipulate the [Fund] by manipulating the price of CME Bitcoin Futures Contracts, whether that attempt is made by directly trading on the CME [Bitcoin Futures Market] or indirectly by trading outside of the CME [Bitcoin Futures Market]."<sup>94</sup> The Commission further noted in the Approval Order that, as a result, "when the CME shares its surveillance information with [NYSE] Arca, the information would assist in detecting and deterring fraudulent or manipulative misconduct related to the non-cash assets held by the [Fund]."<sup>95</sup> The Sponsor further believes that, consistent with the Approval Order, CME surveillance can be relied upon to capture any possible manipulation of the CME Bitcoin Futures Market, even when the attempt is made indirectly by trading outside the CME Bitcoin Futures Market in unregulated markets.<sup>96</sup>

The Sponsor also believes that it is unlikely that trading in the Fund would be the predominant influence on prices on the CME Bitcoin Futures Market. The Approval Order noted that it was unlikely that trading in the Fund would be the predominant

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<sup>94</sup> See Approval Order, 87 FR at 21679.

<sup>95</sup> Id.

<sup>96</sup> See id. ("The Commission agrees with [NYSE] Arca that the CME [Bitcoin Futures Market], as a CFTC-regulated futures exchange, has 'the requisite oversight, controls, and regulatory scrutiny necessary to maintain, promote, and effectuate fair and transparent trading of its listed products, including the BTC Contracts and MBT Contracts.' As [NYSE] Arca states, as a Designated Contracts Market ('DCM'), the CME [Bitcoin Futures Market] 'comprehensively surveils futures market conditions and price movements on a realtime and ongoing basis in order to detect and prevent price distortions, including price distortions caused by manipulative efforts.' Thus the CME's surveillance can reasonably be relied upon to capture the effects on the CME [Bitcoin Futures Market] caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME [Bitcoin Futures Contracts], whether that attempt is made by directly trading on the CME [Bitcoin Futures Market] or indirectly by trading outside of the CME [Bitcoin Futures Market]. As such, when the CME shares its surveillance information with [NYSE] Arca, the information would assist in detecting and deterring fraudulent or manipulative misconduct related to the non-cash assets held by the proposed ETP") (internal citations omitted).



influence on price in the CME Bitcoin Futures Market,<sup>97</sup> and the Sponsor believes that the addition of bitcoin to the Fund's holdings, using EFP transactions through the CME Bitcoin Futures Market, does not significantly alter the influence of the Fund's trading on the CME Bitcoin Futures Market, for the following reasons:

1. **The Fund's limited influence over the market:** As the Commission noted in the Approval Order,<sup>98</sup> the Commission observed no disruption to the CME Bitcoin Futures Market or evidence that the Fund exerted a dominant influence on CME bitcoin futures prices. The Sponsor therefore believes that it is very unlikely that the Fund's trading, even with the addition of bitcoin to its holdings, would become the predominant influence on the futures market.
2. **Spot bitcoin would be purchased using market-neutral EFP transactions:** The bitcoin in the Fund's portfolio would be purchased by exchanging an equivalent CME Bitcoin Futures Contracts position using EFP transactions through the CME Bitcoin Futures Market. The Fund's bitcoin trading would thus be directly linked to the futures market and would not introduce a new, independent variable that could significantly influence the futures market. Indeed, because both sides of the trade track the same benchmark, an EFP is market-neutral, and, as such, the pricing of an EFP is quoted in terms of the basis between the price of the futures contract and the level of the underlying index.<sup>99</sup>
3. **The Fund's investment strategy reduces recurrent trading activity and price pressure on the CME Bitcoin Futures Market as compared to a fund that only holds CME Bitcoin Futures Contracts:** Because the Fund will also hold bitcoin, the Sponsor believes that CME Bitcoin Futures Contracts rollover operations would be reduced, as would the trading activity on the CME Bitcoin Futures Market that occurs as a CME Bitcoin Futures Contract nears expiration, thereby significantly reducing its influence on the CME Bitcoin Futures Market.

The Sponsor therefore believes that the proposed addition of bitcoin to the Fund's holdings would not significantly alter the influence of the Fund's trading on the CME Bitcoin Futures Market and that the proposed design of the Fund's investment strategy would instead result in potential impact on the CME Bitcoin Futures Market that is the same or less than that of the previous investment strategy (as represented in the Approval Order).

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<sup>97</sup> See *id.* at 21680.

<sup>98</sup> See *id.* at 21681.

<sup>99</sup> According to the Fund's registration statement and as discussed above, the Fund uses EFP transactions to efficiently transition its bitcoin exposure from a physical to a futures position within a regulated environment.

The Sponsor notes that, as of April 2021 and as noted in the Fund's original proposal to list and trade its Shares on the Exchange, the CME Bitcoin Futures Market was already showing a significant increase in size, as per the table below:<sup>100</sup>

CME BITCOIN FUTURES MARKET		
	<u>February 26, 2020</u>	<u>April 7, 2021</u>
Trading Volume	\$433 million	\$4,321 million
Open Interest	\$238 million	\$2,582 million

The Sponsor notes that growth of the CME Bitcoin Futures Market at that time coincided with similar growth in the bitcoin spot market. Moreover, the market for Bitcoin futures was and still is rapidly approaching the size of markets for other commodity interests, including interests in metals, agricultural, and petroleum products.

Accordingly, as the CME Bitcoin Futures Market continues to develop and more closely resemble other commodity futures markets, the Sponsor believes that it is reasonable to expect that the relationship between the bitcoin futures market and bitcoin spot market will behave similarly to other future/spot market relationships, where the spot market may have no relationship to the futures market (although the current proposal does not depend on such similarity).

In addition, in the time since the Approval Order was issued, there has been significant growth in bitcoin futures in terms of trading volumes, as reflected in the table below:

CME BITCOIN FUTURES MARKET		
	<u>April 6, 2022</u>	<u>June 30, 2023</u>
Trading Volume	\$1,692 million	\$3,473 million
Open Interest	\$2,529 million	\$2,800 million

<sup>100</sup> See Securities Exchange Act Release No. 92573 (August 5, 2021), 86 FR 44062 at 44073 (August 11, 2021) (SR-NYSEArca-2021-53) (Notice of Filing of a Proposed Rule Change To List and Trade Shares of Teucrium Bitcoin Futures Fund Under NYSE Arca Rule 8.200-E).

The Sponsor also notes that in the same period during which CME Bitcoin Futures Market open interest remained at roughly at the same level, trading volume and open interest of unregulated bitcoin futures markets had a significant drawdown:<sup>101</sup>

UNREGULATED BITCOIN FUTURES MARKETS			
	<u>April 7, 2021</u>	<u>April 6, 2022</u>	<u>June 30, 2023</u>
Trading Volume	\$68,333 million	\$37,333 million	\$29,693 million
Open Interest	\$20,420 million	\$13,980 million	\$11,630 million

Furthermore, the Sponsor notes that in the same period the trading volume of spot bitcoin also fell significantly:

SPOT BITCOIN			
	<u>April 7, 2021</u>	<u>April 6, 2022</u>	<u>June 1, 2023</u>
Trading Volume	\$698,000 million	\$297,000 million	\$116,000 million

The Sponsor believes that the data above suggests an increase in market appetite for regulated products (e.g., CME Bitcoin Futures Contracts) vis-a-vis a significant decrease in interest for unregulated products (e.g., unregulated futures and spot bitcoin).

The Sponsor further believes that an analysis of the data presented above indicates that the CME Bitcoin Futures Market managed to maintain its open interest level despite the price volatility that bitcoin experienced in 2022, demonstrating its resilience and that it is sufficiently developed such that it is unlikely that trading in the Fund would be the predominant influence on its prices.

The Sponsor further notes that the Commission stated in the Approval Order “that the CME [Bitcoin Futures Market] has sufficiently developed to support ETPs seeking exposure to bitcoin by holding CME Bitcoin Futures Contracts.”<sup>102</sup> The Sponsor believes that the CME Bitcoin Futures Market is also sufficiently developed to support ETPs that seek exposure to Bitcoin by holding a mix of CME Bitcoin Futures Contracts and bitcoin through the use of EFP transactions that are traded, reported, and cleared through the

<sup>101</sup> Data in this table is sourced from: <https://www.theblock.co/data/crypto-markets/futures>. Trading volume data for bitcoin futures in unregulated markets was only available on a monthly frequency. Therefore, the trading volume figures displayed in the table are approximations derived from the daily average trading volumes reported for their respective months.

<sup>102</sup> See Approval Order, 87 FR at 21681.

CME Bitcoin Futures Market and whose conditions and prices are subject to CME oversight.

### Creations and Redemptions

According to the Sponsor (and as discussed further below), the Fund uses cash creations and redemptions.<sup>103</sup> An AP delivers cash to the Fund instead of bitcoin or CME Bitcoin Futures Contracts in the creation process. An AP receives cash instead of bitcoin or CME Bitcoin Futures Contracts in the redemption process. The cash received during the creation process is then used by the Sponsor to purchase CME Bitcoin Futures Contracts with an aggregate market value that approximates the amount of cash received upon the creation. During a redemption transaction, the reverse process is used, where the Sponsor sells CME Bitcoin Futures Contracts with an aggregate market value that approximates the amount of cash to be paid upon the redemption. On a daily basis, the Sponsor will analyze the current portfolio allocation of the Fund between bitcoin and CME Bitcoin Futures Contracts and, based on market conditions, may decide to engage in an EFP transaction through the CME Bitcoin Futures Market to buy or sell bitcoin for the equivalent position in CME Bitcoin Futures Contracts.

The Sponsor believes that the Fund's use of cash creations and redemptions protects against manipulation in the creation and redemption process and of the Fund's market price from trading in unregulated spot markets. Investment in bitcoin will not be directly related to creation or redemption of Shares such that trades can be performed in smaller sizes and at unpredictable times, reducing the risk of creation or redemption manipulation.

Specifically, the Sponsor believes that cash creations and redemptions serve as a deterrent to manipulation in several ways:

- 1. Decoupling from spot market:** By using cash instead of bitcoin for creations and redemptions, the Fund's operations are decoupled from the unregulated spot market. The creation and redemption process does not directly influence the unregulated spot market or vice versa, thereby reducing the potential for manipulation through this process.
- 2. Unpredictable trading times:** The Fund's investment in spot bitcoin is not directly related to creations or redemptions. As a result, trading can be done in smaller sizes and at unpredictable times, making it harder for potential manipulators to time their actions.
- 3. Reduced impact of large trades:** By effecting creations and redemptions in cash, large trades that could potentially influence the unregulated spot market are

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<sup>103</sup> In a cash creation/redemption mechanism, APs create or redeem shares of the ETP using cash instead of the underlying assets. This contrasts with in-kind creation/redemption, where APs use a basket of the ETP's underlying assets for these transactions. In cash creation/redemption, APs provide or receive an equivalent cash value based on the NAV of the ETP's shares.

mitigated. Instead, these trades are absorbed in the CME Bitcoin Futures Market, which is sufficiently liquid and, as a regulated market that is a member of ISG, can reasonably be relied upon to assist the Exchange in detecting and deterring fraudulent or manipulative misconduct.

- 4. Reduced influence from unregulated spot bitcoin trading platforms:** In-kind creation may create a direct relationship between the Fund's market price and prices on offshore unregulated trading platforms such as Binance and others by arbitrage, because an AP could buy or sell bitcoin from such markets and receive or deliver bitcoin from the Fund through the creation or redemption process. With creations and redemptions in cash, however, that arbitrage cannot be executed without transacting on the CME Bitcoin Futures Market. Thus, the Sponsor believes that, by removing a direct causal relationship between unregulated markets and the Fund's market price, it is unlikely that a person attempting to manipulate the ETP would be reasonably successful by trading only on unregulated spot bitcoin trading platforms. A would-be manipulator would have to transact on the CME Bitcoin Futures Market, such that NYSE Arca's common ISG membership with CME would assist NYSE Arca in detecting and deterring misconduct.

The Sponsor believes that the Fund's creation and redemption process is designed to minimize the potential for market manipulation, thereby protecting investors and maintaining the integrity of the markets.

#### Settlement of CME Bitcoin Futures Contracts

According to the Registration Statement, each BTC Contract and MBT Contract settles daily to the BTC Contract VWAP of all trades that occur between 2:59 p.m. and 3:00 p.m. Central Time, the settlement period, rounded to the nearest tradable tick.<sup>104</sup>

<sup>104</sup>

VWAP is calculated based first on Tier 1 (if there are trades during the settlement period); then Tier 2 (if there are no trades during the settlement period); and then Tier 3 (in the absence of any trade activity or bid/ask in a given contract month during the current trading day, as follows:

Tier 1: Each contract month settles to its VWAP of all trades that occur between 14:59:00 and 15:00:00 CT, the settlement period, rounded to the nearest tradable tick. If the VWAP is exactly in the middle of two tradable ticks, then the settlement will be the tradable price that is closer to the contract's prior day settlement price.

Tier 2: If no trades occur on CME Globex between 14:59:00 and 15:00:00 CT, the settlement period, then the last trade (or the contract's settlement price from the previous day in the absence of a last trade price) is used to determine whether to settle to the bid or the ask during this period.

a. If the last trade price is outside of the bid/ask spread, then the contract month settles to the nearest bid or ask price.

b. If the last trade price is within the bid/ask spread, or if a bid/ask spread is not available, then the contract month settles to the last trade price.

Tier 3: In the absence of any trade activity or bid/ask in a given contract month during the current trading day, the daily settlement price will be determined by applying the net change from the preceding contract month to the given contract month's prior daily settlement price.

BTC Contracts and MBT Contracts each expire on the last Friday of the contract month and are settled with cash. The final settlement value is based on the CME CF BRR at 4:00 p.m. London time on the expiration day of the futures contract.

As proposed, the Fund will rollover its soon to expire CME Bitcoin Futures Contracts to extend the expiration or maturity of its position forward by closing the initial contract holdings and opening a new longer-term contract holding for the same underlying asset at the then-current market price. The Fund does not intend to hold any bitcoin futures positions into cash settlement.

### Net Asset Value

According to the Registration Statement, the Fund's NAV per Share will be calculated by taking the current market value of its total assets, subtracting any liabilities, and dividing that total by the number of Shares.

The Administrator of the Fund will calculate the NAV once each trading day, as of the earlier of the close of the New York Stock Exchange or 4:00 p.m. Eastern Time ("E.T.").

According to the Registration Statement, to determine the value of CME Bitcoin Futures Contracts, the Fund's Administrator will use the CME Bitcoin Futures Contract settlement price on the exchange on which the contract is traded, except that the "fair value" of CME Bitcoin Futures Contracts (as described in more detail below) may be used when CME Bitcoin Futures Contracts close at their price fluctuation limit for the day. The Fund's Administrator will determine the value of Fund investments as of the earlier of the close of the New York Stock Exchange or 4:00 p.m. E.T. The Fund's NAV will include any unrealized profit or loss on open CME Bitcoin Futures Contracts and any other credit or debit accruing to the Fund but unpaid or not received by the Fund.

According to the Registration Statement, the fair value of the Fund's holdings will be determined by the Fund's Sponsor in good faith and in a manner that assesses the future bitcoin market value based on a consideration of all available facts and all available information on the valuation date. When a CME Bitcoin Futures Contract has closed at its price fluctuation limit, the fair value determination will attempt to estimate the price at which such CME Bitcoin Futures Contract would be trading in the absence of the price fluctuation limit (either above such limit when an upward limit has been reached or below such limit when a downward limit has been reached). Typically, this estimate will be made primarily by reference to exchange traded instruments at 4:00 p.m. E.T. on settlement day. The fair value of BTC Contracts and MBT Contracts may not reflect such security's market value or the amount that the Fund might reasonably expect to receive for the BTC Contracts and MBT Contracts upon its current sale.

According to the Registration Statement and as discussed above, the value of spot bitcoin held by the Fund would be determined by the Administrator, when calculating the Fund's NAV, via the FBSP methodology. As discussed above, the FBSP methodology allows

for the determination of a spot price of bitcoin that utilizes market data exclusively from CME Bitcoin Futures Contracts and does not rely on market data obtained from unregulated bitcoin markets to determine the value of bitcoin held by the Fund.

### Indicative Fund Value

According to the Registration Statement, in order to provide updated information relating to the Fund for use by investors and market professionals, ICE Data Indices, LLC will calculate an updated IFV. The IFV will be calculated by using the prior day's closing NAV per Share of the Fund as a base and will be updated throughout the core trading session of 9:30 a.m. E.T. to 4:00 p.m. E.T. (the "Core Trading Session") to reflect changes in the value of the Fund's holdings during the trading day. For purposes of calculating the IFV, the Fund's spot bitcoin holdings will be priced using a real time version of the Benchmark, the Nasdaq Bitcoin Reference Price - Real Time ("NQBTC-RT"),<sup>105</sup> and the Fund's CME Bitcoin Futures Contracts holdings will be priced using the most recent trading price for each contract.

The IFV will be disseminated on a per Share basis every 15 seconds during the Exchange's Core Trading Session and be widely disseminated by one or more major market data vendors during the Exchange's Core Trading Session.<sup>106</sup>

### Creation and Redemption of Shares

According to the Registration Statement, the Shares issued by the Fund may only be purchased by APs and only in blocks of 10,000 Shares called "Creation Baskets." The amount of the purchase payment for a Creation Basket is equal to the total NAV of Shares in the Creation Basket. Similarly, only APs may redeem Shares and only in blocks of 10,000 Shares called "Redemption Baskets." The amount of the redemption proceeds for a Redemption Basket is equal to the total NAV of Shares in the Redemption Basket. The purchase price for Creation Baskets and the redemption price for Redemption Baskets are the actual NAV calculated at the end of the business day when a request for a purchase or redemption is received by the Fund. Shares of the Fund will be created and redeemed in cash.<sup>107</sup>

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<sup>105</sup> The "Nasdaq Bitcoin Reference Price - Real Time" or "NQBTC-RT" is the real-time version of the Benchmark and is calculated every second throughout a 24-hour trading day, seven days per week, using published, real-time bid and ask quotes for bitcoin on the NQBTC core trading platforms. See [https://indexes.nasdaqomx.com/docs/methodology\\_nci.pdf](https://indexes.nasdaqomx.com/docs/methodology_nci.pdf).

<sup>106</sup> Several major market data vendors display and/or make widely available IFVs taken from the Consolidated Tape Association ("CTA") or other data feeds.

<sup>107</sup> The Sponsor notes that Shares of the Fund will only be created and redeemed in cash because of regulatory and other concerns surrounding the ability of broker-dealers, such as the APs, to have custody and/or control over non-security digital assets, such as bitcoin. In 2019, Commission Staff noted that a digital asset security that does not meet the definition of a "security" under the Securities Investor Protection Act ("SIPA") would likely not receive protection under SIPA in the event of the failure of a carrying broker-dealer (thus leaving holders of those digital asset securities with only unsecured general creditor claims against the broker-dealer's estate). See SEC Division of Trading and Markets, FINRA Office of General

APs will be the only persons that may place orders to create and redeem Creation Baskets. APs must be (1) either registered broker-dealers or other securities market participants, such as banks and other financial institutions, that are not required to register as broker-dealers to engage in securities transactions, and (2) Depository Trust Company (“DTC”) participants. An AP is an entity that has entered into an Authorized Participant agreement with the Sponsor.

An AP delivers cash to the Fund in the creation process, and an AP receives cash in the redemption process.<sup>108</sup> The cash delivered or received during the creation or redemption process is then used by the Sponsor to purchase or sell CME Bitcoin Futures Contracts with an aggregate market value that approximates the amount of cash received or paid upon the creation or redemption. On a daily basis, the Sponsor will analyze the current portfolio allocation of the Fund between bitcoin and CME Bitcoin Futures Contracts and decide whether to engage in an EFP transaction through the CME Bitcoin Futures Market to buy or sell bitcoin for the equivalent position in CME Bitcoin Futures Contracts.

### Creation Procedures

According to the Registration Statement, on any “Business Day,” an AP may place an order with the Fund’s Transfer Agent to create one or more Creation Baskets. For purposes of processing both purchase and redemption orders, a “Business Day” means any day other than a day when the CME Bitcoin Futures Market or the New York Stock Exchange is closed for regular trading. Purchase orders for Creation Baskets must be placed by 3:00 p.m. EST or one hour prior to the close of trading on the New York Stock Exchange, whichever is earlier. The day on which the distributor(s) engaged by the

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Counsel, Joint Staff Statement on Broker-Dealer Custody of Digital Asset Securities (July 8, 2019), <https://www.sec.gov/news/public-statement/joint-staff-statement-broker-dealer-custody-digital-asset-securities>. The Staff also noted that uncertainty regarding when and whether a broker-dealer holds a digital asset security in its possession or control creates greater risk for customers that their securities will not be able to be returned in the event of a broker-dealer failure. *See id.* The Staff concluded that these concerns were likely to be inconsistent with the expectations of persons who would use a broker-dealer to custody their digital asset securities. In light of these concerns, the creation and redemption and processes of the Fund have been structured so that APs are not required to take custody of, or have control over, bitcoin at any stage.

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The APs will deliver only cash to create Shares and will receive only cash when redeeming Shares. Further, APs will not directly or indirectly purchase, hold, deliver, or receive bitcoin as part of the creation or redemption process or otherwise direct the Trust or a third party with respect to purchasing, holding, delivering, or receiving bitcoin as part of the creation or redemption process.

To the extent applicable, the Fund will create shares by receiving bitcoin from a third party that is not the AP and the Fund—not the AP—is responsible for selecting the third party to deliver the bitcoin. Further, the third party will not be acting as an agent of the AP with respect to the delivery of the bitcoin to the trust or acting at the direction of the AP with respect to the delivery of the bitcoin to the Fund. The Fund will redeem shares by delivering bitcoin to a third party that is not the AP and the Fund—not the AP—is responsible for selecting the third party to receive the bitcoin. Further, the third party will not be acting as an agent of the AP with respect to the receipt of the bitcoin from the Fund or acting at the direction of the AP with respect to the receipt of the bitcoin from the Fund.



Sponsor receives a valid purchase order is referred to as the purchase order date. If the purchase order is received after the applicable cut-off time, the purchase order date will be the next Business Day. Purchase orders are irrevocable.

By placing a purchase order, an AP agrees to deposit cash with the Cash Custodian.

#### Determination of Required Deposits

According to the Registration Statement, the total deposit required to create each basket (“Creation Basket Deposit”) is an amount of cash and/or cash equivalents in the same proportion to the total assets of the Fund (net of estimated accrued but unpaid fees, expenses and other liabilities) on the purchase order date as the proportion of the number of Shares to be created under the purchase order to the total number of Shares outstanding on the purchase order date. The Sponsor determines, directly in its sole discretion or in consultation with the Cash Custodian and the Sub-Administrator, the requirements for cash and/or cash equivalents, including the remaining maturities of the cash equivalents, which may be included in deposits to create baskets. If cash equivalents are to be included in a Creation Basket Deposit for orders placed on a given business day, the Sub-Administrator will publish an estimate of the Creation Basket Deposit requirements at the beginning of such day.

#### Delivery of Required Deposits

According to the Registration Statement, an AP who places a purchase order is responsible for transferring to the Fund’s account with the Cash Custodian the required amount of cash and cash equivalents by the end of the next business day following the purchase order date or by the end of such later business day, not to exceed three business days after the purchase order date, as agreed to between the AP and the Cash Custodian when the purchase order is placed (the “Purchase Settlement Date”). Upon receipt of the deposit amount, the Cash Custodian directs DTC to credit the number of baskets ordered to the AP’s DTC account on the Purchase Settlement Date. Because orders to purchase baskets must be placed by 3:00 p.m. E.T., but the total payment required to create a basket during the continuous offering period will not be determined until 4:00 p.m. E.T. on the date the purchase order is received, APs will not know the total amount of the payment required to create a basket at the time they submit an irrevocable purchase order for the basket. The Fund’s NAV and the total amount of the payment required to create a basket could rise or fall substantially between the time an irrevocable purchase order is submitted and the time the amount of the purchase price in respect thereof is determined.

#### Suspension and Rejection of Purchase Orders

According to the Registration Statement, the Sponsor has the discretion to suspend purchase orders or delay their settlement in specific situations. These situations may include (1) exchange closures or trading restrictions, (2) emergencies affecting the handling of cash equivalents, (3) shareholder protection needs, (4) potential price limit restrictions on CME Bitcoin Futures Contracts, or (5) circumstances in which it would

not be in the best interest of the Fund or its investors to accept purchase orders. Purchase orders must conform to the criteria outlined in the AP agreement and be for whole baskets. The Sponsor may suspend orders that do not meet these criteria. The Sponsor, acting by itself or through the distributor or Transfer Agent, may reject a purchase order or a Creation Basket Deposit if: (a) it determines that, due to position limits or otherwise, investment alternatives that will enable the Fund to meet its investment objective are not available or practicable at that time; (b) it determines that the purchase order or the Creation Basket Deposit is not in proper form; (c) it believes that acceptance of the purchase order or the Creation Basket Deposit would have adverse tax consequences to the Fund or its investors; (d) the acceptance or receipt of the Creation Basket Deposit would, in the opinion of counsel to the Sponsor, be unlawful; (e) circumstances outside the control of the Sponsor make it, for all practical purposes, not feasible to process creations of baskets; (f) there is a possibility that any or all of the CME Bitcoin Futures Contracts of the Fund from which the NAV of the Fund is calculated will be priced at a dynamic price limit restriction;<sup>109</sup> or (g) if, in the sole discretion of the Sponsor, the execution of such an order would not be in the best interest of the Fund or its investors.

### Redemption Procedures

According to the Registration Statement, the procedures by which an AP can redeem one or more Redemption Baskets will mirror the procedures for the creation of Creation Baskets. On any Business Day, an AP may place an order with the Transfer Agent to redeem one or more Redemption Baskets.

The redemption procedures allow APs to redeem Redemption Baskets. Individual shareholders may not redeem directly from the Fund. By placing a redemption order, an AP agrees to deliver the Redemption Baskets to be redeemed through DTC's book entry system to the Fund by the end of the next Business Day following the effective date of the redemption order or by the end of such later business day ("Redemption Settlement Date").

### Determination of Redemption Distribution

According to the Registration Statement, the redemption distribution from the Fund will consist of an amount of cash and/or cash equivalents that is in the same proportion to the total assets of the Fund on the date that the order to redeem is properly received as the number of Shares to be redeemed under the redemption order is in proportion to the total

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The CME imposes a maximum permitted price range for futures contracts in each trading session on its futures markets. When markets reach their price limits, the CME may temporarily halt trading until such price limits can be expanded, remain price limited, or suspend trading for the day, based on relevant regulatory provisions. CME Bitcoin Futures Contracts, like other futures contracts on the CME, are subject to price limits on a dynamic basis. At the commencement of each trading day, CME Bitcoin Futures Contracts are assigned a price limit variant, which equals a percentage of the prior day's settlement price, or a price deemed appropriate by the CME. During the trading day, the price limit variant is applied in rolling 60-minute look-back periods to establish dynamic lower and upper price fluctuation limits. Price limits for CME Bitcoin Futures Contracts are published at <https://www.cmegroup.com/trading/price-limits.html#cryptocurrencies>.

number of Shares outstanding on the date the order is received.

#### Delivery of Redemption Distribution

The redemption distribution due from a Fund will be delivered to the AP on the Redemption Settlement Date if the Fund's DTC account has been credited with the baskets to be redeemed. If the Fund's DTC account has not been credited with all of the baskets to be redeemed by the end of such date, the redemption distribution will be delivered to the extent of whole baskets received. Any remainder of the redemption distribution will be delivered on the next business day after the Redemption Settlement Date to the extent of remaining whole baskets received. Pursuant to information from the Sponsor, the Cash Custodian will also be authorized to deliver the redemption distribution notwithstanding that the baskets to be redeemed are not credited to the Fund's DTC account by 12:00 p.m. E.T. on the Redemption Settlement Date if the AP has collateralized its obligation to deliver the baskets through DTC's book-entry system on such terms as the Sponsor may from time to time determine.

#### Availability of Information

The NAV for the Fund's Shares will be calculated and disseminated daily and will be made available to all market participants at the same time. The intraday, closing prices, and settlement prices of the CME Bitcoin Futures Contracts will be readily available from the CME website, automated quotation systems, published or other public sources, or major market data vendors. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Real-time data for CME Bitcoin Futures Contracts will be available by subscription through on-line information services. ICE Futures U.S. and CME also provide delayed futures and options on futures information on current and past trading sessions and market news free of charge on their respective websites. The specific contract specifications for CME Bitcoin Futures Contracts will also be available on such websites, as well as other financial informational sources. The spot price of bitcoin is available on a 24-hour basis from major market data vendors, including Bloomberg and Reuters. Information relating to trading, including price and volume information, in bitcoin will be available from major market data vendors and from the trading platforms on which bitcoin is traded. EFP transaction volumes are reported daily, by instrument, on the CME website.<sup>110</sup>

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. Quotation information for cash equivalents and commodity futures

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<sup>110</sup> Pricing information for EFP transactions in CME Bitcoin Futures Contracts is reported to the CME Bitcoin Futures Market but is not publicly available.

may be obtained from brokers and dealers who make markets in such instruments. Intraday price and closing price level information for the Benchmark will be available from major market data vendors. The real-time version of the Benchmark value, NQBTC-RT, will be disseminated once every 15 seconds during the Core Trading Session. The Benchmark components and methodology will be made publicly available. The IFV will be available through on-line information services.

In addition, the Fund's website, <https://hashdex-etfs.com/>, will display the applicable end of day closing NAV. The daily holdings of the Fund will be available on the Fund's website. The Fund's website will also include a form of the prospectus for the Fund that may be downloaded. The website will include the Shares' ticker and CUSIP information along with additional quantitative information updated on a daily basis, including: (1) the prior Business Day's reported NAV and closing price and a calculation of the premium and discount of the closing price or mid-point of the bid/ask spread at the time of NAV calculation (the "Bid/Ask Price") against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters. The website disclosure of portfolio holdings will be made daily and will include, as applicable, (i) the name, quantity, price, and market value of the Fund's holdings, (ii) the counterparty to and value of forward contracts and any other financial instruments tracking the Benchmark, and (iii) the total cash and cash equivalents held in the Fund's portfolio, if applicable.

The Fund's website will be publicly available at the time of the public offering of the Shares and accessible at no charge.

### Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.<sup>111</sup> Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the CME Bitcoin Futures Market<sup>112</sup> and in the securities and/or the financial instruments composing the daily disclosed portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

The Exchange may halt trading during the day in which an interruption to the dissemination of the IFV or the value of the Benchmark occurs. The real-time version of the Benchmark value (NQBTC-RT) will be disseminated once every 15 seconds during

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<sup>111</sup> See NYSE Arca Rule 7.12-E.

<sup>112</sup> The Sponsor believes that, under normal market conditions, interruptions or trading halts in individual spot bitcoin markets are unlikely to impact trading in the Shares unless trading in the CME Bitcoin Futures Market is also impacted.

the Core Trading Session. The Benchmark components and methodology will be made publicly available. If the interruption to the dissemination of the IFV, or to the value of the Benchmark persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

### Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. E.T. in accordance with NYSE Arca Rule 7.34-E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6-E, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.500-E. The trading of the Shares will be subject to NYSE Arca Rule 8.500E(f), which sets forth certain restrictions on Equity Trading Permit Holders ("ETP Holders") acting as registered market makers in Trust Units to facilitate surveillance. Pursuant to NYSE Arca Rule 8.500-E(f), an ETP Holder acting as a registered market maker in Trust Units must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the market maker may have or over which it may exercise investment discretion. No market maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a market maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule. In addition to the existing obligations under Exchange rules regarding the production of books and records, the ETP Holder acting as a market maker in Trust Units shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, as may be requested by the Exchange.

For initial and continued listing as proposed herein, the Fund will be in compliance with Rule 10A-3 under the Act, and the Trust will rely on the exception contained in Rule

10A-3(c)(7).<sup>113</sup> A minimum of 50,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

### Surveillance

The Exchange represents that trading in the Shares of the Fund will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>114</sup> The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and the Fund's holdings with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and the Fund's holdings from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the Fund's holdings from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance-sharing agreement ("CSSA"). The Exchange is also able to obtain information regarding trading in the Shares, the underlying bitcoin, CME Bitcoin Futures Contracts, options on bitcoin futures, or any other bitcoin derivative through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market. The Exchange can obtain market surveillance information, including customer identity information, with respect to transactions (including transactions in futures contracts) occurring on US futures exchanges, which are members of the ISG. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Under NYSE Arca Rule 8.500-E(f), an ETP Holder acting as a registered market maker in the Shares is required to provide the Exchange with information relating to its trading in the underlying physical commodity, related commodity futures or options on commodity

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<sup>113</sup> See Rule 10A-3(c)(7), 17 CFR 240.10A-3(c)(7) (stating that a listed issuer is not subject to the requirements of Rule 10A-3 if the issuer is organized as an unincorporated association that does not have a board of directors and the activities of the issuer are limited to passively owning or holding securities or other assets on behalf of or for the benefit of the holders of the listed securities).

<sup>114</sup> FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

futures, or any other related commodity derivatives. Commentary .04 of NYSE Arca Rule 11.3-E requires an ETP Holder acting as a registered market maker, and its affiliates, in the Shares to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares). As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder. To the extent the Exchange may be found to lack jurisdiction over a subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts, the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

CME Bitcoin Futures Contracts held by the Fund will be listed on an exchange that is a member of the ISG or is a market with which the Exchange has a CSSA.<sup>115</sup>

All statements and representations made in this filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5-E(m).

#### Information Bulletin

Prior to the commencement of trading of the Shares, the Exchange will inform its ETP Holders in an information bulletin (“Information Bulletin”) of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) the risks involved in trading the Shares during the Early and Late Trading Sessions when an updated IFV will not be calculated or publicly disseminated; (2) the procedures for purchases and redemptions of Shares in Creation Baskets and Redemption Baskets (and that Shares are not individually redeemable); (3) NYSE Arca Rule 9.2-E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (4) how information regarding the IFV is disseminated; (5) how information regarding portfolio holdings is disseminated; (6) the requirement that ETP Holders deliver a prospectus to

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<sup>115</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange notes that not all components of the Fund may trade on markets that are members of ISG or with which the Exchange has in place a CSSA.

investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (7) trading information.

In addition, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. The Exchange notes that investors purchasing Shares directly from the Fund will receive a prospectus. ETP Holders purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Bulletin will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. In addition, the Information Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement.

The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding bitcoin, that the Commission has no jurisdiction over the trading of Bitcoin as a commodity, and that the CFTC has regulatory jurisdiction over the trading of bitcoin futures contracts and options on bitcoin futures contracts.

The Information Bulletin will also disclose the trading hours of the Shares and that the NAV for the Shares will be calculated after 4:00 p.m. E.T. each trading day. The Information Bulletin will disclose that information about the Shares will be publicly available on the Fund's website.

(b) Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>116</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest because it reflects the Fund's proposed investment strategy, through which the Fund would seek to achieve its investment objectives by investing in both CME Bitcoin Futures Contracts and bitcoin, in addition to being able to hold part of its net assets in cash. The Exchange believes that the Fund's strategy of holding a mix of bitcoin, CME Bitcoin Futures Contracts, and cash would remove impediments to and perfect the mechanism of a free market and protect investors and the public interest, offering investors exposure to bitcoin without relying on unregulated products or markets. The Exchange also believes that the Sponsor has designed the Fund to include features intended to provide a robust framework for mitigating the risks of market manipulation, such as its proposed use of futures-based pricing for bitcoin in calculating the Fund's NAV, EFP transactions through the CME Bitcoin Futures Market to acquire and dispose of bitcoin, and cash creations and redemptions, which would remove

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<sup>116</sup> 15 U.S.C. 78f(b)(5).



impediments to and perfect the mechanism of a free and open market and promote the protection of investors and the public interest. Finally, the Exchange believes that, given these features of the Fund, the CME Bitcoin Futures Market should be considered the regulated market of significant size in relation to the Fund and that there is a reasonable likelihood that a person attempting to manipulate the Fund would also have to trade on the CME Bitcoin Futures Market to do so, such that information shared between CME and NYSE Arca pursuant their common ISG membership would aid NYSE Arca in detecting and deterring potential misconduct, and that it is unlikely that trading in the Fund would be the predominant influence on the CME Bitcoin Futures Market.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest in that the Shares would be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.500-E. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and the Fund's holdings with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and the Fund's holdings from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the Fund's holdings from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. The Exchange is also able to obtain information regarding trading in the Shares and the Fund's holdings through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market. The Exchange can obtain market surveillance information, including customer identity information, with respect to transactions (including transactions in CME Bitcoin Futures Contracts) occurring on US futures exchanges, which are members of the ISG. The intraday, closing prices, and settlement prices of CME Bitcoin Futures Contracts and bitcoin will be readily available from the applicable futures exchange websites, automated quotation systems, published or other public sources, or major market data vendors website or on-line information services. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services.

Real-time data for CME Bitcoin Futures Contracts will be available by subscription from on-line information services. ICE Futures U.S. and CME also provide delayed futures information on current and past trading sessions and market news free of charge on the Fund's website. The specific contract specifications for CME Bitcoin Futures Contracts will also be available on such websites, as well as other financial informational sources. The spot price of bitcoin is available on a 24-hour basis from major market data vendors, including Bloomberg and Reuters. Information relating to trading, including price and volume information, in bitcoin will be available from major market data vendors and from the trading platforms on which bitcoin is traded. EFP transaction volumes are

reported daily, by instrument, on the CME website. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The IFV will be disseminated on a per Share basis every 15 seconds during the Exchange's Core Trading Session and be widely disseminated by one or more major market data vendors during the NYSE Arca Core Trading Session. The Fund's website will also include a form of the prospectus for the Fund that may be downloaded. The website will include the Share's ticker and CUSIP information along with additional quantitative information updated on a daily basis, including, for the Fund: (1) the prior business day's reported NAV and closing price and a calculation of the premium and discount of the closing price or mid-point of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters. The website disclosure of portfolio holdings will be made daily and will include, as applicable, (i) the name, quantity, price, and market value of CME Bitcoin Futures Contracts, (ii) the counterparty to and value of forward contracts, and (iii) other financial instruments, if any, and the characteristics of such instruments and cash equivalents, and amount of cash held in the Fund's portfolio, if applicable.

Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in BTC and/or MBT Contracts and the securities and/or the financial instruments composing the daily disclosed portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of Trust Units based on bitcoin that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of the Shares, which are Trust Units based on bitcoin and that will enhance competition among market participants, to the benefit of investors and the marketplace.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule

change.

6. Extension of Time Period for Commission Action

Not applicable.

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

Not applicable.

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

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

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

Not applicable.

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

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of the Proposed Rule Change for Publication in the Federal Register

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NYSEARCA-2023-58, Amendment No. 1)

[Date]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Regarding the Hashdex Bitcoin Futures ETF

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on January 5, 2024, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes list and trade shares of the Hashdex Bitcoin ETF under NYSE Arca Rule 8.500-E (“Trust Units”). This Amendment No. 1 to SR-NYSEARCA-2023-58 replaces SR-NYSEARCA-2023-58 as originally filed and supersedes such filing in its entirety. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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

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

1. Purpose

The Exchange proposes to list and trade shares (“Shares”) of the Hashdex Bitcoin ETF (the “Fund”) under NYSE Arca Rule 8.500-E.

The Commission previously approved the listing and trading of shares of the Teucrium Bitcoin Futures Fund (the “Predecessor Fund”)<sup>4</sup> pursuant to NYSE Arca Rule 8.200-E, Commentary .02.<sup>5</sup> The Predecessor Fund’s name was subsequently changed to the Hashdex Bitcoin Futures ETF pursuant to an April 18, 2022 amendment to the Predecessor Fund’s registration statement.<sup>6</sup> In connection with the launch of the Predecessor Fund, Tidal

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<sup>4</sup> The Predecessor Fund is a series of the Teucrium Commodity Trust (the “Predecessor Trust”). The Commission has noticed for immediate effectiveness a separate proposed rule change relating to the transfer of management and control of the Fund from the Predecessor Trust to the Tidal Commodities Trust I (the “Trust”). See Securities Exchange Act Release No. 99164 (December 13, 2023), 88 FR 87825 (December 19, 2023) (SR-NYSEARCA-2023-84) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Make Changes to Certain Representations Relating to the Hashdex Bitcoin Futures Fund).

<sup>5</sup> See Securities Exchange Act Release No. 34-94620 (April 6, 2022), 87 FR 21676 (April 12, 2022) (SR-NYSEArca-2021-53) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the Teucrium Bitcoin Futures Fund Under NYSE Arca Rule 8.200-E, Commentary .02 (Trust Issued Receipts)) (the “Approval Order”). The representations herein supersede and replace the representations in the Exchange’s prior rule filing relating to the Teucrium Bitcoin Futures Fund and Partial Amendment No. 2 thereto. See Securities Exchange Act Release No. 92573 (August 5, 2021), 86 FR 44062 (August 11, 2021) (SR-NYSEArca-2021-53) (Notice of Filing of a Proposed Rule Change To List and Trade Shares of Teucrium Bitcoin Futures Fund Under NYSE Arca Rule 8.200-E) and Partial Amendment No. 2, available at: <https://www.sec.gov/comments/sr-nysearca-2021-53/srnysearca202153-20118884-271701.pdf>.

<sup>6</sup> On April 18, 2022, Teucrium Commodity Trust filed with the Commission Pre-Effective Amendment No. 2 to the registration statement on Form S-1 under the Securities Act of 1933 (the “Securities Act”) (File No. 333-256339) changing the name of the Fund from Teucrium Bitcoin Futures Fund to Hashdex Bitcoin Futures ETF.

Investments LLC (f/k/a Toroso Investments LLC, the “Sponsor”),<sup>7</sup> Teucrium Trading, LLC (the “Prior Sponsor”), and Hashdex Asset Management, Ltd. (“Hashdex”) entered into an agreement pursuant to which the Fund would be the successor and surviving entity from a merger into the Fund of the Predecessor Fund (which is a series of the Predecessor Trust sponsored by the Prior Sponsor).<sup>8</sup>

On August 25, 2023, the Trust on behalf of the Fund, submitted a confidential draft registration statement (the “Draft Registration Statement”) on Form S-1 (File No. 377-06858) to change the Fund’s name to the Hashdex Bitcoin ETF and to modify the Fund’s investment objective and strategy, as further discussed below.<sup>9</sup> On December 22, 2023, the Trust, on behalf

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<sup>7</sup> The Sponsor is not registered as a broker-dealer or affiliated with a broker-dealer. In the event that (a) the Sponsor becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new sponsor or sub-adviser is registered as a broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or personnel of the broker-dealer affiliate, as applicable, regarding access to information concerning the composition of and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

<sup>8</sup> On July 21, 2023, the Trust, on behalf of the Fund, filed with the Commission a registration statement on Form S-1 under the Securities Act (File No. 333-2773364), as amended by a Pre-Effective Amendment No. 1 filed with the Commission on November 2, 2023 (“Form S-1”), for the continuous offering and sale of the Fund’s Shares. On October 31, 2023, the Trust filed with the Commission a separate registration statement on Form S-4 (File No. 333-275227) (“Form S-4”) under the Securities Act to register 50,004 shares of the Fund, which was issued in exchange for the outstanding shares of the Predecessor Fund (the “Reorganization”). The Reorganization closed on January 3, 2024. The offering and sale of Fund Shares pursuant to the Form S-1 and the Form S-4 and the trading in such Shares commenced with the closing of the Reorganization, at which time the registration statements on the Form S-1 and the Form S-4 were declared effective.

<sup>9</sup> The Trust, on behalf of the Fund, submitted an Amendment No. 1 to the Registration Statement on November 14, 2023 (“DRS Amendment”). The Jumpstart Our Business Startups Act (the “JOBS Act”), enacted on April 5, 2012, added Section 6(e) to the Securities Act. Section 6(e) of the Securities Act provides that an “emerging growth company” may confidentially submit to the Commission a draft registration statement for confidential, non-public review by the Commission staff prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed not later than 15 days before the date on which the issuer conducts a road show, as such term is defined in Securities Act Rule 433(h)(4). An emerging growth company is defined in Section 2(a)(19) of the Securities Act as an issuer with less than \$1,000,000,000 total annual gross revenues during its most recently completed fiscal year. The Trust meets the definition of an emerging growth company and consequently submitted its Draft Registration Statement and DRS Amendment to the Commission on a confidential basis.

of the Fund, filed publicly a registration statement on Form S-1 (File No. 333-276254) (the “Registration Statement”), which supersedes and replaces the Draft Registration Statement.<sup>10</sup>

The Fund is a series of the Trust, a Delaware statutory trust. The Fund is managed and controlled by the Sponsor and administered by Tidal ETF Services LLC (the “Administrator”). The Sponsor is registered as a commodity pool operator (“CPO”) and a commodity trading adviser with the Commodity Futures Trading Commission (“CFTC”) and is a member of the National Futures Association (“NFA”).

U.S. Bancorp Fund Services, LLC (doing business as U.S. Bank Global Fund Services) is the sub-administrator, registrar, and transfer agent for the Fund (“Sub-Administrator” or “Transfer Agent”). U.S. Bank, N.A. will hold the Fund’s cash and/or cash equivalents<sup>11</sup> (“Cash Custodian”). BitGo Trust Company, Inc. will keep custody of all the Fund’s bitcoin as the “Bitcoin Custodian.”<sup>12</sup>

#### The Fund’s Investment Objective and Strategy

According to the Registration Statement, the investment objective of the Fund is to have the daily changes in the net asset value (“NAV”) of the Shares reflect the daily changes in the price of its benchmark, less expenses from the Fund’s operations, by investing in both bitcoin and bitcoin futures contracts traded on the Chicago Mercantile Exchange, Inc. (“CME”).<sup>13</sup> In

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<sup>10</sup> A Pre-Effective Amendment No. 1 to the Registration Statement was filed on December 26, 2023 (the “Amendment”). The Amendment was an exhibit-only filing to provide the Fund’s executed bitcoin custodian agreement. The Draft Registration Statement and the DRS Amendment have been made accessible as public filings. The Registration Statement is not yet effective, and the Shares will not trade on the Exchange under the prospectus contained in the Registration Statement until such time that the Registration Statement is effective.

<sup>11</sup> “Cash equivalents” include short-term treasury bills (90 days or less to maturity), money market funds, and demand deposit accounts. The Fund does not hold, invest in, or trade in digital assets that are linked to any fiat currency (i.e., stablecoins).

<sup>12</sup> The Fund may, in the future, engage additional custodians for its bitcoin, each of whom may be referred to as a Bitcoin Custodian.

<sup>13</sup> Consistent with the Approval Order, the Fund currently only invests in BTC Contracts and MBT Contracts

doing so, the Sponsor expects that the Fund will provide investors with bitcoin exposure that is more resistant to fraud and manipulative practices than comparable products that seek to rely on unregulated trading platforms.<sup>14</sup> In particular, to avoid any exposure to potential manipulation from actors operating on unregulated trading platforms, although the Fund will hold spot bitcoin, the Fund's NAV will be calculated using a spot bitcoin price derived from the price of CME Bitcoin Futures Contracts (as defined below), and the Fund expects to purchase and sell bitcoin exclusively via Exchange for Physical ("EFP") transactions on the CME's bitcoin futures market (the "CME Bitcoin Futures Market").<sup>15</sup> The Fund will not trade or otherwise rely on information or services from unregulated spot bitcoin trading platforms, but will instead buy CME Bitcoin Futures Contracts with the purpose of using them to acquire physical bitcoin through EFP transactions on the regulated CME Bitcoin Futures Market.

According to the Registration Statement, CME offers two bitcoin futures contracts, one contract representing five (5) bitcoins ("BTC Contract") and another contract representing one-tenth of one (0.10) bitcoin ("MBT Contract").<sup>16</sup> Each BTC Contract and MBT Contract settles daily to the BTC Contract volume-weighted average price ("VWAP") of all trades that occur

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(as defined below) and in cash and cash equivalents.

<sup>14</sup> As used in this filing, "unregulated trading platforms" refers to trading venues whose trading rules are not subject to regulatory review or approval by the SEC, CFTC or other federal regulator, whose trading operations are not subject to regulatory examination, and that are not required by law to have anti-manipulation practices that federal securities or commodities regulation would require. *See, e.g.*, Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To List and Trade Shares of the Winklevoss Bitcoin Trust, Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 at 37597 (August 1, 2018) (SR-BatsBZX-2016-30) (the "Winklevoss Order") (describing lack of regulatory oversight for Gemini trading platform).

<sup>15</sup> The Fund's futures-based spot pricing methodology and use of EFP transactions are explained in greater detail below in "Futures-Based Spot Price" and "EFP Transactions," respectively.

<sup>16</sup> BTC Contracts began trading on the CME Globex trading platform on December 15, 2017, and are cash-settled in U.S. dollars. MBT Contracts began trading on the CME Globex trading platform on May 3, 2021, under the ticker symbol "MBT" and are also cash-settled in U.S. dollars. For purposes of this filing, BTC Contracts and MBT Contracts may also be referred to, individually or collectively, as "CME Bitcoin Futures Contracts."



between 2:59 p.m. and 3:00 p.m., Central Time, the settlement period, rounded to the nearest tradable tick. BTC Contracts and MBT Contracts each expire on the last Friday of the contract month, and the final settlement value for each contract is based on the CME CF Bitcoin Reference Rate (“CME CF BRR”).<sup>17</sup>

BTC Contracts and MBT Contracts each trade six consecutive monthly contracts plus two additional December contract months (if the 6 consecutive months include December, only one additional December contract month is listed). Because BTC Contracts and MBT Contracts are exchange-listed, they allow investors to gain exposure to bitcoin without having to hold the underlying cryptocurrency.

The Fund’s benchmark, as referenced above, is the Nasdaq Bitcoin Reference Price - Settlement (the “NQBTCS” or “Benchmark”),<sup>18</sup> which ultimately tracks the price of bitcoin. The Sponsor believes that the spot price performance of bitcoin is best measured through the use of a reputable index provided by an established index provider and has selected the NQBTCS as a trustworthy benchmark of bitcoin pricing.

The Sponsor will employ a passive investment strategy that is intended to track the changes in the Benchmark regardless of whether the Benchmark goes up or goes down, meaning that the Sponsor will not try to “beat” the Benchmark. In order to track the Benchmark as closely as possible, the Fund will aim to maximize its investment in bitcoin.

The Fund will gain exposure to physical bitcoin by buying CME Bitcoin Futures Contracts for the primary purpose of using such CME Bitcoin Futures Contracts to acquire physical bitcoin through EFP transactions on the regulated CME Bitcoin Futures Market. The

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<sup>17</sup> The CME CF BRR aggregates the trade flow of major bitcoin spot platforms during a specific calculation window into a once-a-day reference rate of the U.S. dollar price of bitcoin.

<sup>18</sup> See <https://indexes.nasdaqomx.com/Index/Overview/NQBTCS>.

Fund may maintain CME Bitcoin Futures Contracts positions (with related cash reserves to meet applicable margin requirements) if the Sponsor deems it necessary to meet the Fund's liquidity needs for the cash payment of Share redemption settlements and of other applicable expenses borne by the Fund. The Fund will also maintain cash balances or invest in cash equivalents to the extent it is unable to purchase CME Bitcoin Futures Contracts with available cash.

If there are no Share redemption orders or currently due Fund-payable expenses and assuming that the Fund is able to utilize all available cash to purchase CME Bitcoin Futures Contracts, the Fund's portfolio is expected to be composed of at least 95% in bitcoin and up to 5% in cash, cash equivalents, and/or CME Bitcoin Futures Contracts.

The Sponsor expects that the Fund's average daily tracking error against the Benchmark will be less than 10% over any period of 30 trading days. The Fund's passive investment strategy is designed to allow investors to purchase and sell the Shares for the purpose of investing in bitcoin, whether to hedge the risk of losses in their bitcoin-related transactions or gain price exposure to the bitcoin market.

The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. That is, given its passive investment strategy, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2Xs, 3Xs, -2Xs, and -3Xs) of the Fund's Benchmark.

#### The Fund's Benchmark

According to the Sponsor, the Fund will use the Benchmark as a reference to track and measure its performance compared to the price performance of spot bitcoin. The Fund will not use the Benchmark for valuation purposes when calculating the Fund's NAV.<sup>19</sup>

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<sup>19</sup> As further explained below, the Administrator will employ a methodology based on the settlement prices of the CME Bitcoin Futures Contracts to determine the price of the Fund's spot bitcoin holdings for NAV

According to the Sponsor, the NQBTCS is designed to allow institutional investors to track the price of bitcoin by applying a rigorous methodology to trade data captured from cryptocurrency trading platforms that meet the eligibility criteria of the Nasdaq Crypto Index (“NCI”). The NQBTCS is calculated once every trading day by applying a publicly available rules-based pricing methodology to a diverse collection of pricing sources to provide an institutional-grade reference price for bitcoin.<sup>20</sup> The NQBTCS is designed to account for variances in price across a wide range of sources, each of which has been vetted according to criteria identified in the methodology. Specifically, the NQBTCS settlement value is the Time Weighted Average Price (“TWAP”) calculated across the VWAPs for each minute in the settlement price window, which is between 2:50:00 and 3:00:00 p.m. New York time. Where there are no transactions observed in any given minute of the settlement price window, that minute is excluded from the calculation of the TWAP.

According to the Sponsor, the NQBTCS also utilizes penalty factors to mitigate the impact of anomalous trading activity such as manipulation, illiquidity, large block trading, or operational issues that could compromise price representation. Three types of penalties are applied: abnormal price penalties, abnormal volatility penalties, and abnormal volume penalties. These penalties are defined as adjustment factors to the weight of information from each trading platform that contributes pricing information based on the deviation of a trading platform’s price, volatility, or volume from the median across all trading platforms. For example, if a core trading

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calculation. The Sponsor believes that this approach enables the Fund to effectively track the Benchmark while also mitigating risks to investors stemming from exposure to unregulated trading platforms and the prices derived from them.

<sup>20</sup> See [https://indexes.nasdaqomx.com/docs/methodology\\_NCI.pdf](https://indexes.nasdaqomx.com/docs/methodology_NCI.pdf).

platform's price is 2.5 standard deviations away from the median price, its price penalty factor will be a 1/2.5 multiplier.

Finally, as a means of achieving the highest degrees of confidence in the reported volume, data is sourced only from "core trading platforms" that are screened, selected, and approved by the Nasdaq Crypto Index Oversight Committee (the "NCIOC"). Core trading platforms must:

- (1) Have strong forking controls;
- (2) Have effective anti-money laundering controls;
- (3) Have a reliable and transparent application programming interface that provides real-time and historical trading data;
- (4) Charge fees for trading and structure trading incentives that do not interfere with the forces of supply and demand;
- (5) Be licensed by a public independent governing body;
- (6) Include surveillance for manipulative trading practices and erroneous transactions;
- (7) Evidence a robust IT infrastructure;
- (8) Demonstrate active capacity management;<sup>21</sup>
- (9) Evidence cooperation with regulators and law enforcement; and
- (10) Have a minimum market representation for trading volume.<sup>22</sup>

Additionally, the NCIOC conducts further diligence to assess a trading platform's

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<sup>21</sup> According to NCI's methodology, to demonstrate active capacity management, core trading platforms must demonstrate that their platform's technical infrastructure is designed in such a way that it is capable of accommodating a sudden, significant increase in trade volume without impacting system functionality. See id. at 4.

<sup>22</sup> According to NCI's methodology, to compute a trading platform's market size, the NCIOC sums the U.S. Dollar ("USD") volume of all eligible digital asset - USD pairs for the month of August each year. A core trading platform must have at least 0.05% of the total volume in eligible trading platforms. See id.

eligibility and will consider additional criteria such as the trading platform's organizational and ownership structure, security history, and reputation. The list of existing core trading platforms will be recertified by the NCIOC at a minimum on an annual basis.

The Sponsor believes that the NQBTCS is a suitable Benchmark for the Fund for several reasons. First, it would provide reliable pricing for purposes of tracking the actual performance of bitcoin. Second, it is administered by a reputable index administrator that is not affiliated with the Sponsor or Fund,<sup>23</sup> which provides assurances of accountability and independence. Finally, the NQBTCS methodology is designed to resist potential price manipulation from unregulated bitcoin markets by applying the following safeguards:

- (1) Strict eligibility criteria for the NCI core trading platforms from which the NQBTCS data is drawn;
- (2) A diverse collection of trustworthy pricing sources to provide an institutional-grade reference price for bitcoin; and
- (3) The use of adjustment factors to mitigate against the impact of any anomalous trading activity.

#### Futures-Based Spot Price

For purposes of calculating the Fund's NAV, the value of the bitcoin held by the Fund

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<sup>23</sup> Nasdaq, Inc. ("Nasdaq"), the index provider, adheres to the International Organization of Securities Commissions principles for benchmarks (the "IOSCO Principles") for many of its indexes via an internal control and governance framework that is audited by an external, independent auditor on an annual basis. Although NQBTCS is not currently one of the indexes that is required to comply with IOSCO Principles, as a reference rate index, it is administered in a manner that is generally consistent with both the IOSCO Principles and the elements of Nasdaq's internal control and governance framework pursuant to IOSCO Principles. NQBTCS is administered and governed by the NCIOC in accordance with the publicly available NCI methodology. The NCIOC oversees all aspects of the administration of the NQBTCS, including the defined processes and controls for the selection and monitoring of third parties such as the core trading platforms and core custodians (see "Custody of Bitcoin," *infra*), as well as the validation and reconciliation of index calculations and pricing data. The NCIOC also oversees the identification and mitigation of any potential conflicts of interest, formal complaints, and updates or changes to the index methodology consistent with the IOSCO Principles.

will be determined by the Administrator in good faith based on a “Futures-Based Spot Price” or “FBSP” methodology.<sup>24</sup> The Sponsor has selected this pricing approach to value the Fund’s bitcoin because it insulates the calculation of the NAV of the Fund from data from unregulated bitcoin trading platforms.

According to the Sponsor, the FBSP methodology allows for the estimation of the spot price of bitcoin by utilizing only market data related to BTC Contracts<sup>25</sup> traded on the CME Bitcoin Futures Market (specifically, settlement prices and time to maturity for such futures contracts). The Administrator is thus able to calculate the Fund’s NAV (as further described in “Net Asset Value” below) without relying on market data from unregulated bitcoin trading platforms. The Administrator will apply the FBSP methodology to estimate the price of spot bitcoin daily by using the daily settlement prices of BTC Contracts.

According to the Sponsor, the FBSP methodology is based on well-established academic research,<sup>26</sup> particularly on the topic of term structure of interest rates. As discussed below, the Sponsor has tested the reliability of FBSP-derived prices by comparing them to historical samples of various benchmarks for the prices of physical bitcoin. The Sponsor believes that the FBSP-derived prices very closely adhere to such benchmarks and that the FBSP methodology can fairly price bitcoin while seeking to protect the Fund’s NAV from short-term distortions that

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<sup>22</sup> The FBSP is based on extensive academic research on forward yield curves and is further described in the Fund’s Registration Statement.

<sup>25</sup> For the calculation of FBSP, the Administrator considers all listed BTC Contracts that have a daily settlement price published by the CME Bitcoin Futures Market on a given date. The Sponsor notes that, although BTC and MBT Contracts have the same settlement prices, the Administrator will only consider BTC Contracts when calculating the FBSP.

<sup>26</sup> See, e.g., Nelson, Charles R., and Andrew F. Siegel, “Parsimonious modeling of yield curves.” *Journal of Business* (1987), available at: [https://www.researchgate.net/publication/24103017\\_Parsimonious\\_Modeling\\_of\\_Yield\\_Curves](https://www.researchgate.net/publication/24103017_Parsimonious_Modeling_of_Yield_Curves); Svensson, Lars EO, “Estimating and Interpreting Forward Interest Rates: Sweden 1992-1994.” (September 1994), IMF Working Paper No. 94/114, available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=883856](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=883856).

may arise due to fraud or manipulation attempts by bad actors trading on unregulated trading platforms.

The calculations underlying the FBSP methodology utilize well-understood and simple-to-implement mathematical and statistical techniques, such as multivariate linear regressions and arithmetic operations. The detailed methodology is described in the Fund's Registration Statement and will also be published on the Fund's website (<https://hashdex-etfs.com/>), along with all inputs necessary to replicate the calculation. In the event of any modifications to the FBSP methodology, the Fund will issue a press release notifying the investing public of such change and the date of the change's effectiveness, which press release will be filed with the Commission under a current report on Form 8-K by the Fund, and, with respect changes to the FBSP methodology as described in this filing, file a proposed rule change under Section 19(b) with the Commission.

The FBSP methodology involves calculating a parametric forward curve<sup>27</sup> into prevailing prices for actual BTC Contracts. The parametric forward curve can then be used to derive the spot price of bitcoin by calculating the price to the point of immediate settlement (i.e., setting the BTC Contracts' time to maturity to zero). This process results in a set of calculated weights that are applied to the price of each actual BTC Contract included in the forward curve. The weights are calculated daily and are dependent solely on the number of calendar days until maturity of each active BTC Contract.<sup>28</sup> The spot price for bitcoin derived from FBSP is, in turn, calculated

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<sup>27</sup> The forward curve of bitcoin futures contracts is the plot of the prices of individual futures contracts against their respective time to maturity. A parametric forward curve is a mathematical function that produces a price for a futures contract for any maturity, which can be used to generate a theoretical estimate of a futures price for a maturity that does not have contracts negotiated, including a spot price, by setting the time to maturity to zero.

<sup>28</sup> The Sponsor will make these weights publicly available on the Fund's website daily, such that any third party can replicate the calculation.

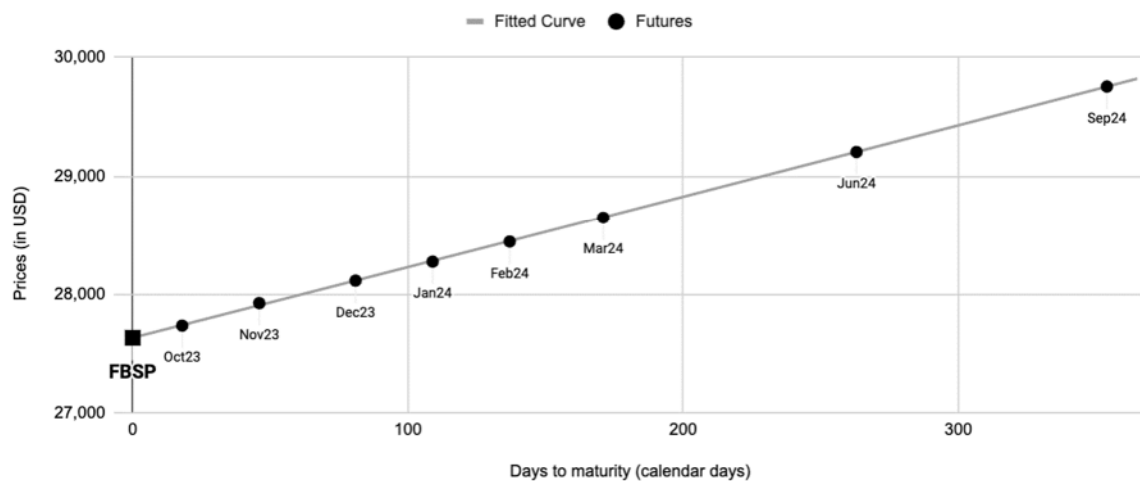
by multiplying each price by its applicable weight and then summing all terms:

$$FBSP = \sum W_i * SP_i$$

where  $W_i$  is the weight and  
 $SP_i$  is the settlement price of each BTC Contract.

The chart below visually illustrates the CME Bitcoin Futures Market's forward curve and how the FBSP is determined for a specific date (October 9, 2023). Each dot represents the settlement price of a specific CME Bitcoin Futures Contract. The line represents the calculated (fitted) forward curve. The dots align closely with the fitted curve line, meaning that the curve accurately tracks the settlement prices of the BTC Contracts. The square is a point on the curve corresponding to a zero-day maturity, representing the spot price for bitcoin for that date.

BTC Contracts Forward Curve and FBSP - 10/09/2023

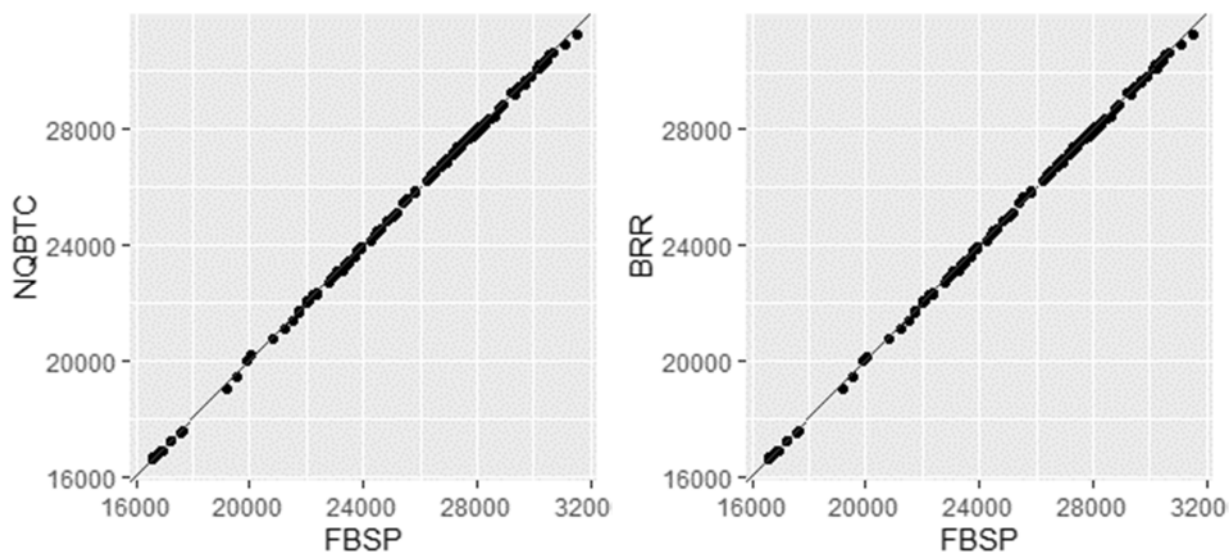




The table below demonstrates the FBSP calculation for the same specific day.

<b>FBSP on 10/09/2023</b>			
<b>Future</b>	<b>Weight (W)</b>	<b>Settlement Price (SP)</b>	<b>Product (W x SP)</b>
Oct23	122.10%	\$27,735.00	\$33,864.44
Nov23	-0.70%	\$27,925.00	-\$195.48
Dec23	-6.70%	\$28,115.00	-\$1,883.71
Jan24	-5.90%	\$28,275.00	-\$1,668.23
Feb24	-4.90%	\$28,445.00	-\$1,393.81
Mar24	-3.70%	\$28,650.00	-\$1,060.05
Jun24	-1.50%	\$29,205.00	-\$438.08
Sep24	-0.30%	\$29,755.00	-\$89.27
Dec24	0.50%	\$30,305.00	\$151.53
Mar25	1.10%	\$30,860.00	\$339.46
<b>FBSP</b>			\$27,626.82
<b>NQBTC</b>			\$27,619.94
<b>Divergence (%)</b>			0.02%

Using data available on Bloomberg on July 10, 2023, the Sponsor compared FBSP to NQBTCS and CME CF BRR from December 27, 2022 to July 7, 2023 and concluded that FBSP tracks both indexes with satisfactory accuracy. The following charts show a direct comparison between those two benchmark values and FBSP:



In the above charts, each point indicates one day, and their proximity to the line shows how similar FBSP is to each of NQBTC and CME CF BRR. The correlations between FBSP and each of NQBTC and CME CF BRR exceed 99.9%, and the mean absolute percentage divergences are 21 basis points (“bps,” where 1bp = 0.01%) and 22bps, respectively, while the median absolute percentage divergences are 18bps and 17bps, respectively.

The Sponsor believes that this data strongly suggests that FBSP is a suitable choice for NAV calculation purposes.

*Mitigation of Manipulation Risks Through Use of the FBSP for NAV Calculation*

While the Commission has raised valid concerns about the potential influence of unregulated bitcoin markets on the daily settlement price of the CME Bitcoin Futures Market, the Sponsor believes that the proposed use of FBSP to calculate the value of the bitcoin held by the Fund for purposes of NAV calculation provides a significant and sufficient degree of insulation from such influences, for the following reasons:

1. **Regulated market influence:** The daily settlement price of CME Bitcoin Futures Contracts, which is the basis for the NAV calculation of both futures

contracts and bitcoin holdings of the Fund, is primarily influenced by trading activity within the regulated futures market itself. This market is subject to stringent oversight and surveillance mechanisms designed to detect and deter manipulative and fraudulent practices, thus significantly limiting the possible influence of unregulated bitcoin markets on the daily settlement price.

2. **High liquidity and volume:** The CME Bitcoin Futures Market is characterized by high liquidity and trading volume, such that any attempt to influence the price calculated by the FBSP through trading activity in other, unregulated bitcoin markets would require a significant amount of capital and coordination. The Sponsor thus believes that any such manipulation attempts would be readily detectable by the CME's market surveillance.
3. **Complex pricing methodology:** The NAV calculation methodology is comprehensive and accounts for both the tenor and final settlement price of each futures contract. In addition, the FBSP method used in the NAV calculation process incorporates all maturities of BTC Contracts, which exhibit a robust price relationship among themselves. As a result, attempting to manipulate these prices in a coordinated manner to generate a substantial impact on NAV would be very challenging for potential manipulators and likely financially unfeasible. The Sponsor thus believes that the complexity of the methodology provides an additional layer of protection against manipulation, as it would be extremely difficult for a manipulator to influence all these factors in a coordinated way to impact the Fund's NAV without leaving a detectable trail that would alert market surveillance.

4. **Focus on near-term contracts:** The FBSP methodology gives more importance to futures contracts that are due for settlement in the near term because such contracts are more heavily traded, and their prices are more reliable indicators of the current spot price of bitcoin. The Sponsor believes that the methodology's focus on near-term contracts further reduces the potential for manipulation, as these contracts are less susceptible to manipulation due to their higher trading volumes and liquidity.

As detailed above, the Sponsor's proposed investment strategy ensures that no unregulated spot bitcoin trading platform could be considered a "market of relevant size" in relation to the Fund, given that the Fund does not rely on any information or services coming from unregulated markets. All of the Fund's operations, including the purchase and sale of bitcoin and its NAV determination, rely on CME Bitcoin Futures Contracts on the CME Bitcoin Futures Market. Thus, all of the Fund's transactions, whether in CME Bitcoin Futures Contracts or physical bitcoin, are registered and monitored on a regulated exchange, providing an additional layer of security and transparency. Because any attempt to manipulate the Fund would require significant trading on the CME Bitcoin Futures Market, and not on any unregulated bitcoin trading platform, there is significantly reduced potential for manipulation and fraud, further protecting investors and maintaining the integrity of the market.

The Sponsor also believes that it is highly unlikely that a person attempting to manipulate the NAV of the Fund could do so successfully by trading on unregulated spot and derivatives markets. Because of direct arbitrage, it is reasonable to assume that the ETP's market price (in

the secondary market) would closely adhere to the Fund's Indicative Fund Value ("IFV"),<sup>29</sup> given that APs can always create and redeem shares of the Fund hedging with a basket of CME Bitcoin Futures Contracts and the value of the creation basket is determined based on the NAV of the Fund, which in turn is calculated using the FBSP method based on such basket of CME Bitcoin Futures Contracts. Consequently, the likelihood that a potential manipulator of the ETP could succeed by exclusively trading in unregulated bitcoin markets would depend on how much the prices in these markets have an impact over CME Bitcoin Futures Contracts prices. The likelihood that a potential manipulator would undertake such an effort is also low when considering the financial burden of manipulating the unregulated markets and the overall expected profitability of any such manipulation.

To further assess such likelihood, the Sponsor carried out the following analysis to investigate the relationship between prices from relevant unregulated bitcoin markets and the prices of CME Bitcoin Futures Contracts, to assess the impact that a manipulation on those markets would have on the CME Bitcoin Futures Market. The Sponsor collected one-minute bars data between January 18, 2023 and July 26, 2023<sup>30</sup> of prices for the nearest CME Bitcoin Futures Contract ("Nearest CME Futures") and the following alternative bitcoin prices ("ABP"): (1) bitcoin (in USD) on each of NQBTCS's core trading platforms,<sup>31</sup> (2) bitcoin (in Tether stablecoin (USDT)), and (3) BTCUSDT USDs-Margined Perpetuals on Binance. For each day and each ABP, a simple regression model was estimated with one-minute Nearest CME Futures log-returns as the dependent variable, and two independent variables: (1) the log Nearest CME

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<sup>29</sup> The IFV, as further discussed in the "Indicative Fund Value" section below, is based on the prior day's closing NAV per Share and updated to reflect changes in the Fund's holdings value during the trading day.

<sup>30</sup> This date range represents days with intraday data available on Bloomberg as of July 27, 2023. Days with less than 40 observations for a given ABP were excluded from the analysis of such ABP.

<sup>31</sup> The core trading platforms as of December 31, 2023 were BitStamp, Coinbase, Gemini, itBit, and Kraken.

Futures closing price of the previous minute (as a control variable) and (2) the difference between the ABP log return and the Nearest CME Futures log return in the previous minute (as the variable of interest).

The estimated coefficients associated with the variable of interest are a measure of the expected response from the Nearest CME Futures (as measured by its returns) to a divergence between its own return information and the one from ABP in the near past (one-minute lagged returns). Such divergences are expected to occur in cases of manipulation. A higher coefficient (closer to one) would indicate that Nearest CME Futures are more sensitive to and strongly influenced by the divergence, while a lower coefficient (closer to zero) would suggest that Nearest CME Futures are less responsive and not significantly influenced by the information coming from ABP. The Sponsor believes that these coefficients can be considered a conservative estimate of the real impact that manipulation in an ABP would have over the Nearest CME Futures price because the estimates are calculated under normal circumstances rather than under a manipulative attack, in which some other indicators, such as abnormal volume and volatility, would warn market participants and undermine their perception of the attacked ABP as a reliable price reference.

The results of the Sponsor's analysis are summarized in the table below:<sup>32</sup>

ABP	Estimated Parameters				Market Depth	
	Average	1st Decile	Median	9th Decile	+2% Depth	-2% Depth
Coinbase (spot USD)	0.39	0.21	0.41	0.53	\$10,317,109	\$17,320,315
Binance (spot USDT)	0.36	0.15	0.38	0.52	\$17,523,531	\$42,136,404
Kraken (spot USD)	0.22	0.03	0.23	0.40	\$28,189,731	\$30,375,259
Bitstamp (spot USD)	0.17	0.03	0.18	0.33	\$5,083,934	\$4,831,827
Gemini (spot USD)	0.15	-0.01	0.16	0.30		
ItBit (spot USD)	0.08	-0.07	0.07	0.23		
Binance (perpetual USDT)	0.01	-0.07	0.00	0.09		

<sup>32</sup> The market depth information was obtained from CoinMarketCap on July 19, 2023. The ABPs with blank cells in this table were not included in the July 19, 2023 snapshot.

The Sponsor's analysis suggests that the influence of ABP over the Nearest CME Futures prices is relatively low. For instance, if a would-be manipulator chose to attack Coinbase, which is an ABP with higher coefficients and thus higher potential to impact Nearest CME Futures, the average coefficient of 0.39 means that in order to manipulate Nearest CME Futures prices by 1%, the would-be manipulator would have to distort Coinbase prices by more than 2.5% (i.e., 1% divided by 0.39) on average. To be successful with 90% confidence (1st Decile), this manipulator would have to distort Coinbase prices by more than 4.7% (1% divided by 0.21). The Sponsor believes that its analysis supports that, even considering these conservative estimates, indirect manipulation would be extremely inefficient.

The market depth columns in the above table indicate that substantial financial resources, running into tens of millions of dollars, are present on both sides of the order book for the most influential ABPs (even without including hidden orders, bots, and arbitrageurs that effectively enhance liquidity). The considerable financial commitment that would be required makes the manipulation of these prices an expensive endeavor.

The Sponsor believes that its analysis demonstrates that the low efficiency of attempts to manipulate ABPs, coupled with the significant cost involved in influencing impactful ABPs, makes potential manipulation of spot bitcoin markets an unattractive proposition, and that it is therefore highly unlikely that a potential manipulator of the ETP could succeed by exclusively trading in unregulated bitcoin markets. The combination of the high costs and the inefficiencies associated with manipulation makes it a daunting and unprofitable venture.

The Sponsor acknowledges the potential for influence from trades settled in unregulated bitcoin markets. However, the Sponsor believes that the NAV calculation methodology, coupled with the inherent characteristics of the CME Bitcoin Futures Market, provides a significant

degree of protection against such influence being deliberately used to manipulate the Fund's market price or NAV. The Sponsor believes that any such attempt at manipulation very likely would be detected by CME market surveillance.

#### EFP Transactions

According to the Sponsor, an EFP transaction, also known as an Exchange for Related Position ("EFRP") transaction,<sup>33</sup> is a type of trade that is available for most CME futures contracts. An EFP trade is a composite transaction that involves the opening of a position in the futures market and the execution of an inverse trade in the underlying physical asset. An EFP trade closes with a physical delivery against a cash settlement.

Because EFP trades require the parties to the transaction to simultaneously trade the futures and the physical legs of the transaction, the futures leg of an EFP trade is not executed at the CME's central limit order book. Rather, an EFP is a CME-regulated, bilaterally negotiated block trade, in which both parties engage in both legs of the composite transaction.

According to the Sponsor, the Fund seeks to use EFP transactions to gain exposure to spot bitcoin for the following reasons:

- (1) EFP transactions are reported through the CME Bitcoin Futures Market, which is a regulated market and the relevant regulated market for the Fund for the purposes of the test specified in the Winklevoss Order.
- (2) EFP transactions are subject to the CME's market surveillance program, which helps deter and investigate fraudulent and manipulative misconduct.
- (3) EFP transactions will allow the Fund to gain efficient and regular exposure to

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<sup>33</sup> See <https://www.cmegroup.com/clearing/operations-and-deliveries/accepted-trade-types/efp-efr-eoo-trades.html>. The terms "EFP" and "EFRP" are used interchangeably for purposes of this filing.



physical bitcoin without relying on unregulated bitcoin markets for any purpose, including its creation and redemption processes.

When the Sponsor intends to increase the Fund's bitcoin holdings, the Fund will participate in an EFP transaction to sell futures contracts and buy physical bitcoin, while the liquidity provider ("LP") participating in such transaction will buy futures contracts and sell physical bitcoin.<sup>34</sup> Similarly, when the Sponsor seeks to decrease the Fund's bitcoin holdings, the Fund will participate in an EFP transaction to buy futures contracts and sell physical bitcoin, while the LP on the other side of the transaction will sell futures contracts and buy physical bitcoin.

The most well-established means for buying and selling physical bitcoin in large quantities is through the use of simple cash-for-asset OTC transactions with an LP, such as several market makers active in U.S. capital markets. The Sponsor believes that a key benefit of EFP transactions is that they allow for an OTC transaction to be conducted under the regulatory oversight of the CME.

According to the Sponsor, the Fund will exclusively use CME Bitcoin Futures Market's EFP transactions to purchase and sell its physical bitcoin. Therefore, all trading of the Fund's non-cash (or cash equivalents) assets (i.e., CME Bitcoin Futures Contracts and physical bitcoin) will take place through the CME Bitcoin Futures Market, and the CME Bitcoin Futures Market will be the relevant regulated market for the Fund. Because NYSE Arca and CME are both members of the Intermarket Surveillance Group ("ISG"), information shared by CME with

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<sup>34</sup> The LPs with which the Fund will engage in bitcoin transactions are third parties that are not affiliated with the Fund and Sponsor and are not acting as agents of the Fund, Sponsor, or AP, and all transactions will be done on an arms-length basis. There is no contractual relationship between the Fund, the Sponsor, or the LP. When seeking to sell bitcoin on behalf of the Fund, the Sponsor will seek to sell bitcoin at commercially reasonable prices and terms to any of the approved LPs. Once agreed upon, the transaction will generally occur on an "over-the-counter" basis.

NYSE Arca can be used to assist in detecting and deterring fraudulent or manipulative misconduct.

*EFP Transactions through the CME Bitcoin Futures Market*

All EFP trades have two legs: a futures leg and a physical leg. In the futures leg of an EFP Transaction through the CME Bitcoin Futures Market, party A sells CME Bitcoin Futures Contracts to party B for a given price.<sup>35</sup> In the physical leg of the same transaction, party A buys physical bitcoins sold by party B by delivering cash consideration for those bitcoins to party B.

When two parties agree to perform a CME Bitcoin Futures Market EFP trade,<sup>36</sup> they must agree on the following terms:

- (1) The contract (maturity) that will be used in the futures leg of the trade;
- (2) The number of futures contracts in the futures leg of the trade;
- (3) The price of the futures contract in the futures leg of the trade;
- (4) The quantity of physical bitcoins in the physical leg of the trade (where the amount of bitcoin traded must be approximately equivalent to the notional amount of the futures contracts traded);<sup>37</sup>
- (5) The basis spread,<sup>38</sup> which is used to determine the price per bitcoin for the cash payment in the physical leg of the EFP trade.

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<sup>35</sup> In practice, both parties will simply enter open futures positions on the CME Bitcoin Futures Market (party A will open a short position and party B will open a long position). Both positions will have the exact same size and will be opened at the same price. The CME allows EFP transactions to be executed at a mutually agreed price, but it requires that such price be commercially reasonable. CME's EFRP rules establish that if prices deviate excessively from prevailing market levels, counterparties to the trade may be required to demonstrate that such deviant prices are indeed legitimate. See CME Rule 538.F; note 44, infra.

<sup>36</sup> See <https://www.cmegroup.com/education/articles-and-reports/bitcoin-futures-exchange-for-physical-transactions.html>.

<sup>37</sup> In practice, the quantity of bitcoins in both the futures leg and in the physical leg of a CME Bitcoin Futures Market EFP trade are likely to be exactly the same.

<sup>38</sup> "Basis spread" refers to the difference in price between two related financial instruments. In the context of an EFP transaction, the basis spread is the difference between the futures contract price and the spot price

After both parties agree to the terms of an EFP trade, they report the trade details to the CME. The futures leg of the EFP transaction is cleared by CME Clearing. The two parties to the EFP trade are responsible for bilaterally clearing the physical leg of the transaction.

*The Fund's Use of EFP Transactions*

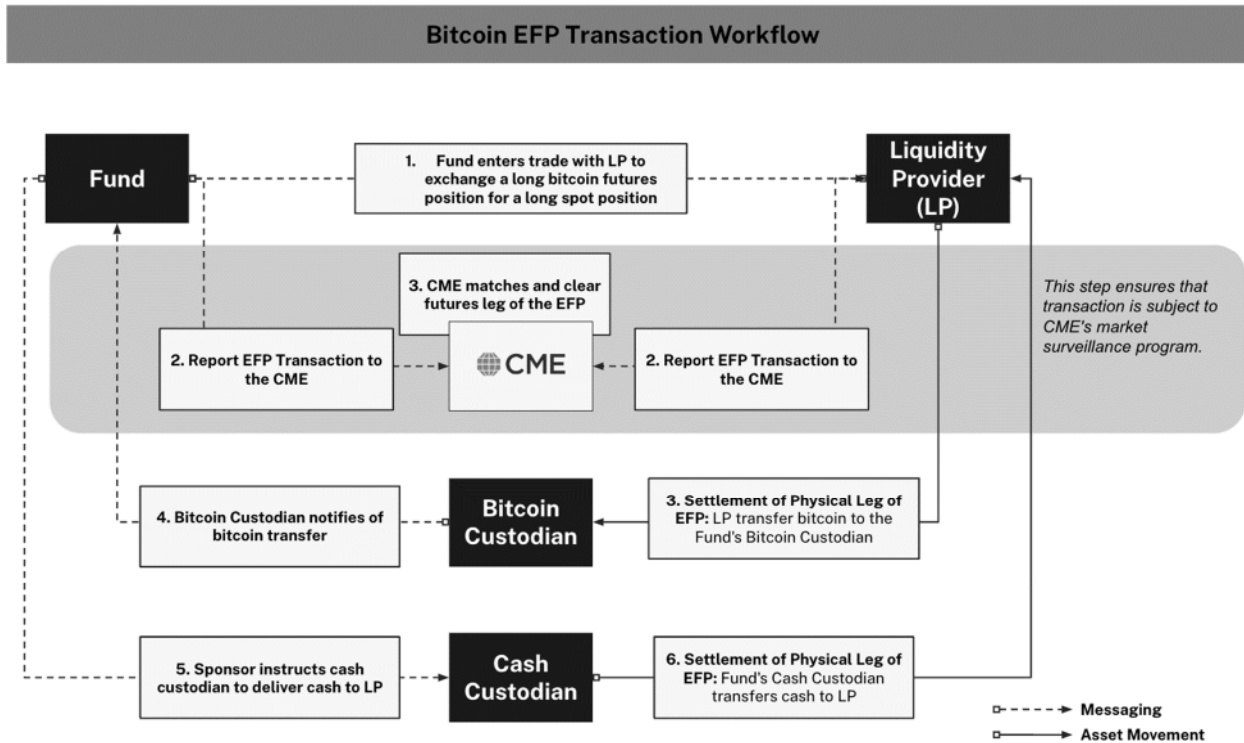
According to the Sponsor, the Fund will, under normal market conditions, frequently increase or decrease its holdings of physical bitcoin as Shares are created and redeemed. As noted above, the Fund will acquire and dispose of physical bitcoin only through EFP transactions through the CME Bitcoin Futures Market, which take place under the regulatory oversight of the CME, a CFTC-regulated market.

Pursuant to the Fund's investment objectives, when the Sponsor decides to increase or decrease its holdings of physical bitcoin, it will cause the Fund to execute an EFP trade with an LP. The Fund and the LP will simultaneously exchange a futures position for a corresponding, economically offsetting position in physical bitcoin.

The diagram below illustrates the steps in the execution of a typical EFP trade by the Fund to acquire spot bitcoin in exchange for CME Bitcoin Futures Contracts.

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of the underlying bitcoin. This spread is crucial in determining the amount of cash payment in the physical leg of the EFP transaction, essentially setting the price per bitcoin based on the prevailing market conditions in the futures and spot markets.



To provide a more concrete example of an EFP transaction that the Fund would undertake to acquire spot bitcoin, assume that the Fund needs to buy 50 bitcoins in exchange for 10 units of the next maturity of BTC Contracts.<sup>39</sup> The Sponsor will select<sup>40</sup> an LP that it believes will provide the best execution opportunity for the proposed EFP trade. The LP will provide bid/ask quotes for the EFP transaction as a basis spread against the settlement price of the BTC Contract to determine the price of the physical bitcoin that will be exchanged in the physical leg of the

<sup>39</sup> As detailed above, one BTC Contract represents five bitcoins.

<sup>40</sup> As described in the Fund's Registration Statement, the Sponsor will conduct a Request-for-Quote auction with one or more previously identified LPs to determine the best price on the requested quantity for the proposed EFP transaction. The LPs of the Fund are screened, selected, and approved by the Sponsor and should satisfy, at minimum, the following criteria:

- (1) Be licensed as a Money Service Business by the Financial Crimes Enforcement Network;
- (2) Registered with the CFTC and a member of the NFA or otherwise comply with applicable CFTC requirements governing eligibility to transact in bitcoin EFPs;
- (3) Have anti-money laundering and combating the financing of terrorism policies in place and be compliant with Financial Action Task Force guidance;
- (4) Have cybersecurity, disaster recovery and business continuity, and third-party service provider management policies.

EFP. Then, assume that the Sponsor determines that the best option for the Fund is a bid of +25 bps. Assuming that the daily settlement price of the relevant BTC Contract was \$26,060, the price for the physical leg of the EFP transaction agreed upon by the Fund and the LP is \$25,995.01. Upon completion of the EFP transaction, the Fund and the LP will have different positions, but the same financial exposure:

- Before the transaction, the Fund was long 10 BTC Contracts; after the transaction, it has converted this exposure into 50 physical bitcoins.
- Before the transaction, the LP had 50 bitcoins; after the transaction, it holds an equivalent position long in 10 BTC Contracts.

The table below illustrates the steps in this EFP transaction:

Steps	LP	Fund
1. Starting position	50 bitcoins	10 BTC Contracts
2. EFP transaction is negotiated between the LP and the Fund	The LP and the Fund agree to terms of the EFP, namely: <ul style="list-style-type: none"> <li>• Fund sells / LP buys 10 BTC Contracts at \$26,060</li> <li>• Fund buys / LP sells 50 bitcoins at \$25,995.01 (basis spread of +25bps)</li> </ul>	
3. LP sends bitcoin to the Fund	-50 bitcoins	+50 bitcoins
4. The EFP transaction is reported to CME and the LP assumes the long position in 10 BTC Contracts	+10 BTC Contracts	-10 BTC Contracts
5. Final position	10 BTC Contracts	50 bitcoins

EFP transactions must be submitted to the CME “as soon as possible, but no later than the end of the business day on which the EFRP was executed.”<sup>41</sup> The relevant terms reported to the CME are:<sup>42</sup>

<sup>41</sup> See <https://www.cmegroup.com/rulebook/files/cme-group-Rule-538.pdf> at FAQ 23.

<sup>42</sup> See *id.* at FAQs 23, 24; Section 538.I.

- (1) The type of the EFRP (which, for the Fund, will be the CME Bitcoin Futures Market EFP);
- (2) The date and time of the trade (i.e., the time when agreement was reached on the prices and quantities of the transaction);
- (3) The price and quantity of the CME contract (which, for the Fund, will be the CME Bitcoin Futures Contracts); and
- (4) The price and quantity of the corresponding related position (which, for the Fund, will be physical bitcoin).

*Mitigation of Manipulation Risks Through Use of EFP Transactions*

The Sponsor believes that EFP transactions help protect against fraud and manipulation because they allow exchanges that share surveillance information with CME to investigate suspicious behavior by market participants. In addition, the Sponsor believes that regulatory requirements pursuant to CME Rule 538<sup>43</sup> pertaining to EFP transactions significantly increase the likelihood that fraud and manipulation will be detected and deterred. These regulatory requirements include:

- **Pricing of EFPs:** Section 538.F (“Prices and Price Increments”) states that while parties to an EFP transaction have discretion to mutually agree on a price, EFPs “may not be priced to facilitate the transfer of funds between parties for any purpose other than as the consequence of legitimate commercial activity.”<sup>44</sup>

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<sup>43</sup> See <https://www.cmegroup.com/rulebook/files/cme-group-Rule-538.pdf>.

<sup>44</sup> EFRPs “may not be priced off-market for the purpose of shifting substantial sums of cash from one party to another, to allocate gains and losses between the futures or options on futures and the cash or OTC derivative components of the EFRP, to evade taxes, to circumvent financial controls by disguising a firm’s financial condition, or to accomplish some other unlawful purpose” and “EFRPs executed at off-market prices are more likely to be reviewed by Market Regulation to determine the purpose for the pricing.” See id. at FAQ 11.

- **Reporting:** Section 538.I (“Submission to the Clearing House”) states that parties engaging in an EFP transaction must report each transaction to CME Clearing within the time period and manner specified by the CME.<sup>45</sup> EFP transaction volumes are also required to be reported to the CME with the daily large trader positions by each clearing member, omnibus account, and foreign broker.
- **Recordkeeping:** Section 538.H (“Recordkeeping”) states that “parties to an [EFP] transaction must maintain all records relevant to the [futures] contract and the related position transaction.”<sup>46</sup>

The FAQs relating to CME Rule 538 also state that parties to an EFRP, along with their clearing members, are subject to CME jurisdiction and may be required to produce records and cooperate fully with any investigation.<sup>47</sup>

The Sponsor believes that EFP transactions between the Fund and an LP to trade physical bitcoin are significantly less susceptible to fraud or manipulation because they are subject to a range of CME regulatory requirements regarding pricing, reporting, surveillance, and recordkeeping, as discussed above. Further, EFP transactions are entered into only by CFTC-

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<sup>45</sup> See id. at FAQs 23, 24; Section 538.I.

<sup>46</sup> The types of records that must be maintained by parties to an EFP include:

- (1) All order tickets, trade blotters, e-mails, instant messages, telephone recordings or other records related to the order placement, negotiation, execution and/or confirmation of the EFRP.
- (2) All cash confirmations and signed contracts corresponding to the cash or derivative component of the EFRP. The documentation must contain all of the relevant terms of the transaction and counterparty information.
- (3) Third party proof of payment evidencing settlement and documentation representing the transfer of ownership of the commodity.
- (4) Futures account statement reflecting confirmation of the EFRP.
- (5) Records reflecting the booking of the cash or derivative transaction in the firm’s internal bookkeeping systems. See id. at FAQ 19.

<sup>47</sup> See id. at FAQ 20.

regulated futures commission merchants and occur through the CME Bitcoin Futures Market, which is a CFTC-regulated market with processes in place to prevent market manipulation, including the monitoring of transaction prices and the investigation of potential manipulations.

According to the Sponsor, the ability of participants to undertake EFP transactions is determined exclusively by the liquidity of the CME Bitcoin Futures Market and by the liquidity of OTC markets for physical bitcoin, both of which are sufficiently large. The Sponsor understands that a significant number of LPs are prepared to execute bitcoin EFP transactions. The CME's website lists at least 15 LPs that have agreed to be listed as contacts for clients interested in executing block trades and EFP transactions.<sup>48</sup> The Sponsor has consulted with several such LPs and believes that those LPs could provide enough liquidity to support the Fund's demand for bitcoin when it incorporates physical bitcoin into its strategy. The Sponsor notes that several such LPs already have an ongoing commercial relationship with the Sponsor and/or Hashdex and are active participants in trading the CME Bitcoin Futures Markets, bitcoin, and bitcoin ETPs worldwide.

#### The Bitcoin and Bitcoin Futures Markets

According to the Registration Statement, bitcoin is a digital asset that serves as the unit of account on an open-source, decentralized, peer-to-peer computer network. It may be used to pay for goods and services, stored for future use, or converted to government-backed currency. As of the date of this prospectus, the adoption of bitcoin for these purposes has been limited. The value of bitcoin is not backed by any government, corporation, or other identified body.

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<sup>48</sup> A list of the LPs is available at: <https://www.cmegroup.com/trading/bitcoin-brokers-and-block-liquidity-providers.html>.



The value of bitcoin depends on its supply (which is limited), and demand for bitcoin in the markets for exchange that have been organized to facilitate the trading of bitcoin. By design, the supply of bitcoin is intentionally limited to 21 million bitcoins. According to the Registration Statement, there are approximately 19 million bitcoins in circulation.

Bitcoin is maintained on a decentralized, open source, peer-to-peer computer network, the “Bitcoin Network.” No single entity owns or operates the Bitcoin Network. The Bitcoin Network is accessed through software and governs bitcoin’s creation and movement. The source code for the Bitcoin Network, often referred to as the “Bitcoin Protocol,” is open-source, and anyone can contribute to its development.

The infrastructure of the Bitcoin Network is collectively maintained by various participants in the Bitcoin Network, which include miners, developers, and users. Miners validate transactions and provide security to the network, and are currently compensated for that service in bitcoin. Developers maintain and contribute updates to the Bitcoin Protocol. Users access the Bitcoin Network using open-source software. Anyone can be a user, developer, or miner.

Bitcoin is “stored” on a digital transaction ledger commonly known as a “blockchain.” A blockchain is a distributed database that is continuously updated and reconciled among certain users and is protected by cryptography. The bitcoin blockchain contains a complete record and history for each bitcoin transaction. New bitcoins are created through a process called “mining.” Miners use specialized computer software and hardware to solve a highly complex mathematical problem presented by the bitcoin Protocol. The first miner to successfully solve the problem is permitted to add a block of transactions to the bitcoin blockchain. The new block is then confirmed through acceptance by a majority of users who maintain versions of the blockchain on

their individual computers. Miners that successfully add a block to the bitcoin blockchain are automatically rewarded with a fixed amount of bitcoin for their effort plus any transaction fees paid by transferors whose transactions are recorded in the block. This reward system is the means by which new bitcoin enters circulation and is the mechanism by which versions of the blockchain held by users on a decentralized network are kept in consensus.

The Bitcoin Protocol is an open-source project with no official company or group in control, and anyone can review the underlying code. There are, however, a number of individual developers that regularly contribute to a specific distribution of the bitcoin software known as the “Bitcoin Core.” Developers of the Bitcoin Core loosely oversee the development of the source code. There are many other compatible versions of the bitcoin software, but Bitcoin Core is the most widely adopted and currently provides the de facto standard for the Bitcoin Protocol. The core developers are able to access, and can alter, the Bitcoin Network source code and, as a result, they are responsible for quasi-official releases of updates and other changes to the Bitcoin Network’s source code. However, because bitcoin has no central authority, the release of updates to the Bitcoin Network’s source code by the core developers does not guarantee that the updates will be automatically adopted by the other purchasers. Users and miners must accept any changes made to the source code by downloading the proposed modification and that modification is effective only with respect to those bitcoin users and miners who choose to download it. As a practical matter, a modification to the source code becomes part of the Bitcoin Network only if it is accepted by purchasers that collectively have a majority of the processing power on the Bitcoin Network. If a modification is accepted by only a percentage of users and miners, a division will occur such that one network will run the pre-modification source code and the other network will run the modified source code. Such a division is known as a “fork.”

The Sponsor notes that individual users, institutional investors and investment funds that want to provide exposure to bitcoin by investing directly in bitcoin, and therefore must transact in bitcoin, must use the Bitcoin Network to download specialized software referred to as a “bitcoin wallet.” This wallet may be used to send and receive bitcoin through users’ unique “bitcoin addresses.” The amount of bitcoin associated with each bitcoin address, as well as each bitcoin transaction to or from such address, is captured on the blockchain. Bitcoin transactions are secured by cryptography known as public-private key cryptography, represented by the bitcoin addresses and digital signature in a transaction’s data file. Each Bitcoin Network address, or wallet, is associated with a unique “public key” and “private key” pair, both of which are lengthy alphanumeric codes, derived together and possessing a unique relationship. The private key is a secret and must be kept in accordance with appropriate controls and procedures to ensure it is used only for legitimate and intended transactions. If an unauthorized third person learns of a user’s private key, that third person could forge the user’s digital signature and send the user’s bitcoin to any arbitrary bitcoin address, thereby stealing the user’s bitcoin. Similarly, if a user loses his private key and cannot restore such access (e.g., through a backup), the user may permanently lose access to the bitcoin contained in the associated address.

The first rule filing proposing to list an exchange-traded product (“ETP”) to provide exposure to bitcoin in the U.S. was submitted by the Cboe BZX Exchange, Inc. on June 30, 2016.<sup>49</sup> At that time, blockchain technology, and digital assets that utilized it, were relatively new to the broader public. The market cap of all bitcoin in existence at that time was approximately \$10 billion. No registered offering of digital asset securities or shares in an investment vehicle with exposure to bitcoin or any other cryptocurrency had yet been conducted,

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<sup>49</sup> See Winklevoss Order.

and the regulated infrastructure for conducting a digital asset securities offering had not begun to develop.<sup>50</sup> Similarly, regulated U.S. bitcoin futures contracts did not exist. The CFTC had determined that bitcoin is a commodity,<sup>51</sup> but had not engaged in significant enforcement actions in the space. The New York Department of Financial Services (“NYDFS”) adopted its final BitLicense regulatory framework in 2015, but had only approved four entities to engage in activities relating to virtual currencies (whether through granting a BitLicense or a limited-purpose trust charter) as of June 30, 2016.<sup>52</sup> While the first over-the-counter bitcoin fund launched in 2013, public trading was limited and the fund had only \$60 million in assets.<sup>53</sup> There were very few, if any, traditional financial institutions engaged in the space, whether through investment or providing services to digital asset companies. In January 2018, the Staff of the Commission noted in a letter to the Investment Company Institute and SIFMA that it was not aware, at that time, of a single custodian providing fund custodial services for digital assets.<sup>54</sup>

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<sup>50</sup> Digital assets that are securities under U.S. law are referred to throughout this proposal as “digital asset securities.” All other digital assets, including bitcoin, are referred to interchangeably as “cryptocurrencies” or “virtual currencies.” The term “digital assets” refers to all digital assets, including both digital asset securities and cryptocurrencies, together.

<sup>51</sup> See “In the Matter of Coinflip, Inc.” (“Coinflip”) (CFTC Docket 15-29 (September 17, 2015)) (order instituting proceedings pursuant to Sections 6(c) and 6(d) of the CEA, making findings and imposing remedial sanctions), in which the CFTC stated: “Section 1a(9) of the CEA defines ‘commodity’ to include, among other things, ‘all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.’ 7 U.S.C. § 1a(9). The definition of a ‘commodity’ is broad. See, e.g., Board of Trade of City of Chicago v. SEC, 677 F.2d 1137, 1142 (7th Cir. 1982). Bitcoin and other virtual currencies are encompassed in the definition and properly defined as commodities.”

<sup>52</sup> A list of virtual currency businesses that are entities regulated by the NYDFS is available on the NYDFS website. See [https://www.dfs.ny.gov/virtual\\_currency\\_businesses#:~:text=A%20business%20must%20obtain%20a,business%20in%20New%20York%20State](https://www.dfs.ny.gov/virtual_currency_businesses#:~:text=A%20business%20must%20obtain%20a,business%20in%20New%20York%20State).

<sup>53</sup> See Bitcoin Investment Trust Form S-1, dated May 27, 2016, available at: <https://www.sec.gov/Archives/edgar/data/1588489/000095012316017801/filename1.htm> (data as of March 31, 2016 according to publicly available filings).

<sup>54</sup> See Letter from Dalia Blass, Director, Division of Investment Management, U.S. Securities and Exchange Commission to Paul Schott Stevens, President & CEO, Investment Company Institute and Timothy W. Cameron, Asset Management Group – Head, Securities Industry and Financial Markets Association (January 18, 2018), available at: <https://www.sec.gov/divisions/investment/noaction/2018/cryptocurrency-011818.htm>.

The digital assets financial ecosystem, including bitcoin, has progressed and matured significantly. The development of a regulated market for digital asset securities has significantly evolved, with market participants having conducted registered public offerings of both digital asset securities<sup>55</sup> and shares in investment vehicles holding bitcoin futures.<sup>56</sup> Additionally, licensed and regulated service providers have emerged to provide fund custodial services for digital assets, among other services. For example, in December 2020, the Commission issued a statement permitting certain special purpose broker-dealers to custody digital asset securities under Rule 15c3-3 under the Act.<sup>57</sup> In September 2020, the Staff of the Commission released a no-action letter permitting certain broker-dealers to operate a non-custodial Alternative Trading System (“ATS”) for digital asset securities, subject to specified conditions.<sup>58</sup> In October 2019, the Staff of the Commission granted temporary relief from the clearing agency registration requirement to an entity seeking to establish a securities clearance and settlement system based on distributed ledger technology,<sup>59</sup> and multiple transfer agents who provide services for digital

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<sup>55</sup> See Prospectus Supplement filed pursuant to Rule 424(b)(1) for INX Tokens (Registration No. 333-233363), available at: [https://www.sec.gov/Archives/edgar/data/1725882/000121390020023202/ea125858-424b1\\_inxlimited.htm](https://www.sec.gov/Archives/edgar/data/1725882/000121390020023202/ea125858-424b1_inxlimited.htm).

<sup>56</sup> See Prospectus filed by Stone Ridge Trust VI on behalf of NYDIG Bitcoin Strategy Fund Registration, available at: <https://www.sec.gov/Archives/edgar/data/1764894/000119312519309942/d693146d497.htm>.

<sup>57</sup> See Securities Exchange Act Release No. 90788, 86 FR 11627 (February 26, 2021) (File Number S7-25-20) (Custody of Digital Asset Securities by Special Purpose Broker-Dealers).

<sup>58</sup> See Letter from Elizabeth Baird, Deputy Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Kris Dailey, Vice President, Risk Oversight & Operational Regulation, Financial Industry Regulatory Authority (September 25, 2020), available at: <https://www.sec.gov/divisions/marketreg/mr-noaction/2020/finra-ats-role-in-settlement-of-digital-asset-security-trades-09252020.pdf>.

<sup>59</sup> See Letter from Jeffrey S. Mooney, Associate Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Charles G. Cascarilla & Daniel M. Burstein, Paxos Trust Company, LLC (October 28, 2019), available at: <https://www.sec.gov/divisions/marketreg/mr-noaction/2019/paxos-trust-company-102819-17a.pdf>.

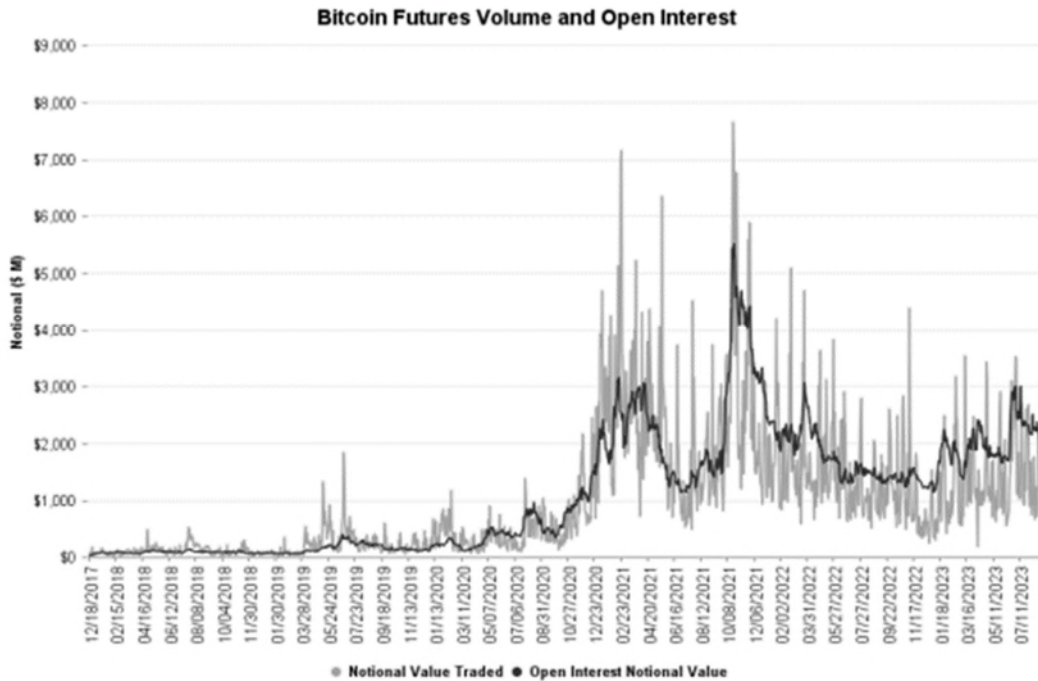
asset securities have registered with the Commission.<sup>60</sup>

As noted above, CME began offering trading in BTC Contracts in 2017, and in MBT Contracts in 2021. Each of the contracts' final cash settlement is based on the CME CF BRR.<sup>61</sup> The contracts trade and settle like other cash-settled commodity futures contracts. According to the Sponsor, trading in CME Bitcoin Futures Contracts has increased significantly in recent years, in particular with respect to BTC Contracts. Nearly every measurable metric related to BTC Contracts has trended consistently up since launch and/or accelerated upward in the past year, as the market recovered some of the ground lost since falling from the all-time high activity levels of end 2021. This general upward trend in trading volume and open interest is captured in the following chart.

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<sup>60</sup> See, e.g., Form TA-1/A filed by Tokensoft Transfer Agent LLC (CIK: 0001794142) on January 8, 2021, available at: [https://www.sec.gov/Archives/edgar/data/1794142/000179414219000001/xslFTA1X01/primary\\_doc.xml](https://www.sec.gov/Archives/edgar/data/1794142/000179414219000001/xslFTA1X01/primary_doc.xml).

<sup>61</sup> According to the CME, the CME CF BRR aggregates the trade flow of major bitcoin spot trading platforms during a specific calculation window into a once-a-day reference rate of the U.S. dollar price of bitcoin. Calculation rules are geared toward maximum transparency and real-time replicability in underlying spot markets, including Bitstamp, Coinbase, Gemini, itBit, and Kraken. For additional information, refer to <https://www.cmegroup.com/trading/cryptocurrency-indices/cf-bitcoin-reference-rate.html?redirect=/trading/cf-bitcoin-reference-rate.html>.



Note: The 2023 daily average notional value is for the period through September 1, 2023. Source: CME, <https://www.cmegroup.com/reports/bitcoin-futures-liquidity-report.pdf>

Similarly, the number of large open interest holders<sup>62</sup> has continued to increase even as the price of bitcoin has risen, as have the number of unique accounts trading CME Bitcoin Futures Contracts.

As it pertains specifically to the CME Bitcoin Futures Contracts (those in which the Fund will invest), the statistics are equally as profound. The following table sets forth the approximate daily notional average volume for the CME Bitcoin Futures Contracts, followed by the daily average volume for all of the CME Bitcoin Futures Contracts, the first to expire and the second to expire. With a daily notional average volume of \$1.4 billion in 2023, trading volume in CME Bitcoin Futures Contracts is almost six times the 2019 volume and almost three times the volume

<sup>62</sup> A large open interest holder in BTC Contracts is an entity that holds at least 25 contracts, which is the equivalent of 125 bitcoin. At a price of approximately \$26,025 per bitcoin on 9/7/23, more than 110 firms had outstanding positions of greater than \$3.25 million in BTC Contracts. Source: <https://www.theblock.co/data/crypto-markets/cme-cots/large-open-interest-holders-of-cme-bitcoin-futures>.

in 2020. In addition, despite the bear market, the trading volume in 2023 has been resilient and slightly increasing compared to 2022.

	Daily Notional Average Volume for CME Bitcoin Futures Contracts (in \$)	Average Daily Volume for CME Bitcoin Futures Contracts	First-to-Expire CME Bitcoin Futures Contract	Second-to-Expire CME Bitcoin Futures Contract
2019	\$242 million	6,365	5,400	700
2020	\$523 million	8,782	7,100	1,300
2021	\$2,379 million	10,035	7,300	2,100
2022	\$1,426 million	10,735	8,200	2,100
2023	\$1,413 million	10,775	8,400	1,900

Note: The 2023 data is for the period ending on August 31, 2023. Source: CME; Bloomberg.

### Developments in the Bitcoin and Bitcoin Futures Markets

The regulatory landscape for bitcoin and bitcoin markets has changed significantly since 2016. The market for bitcoin grew approximately 100 times larger through 2021, reaching a market cap of \$1.3 trillion at its all-time high. Although bitcoin's market cap is down to \$500 billion (as of September 7, 2023), its market cap is greater than companies<sup>63</sup> such as Visa, Inc., Exxon Mobil Corporation, Walmart, Inc., and JP Morgan Chase & Co. The number of verified users at Coinbase, the largest U.S.-based bitcoin trading platform, has grown to over 110 million

<sup>63</sup> See <https://coinmarketcap.com/largest-companies/>.



at the end of 2022, compared to 43 million at the end of 2020.<sup>64</sup> CFTC-regulated bitcoin futures represented approximately \$42 billion in notional trading on the CME Bitcoin Futures Market in August 2023, compared to \$3.9 billion, \$28 billion, \$60 billion, and \$20 billion in total trading in December 2019, December 2020, December 2021, and December 2022 respectively. CFTC-regulated bitcoin futures represented \$2.2 billion in open interest in August 2023, compared to \$115 million, \$1.29 billion, \$3.27 billion, and \$1.31 billion in December 2019, December 2020, December 2021, and December 2022 respectively.<sup>65</sup> The CFTC has exercised its regulatory jurisdiction in bringing a number of enforcement actions related to bitcoin and against trading platforms that offer cryptocurrency trading.<sup>66</sup> The U.S. Office of the Comptroller of the Currency (the “OCC”) has made clear that federally-chartered banks are able to provide custody services for cryptocurrencies and other digital assets.<sup>67</sup> NYDFS has granted no fewer than thirty BitLicenses, including to established public payment companies like PayPal Holdings, Inc. and Square, Inc., and limited purpose trust charters to entities providing cryptocurrency custody services. The U.S. Treasury Financial Crimes Enforcement Network (“FinCEN”) has released

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<sup>64</sup> See Coinbase 2022 10-K, available at: [https://s27.q4cdn.com/397450999/files/doc\\_financials/2022/q4/86fe25e0-342b-40fa-aacc-ea04faf322cb.pdf](https://s27.q4cdn.com/397450999/files/doc_financials/2022/q4/86fe25e0-342b-40fa-aacc-ea04faf322cb.pdf).

<sup>65</sup> All statistics and charts included in this proposal with respect to the CME Bitcoin Futures Market are sourced from <https://www.cmegroup.com/trading/bitcoin-futures.html>. In addition, as further discussed below, the Sponsor believes the CME Bitcoin Futures Market represents a regulated market of significant size for purposes of addressing the Commission’s concerns about potential manipulation of the bitcoin market.

<sup>66</sup> The CFTC’s annual report for Fiscal Year 2020 (which ended on September 30, 2020) noted that the CFTC “continued to aggressively prosecute misconduct involving digital assets that fit within the CEA’s definition of commodity” and “brought a record setting seven cases involving digital assets.” See CFTC FY2020 Division of Enforcement Annual Report, available at: [https://www.cftc.gov/media/5321/DOE\\_FY2020\\_AnnualReport\\_120120/download](https://www.cftc.gov/media/5321/DOE_FY2020_AnnualReport_120120/download). Additionally, the CFTC filed on October 1, 2020, a civil enforcement action against the owner/operators of the BitMEX trading platform, which was one of the largest bitcoin derivative trading platforms. See CFTC Release No. 8270-20 (October 1, 2020), available at: <https://www.cftc.gov/PressRoom/PressReleases/8270-20>.

<sup>67</sup> See OCC News Release 2021-2 (January 4, 2021), available at: <https://www.occ.gov/news-issuances/news-releases/2021/nr-occ-2021-2.html>.

extensive guidance regarding the applicability of the Bank Secrecy Act (“BSA”) and implementing regulations to virtual currency businesses,<sup>68</sup> and has proposed rules imposing requirements on entities subject to the BSA that are specific to the technological context of virtual currencies.<sup>69</sup> In addition, the Treasury’s Office of Foreign Assets Control (“OFAC”) has brought enforcement actions over apparent violations of the sanctions laws in connection with the provision of wallet management services for digital assets.<sup>70</sup>

In addition to the regulatory developments noted above, more traditional financial market participants appear to be embracing cryptocurrency: large insurance companies,<sup>71</sup> investment

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<sup>68</sup> See FinCEN Guidance FIN-2019-G001 (May 9, 2019) (Application of FinCEN’s Regulations to Certain Business Models Involving Convertible Virtual Currencies), available at: <https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf>.

<sup>69</sup> See U.S. Department of the Treasury Press Release: “The Financial Crimes Enforcement Network Proposes Rule Aimed at Closing Anti-Money Laundering Regulatory Gaps for Certain Convertible Virtual Currency and Digital Asset Transactions” (December 18, 2020), available at: <https://home.treasury.gov/news/press-releases/sm1216>.

<sup>70</sup> See U.S. Department of the Treasury Enforcement Release: “OFAC Enters Into \$98,830 Settlement with BitGo, Inc. for Apparent Violations of Multiple Sanctions Programs Related to Digital Currency Transactions” (December 30, 2020), available at: [https://home.treasury.gov/system/files/126/20201230\\_bitgo.pdf](https://home.treasury.gov/system/files/126/20201230_bitgo.pdf).

<sup>71</sup> On December 10, 2020, Massachusetts Mutual Life Insurance Company (MassMutual) announced that it had purchased \$100 million in bitcoin for its general investment account. See MassMutual Press Release “Institutional Bitcoin provider NYDIG announces minority stake purchase by MassMutual” (December 10, 2020), available at: <https://www.massmutual.com/about-us/news-and-press-releases/press-releases/2020/12/institutional-bitcoin-provider-nydig-announces-minority-stake-purchase-by-massmutual>.

banks,<sup>72</sup> asset managers,<sup>73</sup> credit card companies,<sup>74</sup> university endowments,<sup>75</sup> pension funds,<sup>76</sup> and even historically bitcoin skeptical fund managers<sup>77</sup> are allocating to bitcoin. The largest over-the-counter bitcoin fund previously filed a Form 10 registration statement, which the Staff of the Commission reviewed and which took effect automatically, and is now a reporting company.<sup>78</sup> Established companies like Tesla, Inc.,<sup>79</sup> MicroStrategy Incorporated,<sup>80</sup> and Square, Inc.,<sup>81</sup> among others, have recently announced substantial investments in bitcoin in amounts as large as \$1.5 billion (Tesla) and \$425 million (MicroStrategy).

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<sup>72</sup> See, e.g., “Morgan Stanley to Offer Rich Clients Access to Bitcoin Funds” (March 17, 2021) available at: <https://www.bloomberg.com/news/articles/2021-03-17/morgan-stanley-to-offer-rich-clients-access-to-bitcoin-funds>.

<sup>73</sup> See, e.g., “BlackRock’s Rick Rieder says the world’s largest asset manager has ‘started to dabble’ in Bitcoin” (February 17, 2021), available at: <https://www.cnbc.com/2021/02/17/blackrock-has-started-to-dabble-in-bitcoin-says-rick-rieder.html> and “Guggenheim’s Scott Minerd Says Bitcoin Should Be Worth \$400,000” (December 16, 2020), available at: <https://www.bloomberg.com/news/articles/2020-12-16/guggenheim-s-scott-minerd-says-bitcoin-should-be-worth-400-000>.

<sup>74</sup> See, e.g., “Visa Moves to Allow Payment Settlements Using Cryptocurrency” (March 29, 2021), available at: <https://www.reuters.com/business/autos-transportation/exclusive-visa-moves-allow-payment-settlements-using-cryptocurrency-2021-03-29/>.

<sup>75</sup> See, e.g., “Harvard and Yale Endowments Among Those Reportedly Buying Crypto” (January 25, 2021), available at: <https://www.bloomberg.com/news/articles/2021-01-26/harvard-and-yale-endowments-among-those-reportedly-buying-crypto>.

<sup>76</sup> See, e.g., “Virginia Police Department Reveals Why its Pension Fund is Betting on Bitcoin” (February 14, 2019), available at: <https://finance.yahoo.com/news/virginia-police-department-reveals-why-194558505.html>.

<sup>77</sup> See, e.g., “Bridgewater: Our Thoughts on Bitcoin” (January 28, 2021) available at: <https://www.bridgewater.com/research-and-insights/our-thoughts-on-bitcoin> and “Paul Tudor Jones says he likes bitcoin even more now, rally still in the ‘first inning’” (October 22, 2020), available at: <https://www.cnbc.com/2020/10/22/-paul-tudor-jones-says-he-likes-bitcoin-even-more-now-rally-still-in-the-first-inning.html>.

<sup>78</sup> See Letter from Division of Corporation Finance, Office of Real Estate & Construction to Barry E. Silbert, Chief Executive Officer, Grayscale Bitcoin Trust (January 31, 2020), available at: <https://www.sec.gov/Archives/edgar/data/1588489/000000000020000953/filename1.pdf>.

<sup>79</sup> See Form 10-K submitted by Tesla, Inc. for the fiscal year ended December 31, 2020 at 23: [https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/00015645902100459\\_9/tsla-10k\\_20201231.htm](https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/00015645902100459_9/tsla-10k_20201231.htm).

<sup>80</sup> See Form 10-Q submitted by MicroStrategy Incorporated for the quarterly period ended September 30, 2020 at 8: [https://www.sec.gov/ix?doc=/Archives/edgar/data/1050446/00015645902004799\\_5/mstr-10q\\_20200930.htm](https://www.sec.gov/ix?doc=/Archives/edgar/data/1050446/00015645902004799_5/mstr-10q_20200930.htm).

<sup>81</sup> See Form 10-Q submitted by Square, Inc. for the quarterly period ended September 30, 2020 at 51: [https://www.sec.gov/ix?doc=/Archives/edgar/data/1512673/00015126732000001\\_2/sq-20200930.htm](https://www.sec.gov/ix?doc=/Archives/edgar/data/1512673/00015126732000001_2/sq-20200930.htm).

The Sponsor maintains that despite these developments, access for U.S. retail investors to gain exposure to bitcoin via a transparent and regulated exchange-traded vehicle remains limited. As investors and advisors increasingly utilize ETPs to manage diversified portfolios (including equities, fixed income securities, commodities, and currencies) quickly, easily, relatively inexpensively, tax-efficiently, and without having to hold directly any of the underlying assets; options for bitcoin exposure for U.S. investors remain limited to: (i) investing in over-the-counter bitcoin funds (“OTC Bitcoin Funds”) that are subject to high premium/discount volatility (and high management fees) to the advantage of more sophisticated investors that are able to purchase shares at NAV directly with the issuing trust; (ii) investing in CFTC-regulated bitcoin futures exchange-traded funds (“ETFs”) that are subject to higher complexity and costs due to need for rolling the futures contracts; (iii) facing the technical risk, complexity, and generally high fees associated with buying and storing bitcoin directly; or (iv) purchasing shares of operating companies that they believe will provide proxy exposure to bitcoin with limited disclosure about the associated risks. Meanwhile, investors in many other countries, including Canada, are able to use more traditional exchange listed and traded products to gain exposure to bitcoin.<sup>82</sup>

For example, the Purpose Bitcoin ETF, a retail physical bitcoin ETP launched in Canada, reportedly reached \$421.8 million in assets under management (“AUM”) in two days, and has achieved \$993 million in assets as of April 14, 2021, demonstrating the demand for a North American market listed bitcoin ETP. The Sponsor believes that the demand for the Purpose

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<sup>82</sup> Securities regulators in a number of other countries have either approved or otherwise allowed the listing and trading of bitcoin ETPs. Specifically, these funds (with their respective approximate AUMs as of April 14, 2021) include the Purpose Bitcoin ETF (\$993,000,000), VanEck Vectors Bitcoin ETN (\$209,000,000), WisdomTree Bitcoin ETP (\$407,000,000), Bitcoin Tracker One (\$1,380,000,000), BTCcet Bitcoin ETP (\$1,410,000,000), 21Shares Bitcoin ETP (\$362,000,000), 21Shares Bitcoin Suisse ETP (\$30,000,000), CoinShares Physical Bitcoin ETP (\$396,000,000).

Bitcoin ETF is driven primarily by investors' desire to have a regulated and accessible means of exposure to. The Purpose Bitcoin ETF also offers a class of units that is U.S. dollar bitcoin denominated, which could appeal to U.S. investors. Without an approved bitcoin ETP in the U.S. as a viable alternative, the Sponsor believes U.S. investors will seek to purchase these shares in order to get access to bitcoin exposure, leaving them without the protections of U.S. securities laws. Given the separate regulatory regime and the potential difficulties associated with any international litigation, such an arrangement would create more risk exposure for U.S. investors than they would otherwise have with a U.S. exchange listed ETP. With the addition of more bitcoin ETPs in non-U.S. jurisdictions expected to grow, the Sponsor anticipates that such risks will only continue to grow.

In addition, several funds registered under the Investment Company Act of 1940 (the "1940 Act") have effective registration statements that contemplate bitcoin exposure through a variety of means, including through investments in bitcoin futures contracts<sup>83</sup> and through OTC Bitcoin Funds.<sup>84</sup> In previous statements, the Staff of the Commission has acknowledged how such funds can satisfy their concerns regarding custody, valuation, and manipulation.<sup>85</sup> The funds that have already invested in bitcoin instruments have no reported issues regarding custody, valuation, or manipulation of the instruments held by these funds. While these funds do offer investors some means of exposure to bitcoin, the Sponsor believes the current offerings fall short of giving investors an accessible, regulated product that provides concentrated exposure to

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<sup>83</sup> See, e.g., Stone Ridge Trust VI (File No. 333-234055); BlackRock Global Allocation Fund, Inc. (File No. 33-22462); and BlackRock Funds V (File No. 333-224371).

<sup>84</sup> See, e.g., Amplify Transformational Data Sharing ETF (File No. 333-207937); and ARK Innovation ETF (File No. 333-191019).

<sup>85</sup> See Dalia Blass, "Keynote Address—2019 ICI Securities Law Developments Conference" (December 3, 2019), available at: <https://www.sec.gov/news/speech/blas-keynote-address-2019-ici-securities-law-developments-conference>.

bitcoin and bitcoin prices.

#### Unregulated Exposure to Bitcoin and Investor Protection Concerns

The Sponsor notes that U.S. investor exposure to bitcoin through OTC Bitcoin Funds and other unregulated means has grown into the tens of billions of dollars. With that growth, so too has grown the potential risk to U.S. investors. Investor protection concerns persist, as OTC Bitcoin Funds and other unregulated means of exposure to bitcoin continue to attract investors despite the approval of bitcoin futures-based ETPs by the Commission. The Sponsor appreciates the Commission's previously articulated concerns about potential manipulation when an ETP holds actual bitcoin and believes that the Fund represents an opportunity for U.S. investors to gain price exposure to CME Bitcoin Futures Contracts and bitcoin in a regulated and transparent exchange-traded vehicle that mitigates those concerns through the use of CME Bitcoin Futures Contracts, applying futures-based pricing for spot bitcoin, and limiting the Fund's exposure to spot bitcoin to the CFTC-regulated EFP market. The Sponsor believes that the structure of the Fund accordingly limits risks by: (i) reducing premium and discount volatility; (ii) reducing management fees through meaningful competition; (iii) reducing risks associated with investing in operating companies that are imperfect proxies for bitcoin exposure; and (iv) avoiding regulatory concerns regarding valuation posed by ETFs and ETPs that invest directly in bitcoin rather than in CME Bitcoin Futures Contracts or bitcoin via EFP transactions on the regulated CME Bitcoin Futures Market, a CFTC-regulated exchange that meets regulatory standards that are not met by spot bitcoin trading platforms.

#### Custody of Bitcoin

According to the Registration Statement, institutional purchasers of bitcoin, including other bitcoin funds that provide exposure to bitcoin by investing directly in bitcoin, generally

maintain their bitcoin account with a bitcoin custodian. Bitcoin custodians are financial institutions that have implemented a series of specialized security precautions, including holding bitcoin in “cold storage,” to try to ensure the safety of an account holder’s bitcoin. These bitcoin custodians must carefully consider the design of the physical, operational, and cryptographic systems for secure storage of private keys in an effort to lower the risk of loss or theft, and many use a multi-factor security system under which actions by multiple individuals working together are required to access the private keys necessary to transfer such digital assets and ensure exclusive ownership.

The Fund’s Bitcoin Custodian(s) will hold the Fund’s bitcoin acquired via EFP transactions through the CME Bitcoin Futures Market and will be responsible for maintaining custody of the Fund’s bitcoin assets.

The Fund’s Bitcoin Custodian(s) must satisfy, at least, the “core custodian” requirements set forth by the NCIIOC in the NCI methodology, including:<sup>86</sup>

1. Provide custody accounts whose holders are the legal beneficiaries of the assets held in the account. In case of bankruptcy or insolvency of a Bitcoin Custodian, creditors or the estate should have no rights to the Fund’s assets.
2. Offer segregated accounts and store the Fund’s bitcoin in separated individual accounts and not in omnibus accounts. The Fund’s bitcoin will be held in segregated wallets and not commingled with the Bitcoin Custodian’s or other customer assets.
3. Generate account-segregated private keys for digital assets using high entropy random number generation methods and employ advanced security practices.

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See [https://indexes.nasdaqomx.com/docs/methodology\\_nci.pdf](https://indexes.nasdaqomx.com/docs/methodology_nci.pdf).

4. Utilize technology for storing private keys in offline digital vaults and apply secure processes, such as private key segmentation, multi-signature authorization, and geographic distribution of stored assets, to limit access to private keys. The Bitcoin Custodian will use security technology for storing private keys aiming to avoid theft or misappropriation of assets due to online attacks, collusion of agents managing the storage services, or any other threat.
5. Have a comprehensive risk management policy and formalized framework of managing operational and custody risks, including a disaster recovery program that ensures continuity of operations in the event of a system failure. The Bitcoin Custodian will have a business continuity plan to help ensure continued access to the Fund's assets.
6. Have an insurance policy that covers, at least partially, risks such as the loss of Fund assets held in cold storage, including from employee collusion or fraud, physical loss including theft, damage of key material, security breach or hack, and fraudulent transfer.
7. Comply with higher standards of government oversight, external audits, and security to safekeep asset ownership. The Bitcoin Custodian must be licensed or registered as a custodian by a reputable and independent governing body (e.g., the New York State Department of Financial Services, or other state, national or international regulators), as can be ascertained by certain public data sources.
8. Provide third-party audit reports at least annually on operational and security processes. These audits may be completed by having a Systems and Organizational Control certification issued and are intended to provide reasonable



assurance that the Bitcoin Custodian's operational processes and private key management controls are in accordance with the expected standards.

The Sponsor will cause the Trust to maintain ownership and control of the Fund's bitcoin in a manner consistent with good delivery requirements for spot commodity transactions.

The Structure and Operation of the Fund Satisfies Commission Requirements for Bitcoin-Based Exchange Traded Products

The Sponsor believes that the Fund's holding a combination of CME Bitcoin Futures Contracts, bitcoin, and cash could significantly mitigate the risk of market manipulation while still providing the market with a regulated product that tracks the actual price of bitcoin, creating a secure way for U.S. investors to gain exposure to bitcoin without having to rely on unregulated products, offshore regulated products, or indirect strategies such as investing in publicly traded companies that hold bitcoin.

In determining whether to approve listing and trading of new ETPs, the Commission conducts a thorough analysis to ensure the proposal is consistent with Section 6(b)(5) of the Act. Section 6(b)(5) of the Act mandates that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest. With respect to ETPs, the Commission often considers how the listing exchange would access necessary information to detect and deter market manipulation, illegal trading, and other abuses, which listing exchanges may accomplish by entering into a comprehensive surveillance-sharing agreement with other entities, such as the markets trading the ETP's underlying assets. Historically, for commodity-trust ETPs, there has always been at least one regulated market of significant size for trading futures on the underlying commodity — whether gold, silver, platinum, palladium, or copper. Then, the listing exchange would enter into surveillance-sharing

agreements with, or hold ISG membership in common with, that regulated market.<sup>87</sup>

In the context of bitcoin, CME Bitcoin Futures Market is currently the only regulated market in the U.S.

The Commission has previously interpreted the terms “significant market” and “market of significant size” to include a market (or group of markets) where:

- (1) There is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, such that a surveillance-sharing agreement would assist the ETP listing market in detecting and deterring misconduct; and
- (2) It is unlikely that trading in the ETP would be the predominant influence on prices in that market.<sup>88</sup>

With respect to the first prong of the Commission’s interpretation, the Commission has previously explained that the lead/lag relationship between the bitcoin futures market and the spot market is central to understanding this first prong. With respect to the second prong, the Commission’s prior analysis has focused on the potential size and liquidity of the ETP compared to the size and liquidity of the market.

The Commission recognized in the Approval Order that “the CME is a ‘significant

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<sup>87</sup> See Winklevoss Order; Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the Bitwise Bitcoin ETF Trust Under NYSE Arca Rule 8.201-E, Securities Exchange Act Release No. 87267 (Oct. 9, 2019), 84 FR 55382 at 55383, 55410 (Oct. 16, 2019) (SR-NYSEArca-2019-01) (the “Bitwise Order”); Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, to Amend NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) and to List and Trade Shares of the United States Bitcoin and Treasury Investment Trust Under NYSE Arca Rule 8.201-E, Securities Exchange Act Release No. 88284 (February 26, 2020), 85 FR 12595 at 12609 (March 3, 2020) (SR-NYSEArca-2019-39) (the “Wilshire Phoenix Order”).

<sup>88</sup> See, e.g., Winklevoss Order, 83 FR at 37594. The Commission further noted that “[t]here could be other types of “significant markets” and “markets of significant size,” but this definition is an example that will provide guidance to market participants.” Id.

market’ related to CME bitcoin futures contracts,” and thus that the Exchange has entered into the requisite surveillance-sharing agreement with respect to its CME Bitcoin Futures Contracts holdings.<sup>89</sup> However, there is still a lack of consensus on whether the CME is of “significant size” in relation to the spot bitcoin market based on the test historically applied by the Commission.

#### Interrelationship between the CME Bitcoin Futures Market and the Fund

The Commission has previously stated that “the interpretation of the term market of significant size depends on the interrelationship between the market with which the listing exchange has a surveillance-sharing agreement and the proposed ETP.”<sup>90</sup> The Sponsor intends to adopt an innovative approach to mitigate the risks of fraud and manipulation that are unique to the Fund. The core principle of this approach would be to structure the operation of the Fund such that the regulated market of significant size in relation to the Fund is the CME Bitcoin Futures Market because the Fund trades all of its non-cash assets through the CME Bitcoin Futures Market. Therefore, the Sponsor’s strategy aims to establish a comprehensive interrelationship between the CME and the Fund so that the CME Bitcoin Futures Market is the market of significant size in relation to the Fund. The Sponsor notes that, although the Fund may, as proposed, hold bitcoin, it does not rely on any pricing or other information or services from unregulated bitcoin spot bitcoin trading platforms. Therefore, no spot bitcoin trading platform could be considered a “market of relevant size” in relation to the Fund.

The Sponsor has designed the Fund to have four novel features that underscore its

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<sup>89</sup> See Approval Order, 87 FR at 21678 and further discussion at 21678-81.

<sup>90</sup> See Securities Exchange Act Release No. 95180 (June 29, 2022), 87 FR 40299 at 40312 (July 6, 2022) (SR-NYSEArca-2021-90) (Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Shares of Grayscale Bitcoin Trust Under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares)).

significant interrelationship with the CME Bitcoin Futures Market:

1. **Investment strategy:** The Fund will only hold bitcoin, CME Bitcoin Futures Contracts, and cash and cash equivalents. Accordingly, the CME Bitcoin Futures Market is the only market on which the Fund's non-cash assets would trade and is therefore the "significant market" in relation to the Fund, as proposed.
2. **Futures-based pricing for spot bitcoin:** The price determination for bitcoin holdings in the NAV calculation will be derived from the CME's bitcoin futures curve.<sup>91</sup> As a result, the price of bitcoin holdings will depend solely on bitcoin futures settlement prices on the CME Bitcoin Futures Market and will not depend directly on price information from unregulated spot bitcoin markets (as further discussed below).
3. **Physical bitcoin purchases through the CME Bitcoin Futures Market:** The Fund will solely use the CME Bitcoin Futures Market's EFP transactions to acquire and dispose of bitcoin, instead of transactions on unregulated spot bitcoin trading platforms. Accordingly, the only non-cash assets held by the Fund (CME Bitcoin Futures Contracts and bitcoin obtained from EFP transactions) would be traded, reported, and cleared through the CME Bitcoin Futures Market, such that CME and NYSE Arca can share information pursuant to their common ISG membership to detect and deter fraudulent or manipulative misconduct related to those assets.
4. **Creations and redemptions:** The Fund will use cash creations and redemptions<sup>92</sup> to

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<sup>91</sup> The "futures curve" is a representation of the relationship between futures contract prices and their respective expiration dates.

<sup>92</sup> In a cash creation/redemption format, the Authorized Participant delivers cash to the Fund instead of bitcoin. The Fund's creation and redemption processes are further discussed below.

deter intraday Share price manipulation that could originate from in-kind creation or redemption from bitcoin sourced in unregulated spot markets. Investment in bitcoin thus would not be directly related to creation/redemptions, but would instead be adjusted dynamically based on target portfolio exposure.<sup>93</sup> Trading for bitcoin could thus be accomplished in smaller sizes and at unpredictable times, reducing the risk of manipulation in the creation or redemption processes.

The Sponsor believes that these features of the Fund are designed to provide a robust framework for mitigating the risks of market manipulation, thereby protecting investors and maintaining the integrity of the market. The Sponsor further believes that, given these features of the Fund, the CME Bitcoin Futures Market should be considered the regulated market of significant size in relation to the Fund.

The Sponsor further believes that the proposed novel approach is in line with the first prong of the Commission's interpretation of the definition of "regulated market of significant size" as to the CME Bitcoin Futures Market because (i) the CME Bitcoin Futures Market is the only market where the Fund trades its non-cash assets,<sup>94</sup> and (ii) there is a reasonable likelihood that a person attempting to manipulate the Fund would also have to trade on the CME Bitcoin

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<sup>93</sup> The portfolio's exposure to bitcoin will be dynamic because the Sponsor will assess market conditions (e.g., expected level of creation and redemption based on historic trends, the futures curve, market liquidity and volatility) in allocating the Fund's portfolio among the assets that it may hold (bitcoin, CME Bitcoin Futures Contracts, cash and cash equivalents). The Sponsor will manage the Fund to minimize transaction costs related to the conversion between CME Bitcoin Futures Contracts and bitcoin that would be necessary to process redemptions. The Sponsor will generally aim to maximize the allocation to bitcoin to better track the Fund's Benchmark.

<sup>94</sup> In the Approval Order, the Commission stated that if the proposed "significant" regulated market (in this case, the CME Bitcoin Futures Market) with which the listing exchange has a surveillance-sharing agreement is the same market on which the ETP trades its non-cash assets, then (i) it is unnecessary for the listing exchange to establish a reasonable likelihood that the would-be manipulator would have to trade on said listing exchange to manipulate the proposed ETP (thereby satisfying the first prong of the Commission's standard for "market of significant size"), and (ii) it is unnecessary to establish a "lead-lag" relationship between said listing exchange and other markets. 87 FR at 21679 n. 47 & 21680.

Futures Market to successfully manipulate the ETP (and, accordingly, CME's common ISG membership would aid NYSE Arca in detecting and deterring potential misconduct).

The Sponsor has designed its approach so that any attempt to manipulate the Fund would require trading on the CME Bitcoin Futures Market, for the following reasons:

- 1. Futures-based pricing for spot bitcoin:** The price of the Fund's bitcoin holdings would be determined based on settlement prices of CME Bitcoin Futures Contracts for purposes of calculating NAV (as explained in the discussion of FBSP above). Accordingly, any attempt to manipulate the price of the Fund would require influencing the futures curve on the CME Bitcoin Futures Market because the spot price (which could be a target for manipulation) does not directly influence the price of the Fund. There is thus a direct lead/lag relationship in which CME Bitcoin Futures Market prices lead both the spot price used by the Fund to determine its NAV and the Fund's market price.
- 2. Spot bitcoin operations via EFP transaction through the CME Bitcoin Futures Market:** Because the Fund's bitcoin operations would take place via CME Bitcoin Futures Market EFP transactions, any attempt to manipulate the Fund's transactions in bitcoin holdings would require the would-be manipulator to trade on the CME Bitcoin Futures Market. Accordingly, any potential manipulation of the Fund would require extensive operations on the heavily regulated CME Bitcoin Futures Market.
- 3. Cash creations and redemptions:** The Fund's use of cash creations and redemptions also reduces the potential for manipulation through the creation and redemption processes by eliminating the direct arbitrage between unregulated spot

markets and the Fund's market price. Any significant creation or redemption activity aimed at manipulating the Fund would likely influence the CME Bitcoin Futures Market, given that the cash received in the creation is used to buy CME Bitcoin Futures Contracts and the cash generated for redemption distribution comes from the sale of CME Bitcoin Futures Contracts.

Given these factors, the Sponsor believes that the common membership of NYSE Arca and CME in the ISG would be an effective tool in assisting NYSE Arca in detecting and deterring potential misconduct. The exchanges' ability to share information would provide the Exchange with access to relevant trading data from the CME Bitcoin Futures Market, which is intrinsically linked to the Fund, allowing for appropriate oversight and facilitating the ability to identify and investigate any suspicious trading activity.

The Approval Order stated that the CME "comprehensively surveils futures market conditions and price movements on a real-time and ongoing basis in order to detect and prevent price distortions, including price distortions caused by manipulative efforts" and that the "CME's surveillance can reasonably be relied upon to capture the effects on the CME [Bitcoin Futures Market] caused by a person attempting to manipulate the [Fund] by manipulating the price of CME Bitcoin Futures Contracts, whether that attempt is made by directly trading on the CME [Bitcoin Futures Market] or indirectly by trading outside of the CME [Bitcoin Futures Market]."<sup>95</sup> The Commission further noted in the Approval Order that, as a result, "when the CME shares its surveillance information with [NYSE] Arca, the information would assist in detecting and deterring fraudulent or manipulative misconduct related to the non-cash assets held

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<sup>95</sup> See Approval Order, 87 FR at 21679.

by the [Fund].”<sup>96</sup> The Sponsor further believes that, consistent with the Approval Order, CME surveillance can be relied upon to capture any possible manipulation of the CME Bitcoin Futures Market, even when the attempt is made indirectly by trading outside the CME Bitcoin Futures Market in unregulated markets.<sup>97</sup>

The Sponsor also believes that it is unlikely that trading in the Fund would be the predominant influence on prices on the CME Bitcoin Futures Market. The Approval Order noted that it was unlikely that trading in the Fund would be the predominant influence on price in the CME Bitcoin Futures Market,<sup>98</sup> and the Sponsor believes that the addition of bitcoin to the Fund’s holdings, using EFP transactions through the CME Bitcoin Futures Market, does not significantly alter the influence of the Fund’s trading on the CME Bitcoin Futures Market, for the following reasons:

1. **The Fund’s limited influence over the market:** As the Commission noted in the Approval Order,<sup>99</sup> the Commission observed no disruption to the CME Bitcoin Futures Market or evidence that the Fund exerted a dominant influence on CME bitcoin futures prices. The Sponsor therefore believes that it is very

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<sup>96</sup> Id.

<sup>97</sup> See id. (“The Commission agrees with [NYSE] Arca that the CME [Bitcoin Futures Market], as a CFTC-regulated futures exchange, has ‘the requisite oversight, controls, and regulatory scrutiny necessary to maintain, promote, and effectuate fair and transparent trading of its listed products, including the BTC Contracts and MBT Contracts.’ As [NYSE] Arca states, as a Designated Contracts Market (‘DCM’), the CME [Bitcoin Futures Market] ‘comprehensively surveils futures market conditions and price movements on a realtime and ongoing basis in order to detect and prevent price distortions, including price distortions caused by manipulative efforts.’ Thus the CME’s surveillance can reasonably be relied upon to capture the effects on the CME [Bitcoin Futures Market] caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME [Bitcoin Futures Contracts], whether that attempt is made by directly trading on the CME [Bitcoin Futures Market] or indirectly by trading outside of the CME [Bitcoin Futures Market]. As such, when the CME shares its surveillance information with [NYSE] Arca, the information would assist in detecting and deterring fraudulent or manipulative misconduct related to the non-cash assets held by the proposed ETP”) (internal citations omitted).

<sup>98</sup> See id. at 21680.

<sup>99</sup> See id. at 21681.



unlikely that the Fund's trading, even with the addition of bitcoin to its holdings, would become the predominant influence on the futures market.

**2. Spot bitcoin would be purchased using market-neutral EFP transactions:**

The bitcoin in the Fund's portfolio would be purchased by exchanging an equivalent CME Bitcoin Futures Contracts position using EFP transactions through the CME Bitcoin Futures Market. The Fund's bitcoin trading would thus be directly linked to the futures market and would not introduce a new, independent variable that could significantly influence the futures market.

Indeed, because both sides of the trade track the same benchmark, an EFP is market-neutral, and, as such, the pricing of an EFP is quoted in terms of the basis between the price of the futures contract and the level of the underlying index.<sup>100</sup>

**3. The Fund's investment strategy reduces recurrent trading activity and price pressure on the CME Bitcoin Futures Market as compared to a fund that**

**only holds CME Bitcoin Futures Contracts:** Because the Fund will also hold bitcoin, the Sponsor believes that CME Bitcoin Futures Contracts rollover operations would be reduced, as would the trading activity on the CME Bitcoin Futures Market that occurs as a CME Bitcoin Futures Contract nears expiration, thereby significantly reducing its influence on the CME Bitcoin Futures Market.

The Sponsor therefore believes that the proposed addition of bitcoin to the Fund's holdings would not significantly alter the influence of the Fund's trading on the CME Bitcoin Futures Market and that the proposed design of the Fund's investment strategy would instead

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<sup>100</sup> According to the Fund's registration statement and as discussed above, the Fund uses EFP transactions to efficiently transition its bitcoin exposure from a physical to a futures position within a regulated environment.

result in potential impact on the CME Bitcoin Futures Market that is the same or less than that of the previous investment strategy (as represented in the Approval Order).

The Sponsor notes that, as of April 2021 and as noted in the Fund's original proposal to list and trade its Shares on the Exchange, the CME Bitcoin Futures Market was already showing a significant increase in size, as per the table below:<sup>101</sup>

CME BITCOIN FUTURES MARKET		
	<u>February 26, 2020</u>	<u>April 7, 2021</u>
Trading Volume	\$433 million	\$4,321 million
Open Interest	\$238 million	\$2,582 million

The Sponsor notes that growth of the CME Bitcoin Futures Market at that time coincided with similar growth in the bitcoin spot market. Moreover, the market for Bitcoin futures was and still is rapidly approaching the size of markets for other commodity interests, including interests in metals, agricultural, and petroleum products.

Accordingly, as the CME Bitcoin Futures Market continues to develop and more closely resemble other commodity futures markets, the Sponsor believes that it is reasonable to expect that the relationship between the bitcoin futures market and bitcoin spot market will behave similarly to other future/spot market relationships, where the spot market may have no relationship to the futures market (although the current proposal does not depend on such similarity).

In addition, in the time since the Approval Order was issued, there has been significant

<sup>101</sup> See Securities Exchange Act Release No. 92573 (August 5, 2021), 86 FR 44062 at 44073 (August 11, 2021) (SR-NYSEArca-2021-53) (Notice of Filing of a Proposed Rule Change To List and Trade Shares of Teucrium Bitcoin Futures Fund Under NYSE Arca Rule 8.200-E).

growth in bitcoin futures in terms of trading volumes, as reflected in the table below:

CME BITCOIN FUTURES MARKET		
	<u>April 6, 2022</u>	<u>June 30, 2023</u>
Trading Volume	\$1,692 million	\$3,473 million
Open Interest	\$2,529 million	\$2,800 million

The Sponsor also notes that in the same period during which CME Bitcoin Futures Market open interest remained at roughly at the same level, trading volume and open interest of unregulated bitcoin futures markets had a significant drawdown:<sup>102</sup>

UNREGULATED BITCOIN FUTURES MARKETS			
	<u>April 7, 2021</u>	<u>April 6, 2022</u>	<u>June 30, 2023</u>
Trading Volume	\$68,333 million	\$37,333 million	\$29,693 million
Open Interest	\$20,420 million	\$13,980 million	\$11,630 million

Furthermore, the Sponsor notes that in the same period the trading volume of spot bitcoin also fell significantly:

SPOT BITCOIN			
	<u>April 7, 2021</u>	<u>April 6, 2022</u>	<u>June 1, 2023</u>
Trading Volume	\$698,000 million	\$297,000 million	\$116,000 million

The Sponsor believes that the data above suggests an increase in market appetite for regulated products (e.g., CME Bitcoin Futures Contracts) vis-a-vis a significant decrease in

<sup>102</sup> Data in this table is sourced from: <https://www.theblock.co/data/crypto-markets/futures>. Trading volume data for bitcoin futures in unregulated markets was only available on a monthly frequency. Therefore, the trading volume figures displayed in the table are approximations derived from the daily average trading volumes reported for their respective months.

interest for unregulated products (e.g., unregulated futures and spot bitcoin).

The Sponsor further believes that an analysis of the data presented above indicates that the CME Bitcoin Futures Market managed to maintain its open interest level despite the price volatility that bitcoin experienced in 2022, demonstrating its resilience and that it is sufficiently developed such that it is unlikely that trading in the Fund would be the predominant influence on its prices.

The Sponsor further notes that the Commission stated in the Approval Order “that the CME [Bitcoin Futures Market] has sufficiently developed to support ETPs seeking exposure to bitcoin by holding CME Bitcoin Futures Contracts.”<sup>103</sup> The Sponsor believes that the CME Bitcoin Futures Market is also sufficiently developed to support ETPs that seek exposure to Bitcoin by holding a mix of CME Bitcoin Futures Contracts and bitcoin through the use of EFP transactions that are traded, reported, and cleared through the CME Bitcoin Futures Market and whose conditions and prices are subject to CME oversight.

#### Creations and Redemptions

According to the Sponsor (and as discussed further below), the Fund uses cash creations and redemptions.<sup>104</sup> An AP delivers cash to the Fund instead of bitcoin or CME Bitcoin Futures Contracts in the creation process. An AP receives cash instead of bitcoin or CME Bitcoin Futures Contracts in the redemption process. The cash received during the creation process is then used by the Sponsor to purchase CME Bitcoin Futures Contracts with an aggregate market value that approximates the amount of cash received upon the creation. During a redemption

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<sup>103</sup> See Approval Order, 87 FR at 21681.

<sup>104</sup> In a cash creation/redemption mechanism, APs create or redeem shares of the ETP using cash instead of the underlying assets. This contrasts with in-kind creation/redemption, where APs use a basket of the ETP's underlying assets for these transactions. In cash creation/redemption, APs provide or receive an equivalent cash value based on the NAV of the ETP's shares.

transaction, the reverse process is used, where the Sponsor sells CME Bitcoin Futures Contracts with an aggregate market value that approximates the amount of cash to be paid upon the redemption. On a daily basis, the Sponsor will analyze the current portfolio allocation of the Fund between bitcoin and CME Bitcoin Futures Contracts and, based on market conditions, may decide to engage in an EFP transaction through the CME Bitcoin Futures Market to buy or sell bitcoin for the equivalent position in CME Bitcoin Futures Contracts.

The Sponsor believes that the Fund's use of cash creations and redemptions protects against manipulation in the creation and redemption process and of the Fund's market price from trading in unregulated spot markets. Investment in bitcoin will not be directly related to creation or redemption of Shares such that trades can be performed in smaller sizes and at unpredictable times, reducing the risk of creation or redemption manipulation.

Specifically, the Sponsor believes that cash creations and redemptions serve as a deterrent to manipulation in several ways:

- 1. Decoupling from spot market:** By using cash instead of bitcoin for creations and redemptions, the Fund's operations are decoupled from the unregulated spot market. The creation and redemption process does not directly influence the unregulated spot market or vice versa, thereby reducing the potential for manipulation through this process.
- 2. Unpredictable trading times:** The Fund's investment in spot bitcoin is not directly related to creations or redemptions. As a result, trading can be done in smaller sizes and at unpredictable times, making it harder for potential manipulators to time their actions.
- 3. Reduced impact of large trades:** By effecting creations and redemptions in

cash, large trades that could potentially influence the unregulated spot market are mitigated. Instead, these trades are absorbed in the CME Bitcoin Futures Market, which is sufficiently liquid and, as a regulated market that is a member of ISG, can reasonably be relied upon to assist the Exchange in detecting and deterring fraudulent or manipulative misconduct.

- 4. Reduced influence from unregulated spot bitcoin trading platforms:** In-kind creation may create a direct relationship between the Fund's market price and prices on offshore unregulated trading platforms such as Binance and others by arbitrage, because an AP could buy or sell bitcoin from such markets and receive or deliver bitcoin from the Fund through the creation or redemption process. With creations and redemptions in cash, however, that arbitrage cannot be executed without transacting on the CME Bitcoin Futures Market. Thus, the Sponsor believes that, by removing a direct causal relationship between unregulated markets and the Fund's market price, it is unlikely that a person attempting to manipulate the ETP would be reasonably successful by trading only on unregulated spot bitcoin trading platforms. A would-be manipulator would have to transact on the CME Bitcoin Futures Market, such that NYSE Arca's common ISG membership with CME would assist NYSE Arca in detecting and deterring misconduct.

The Sponsor believes that the Fund's creation and redemption process is designed to minimize the potential for market manipulation, thereby protecting investors and maintaining the integrity of the markets.

### Settlement of CME Bitcoin Futures Contracts

According to the Registration Statement, each BTC Contract and MBT Contract settles daily to the BTC Contract VWAP of all trades that occur between 2:59 p.m. and 3:00 p.m. Central Time, the settlement period, rounded to the nearest tradable tick.<sup>105</sup>

BTC Contracts and MBT Contracts each expire on the last Friday of the contract month and are settled with cash. The final settlement value is based on the CME CF BRR at 4:00 p.m. London time on the expiration day of the futures contract.

As proposed, the Fund will rollover its soon to expire CME Bitcoin Futures Contracts to extend the expiration or maturity of its position forward by closing the initial contract holdings and opening a new longer-term contract holding for the same underlying asset at the then-current market price. The Fund does not intend to hold any bitcoin futures positions into cash settlement.

### Net Asset Value

According to the Registration Statement, the Fund's NAV per Share will be calculated by taking the current market value of its total assets, subtracting any liabilities, and dividing that total

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<sup>105</sup> VWAP is calculated based first on Tier 1 (if there are trades during the settlement period); then Tier 2 (if there are no trades during the settlement period); and then Tier 3 (in the absence of any trade activity or bid/ask in a given contract month during the current trading day, as follows:

Tier 1: Each contract month settles to its VWAP of all trades that occur between 14:59:00 and 15:00:00 CT, the settlement period, rounded to the nearest tradable tick. If the VWAP is exactly in the middle of two tradable ticks, then the settlement will be the tradable price that is closer to the contract's prior day settlement price.

Tier 2: If no trades occur on CME Globex between 14:59:00 and 15:00:00 CT, the settlement period, then the last trade (or the contract's settlement price from the previous day in the absence of a last trade price) is used to determine whether to settle to the bid or the ask during this period.

a. If the last trade price is outside of the bid/ask spread, then the contract month settles to the nearest bid or ask price.

b. If the last trade price is within the bid/ask spread, or if a bid/ask spread is not available, then the contract month settles to the last trade price.

Tier 3: In the absence of any trade activity or bid/ask in a given contract month during the current trading day, the daily settlement price will be determined by applying the net change from the preceding contract month to the given contract month's prior daily settlement price.

by the number of Shares.

The Administrator of the Fund will calculate the NAV once each trading day, as of the earlier of the close of the New York Stock Exchange or 4:00 p.m. Eastern Time (“E.T.”).

According to the Registration Statement, to determine the value of CME Bitcoin Futures Contracts, the Fund’s Administrator will use the CME Bitcoin Futures Contract settlement price on the exchange on which the contract is traded, except that the “fair value” of CME Bitcoin Futures Contracts (as described in more detail below) may be used when CME Bitcoin Futures Contracts close at their price fluctuation limit for the day. The Fund’s Administrator will determine the value of Fund investments as of the earlier of the close of the New York Stock Exchange or 4:00 p.m. E.T. The Fund’s NAV will include any unrealized profit or loss on open CME Bitcoin Futures Contracts and any other credit or debit accruing to the Fund but unpaid or not received by the Fund.

According to the Registration Statement, the fair value of the Fund’s holdings will be determined by the Fund’s Sponsor in good faith and in a manner that assesses the future bitcoin market value based on a consideration of all available facts and all available information on the valuation date. When a CME Bitcoin Futures Contract has closed at its price fluctuation limit, the fair value determination will attempt to estimate the price at which such CME Bitcoin Futures Contract would be trading in the absence of the price fluctuation limit (either above such limit when an upward limit has been reached or below such limit when a downward limit has been reached). Typically, this estimate will be made primarily by reference to exchange traded instruments at 4:00 p.m. E.T. on settlement day. The fair value of BTC Contracts and MBT Contracts may not reflect such security’s market value or the amount that the Fund might reasonably expect to receive for the BTC Contracts and MBT Contracts upon its current sale.



According to the Registration Statement and as discussed above, the value of spot bitcoin held by the Fund would be determined by the Administrator, when calculating the Fund's NAV, via the FBSP methodology. As discussed above, the FBSP methodology allows for the determination of a spot price of bitcoin that utilizes market data exclusively from CME Bitcoin Futures Contracts and does not rely on market data obtained from unregulated bitcoin markets to determine the value of bitcoin held by the Fund.

#### Indicative Fund Value

According to the Registration Statement, in order to provide updated information relating to the Fund for use by investors and market professionals, ICE Data Indices, LLC will calculate an updated IFV. The IFV will be calculated by using the prior day's closing NAV per Share of the Fund as a base and will be updated throughout the core trading session of 9:30 a.m. E.T. to 4:00 p.m. E.T. (the "Core Trading Session") to reflect changes in the value of the Fund's holdings during the trading day. For purposes of calculating the IFV, the Fund's spot bitcoin holdings will be priced using a real time version of the Benchmark, the Nasdaq Bitcoin Reference Price - Real Time ("NQBTC-RT"),<sup>106</sup> and the Fund's CME Bitcoin Futures Contracts holdings will be priced using the most recent trading price for each contract.

The IFV will be disseminated on a per Share basis every 15 seconds during the Exchange's Core Trading Session and be widely disseminated by one or more major market data vendors during the Exchange's Core Trading Session.<sup>107</sup>

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<sup>106</sup> The "Nasdaq Bitcoin Reference Price - Real Time" or "NQBTC-RT" is the real-time version of the Benchmark and is calculated every second throughout a 24-hour trading day, seven days per week, using published, real-time bid and ask quotes for bitcoin on the NQBTC core trading platforms. See [https://indexes.nasdaqomx.com/docs/methodology\\_nci.pdf](https://indexes.nasdaqomx.com/docs/methodology_nci.pdf).

<sup>107</sup> Several major market data vendors display and/or make widely available IFVs taken from the Consolidated Tape Association ("CTA") or other data feeds.

### Creation and Redemption of Shares

According to the Registration Statement, the Shares issued by the Fund may only be purchased by APs and only in blocks of 10,000 Shares called “Creation Baskets.” The amount of the purchase payment for a Creation Basket is equal to the total NAV of Shares in the Creation Basket. Similarly, only APs may redeem Shares and only in blocks of 10,000 Shares called “Redemption Baskets.” The amount of the redemption proceeds for a Redemption Basket is equal to the total NAV of Shares in the Redemption Basket. The purchase price for Creation Baskets and the redemption price for Redemption Baskets are the actual NAV calculated at the end of the business day when a request for a purchase or redemption is received by the Fund. Shares of the Fund will be created and redeemed in cash.<sup>108</sup>

APs will be the only persons that may place orders to create and redeem Creation Baskets. APs must be (1) either registered broker-dealers or other securities market participants, such as banks and other financial institutions, that are not required to register as broker-dealers to engage in securities transactions, and (2) Depository Trust Company (“DTC”) participants. An AP is an entity that has entered into an Authorized Participant agreement with the Sponsor.

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The Sponsor notes that Shares of the Fund will only be created and redeemed in cash because of regulatory and other concerns surrounding the ability of broker-dealers, such as the APs, to have custody and/or control over non-security digital assets, such as bitcoin. In 2019, Commission Staff noted that a digital asset security that does not meet the definition of a “security” under the Securities Investor Protection Act (“SIPA”) would likely not receive protection under SIPA in the event of the failure of a carrying broker-dealer (thus leaving holders of those digital asset securities with only unsecured general creditor claims against the broker-dealer’s estate). See SEC Division of Trading and Markets, FINRA Office of General Counsel, Joint Staff Statement on Broker-Dealer Custody of Digital Asset Securities (July 8, 2019), <https://www.sec.gov/news/public-statement/joint-staff-statement-broker-dealer-custody-digital-asset-securities>. The Staff also noted that uncertainty regarding when and whether a broker-dealer holds a digital asset security in its possession or control creates greater risk for customers that their securities will not be able to be returned in the event of a broker-dealer failure. See id. The Staff concluded that these concerns were likely to be inconsistent with the expectations of persons who would use a broker-dealer to custody their digital asset securities. In light of these concerns, the creation and redemption and processes of the Fund have been structured so that APs are not required to take custody of, or have control over, bitcoin at any stage.

An AP delivers cash to the Fund in the creation process, and an AP receives cash in the redemption process.<sup>109</sup> The cash delivered or received during the creation or redemption process is then used by the Sponsor to purchase or sell CME Bitcoin Futures Contracts with an aggregate market value that approximates the amount of cash received or paid upon the creation or redemption. On a daily basis, the Sponsor will analyze the current portfolio allocation of the Fund between bitcoin and CME Bitcoin Futures Contracts and decide whether to engage in an EFP transaction through the CME Bitcoin Futures Market to buy or sell bitcoin for the equivalent position in CME Bitcoin Futures Contracts.

#### Creation Procedures

According to the Registration Statement, on any “Business Day,” an AP may place an order with the Fund’s Transfer Agent to create one or more Creation Baskets. For purposes of processing both purchase and redemption orders, a “Business Day” means any day other than a day when the CME Bitcoin Futures Market or the New York Stock Exchange is closed for regular trading. Purchase orders for Creation Baskets must be placed by 3:00 p.m. EST or one hour prior to the close of trading on the New York Stock Exchange, whichever is earlier. The day on which the distributor(s) engaged by the Sponsor receives a valid purchase order is referred to as the purchase order date. If the purchase order is received after the applicable cut-off time, the

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<sup>109</sup> The APs will deliver only cash to create Shares and will receive only cash when redeeming Shares. Further, APs will not directly or indirectly purchase, hold, deliver, or receive bitcoin as part of the creation or redemption process or otherwise direct the Trust or a third party with respect to purchasing, holding, delivering, or receiving bitcoin as part of the creation or redemption process.

To the extent applicable, the Fund will create shares by receiving bitcoin from a third party that is not the AP and the Fund—not the AP—is responsible for selecting the third party to deliver the bitcoin. Further, the third party will not be acting as an agent of the AP with respect to the delivery of the bitcoin to the trust or acting at the direction of the AP with respect to the delivery of the bitcoin to the Fund. The Fund will redeem shares by delivering bitcoin to a third party that is not the AP and the Fund—not the AP—is responsible for selecting the third party to receive the bitcoin. Further, the third party will not be acting as an agent of the AP with respect to the receipt of the bitcoin from the Fund or acting at the direction of the AP with respect to the receipt of the bitcoin from the Fund.

purchase order date will be the next Business Day. Purchase orders are irrevocable.

By placing a purchase order, an AP agrees to deposit cash with the Cash Custodian.

#### Determination of Required Deposits

According to the Registration Statement, the total deposit required to create each basket (“Creation Basket Deposit”) is an amount of cash and/or cash equivalents in the same proportion to the total assets of the Fund (net of estimated accrued but unpaid fees, expenses and other liabilities) on the purchase order date as the proportion of the number of Shares to be created under the purchase order to the total number of Shares outstanding on the purchase order date. The Sponsor determines, directly in its sole discretion or in consultation with the Cash Custodian and the Sub-Administrator, the requirements for cash and/or cash equivalents, including the remaining maturities of the cash equivalents, which may be included in deposits to create baskets. If cash equivalents are to be included in a Creation Basket Deposit for orders placed on a given business day, the Sub-Administrator will publish an estimate of the Creation Basket Deposit requirements at the beginning of such day.

#### Delivery of Required Deposits

According to the Registration Statement, an AP who places a purchase order is responsible for transferring to the Fund’s account with the Cash Custodian the required amount of cash and cash equivalents by the end of the next business day following the purchase order date or by the end of such later business day, not to exceed three business days after the purchase order date, as agreed to between the AP and the Cash Custodian when the purchase order is placed (the “Purchase Settlement Date”). Upon receipt of the deposit amount, the Cash Custodian directs DTC to credit the number of baskets ordered to the AP’s DTC account on the Purchase Settlement Date. Because orders to purchase baskets must be placed by 3:00 p.m. E.T., but the

total payment required to create a basket during the continuous offering period will not be determined until 4:00 p.m. E.T. on the date the purchase order is received, APs will not know the total amount of the payment required to create a basket at the time they submit an irrevocable purchase order for the basket. The Fund's NAV and the total amount of the payment required to create a basket could rise or fall substantially between the time an irrevocable purchase order is submitted and the time the amount of the purchase price in respect thereof is determined.

#### Suspension and Rejection of Purchase Orders

According to the Registration Statement, the Sponsor has the discretion to suspend purchase orders or delay their settlement in specific situations. These situations may include (1) exchange closures or trading restrictions, (2) emergencies affecting the handling of cash equivalents, (3) shareholder protection needs, (4) potential price limit restrictions on CME Bitcoin Futures Contracts, or (5) circumstances in which it would not be in the best interest of the Fund or its investors to accept purchase orders. Purchase orders must conform to the criteria outlined in the AP agreement and be for whole baskets. The Sponsor may suspend orders that do not meet these criteria. The Sponsor, acting by itself or through the distributor or Transfer Agent, may reject a purchase order or a Creation Basket Deposit if: (a) it determines that, due to position limits or otherwise, investment alternatives that will enable the Fund to meet its investment objective are not available or practicable at that time; (b) it determines that the purchase order or the Creation Basket Deposit is not in proper form; (c) it believes that acceptance of the purchase order or the Creation Basket Deposit would have adverse tax consequences to the Fund or its investors; (d) the acceptance or receipt of the Creation Basket Deposit would, in the opinion of counsel to the Sponsor, be unlawful; (e) circumstances outside the control of the Sponsor make it, for all practical purposes, not feasible to process creations of baskets; (f) there is a possibility that

any or all of the CME Bitcoin Futures Contracts of the Fund from which the NAV of the Fund is calculated will be priced at a dynamic price limit restriction;<sup>110</sup> or (g) if, in the sole discretion of the Sponsor, the execution of such an order would not be in the best interest of the Fund or its investors.

#### Redemption Procedures

According to the Registration Statement, the procedures by which an AP can redeem one or more Redemption Baskets will mirror the procedures for the creation of Creation Baskets. On any Business Day, an AP may place an order with the Transfer Agent to redeem one or more Redemption Baskets.

The redemption procedures allow APs to redeem Redemption Baskets. Individual shareholders may not redeem directly from the Fund. By placing a redemption order, an AP agrees to deliver the Redemption Baskets to be redeemed through DTC's book entry system to the Fund by the end of the next Business Day following the effective date of the redemption order or by the end of such later business day ("Redemption Settlement Date").

#### Determination of Redemption Distribution

According to the Registration Statement, the redemption distribution from the Fund will consist of an amount of cash and/or cash equivalents that is in the same proportion to the total assets of the Fund on the date that the order to redeem is properly received as the number of

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<sup>110</sup> The CME imposes a maximum permitted price range for futures contracts in each trading session on its futures markets. When markets reach their price limits, the CME may temporarily halt trading until such price limits can be expanded, remain price limited, or suspend trading for the day, based on relevant regulatory provisions. CME Bitcoin Futures Contracts, like other futures contracts on the CME, are subject to price limits on a dynamic basis. At the commencement of each trading day, CME Bitcoin Futures Contracts are assigned a price limit variant, which equals a percentage of the prior day's settlement price, or a price deemed appropriate by the CME. During the trading day, the price limit variant is applied in rolling 60-minute look-back periods to establish dynamic lower and upper price fluctuation limits. Price limits for CME Bitcoin Futures Contracts are published at <https://www.cmegroup.com/trading/price-limits.html#cryptocurrencies>.

Shares to be redeemed under the redemption order is in proportion to the total number of Shares outstanding on the date the order is received.

#### Delivery of Redemption Distribution

The redemption distribution due from a Fund will be delivered to the AP on the Redemption Settlement Date if the Fund's DTC account has been credited with the baskets to be redeemed. If the Fund's DTC account has not been credited with all of the baskets to be redeemed by the end of such date, the redemption distribution will be delivered to the extent of whole baskets received. Any remainder of the redemption distribution will be delivered on the next business day after the Redemption Settlement Date to the extent of remaining whole baskets received. Pursuant to information from the Sponsor, the Cash Custodian will also be authorized to deliver the redemption distribution notwithstanding that the baskets to be redeemed are not credited to the Fund's DTC account by 12:00 p.m. E.T. on the Redemption Settlement Date if the AP has collateralized its obligation to deliver the baskets through DTC's book-entry system on such terms as the Sponsor may from time to time determine.

#### Availability of Information

The NAV for the Fund's Shares will be calculated and disseminated daily and will be made available to all market participants at the same time. The intraday, closing prices, and settlement prices of the CME Bitcoin Futures Contracts will be readily available from the CME website, automated quotation systems, published or other public sources, or major market data vendors. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Real-time data for CME Bitcoin Futures Contracts will be available by subscription through on-line information services. ICE Futures U.S. and CME also provide delayed futures and options on futures information on current and past trading sessions and market news free of charge on their respective websites. The specific contract specifications for CME Bitcoin Futures Contracts will also be available on such websites, as well as other financial informational sources. The spot price of bitcoin is available on a 24-hour basis from major market data vendors, including Bloomberg and Reuters. Information relating to trading, including price and volume information, in bitcoin will be available from major market data vendors and from the trading platforms on which bitcoin is traded. EFP transaction volumes are reported daily, by instrument, on the CME website.<sup>111</sup>

Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. Quotation information for cash equivalents and commodity futures may be obtained from brokers and dealers who make markets in such instruments. Intra-day price and closing price level information for the Benchmark will be available from major market data vendors. The real-time version of the Benchmark value, NQBTC-RT, will be disseminated once every 15 seconds during the Core Trading Session. The Benchmark components and methodology will be made publicly available. The IFV will be available through on-line information services.

In addition, the Fund's website, <https://hashdex-etfs.com/>, will display the applicable end of day closing NAV. The daily holdings of the Fund will be available on the Fund's website. The Fund's website will also include a form of the prospectus for the Fund that may be

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<sup>111</sup> Pricing information for EFP transactions in CME Bitcoin Futures Contracts is reported to the CME Bitcoin Futures Market but is not publicly available.



downloaded. The website will include the Shares' ticker and CUSIP information along with additional quantitative information updated on a daily basis, including: (1) the prior Business Day's reported NAV and closing price and a calculation of the premium and discount of the closing price or mid-point of the bid/ask spread at the time of NAV calculation (the "Bid/Ask Price") against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters. The website disclosure of portfolio holdings will be made daily and will include, as applicable, (i) the name, quantity, price, and market value of the Fund's holdings, (ii) the counterparty to and value of forward contracts and any other financial instruments tracking the Benchmark, and (iii) the total cash and cash equivalents held in the Fund's portfolio, if applicable.

The Fund's website will be publicly available at the time of the public offering of the Shares and accessible at no charge.

#### Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.<sup>112</sup> Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the CME Bitcoin Futures Market<sup>113</sup> and in the securities and/or

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<sup>112</sup> See NYSE Arca Rule 7.12-E.

<sup>113</sup> The Sponsor believes that, under normal market conditions, interruptions or trading halts in individual spot bitcoin markets are unlikely to impact trading in the Shares unless trading in the CME Bitcoin Futures Market is also impacted.

the financial instruments composing the daily disclosed portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

The Exchange may halt trading during the day in which an interruption to the dissemination of the IFV or the value of the Benchmark occurs. The real-time version of the Benchmark value (NQBTC-RT) will be disseminated once every 15 seconds during the Core Trading Session. The Benchmark components and methodology will be made publicly available. If the interruption to the dissemination of the IFV, or to the value of the Benchmark persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

#### Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. E.T. in accordance with NYSE Arca Rule 7.34-E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6-E, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.500-E. The trading of the Shares will be subject to NYSE Arca Rule 8.500E(f), which sets

forth certain restrictions on Equity Trading Permit Holders (“ETP Holders”) acting as registered market makers in Trust Units to facilitate surveillance. Pursuant to NYSE Arca Rule 8.500-E(f), an ETP Holder acting as a registered market maker in Trust Units must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the market maker may have or over which it may exercise investment discretion. No market maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a market maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule. In addition to the existing obligations under Exchange rules regarding the production of books and records, the ETP Holder acting as a market maker in Trust Units shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, as may be requested by the Exchange.

For initial and continued listing as proposed herein, the Fund will be in compliance with Rule 10A-3 under the Act, and the Trust will rely on the exception contained in Rule 10A-3(c)(7).<sup>114</sup> A minimum of 50,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

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<sup>114</sup> See Rule 10A-3(c)(7), 17 CFR 240.10A-3(c)(7) (stating that a listed issuer is not subject to the requirements of Rule 10A-3 if the issuer is organized as an unincorporated association that does not have a board of directors and the activities of the issuer are limited to passively owning or holding securities or other assets on behalf of or for the benefit of the holders of the listed securities).

### Surveillance

The Exchange represents that trading in the Shares of the Fund will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>115</sup> The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and the Fund's holdings with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and the Fund's holdings from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the Fund's holdings from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance-sharing agreement ("CSSA"). The Exchange is also able to obtain information regarding trading in the Shares, the underlying bitcoin, CME Bitcoin Futures Contracts, options on bitcoin futures, or any

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<sup>115</sup> FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

other bitcoin derivative through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market. The Exchange can obtain market surveillance information, including customer identity information, with respect to transactions (including transactions in futures contracts) occurring on US futures exchanges, which are members of the ISG. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Under NYSE Arca Rule 8.500-E(f), an ETP Holder acting as a registered market maker in the Shares is required to provide the Exchange with information relating to its trading in the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives. Commentary .04 of NYSE Arca Rule 11.3-E requires an ETP Holder acting as a registered market maker, and its affiliates, in the Shares to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares). As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder. To the extent the Exchange may be found to lack jurisdiction over a subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts, the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

CME Bitcoin Futures Contracts held by the Fund will be listed on an exchange that is a member of the ISG or is a market with which the Exchange has a CSSA.<sup>116</sup>

All statements and representations made in this filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5-E(m).

#### Information Bulletin

Prior to the commencement of trading of the Shares, the Exchange will inform its ETP Holders in an information bulletin (“Information Bulletin”) of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) the risks involved in trading the Shares during the Early and Late Trading Sessions when an updated IFV will not be calculated or publicly disseminated; (2) the procedures for purchases and redemptions of Shares in Creation Baskets and Redemption Baskets (and that Shares are not individually redeemable); (3) NYSE Arca Rule 9.2-E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (4) how information regarding the IFV is disseminated; (5) how information

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<sup>116</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange notes that not all components of the Fund may trade on markets that are members of ISG or with which the Exchange has in place a CSSA.

regarding portfolio holdings is disseminated; (6) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (7) trading information.

In addition, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. The Exchange notes that investors purchasing Shares directly from the Fund will receive a prospectus. ETP Holders purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Bulletin will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. In addition, the Information Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement.

The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding bitcoin, that the Commission has no jurisdiction over the trading of Bitcoin as a commodity, and that the CFTC has regulatory jurisdiction over the trading of bitcoin futures contracts and options on bitcoin futures contracts.

The Information Bulletin will also disclose the trading hours of the Shares and that the NAV for the Shares will be calculated after 4:00 p.m. E.T. each trading day. The Information Bulletin will disclose that information about the Shares will be publicly available on the Fund's website.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>117</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative

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<sup>117</sup> 15 U.S.C. 78f(b)(5).

acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest because it reflects the Fund's proposed investment strategy, through which the Fund would seek to achieve its investment objectives by investing in both CME Bitcoin Futures Contracts and bitcoin, in addition to being able to hold part of its net assets in cash. The Exchange believes that the Fund's strategy of holding a mix of bitcoin, CME Bitcoin Futures Contracts, and cash would remove impediments to and perfect the mechanism of a free market and protect investors and the public interest, offering investors exposure to bitcoin without relying on unregulated products or markets. The Exchange also believes that the Sponsor has designed the Fund to include features intended to provide a robust framework for mitigating the risks of market manipulation, such as its proposed use of futures-based pricing for bitcoin in calculating the Fund's NAV, EFP transactions through the CME Bitcoin Futures Market to acquire and dispose of bitcoin, and cash creations and redemptions, which would remove impediments to and perfect the mechanism of a free and open market and promote the protection of investors and the public interest. Finally, the Exchange believes that, given these features of the Fund, the CME Bitcoin Futures Market should be considered the regulated market of significant size in relation to the Fund and that there is a reasonable likelihood that a person attempting to manipulate the Fund would also have to trade on the CME Bitcoin Futures Market to do so, such that information shared between CME and NYSE Arca pursuant their common ISG membership would aid NYSE Arca in detecting and deterring potential misconduct, and that



it is unlikely that trading in the Fund would be the predominant influence on the CME Bitcoin Futures Market.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest in that the Shares would be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.500-E. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and the Fund's holdings with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and the Fund's holdings from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the Fund's holdings from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. The Exchange is also able to obtain information regarding trading in the Shares and the Fund's holdings through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market. The Exchange can obtain market surveillance information, including customer identity information, with respect to transactions (including transactions in CME Bitcoin Futures Contracts) occurring on US futures exchanges, which are members of the ISG. The intraday, closing prices, and settlement prices of CME Bitcoin Futures Contracts and bitcoin will be readily available from the applicable futures exchange websites, automated quotation systems, published or other public sources, or major market data vendors website or on-line information

services. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services.

Real-time data for CME Bitcoin Futures Contracts will be available by subscription from on-line information services. ICE Futures U.S. and CME also provide delayed futures information on current and past trading sessions and market news free of charge on the Fund's website. The specific contract specifications for CME Bitcoin Futures Contracts will also be available on such websites, as well as other financial informational sources. The spot price of bitcoin is available on a 24-hour basis from major market data vendors, including Bloomberg and Reuters. Information relating to trading, including price and volume information, in bitcoin will be available from major market data vendors and from the trading platforms on which bitcoin is traded. EFP transaction volumes are reported daily, by instrument, on the CME website. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The IFV will be disseminated on a per Share basis every 15 seconds during the Exchange's Core Trading Session and be widely disseminated by one or more major market data vendors during the NYSE Arca Core Trading Session. The Fund's website will also include a form of the prospectus for the Fund that may be downloaded. The website will include the Share's ticker and CUSIP information along with additional quantitative information updated on a daily basis, including, for the Fund: (1) the prior business day's reported NAV and closing price and a calculation of the premium and discount of the closing price or mid-point of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters. The

website disclosure of portfolio holdings will be made daily and will include, as applicable, (i) the name, quantity, price, and market value of CME Bitcoin Futures Contracts, (ii) the counterparty to and value of forward contracts, and (iii) other financial instruments, if any, and the characteristics of such instruments and cash equivalents, and amount of cash held in the Fund's portfolio, if applicable.

Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in BTC and/or MBT Contracts and the securities and/or the financial instruments composing the daily disclosed portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of Trust Units based on bitcoin that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of the Shares,

which are Trust Units based on bitcoin and that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-NYSEARCA-2023-58 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSEARCA-2023-58. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEARCA-2023-58 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>118</sup>

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<sup>118</sup> 17 CFR 200.30-3(a)(12).

**Sherry R. Haywood,**

*Assistant Secretary.*