

## MEMORANDUM

TO: File no. SR-NYSEARCA-2023-58

FROM: Samantha Ostrom  
*Policy Counsel, Office of the Chair*

RE: Meeting with Hashdex re: Hashdex Bitcoin ETF

DATE: November 29, 2023

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On November 27, 2023, Corey Frayer and Samantha Ostrom from the Office of the Chair met with the following individuals:

- Samir Kerbage, Hashdex
- Bruno Caratori, Hashdex
- Julia Castelo Branco Rocha, Hashdex
- Thomas Champion, NYSE Arca
- Neel Maitra, Wilson Sonsini Goodrich & Rosati

The discussion concerned NYSE Arca, Inc.'s proposed rule change to list and trade shares of the Hashdex Bitcoin ETF under NYSE Arca Rule 8.500-E. Hashdex also provided the attached presentation.



# Hashdex

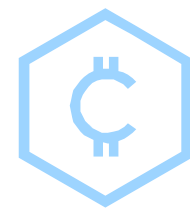
U.S. Securities and Exchange Commission Presentation

November 27, 2023

Since our 2018 founding, Hashdex has managed investment products built to provide investors regulated access to the crypto ecosystem.



Hashdex launched the world's first crypto index ETF and is one of the **largest crypto asset managers**.



Our mission is to open the crypto ecosystem to investors through **best-in-class products**.



We **empower investors through education** with initiatives like the *Nasdaq Academy: Digital Assets*.



Nasdaq partnered with Hashdex to co-develop the **Nasdaq Crypto Index (NCI)**, a bellwether benchmark.

**480m+**

USD (AUM)\*

**14**

crypto ETPs  
across seven  
countries

**5,700+**

advisor registrants  
for the *Digital  
Assets* course

**200k+**

investors  
globally\*

\* As of November 26, 2023.



# The Commission has rejected spot bitcoin ETFs, assessing that none offered the necessary protections against fraud and manipulation.



Issuers sought to resolve vulnerability to manipulation by...



The Commission rejected filings as it assessed that...



... seeking to establish that price formation of bitcoin happened in regulated markets for futures (like oil, gold, and other commodities).



... the evidence that would indicate that futures markets led price formation for bitcoin was inconclusive.

OR



... offering surveillance sharing agreements between the listing exchange and existing spot crypto exchanges.



... trading venues for spot bitcoin were not regulated and did not offer sufficient government oversight to deter manipulative activity.



# Overview of the Hashdex Bitcoin Futures ETF

- On April 6, 2022 the Commission **approved the listing and trading** of the Teucrium Bitcoin Futures Fund.
- **The Fund's name was changed** to the Hashdex Bitcoin Futures ETF shortly thereafter.
- However, as its name indicates, **the fund continues to hold only bitcoin futures** and cash/cash equivalents.
- The Fund has been trading on NYSE Arca since September 15, 2022 and now proposes to **change its investment strategy.**
- A Form S-1 and Form 19b-4 has been submitted and the **Fund will undertake further transactions to effect this change**, working with the SEC.

	Before	After
<b>Fund Name</b>	Hashdex Bitcoin Futures ETF <i>(previously Teucrium Bitcoin Futures Fund)</i>	Hashdex Bitcoin ETF
<b>Benchmark</b>	Average of the closing settlement prices for the first to expire and second to expire bitcoin futures contracts listed on the CME	Nasdaq Bitcoin Reference Rate ("NQBTCS")
<b>Holdings</b>	<ul style="list-style-type: none"> <li>● Bitcoin Futures Contracts traded on CME Bitcoin Futures Market</li> <li>● Cash and Cash Equivalents</li> </ul>	<ul style="list-style-type: none"> <li>● Bitcoin Futures Contracts traded on CME Bitcoin Futures Market</li> <li>● Physical Bitcoin traded on CME Bitcoin Futures Market</li> <li>● Cash and Cash Equivalents</li> </ul>
<b>Significant Market</b>	CME Bitcoin Futures Market <i>(the only market which the proposed ETP trades its non-cash assets)</i>	
<b>Source of pricing for NAV</b>	Bitcoin Futures Contracts on CME	
<b>Creation/Redemption Process</b>	Cash Creations and Redemptions	



# Hashdex structured its spot bitcoin ETF proposal to fully address the Commission's concerns about fraud and manipulation.

The Fund would buy physical bitcoin from a regulated market (the CME); builds on the Commission's Teucrum Order and other SEC guidance; and has several features to prevent market manipulation, including:



## 1. Spot bitcoin sourced at the CME

- The exclusive use of the regulated CME market to source spot exposure, through its Exchange for Physical (EFP) transactions.



## 2. Spot bitcoin priced on CME

- The physical bitcoin price for NAV is derived from CME's bitcoin futures forward curve.
- Relies solely on CME's bitcoin futures settlement prices, with no influence from outside the CME.



## 3. Cash creations/redemptions

- Eliminates the direct arbitrage between unregulated spot markets and the Fund's market price.
- APs/Market Makers are not required to trade and settle bitcoin (i.e., fits within current market structure).
- Proven approach in other markets.



The CME's Exchange for Physical mechanism would allow the fund to **source spot bitcoin exposure in a regulated trading venue**, with full government oversight.

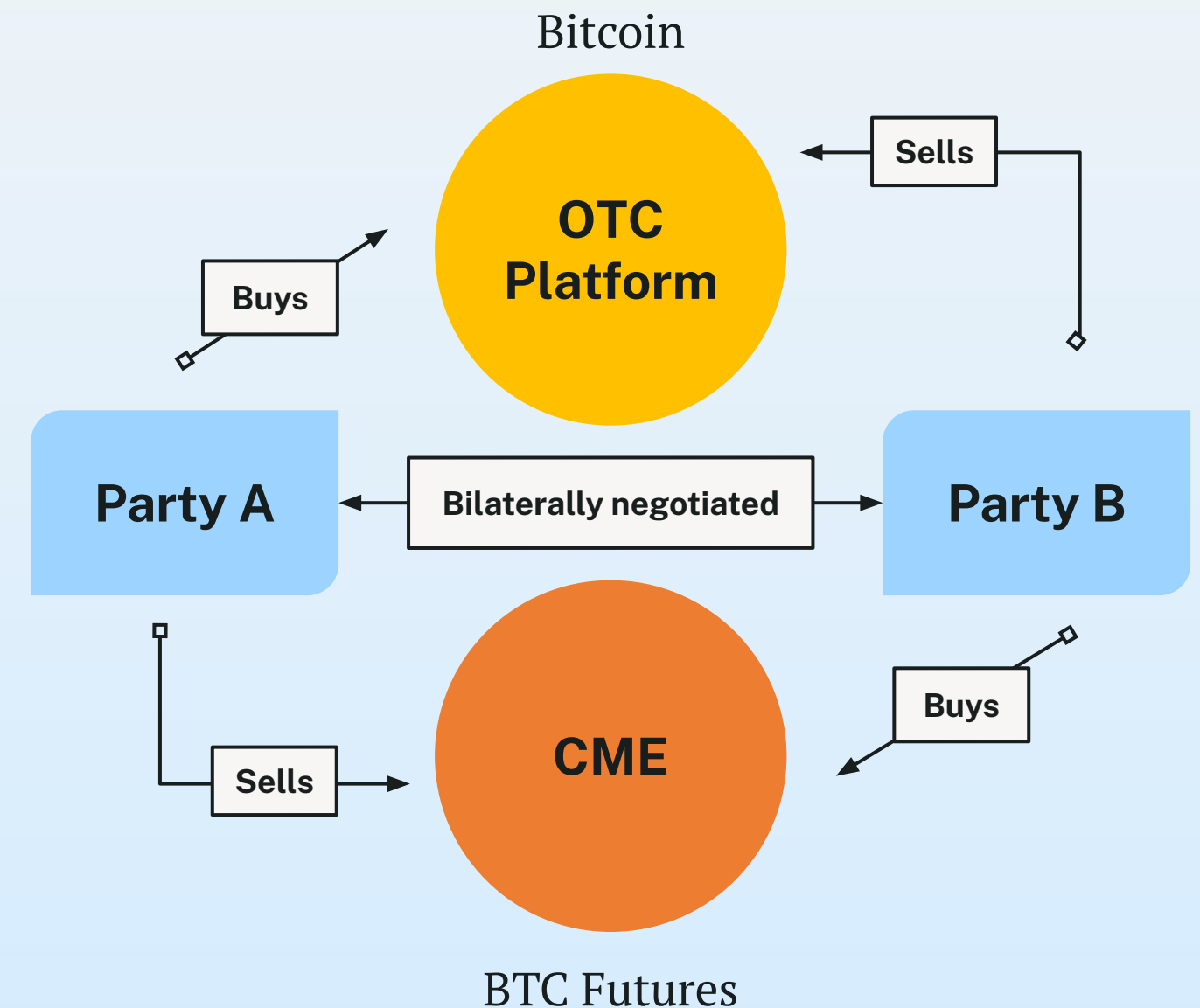
## Overview of Exchange for Physical (EFP) transactions

- Exchange for Physical (EFP) is a **facility for the trading of physical commodities** available on the CME Bitcoin Futures Market.
- For the Fund, EFPs will be used to **purchase and sell physical bitcoin by delivering or receiving the equivalent futures position**.
- EFPs **transactions must be reported to the CME Market**, subject to the CME's market regulation oversight.
- The **same surveillance standards apply to EFP** transactions as apply to the rest of the CME Market.

## Pricing and Regulations

- Prices are based on the related bitcoin futures contracts
- EFP transactions are reviewed by CME's Market Regulation and **cannot be priced off-market** ([CME's Rule 538](#)).

## Mechanics of an EFP Transaction



# EFP transactions provide all the necessary features to deter manipulation of the ETF share price.



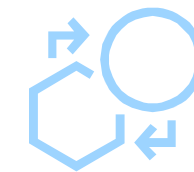
## 1. Regulated Environment

- EFPs occur on the CME, a CFTC-regulated exchange.
- Intermediated by CFTC-regulated FCMs.
- Parties must maintain transaction records and cooperate with surveillance inquiries/investigations.



## 2. Transparency

- EFPs are reported to CME.
- Prices subject to surveillance and review by CME.
- Increases visibility and deters manipulative practices.
- Dodd-Frank modernized EFP transactions, enhancing regulatory standards and transparency.



## 3. Surveillance-Sharing Agreement

- NYSE Arca & CME are Intermarket Surveillance Group (ISG) members.
- Enhanced information sharing and investigative cooperation.







# A novel, investor-centric approach to bitcoin price exposure

We believe the unique features of our filing address the Commission's market manipulation concerns and will provide major safeguards for investors.

Our filing seeks to establish that the CME Bitcoin Futures Market, which is regulated and subject to government oversight, is the relevant market for the proposed ETP.

Specifically, the CME will be the only market where the fund trades its non-cash assets, and it's the only market used for pricing determination and creations and redemptions.

Since 2018, Hashdex has worked hard to provide investors access to the crypto ecosystem through best-in-class, regulated products.

We greatly appreciate the Commission's work to understand the impact of these products on investors, and look forward to continuing this important dialogue.





Thank you!

## Disclaimer

This material expresses Hashdex Asset Management Ltd. and its subsidiaries and affiliates (“Hashdex”)’s opinion for informational purposes only and does not consider the investment objectives, financial situation or individual needs of one or a particular group of investors. We recommend consulting specialized professionals for investment decisions. Investors are advised to carefully read the prospectus or regulations before investing their funds. The information and conclusions contained in this material may be changed at any time, without prior notice. Nothing contained herein constitutes an offer, solicitation or recommendation regarding any investment management product or service. This information is not directed at or intended for distribution to or use by any person or entity located in any jurisdiction where such distribution, publication, availability or use would be contrary to applicable law or regulation or which would subject Hashdex to any registration or licensing requirements within such jurisdiction. No part of this material may be (i) copied, photocopied or duplicated in any form by any means or (ii) redistributed without the prior written consent of Hashdex. By receiving or reviewing this material, you agree that this material is confidential intellectual property of Hashdex and that you will not directly or indirectly copy, modify, recast, publish or redistribute this material and the information therein, in whole or in part, or otherwise make any commercial use of this material without Hashdex’s prior written consent.

Investment in any investment vehicle and cryptoassets is highly speculative and is not intended as a complete investment program. It is designed only for sophisticated persons who can bear the economic risk of the loss of their entire investment and who have limited need for liquidity in their investment. There can be no assurance that the investment vehicles will achieve its investment objective or return any capital. No guarantee or representation is made that Hashdex’s investment strategy, including, without limitation, its business and investment objectives, diversification strategies or risk monitoring goals, will be successful, and investment results may vary substantially over time. Nothing herein is intended to imply that the Hashdex s investment methodology or that investing any of the protocols or tokens listed in the Information may be considered “conservative,” “safe,” “risk free,” or “risk averse.”

Investors should consider the investment objectives, risks, charges and expenses carefully before investing. For a prospectus or summary prospectus with this and other information about the Fund, please visit <https://www.hashdex-etfs.com/>. Read the prospectus carefully before investing.

### Bitcoin Risks

Bitcoin and bitcoin futures are a relatively new asset class and the market for bitcoin is subject to rapid changes and uncertainty. Bitcoin and bitcoin futures are subject to unique and substantial risks, including significant price volatility and lack of liquidity. The value of an investment in the ETF could decline significantly and without warning, including to zero. You should be prepared to lose your entire investment. The ETF does not invest directly in or hold bitcoin. The price and performance of bitcoin futures should be expected to differ from the current “spot” price of bitcoin. These differences could be significant. Bitcoin futures are subject to margin requirements, collateral requirements and other limits that may prevent the ETF from achieving its objective. Margin requirements for futures and costs associated with rolling (buying and selling) futures may have a negative impact on the fund’s performance and its ability to achieve its investment objective. Bitcoin is largely unregulated and bitcoin investments may be more susceptible to fraud and manipulation than more regulated investments. Bitcoin and bitcoin futures are subject to rapid price swings, including as a result of actions and statements by influencers and the media.

### Futures Risk

Commodities and futures investing is generally volatile and risky which may not be suitable for all investors. Futures may be affected by Backwardation: a market condition in which a futures price is lower in the distant delivery months than in the near delivery months. As a result, the fund may benefit because it would be selling more expensive contracts and buying less expensive ones on an ongoing basis; and Contango: A condition in which distant delivery prices for futures exceeds spot prices, often due to costs of storing and insuring the underlying commodity. Opposite of backwardation. As a result, the Fund’s total return may be lower than might otherwise be the case because it would be selling less expensive contracts and buying more expensive one.

- Commodities and futures generally are volatile, and instruments whose underlying investments include commodities and futures are not suitable for all investors.

- This material must be preceded or accompanied by a prospectus. Please read the prospectus carefully before investing.

- The Fund is a commodity pool regulated by the Commodity Futures Trading Commission.

- The Fund, which is an exchange-traded product (ETP), is not a mutual fund or any other type of investment company within the meaning of the Investment Company Act of 1940, as amended, and is not subject to regulation thereunder. An ETP refers to a financial product that is publicly trade like a bond in the stock market. ETPs offer a cost-effective and safe way to diversify an investment portfolio by acquiring exposure to an index or asset class.

- Because the Fund will invest primarily in BITCOIN futures contracts and other derivative instruments based on the price of BITCOIN, an investment in the Fund will subject the investor to the risks of the BITCOIN market, and this could result in substantial fluctuations in the price of the Fund’s shares.

- Shares of the Fund are not insured by the Federal Deposit Insurance Corporation (“FDIC”), may lose value and have no bank guarantee.

- Unlike mutual funds, the Fund generally will not distribute dividends to its shareholders.

Investors may choose to use the Fund as a means of investing indirectly in bitcoin, and there are risks involved in such investments.

This material is not an offer or solicitation of any kind to buy or sell any securities outside of the United States of America.

Hashdex Asset Management Ltd. and its affiliates (‘Hashdex’) is providing this website for information purposes online to sophisticated prospective investors with respect to a potential interest in subscribing shares (‘Shares’) of the Hashdex Bitcoin Futures ETF (the “Fund”). The Fund is a commodity pool that issues Shares that may be purchased and sold on NYSE Arca. The Fund’s investment objective is for changes in the Shares’ NAV to reflect the daily changes of the price of the Benchmark, less expenses from the Fund’s operations. Under normal market conditions, the Fund invests in Benchmark Component Futures Contracts and cash and cash equivalents. Because the Fund’s investment objective is to track the price of the Benchmark by investing in Benchmark Futures Contracts rather than bitcoin, changes in the price of the Shares will vary from changes in the spot price of bitcoin. The Fund will invest in BTC Contracts and MBT Contracts to the extent necessary to achieve maximum exposure to the bitcoin futures market. Because the Fund’s investment objective is to track the price of the Benchmark by investing in Benchmark Futures Contracts rather than bitcoin, changes in the price of the Shares will vary from changes in the spot price of bitcoin.

The Fund employs Foreside Fund Services, LLC as the Distributor for the Fund. The Distribution Services Agreement among the Distributor, the Sponsor, and the Trust calls for the Distributor to work with the Custodian in connection with the receipt and processing of orders for Creation Baskets and Redemption Baskets and the review and approval of all Fund sales literature and advertising material. The Distributor’s principal business address is Three Canal Plaza, Suite 100, Portland, Maine 04101. The Distributor is a broker-dealer registered with the U.S. Securities and Exchange Commission (“SEC”) and a member of FINRA.

The Fund is a series of the Teucrium Commodity Trust (the “Trust”). The sponsor to the Fund is Teucrium Trading, LLC (the “Sponsor”), which receives a management fee. The Sponsor is registered as a commodity pool operator (“CPO”) and a commodity trading adviser (“CTA”) with the Commodity Futures Trading Commission (“CFTC”) and is a member of the National Futures Association (“NFA”). Hashdex Asset Management Ltd. (“Hashdex”) will serve as the Fund’s Digital Asset Adviser and will assist the Sponsor and Marketing Agents with research and investment analysis regarding bitcoin and bitcoin markets for use in the marketing of the Fund. Hashdex will also provide the Fund with marketing services including, but not limited to, branding, the issuance of press releases, preparation of website data content, holding promotional webinars and engaging in promotional activities through social media outlets.

Hashdex has no responsibility for the investment or management of the Fund investment portfolio or for the overall performance or operation of the Fund.

For more information pertaining to the relationship of companies involved in the Fund please read the prospectus.



