Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is November 11, 2023. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised therein. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates December 26, 2023, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-CboeBZX–2023–070).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–21790 Filed 10–2–23; 8:45 am]

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[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98564; File No. SR–NYSEARCA–2023–58)]

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

September 27, 2023.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 22, 2023, 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 to list and trade shares of the Hashdex Bitcoin Futures ETF under NYSE Arca Rule 8.500–E (''Trust Units''). The proposed rule change is available on the Exchange's website at *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 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 of the Hashdex Bitcoin Futures ETF (the ''Fund'') under NYSE Arca Rule 8.500–E. The Commission previously approved the listing and trading of the Shares pursuant to NYSE Arca Rule 8.200–E, Commentary .02 as shares of the Teucrium Bitcoin Futures Fund.[4] The Fund's name was subsequently changed to the Hashdex Bitcoin Futures ETF pursuant to an April 18, 2022 amendment to the Fund's registration statement.[5] In addition to the proposed changes to the Fund's investment objective and strategy, as further discussed below, the Exchange proposes to update the name of the Fund to the Hashdex Bitcoin ETF to reflect the same. This new name for the Fund is reflected in the Form S–1 filed by the Tidal Commodities Trust I (the ''Trust'') on July 21, 2023.[6]

The Fund is a series of the Trust, a Delaware statutory trust.[7] The Fund is managed and controlled by Toroso Investments LLC (the ''Sponsor'').[8] The

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *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.*

[5] 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.

[6] On July 21, 2023, the Trust filed with the Commission a registration statement on Form S–1 under the Securities Act (15 U.S.C. 77a) (File No. 333–____) (the ''July 21, 2023 Form S–1'') reflecting the Trust's assumption of management and control of Fund from Teucrium Commodity Trust. The Shares of the Fund were originally issued by the Teucrium Commodity Trust pursuant to a registration statement on Form S–1 filed with the Commission on May 20, 2021 (File No. 333–256339). The Exchange will submit a separate proposed rule change relating to the transfer of management and control of the Fund from Teucrium Commodity Trust to the Trust.

[7] On August 25, 2023, the Trust confidentially filed a draft registration statement under the Securities Act (the ''Registration Statement''). 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 21 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 Registration Statement to the Commission on a confidential basis. The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement.

[8] The July 21, 2023 Form S–1 also reflects that Toroso Investments LLC has assumed role of the Sponsor of the Trust from Teucrium Trading, LLC. 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.

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'').

The Fund's Investment Objective and Strategy

According to the Registration Statement, the Chicago Mercantile Exchange, Inc. (''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'').[9] 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'').[10]

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. Like a futures contract on a commodity or stock index, BTC Contracts and MBT Contracts allow investors to hedge investment positions or speculate on the future price of Bitcoin.

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 Fund's shares (''Shares'') reflect the daily changes in the price of a specified benchmark (the ''Benchmark''). The Benchmark will be calculated using the Nasdaq Bitcoin Reference Price—Settlement (the ''NQBTCS''),[11] which ultimately tracks the price of Bitcoin.[12] 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 exchanges that meet eligibility criteria of the Nasdaq Crypto Index (''NCI''). The NQBTCS is calculated once every trading day through the application of a publicly available rules-based pricing methodology to a diverse collection of pricing sources to provide an institutional-grade reference price for Bitcoin.[13] The pricing methodology 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 settlement value is the Time Weighted Average Price (''TWAP'') calculated across 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 methodology 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 on the weight of information from each exchange that contributes pricing information based on the deviation of an exchange's price, volatility, or volume from the median across all exchanges. For example, if a core exchange'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 exchanges'' that are screened, selected, and approved by the Nasdaq Crypto Index Oversight Committee (the ''NCIOC''). Core exchanges must: (1) have strong forking controls; (2) have effective anti-money laundering (AML) controls; (3) have reliable and transparent application programming interface (API) 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; (9) evidence cooperation with regulators and law enforcement; and (10) have a minimum market representation for trading volume. Additionally, the NCIOC conducts further diligence to assess an exchange's eligibility and will consider additional criteria such as the exchange's organizational and ownership structure, security history, and reputation; the list of existing core exchanges will be recertified by the NCIOC at minimum on an annual basis.

The Sponsor believes that the NQBTCS is suitable for use in calculating the Benchmark because (i) it would provide reliable pricing for purposes of tracking the actual performance of spot Bitcoin, (ii) it is administered by an independent index administrator, and (iii) its methodology is specifically designed to mitigate potential manipulation coming from unregulated markets. Specifically, the Sponsor believes that (i) by tracking the actual price of spot Bitcoin, which would better represent the Fund's strategy, NQBTCS is a Benchmark that will be more transparent and adequate for the Fund's investors; (ii) using a Benchmark that has its own independent index administrator provides investors the best practices in governance and accountability and benchmark quality; and (iii) the pricing methodology underlying the NQBTCS is designed to be resistant to potential price manipulation by applying a robust methodology to trade data captured from NCI core exchanges, which have to meet strict criteria created by the NCIOC, thereby drawing on a diverse collection of trustworthy pricing sources to provide an institutional-grade reference price for Bitcoin that accounts for variances in price across a wide range of sources and that adjusts to mitigate the impact of anomalous trading activity that could compromise the integrity of the NQBTCS price.

According to the Registration Statement, the Fund seeks to maintain its holdings in Bitcoin Futures Contracts with a roughly constant expiration profile. Therefore, the Fund's positions will be changed or ''rolled'' on a regular basis in order to track the changing nature of the Benchmark by closing out first to expire contracts prior to

[9] BTC Contracts began trading on the CME Globex (''Globex'') trading platform on December 15, 2017, and are cash-settled in U.S. dollars. MBT Contracts began trading on the Globex trading platform on May 3, 2021, under the ticker symbol ''MBT'' and are also cash-settled in U.S. dollars.

[10] 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.

[11] *See https://indexes.nasdaqomx.com/Index/Overview/NQBTCS.*

[12] The Approval Order stated that the Benchmark would be calculated using the closing settlement prices of BTC Contracts listed on the CME. *See* Approval Order, 87 FR at 21676.

[13] *See https://indexes.nasdaqomx.com/docs/methodology_NCI.pdf.*

settlement that are no longer part of the Benchmark, and then entering into second to expire contracts. Accordingly, the Fund will never carry futures positions all the way to cash settlement—the Fund will price only off of the daily settlement prices of the Bitcoin Futures Contracts.[14] To achieve this, the Fund will roll its futures holdings prior to cash settlement of the expiring contract.

In seeking to achieve the Fund's investment objective, the Sponsor will employ a ''neutral'' investment strategy that is intended to track the changes in the Benchmark regardless of whether the Benchmark goes up or goes down. The Fund will endeavor to trade in Bitcoin Futures Contracts and spot Bitcoin so that the Fund's average daily tracking error against the Benchmark will be less than 10 percent over any period of 30 trading days. The Fund's ''neutral'' investment strategy is designed to permit investors generally to purchase and sell the Fund's Shares for the purpose of investing in the Bitcoin Futures Contracts and spot Bitcoin (as discussed below). Such investors may include participants in the Bitcoin market seeking to hedge the risk of losses in their Bitcoin-related transactions, as well as investors seeking price exposure to the Bitcoin market.

According to the Registration Statement, one factor determining the total return from investing in futures contracts is the price relationship between soon to expire contracts and later to expire contracts. If the futures market is in a state of backwardation (*i.e.,* when the price of BTC Contracts and MBT Contracts in the future is expected to be less than the current price), the Fund will buy later to expire contracts for a lower price than the sooner to expire contracts that it sells. Hypothetically, and assuming no changes to either prevailing BTC Contracts and MBT Contracts' prices or the price relationship between soon to expire contracts and later to expire contracts, the value of a contract will rise as it approaches expiration. Over time, if backwardation remained constant, the performance of a portfolio would continue to be affected. If the futures market is in contango, the Fund will buy later to expire contracts for a higher price than the sooner to expire contracts that it sells. Hypothetically, and assuming no other changes to either prevailing BTC Contracts and MBT Contracts' prices or the price relationship between the spot price, soon to expire contracts and later to expire contracts, the value of a contract will fall as it approaches expiration. Over time, if contango remained constant, the performance of a portfolio would continue to be affected. Frequently, whether contango or backwardation exists is a function, among other factors, of the prevailing market conditions of the underlying market and government policy.

The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. That is, 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.

According to the Registration Statement, the Fund will seek to achieve its investment objective by investing in Bitcoin Futures Contracts as well as in physical Bitcoin to the extent allowed by the Fund's investment restrictions on spot Bitcoin, using a pricing methodology, for purposes of calculating the Fund's NAV, that will derive spot Bitcoin prices from Bitcoin Futures Contracts and not from unregulated exchanges, as further explained below (''Spot Bitcoin'').[15] In doing so, the Sponsor expects to provide a better tracking of Bitcoin exposure to investors, while using Bitcoin Futures Contracts in its strategy and relying on the CME as its ''market of relevant size.'' In particular, to avoid any exposure to potential manipulation from unregulated exchanges, the Fund's NAV will be calculated using a spot Bitcoin price derived from CME futures prices, as further explained below, and the Fund expects to purchase and sell physical Bitcoin via CME's Exchange for Physical Transactions, which are subject to CME's market surveillance.

The Bitcoin and Bitcoin Futures Markets Have Progressed and Matured Significantly

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 the 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 Network's source code, often referred to as 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 enter circulation and is the mechanism by which versions of the blockchain held by users

[14] As discussed in more detail below, the CME determines the daily settlements for Bitcoin futures based on trading activity on CME Globex between 14:59:00 and 15:00:00 Central Time (CT), which is the ''settlement period.''

[15] The Approval Order stated that the Fund would only invest in BTC Contracts and MBT Contracts and in cash and cash equivalents.

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 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 first rule filing proposing to list an exchange-traded product to provide exposure to Bitcoin in the U.S. was submitted by the Cboe BZX Exchange, Inc. on June 30, 2016.[16] 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 securities offering had not begun to develop.[17] Similarly, regulated U.S. Bitcoin futures contracts did not exist. The Commodity Futures Trading Commission (the ''CFTC'') had determined that Bitcoin is a commodity,[18] 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.[19] While the first over-the-counter Bitcoin fund launched in 2013, public trading was limited and the fund had only $60 million in assets.[20] 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.[21]

As of the first quarter of 2021, 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[22] and shares in investment vehicles holding Bitcoin futures.[23] 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 adopted a conditional no-action position permitting certain special purpose broker-dealers to custody digital asset securities under Rule 15c3–3 under the Exchange Act.[24] 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.[25] 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;[26] and multiple transfer agents who provide

[16] *See* 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 (August 1, 2018) (the ''Winklevoss II Order''). This proposal was subsequently disapproved by the Commission. *See id.*

[17] 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.

[18] *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.''

[19] 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.*

[20] *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).

[21] *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.*

[22] *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.*

[23] *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.*

[24] *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).

[25] *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.*

[26] *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.*

services for digital asset securities have registered with the Commission.[27]

Beyond the Commission's purview, the regulatory landscape has also changed significantly since 2016, and cryptocurrency markets have grown and evolved as well. 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 [28] 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 exchange, has grown to over 110 million at the end of 2022, compared to 43 million at the end of 2020.[29] CFTC-regulated Bitcoin futures (''Bitcoin Futures'') represented approximately $42 billion in notional trading on the CME 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. 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.[30] 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.[31] 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.[32] 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,[33] and has proposed rules imposing requirements on entities subject to the BSA that are specific to the technological context of virtual currencies.[34] 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.[35]

In addition to the regulatory developments noted above, more traditional financial market participants appear to be embracing cryptocurrency: large insurance companies,[36] investment banks,[37] asset managers,[38]credit card companies,[39]university endowments,[40] pension funds,[41] and even historically Bitcoin skeptical fund managers [42] 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.[43] Established companies like Tesla, Inc.,[44] MicroStrategy Incorporated,[45] and Square, Inc.,[46] 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

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[27] *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.*

[28] *See https://coinmarketcap.com/largest-companies/.*

[29] *See* Coinbase 2022 10–K, available at: *https://s27.q4cdn.com/397450999/files/doc_financials/2022/q4/86fe25e0-342b-40fa-aacc-ea04faf322cb.pdf.*

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

[31] 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.* 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 exchanges. *See* CFTC Release No. 8270–20 (October1, 2020), *available at: https://www.cftc.gov/PressRoom/PressReleases/8270-20.*

[32] *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.*

[33] *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.*

[34] *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.*

[35] *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.*

[36] 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.*

[37] *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.*

[38] *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.*

[39] *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/.*

[40] *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.*

[41] *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.*

[42] *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.*

[43] *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.*

[44] *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/1318605/000156459021004599/tsla-10k_20201231.htm.*

[45] *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/1050446/000156459020047995/mstr-10q_20200930.htm.*

[46] *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/1512673/000151267320000012/sq-20200930.htm.*

exchange-traded vehicle remains limited. As investors and advisors increasingly utilize Exchange-Traded Products (''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 Bitcoin Futures 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.[47]

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[48] and through OTC Bitcoin Funds.[49] As of the date of this filing, it is anticipated that other 1940 Act funds will soon begin to pursue Bitcoin through other means, including through options on Bitcoin futures contracts and investments in privately offered pooled investment vehicles that invest in Bitcoin.[50] In previous statements, the Staff of the Commission has acknowledged how such funds can satisfy their concerns regarding custody, valuation, and manipulation.[51] 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.

OTC Bitcoin Funds and Investor Protection

The Sponsor notes that U.S. investor exposure to Bitcoin through OTC Bitcoin Funds has grown into the tens of billions of dollars. With that growth, so too has grown the potential risk to U.S. investors. As described below, premium and discount volatility, high fees, insufficient disclosures, and technical hurdles are exposing U.S. investors to risks that could potentially be eliminated through access to a Bitcoin futures-based ETP. Investor protection concerns remain and are growing related to OTC Bitcoin Funds. The Sponsor understands the Commission's previous focus in prior disapproval orders on potential manipulation of a Bitcoin ETP holding actual Bitcoin, but believes that such concerns have been sufficiently mitigated by the use of futures contracts, futures-based pricing for Spot Bitcoin, and EFP transactions for Spot Bitcoin in the proposed ETP. Accordingly, the Sponsor believes that the Fund represents an opportunity for U.S. investors to gain price exposure to Bitcoin futures contracts and Spot Bitcoin in a regulated and transparent exchange-traded vehicle that 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 Bitcoin futures contracts or Bitcoin via EFP.

OTC Bitcoin Funds and Premium/Discount Volatility

According to the Sponsor, OTC Bitcoin Funds are generally designed to provide exposure to Bitcoin in a manner similar to the Shares. However, unlike the Shares, OTC Bitcoin Funds are unable to freely offer creation and redemption in a way that incentivizes market participants to keep their shares trading in line with their NAV[52] and, as a result, shares of OTC Bitcoin Funds frequently trade at a price that is out of line with the value of their assets held. Historically, OTC Bitcoin Funds have traded at a significant premium to NAV.[53]

Trading at a premium or a discount is not unique to OTC Bitcoin Funds and is not in itself problematic, but the size of such premiums/discounts and volatility

[47] 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).

[48] *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).

[49] *See, e.g.,* Amplify Transformational Data Sharing ETF (File No. 333–207937); and ARK Innovation ETF (File No. 333–191019).

[50] *See* Stone Ridge Trust, Post-Effective Amendment No. 74 to Registration Statement on Form N–1A (File No. 333–184477), available at: *https://www.sec.gov/Archives/edgar/data/1559992/000119312521072856/d129263d485apos.htm.*

[51] *See* Dalia Blass, ''Keynote Address—2019 ICI Securities Law Developments Conference'' (December 3, 2019), *available at: https://www.sec.gov/news/speech/blass-keynote-address-2019-ici-securities-law-developments-conference.*

[52] Because OTC Bitcoin Funds are not listed on an exchange, they are also not subject to the same transparency and regulatory oversight by a listing exchange as the Shares would be. In the case of the Fund, the common membership of the Exchange and the CME in the Intermarket Surveillance Group (''ISG'') results in increased investor protections as compared to OTC Bitcoin Funds.

[53] The inability to trade in line with NAV may at some point result in OTC Bitcoin Funds trading at a discount to their NAV, which has occurred more recently with respect to one prominent OTC Bitcoin Fund. While that has not historically been the case, and it is not clear whether such discounts will continue, such a prolonged, significant discount scenario would give rise to nearly identical potential issues related to trading at a premium.

thereof highlight the key differences in operations and market structure of OTC Bitcoin Funds as compared to ETPs.

Combined with the significant increase in AUM for OTC Bitcoin Funds over the past year, the size and volatility of premiums and discounts for OTC Bitcoin Funds have given rise to significant and quantifiable investor protection issues, as further described below. In fact, the largest OTC Bitcoin Fund has grown to $16.0 billion in AUM as of September 6, 2023.[54] In the past it has traded at a premium of between roughly five and forty percent, though it has seen premiums at times above one hundred percent.[55] Recently, however, it has traded at a discount, reaching almost 50% discount a few times and trading at an average 40% discount to NAV from October 2022 to June 2023. As of September 6, 2023, the discount to NAV has narrowed and was approximately 19.5%, representing around $3.1 billion less in market value than the Bitcoin actually held by the fund. If premium/discount numbers move back to the middle of its historical range to a 20% premium (which historically could occur), it would represent a swing of approximately $6.4 billion in value unrelated to the value of Bitcoin held by the fund and if the premium returns to the upper end of its typical range, that number increases to $18.9 billion. The Sponsor notes that, as these numbers are only associated with a single OTC Bitcoin Fund, the potential dollars at risk for the whole industry is even higher.

The Sponsor believes that the risks associated with volatile premiums/discounts for OTC Bitcoin Funds raise significant investor protection issues in several ways. First, investors may be buying shares of a fund for a price that is not reflective of the per share value of the fund's underlying assets. Even operating within the normal premium range, it is possible for an investor to buy shares of an OTC Bitcoin Fund only to have those shares quickly lose 10% or more in dollar value without any movement of the price of Bitcoin. That is to say—the price of Bitcoin could have stayed exactly the same from market close on one day to market open the next, yet the value of the shares held by the investor decreased only because of the fluctuation of the premium/discount. As more investment vehicles, including mutual funds and ETFs, seek to gain exposure to Bitcoin, the easiest option for a buy and hold strategy is often an OTC Bitcoin Fund, meaning that even investors that do not directly buy OTC Bitcoin Funds can be disadvantaged by extreme premiums (or discounts) and premium volatility.

The second issue is related to the first and explains how the premium in OTC Bitcoin Funds essentially creates a transfer of value from retail investors to more sophisticated investors. Generally speaking, only accredited investors are able to purchase shares from the issuing fund, which means that they are able to purchase shares directly with the fund at NAV (in exchange for either cash or Bitcoin) without having to pay the premium or sell into the discount. While there are often minimum holding periods for shares required by law, an investor that is allowed to purchase directly from the fund is able to hedge their Bitcoin exposure as needed to satisfy the holding requirements and collect on the premium or discount opportunity.

As noted above, the existence of a premium or discount and the premium/discount collection opportunity is not unique to OTC Bitcoin Funds and does not in itself warrant the approval of an exchange traded product.[56] What is unique is that such significant and persistent premiums and discounts can exist in a product with over $16 billion in assets under management,[57] that billions of retail investor dollars are constantly under threat of premium/discount volatility,[58] and that premium/discount volatility is generally captured by more sophisticated investors on a riskless basis. While the Sponsor appreciates the Commission's focus on potential manipulation of a Bitcoin ETP in prior disapproval orders and believes those concerns are adequately addressed in this filing, the Sponsor believes that the Commission should also consider the direct, quantifiable investor protection issue in determining whether to approve this proposal, particularly when the Trust, as a Bitcoin ETP, is designed to reduce the likelihood of significant and prolonged premiums and discounts with its open-ended nature as well as the ability of market participants (*i.e.,* market makers and authorized participants) to create and redeem on a daily basis.

The Bitcoin Futures Market Has Developed Alongside the Bitcoin Spot Market Into a Strong and Viable Marketplace That Stands on Its Own

As noted above, CME began offering trading in BTC Contracts in 2017, and in MBT Contracts in 2021. Each of the contract's final cash settlement is based on the CME CF Bitcoin Reference Rate (the ''CME CF BRR'').[59] 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 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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[54] As compared to an AUM of approximately $2.6 billion on February 26, 2020. While the price of one Bitcoin has increased approximately 193% in the intervening period, the market price of a share of the fund has increased by approximately 80%, indicating that the price of a share of the fund is attributable to more than just price appreciation in Bitcoin.

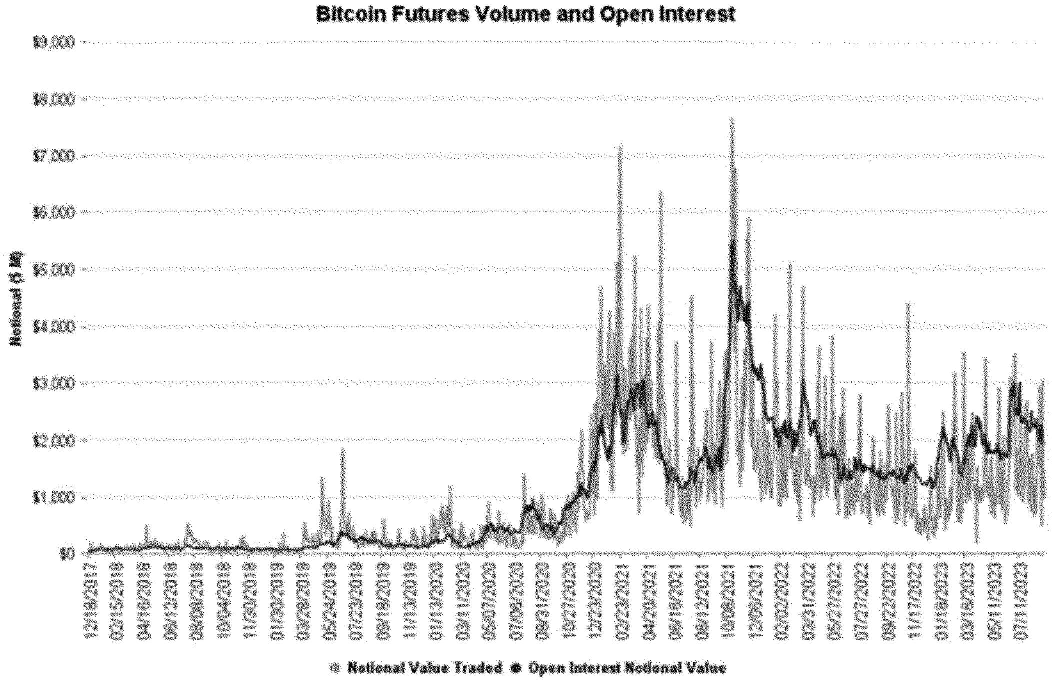
[55] *See* ''Traders Piling Into Overvalued Crypto Funds Risk a Painful Exit'' (February 4, 2021), available at: *https://www.bloomberg.com/news/articles/2021-02-04/bitcoin-one-big-risk-when-investing-in-crypto-funds.*

[56] For example, similar premiums/discounts and premium/discount volatility exist for other non-Bitcoin cryptocurrency related over-the-counter funds, but the size and investor interest in those funds does not give rise to the same investor protection concerns that exist for OTC Bitcoin Funds.

[57] At $16 billion in AUM, the largest OTC Bitcoin Fund would be among the top 90 largest out of roughly 2,400 U.S. listed ETPs. Source: *https://etfdb.com/compare/market-cap/.*

[58] Over the 12 months, there were 4 occurrences where the discount changed overnight by 500 percentage points or more in a single day, either narrowing or widening the discount. In two incidents, the premium dropped from 28.28% to 12.29% from the close on 3/19/20 to the close on 3/20/20 and from 38.40% to 21.05% from the close on 5/13/19 to the close on 5/14/19. Similarly, over the period of 12/21/20 to 1/21/20, the premium went from 40.18% to 2.79%. While the price of Bitcoin appreciated significantly during this period and NAV per share increased by 41.25%, the price per share increased by only 3.58%.

[59] According to the CME, the CME CF BRR aggregates the trade flow of major Bitcoin spot exchanges 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

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Similarly, the number of large open interest holders[60] has continued to increase even as the price of Bitcoin has risen, as have the number of unique accounts trading Bitcoin Futures.

As it pertains specifically to the Bitcoin Futures Contracts 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 Bitcoin Futures Contracts, followed by the daily average volume for all of the Bitcoin Futures Contracts, the first to expire and the second to expire. With a Daily Notional Average Volume of $1.4 billion in 2023, that is almost 6 times the 2019 level and almost 3 times the 2020 ones. Despite the bear market, the trading volume in 2023 has been resilient and slightly increasing compared to 2022.

	Daily notional average volume for bitcoin futures contracts (in million $)	Average daily volume for bitcoin futures contracts	First-to-expire bitcoin futures contract	Second-to-expire bitcoin futures contract
2019	242	6,365	5,400	700
2020	523	8,782	7,100	1,300
2021	2,379	10,035	7,300	2,100
2022	1,426	10,735	8,200	2,100
2023	1,413	10,775	8,400	1,900

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

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

[60] 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.*

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.

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. Considering that the Fund will be able to hold spot bitcoin acquired via EFP transactions made on the CME, the Sponsor will engage a third-party custodian to act as the bitcoin custodian for the Fund to maintain custody of the Fund's bitcoin assets.

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

The Sponsor believes that the Fund's holding a combination of Bitcoin Futures Contracts, Spot 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 spot 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 Exchange-Traded Products (''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.[61]

In the context of Bitcoin, the CME Bitcoin Futures Market (the ''CME 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.[62]

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 [Market] 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 Bitcoin Futures Contracts holdings.[63] However, there is still a lack of consensus on whether the CME Market is of ''significant size'' in relation to the spot Bitcoin market based on the test historically applied by the Commission.

Interrelationship Between the CME 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.''[64] 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 Market because it is the same market on which the Fund trades its non-cash assets. Therefore, the Sponsor's strategy aims to establish a comprehensive interrelationship between the CME Market and the Fund to unequivocally classify the CME Market as the market of significant size in relation to the ETP. The Sponsor notes that, although the Fund may, as proposed, hold physical Bitcoin, it does not rely on any information or services from unregulated Bitcoin spot exchanges (such as Binance and others). Therefore, no spot Bitcoin exchange could be

[61] *See* 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 37592–94 (Aug. 1, 2018) (SR–BatsBZX–2016–30) (the ''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'').

[62] *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.*

[63] *See* Approval Order, 87 FR at 21678 and further discussion at 21678–81.

[64] *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)).

considered a ''market of relevant size'' in relation to the Fund.

The Sponsor has designed the Fund to have five novel features that underscore its significant interrelationship with the CME:

1. *Investment strategy:* The Fund will hold a mix of Spot Bitcoin, Bitcoin Futures Contracts, and cash and cash equivalents, subject to certain investment restrictions (as further discussed below).

2. *Futures-based pricing for Spot Bitcoin:* The price determination for Spot Bitcoin holdings in the NAV calculation will be derived from the CME Market's Bitcoin futures curve. As a result, the price of Spot Bitcoin holdings will depend solely on Bitcoin futures settlement prices on the CME Market and will not depend directly on price information from unregulated spot Bitcoin markets (as further discussed below).

3. *Investment restrictions on Spot Bitcoin:* The Fund will be subject to dynamic investment restrictions that are designed to mitigate the risk that Shares of the Fund could be manipulated by manipulating the Bitcoin spot market and ensuring that the CME Market is the only ''market of significant size'' with respect to the Fund.

4. *Physical Bitcoin purchases on the CME Market:* The Fund will use the CME Market's Exchange for Physical (''EFP'') [65] transactions to acquire and dispose of Spot Bitcoin, instead of transactions on unregulated spot exchanges. Accordingly, the only non-cash assets held by the Fund (Bitcoin Futures Contracts and Bitcoin via EFP) would be traded on the CME Market, such that the exchanges' ability to share information pursuant to their common ISG membership could assist in detecting and deterring fraudulent or manipulative misconduct related to those assets.

5. *Creations and redemptions:* The Fund will use cash creations and redemptions [66] to deter intraday Share price manipulation that could originate from in kind creation or redemption from physical spot Bitcoin sourced in unregulated spot markets. Investment in Spot Bitcoin thus would not be directly related to creation/redemptions, but instead on target portfolio exposure, as allowed by the investment restrictions on spot Bitcoin. Trading for Spot 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, and further believes that, given these features of the Fund, the CME Market would be considered the regulated market of significant size in relation to the Fund.

Additionally, as further discussed below, the Sponsor believes that the Fund investment strategy is designed such that it would be highly unlikely that a person attempting to manipulate the Fund could be successful by trading on unregulated spot and derivatives markets. Thus, no market other than CME could be considered as of significant size in relation to the Fund.

The Sponsor further believes that the novel approach proposed 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 Market and that there is a reasonable likelihood that a person attempting to manipulate the Fund would also have to trade on the CME Market to successfully manipulate the ETP (and, accordingly, the exchange's common ISG membership would aid the Exchange in detecting and deterring potential misconduct).

According to the Sponsor, the Sponsor's approach is designed in such a way that any attempt to manipulate the Fund would require trading on the CME Market, for the following reasons:

1. *Futures-based pricing for Spot Bitcoin:* Because the price determination for Spot Bitcoin holdings in the Fund would be derived from the CME Market futures curve, any attempt to manipulate the price of the Fund would require influencing the futures curve on the CME 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 and unequivocal lead-lag relationship in which CME Market prices lead both the spot price used by the Fund to determine its NAV and the Fund's market price.

2. *Investment restrictions on Spot Bitcoin:* The dynamic investment restrictions in place for the Fund (as discussed in the section below entitled ''Investment Restrictions on Spot Bitcoin'') ensure that any significant trading activity aimed at manipulating the Fund would likely spill over into the CME Market because the investment restrictions are designed to prevent the Fund from becoming so large in relation to the unregulated spot market that the cost-benefit tradeoff is favorable for the potential manipulator to execute without influencing the futures market.

3. *Spot Bitcoin operations via EFP on the CME Market:* Because the Fund's Spot Bitcoin operations would take place via CME Market EFP transactions, any attempt to manipulate the Fund's transactions in Spot Bitcoin holdings would need to occur on the CME Market. Accordingly, any potential manipulation of the Fund is closely tied to the CME Market.

4. *Creations and redemptions:* The Fund's use of cash creations and redemptions also reduces the potential for manipulation through the creation and redemption processes. Any significant creation or redemption activity aimed at manipulating the Fund would likely influence the futures market, given that the investment in spot is based on target portfolio exposure and not directly related to creations or redemptions.

Given these factors, the Sponsor believes that the Exchange and CME Market's common membership in the ISG would be an effective tool in assisting the Exchange in detecting and deterring potential misconduct. The agreement would provide the Exchange with access to necessary trading data from the CME Market, which is intrinsically linked to the Fund, allowing for comprehensive oversight and the ability to quickly 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.'' [67] The Commission further noted in the Approval Order that, as a result, ''when the CME shares its surveillance information with Arca, the information would assist in detecting and deterring fraudulent or manipulative misconduct related to the non-cash assets held by the [Fund].'' [68] 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 markets, even when the attempt is made indirectly by trading outside the CME in unregulated markets.

The Sponsor also believes that it is unlikely that trading in the Fund would be the predominant influence on prices on the CME Market. The addition of Spot Bitcoin to the Fund's holdings, using EFP transactions on the CME Market, does not significantly alter the influence of the Fund's trading on the CME Market, for the following reasons:

1. *The Fund's limited influence over the market:* As the Commission noted in the

[65] *See https://www.cmegroup.com/trading/equity-index/exchange-for-physical-efp-transactions.html.*

[66] In a cash creation/redemption format, the Authorized Participant delivers cash to the fund instead of Spot Bitcoin.

[67] *See* Approval Order, 87 FR at 21679.

[68] *Id.*

Approval Order,[69] the Commission observed no disruption to the CME or evidence that the Fund exerted a dominant influence on CME Bitcoin futures prices. That being the case, the Sponsor believes that it is very unlikely that the Fund's trading, even with the addition of Spot 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 Spot Bitcoin in the Fund's portfolio would be converted from futures positions using EFP transactions on the CME Market. The Fund's Spot Bitcoin holdings 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.

3. *Investment restrictions on Spot Bitcoin and futures-based pricing:* The dynamic investment restrictions and futures-based pricing for Spot Bitcoin would ensure that the Fund's Spot Bitcoin holdings remain at a level where they are unlikely to significantly impact the futures market and that the futures market continues to influence the price of the Fund's Spot Bitcoin holdings (and not the other way around).

The Sponsor therefore believes that the proposed addition of Spot Bitcoin to the Fund's holdings would not significantly alter the influence of the Fund's trading on the CME Market and that the proposed design of the Fund's investment strategy ensures that its potential impact on the CME Market is the same or smaller than 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 Market was already showing a significant increase in size, as per the table below:[70]

CHICAGO MERCANTILE EXCHANGE BITCOIN FUTURES

	February 26, 2020 (million)	April 7, 2021 (million)
Trading Volume	$433	$4,321
Open Interest	238	2,582

The Sponsor notes that growth of the CME 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 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:

CHICAGO MERCANTILE EXCHANGE BITCOIN FUTURES

	April 6, 2022 (million)	June 30, 2023 (million)
Trading Volume	$1,692	$3,473
Open Interest	2,529	2,800

The Sponsor also notes that in the same period during which CME Market open interest remained at roughly at the same level, trading volume and open interest of unregulated Bitcoin futures markets had a significant drawdown: [71]

UNREGULATED FUTURES MARKET

	April 7, 2021 (million)	April 6, 2022 (million)	June 30, 2023 (million)
Trading Volume	$68,333	$37,333	$29,693
Open Interest	20,420	13,980	11,630

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

SPOT BITCOIN

	April 7, 2021 (million)	April 6, 2022 (million)	June 1, 2023 (million)
Trading Volume	$698,000	$297,000	$116,000

The Sponsor believes that the data above suggests an increase in market appetite for regulated products (*e.g.,* CME Market Bitcoin futures) 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 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

[69] *See id.* at 21681.

[70] *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).

[71] 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.

Contracts.'' [72] The Sponsor believes that the CME Market is also sufficiently developed to support ETPs that seek exposure to Bitcoin by holding a mix of CME Market Bitcoin Futures Contracts and physical Bitcoin through the use of CME Market EFP transactions, because the CME Market is the only market on which the Fund's only proposed non-cash assets would trade. Thus, the CME Market remains the ''significant market'' in relation to the Fund, as proposed.

Moreover, as detailed above, the Sponsor's proposed investment strategy ensures that no unregulated spot exchange 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 spot Bitcoin and its NAV determination, are conducted through the CME Market. Thus, all transactions 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 Market, and not on any unregulated spot Bitcoin exchange, there is significantly reduced potential for manipulation and fraud, further protecting investors and maintaining the integrity of the market.

Futures-Based Spot Price (''FBSP'')

The value of Spot Bitcoin held by the Fund would be determined by the Sponsor and by Hashdex Asset Management Ltd. (the ''Digital Asset Adviser'') in good faith based on a methodology that is entirely derived from the settlement prices of Bitcoin Futures Contracts on the CME Market and that considers all available facts and all available information on the valuation date.

The method involves a calculation that is sensitive to both the length of time (the ''tenor'') until each Bitcoin Futures Contract is due for settlement and the final settlement price for each contract. The calculation takes into account each contract's tenor and the tenor squared. This approach is designed to give more importance to contracts that are due for settlement in the near term, considering that the prices of these near-term contracts are more reliable indicators of the current spot price of Bitcoin and are also more heavily traded. The calculation produces a set of weighting factors, with each factor indicating the contribution of the corresponding Bitcoin Futures Contract to the estimated current spot price of Bitcoin. The estimated spot price is the component of the result corresponding to a tenor of zero days. The Sponsor and Digital Asset Advisor do not use data from Bitcoin exchanges or directly from spot Bitcoin trading activity in determining the value of Spot Bitcoin held by the Fund.

As an example, the table below demonstrates how the weights of each hypothetical Bitcoin Futures Contract change over time as the first contract gets closer to maturity.

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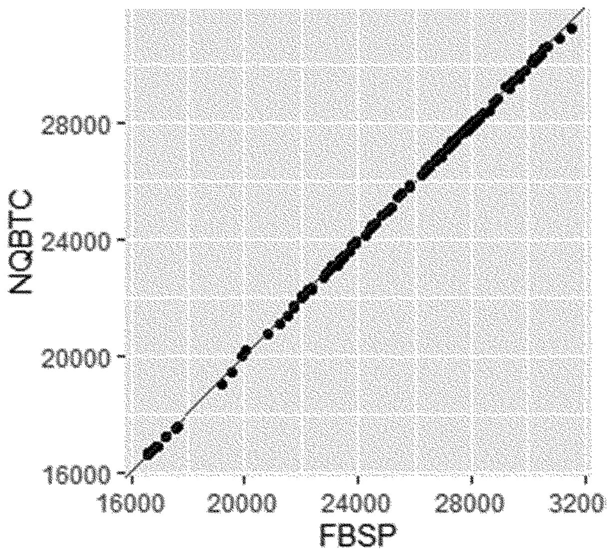
	First future tenor				
Future	27 days	21 days	15 days	9 days	3 days
1st	130.81%	125.92%	120.39%	113.79%	105.33%
2nd	1.91%	-0.84%	-2.94%	-3.80%	-2.26%
3rd	-8.92%	-7.57%	-5.86%	-3.76%	-1.31%
4th	-9.19%	-7.05%	-4.89%	-2.78%	-0.83%
5th	-7.81%	-5.73%	-3.78%	-2.02%	-0.57%
6th	-6.26%	-4.47%	-2.86%	-1.47%	-0.39%
9th	-2.61%	-1.76%	-1.05%	-0.50%	-0.12%
12th	-0.29%	-0.14%	-0.04%	0.01%	0.01%
18th	2.35%	1.65%	1.04%	0.53%	0.14%
Total	100.00%	100.00%	100.00%	100.00%	100.00%

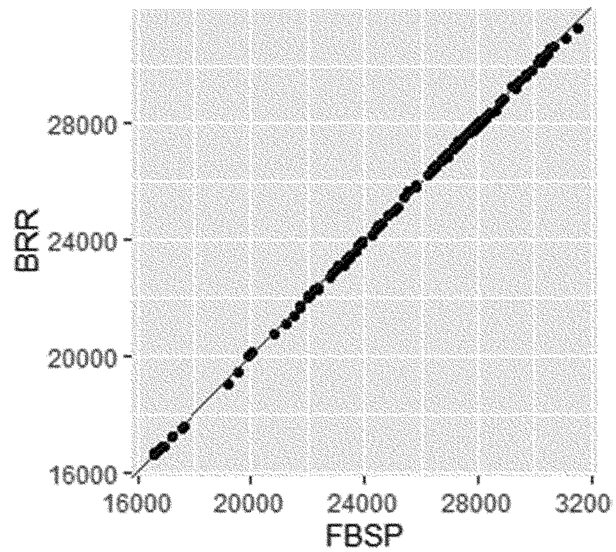
The Sponsor believes that the accuracy of the proposed pricing methodology can be measured by comparing its pricing results to the real time version of Bitcoin price benchmarks such as CME CF BRR and NQBTCS. FBSP is derived from futures settlement prices, which are usually VWAPs from all contracts traded on Globex between 14:59:00 and 15:00:00 Central Time. Accordingly, for purposes of developing a useful proxy, the Sponsor's analysis uses the arithmetic average of the Benchmark closing prices at 14:59:00 and 15:00:00 CT, which is not sensitive to the fluctuations that occur within this minute. By design, this difference in the price metric introduces an artificial distortion in the comparison, resulting in figures that are less adherent than in reality. Therefore, the figures set forth below represent a conservative estimation of the true adherence between FBSP and the Benchmark, considering that the actual adherence to the Benchmark is higher than these results can indicate.[73]

[72] *See* Approval Order at 21681.

[73] The difference in the price metrics introduces an artificial distortion in the comparison. Indeed, a regression analysis shows that the ratio between the maximum and minimum spot prices within the Bitcoin Futures VWAP window is a significant variable that explains the absolute divergences between FBSP and the spot prices. The higher the ratio between the maximum and minimum spot prices, the higher expected absolute divergence between FBSP and the spot prices. The correlation of these two metrics in the case of the real time version of NQBTCS is approximately 30%, suggesting that the actual adherence between FBSP and the spot benchmarks is even higher than the figures discussed herein indicate.

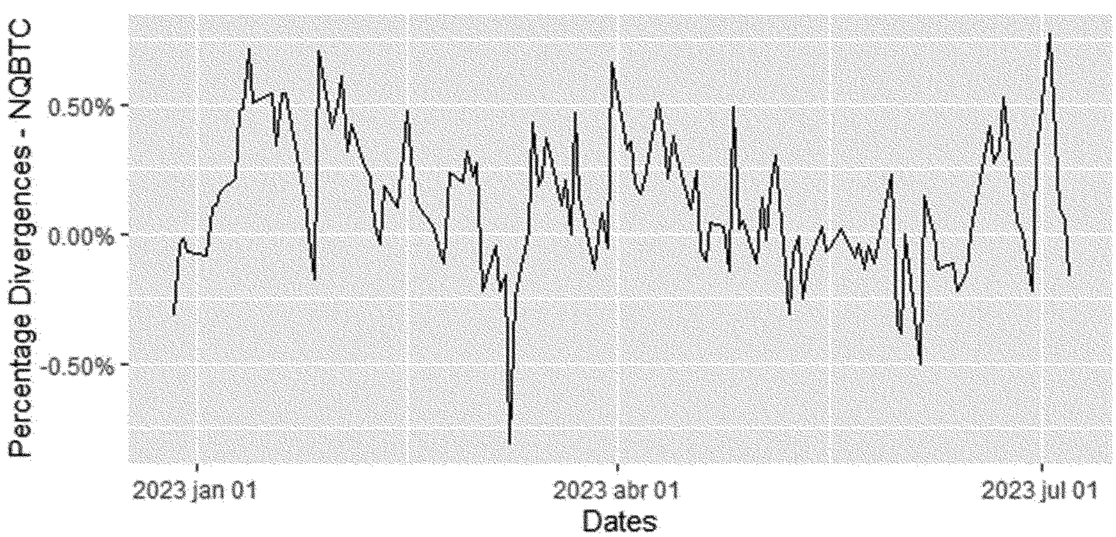
Using data available on Bloomberg on July 10, 2023, the Sponsor compared FBSP to NQBTCS and CME CF BRR from December 27, 2022 to July 7, 2023 and determined that FBSP behaves very similarly to both indexes. The following charts show a direct comparison between those two benchmark values and FBSP:

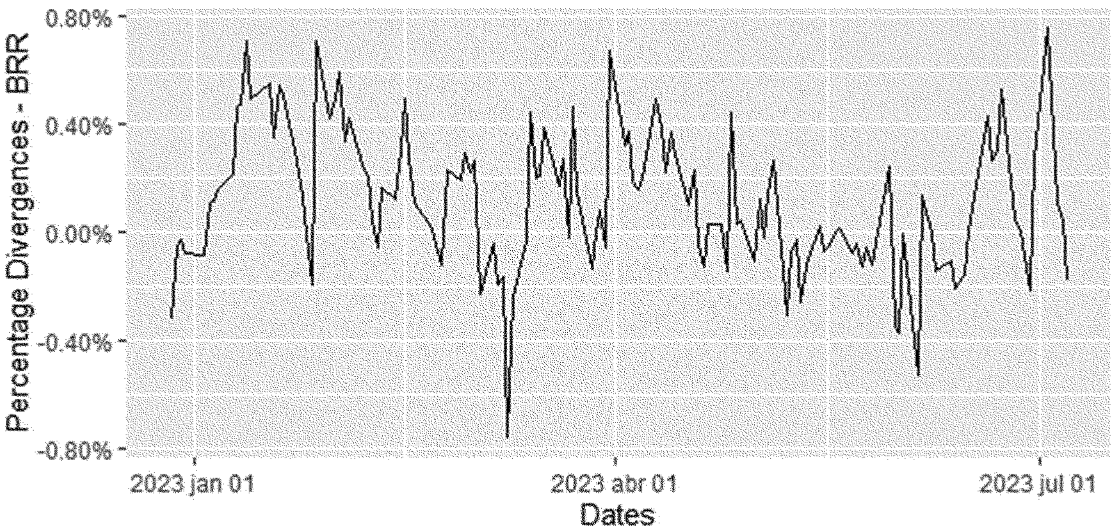




In the above charts, each black point indicates one day, and their proximity to the red line shows how similar FBSP is to each of NQBTCS and CME CF BRR. The correlations between FBSP and each of NQBTCS and CME CF BRR exceed 99.9%, and the mean absolute percentage divergences are 21 basis points (''bps'')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

The charts below provide another visualization of the results of this comparison, as time series of the percentage divergences:





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These charts show that there are no clusters of abnormal divergences. In both cases, more than 90% of the days exhibit percentage divergences between −50 bps and +50 bps. The highest percentage divergence in absolute terms, with 81 bps for the NQBTCS and 76 bps for the CME CF BRR, was observed on March 9, 2023, and coincided with significant volatility in the Bitcoin markets; on that day, NQBTCS dropped 5.34% from $22,003.92 to $20,827.67 and the FBSP, which settles one hour later, dropped by 9.3%, from $22,055.85 to $20,012.10. The Sponsor notes that, even on the day with the highest percentage divergence between FBSP and the other two benchmarks, that percentage divergence was insignificant in comparison to the intraday volatility of Bitcoin itself and could be attributable to the different market structures of the regulated CME Market and the unregulated spot markets.

The Sponsor believes that this data strongly suggests that FBSP is a suitable choice for the NAV calculation, both for the settlement and the real time proxy, and that the following additional considerations further support the soundness of the FBSP methodology:

• Bitcoin is a highly volatile asset traded in multiple venues across the world, and divergences of the magnitude found in this analysis are not unusual across different price sources or exchanges.

• Although it is not a consensus, academic research [74] has found evidence that CME Bitcoin futures lead spot in the price discovery process, so the divergences presented here are impacted by the possibility that spot prices are delayed.

• As noted above, the mean absolute percentage divergences are 21 bps and 22 bps respectively, the median absolute percentage divergences are 18 bps and 17 bps, and March 9, 2023 was the day with the highest percentage divergence in absolute terms, with 81 bps for the NQBTCS and −76 bps for CME CF BRR. The Sponsor believes that these divergences between FBSP and the underlying benchmarks are in a reasonable range and support that FBSP closely tracks NQBTCS and CME CF BRR.

Finally, the Sponsor notes that, even considering that FBSP could create some level of uncertainty due to the potential divergences between the FBSP and the spot prices observed in unregulated markets, the Authorized Purchasers are able to hedge potential exposure by buying the basket of futures that represents FBSP and selling it during the futures settlement window. In doing so, APs can emulate a situation where they know ex ante the value of the creation basket. The opposite trade can have the same effect for the case of redemptions. Thus, the APs providing liquidity on the secondary market during the day will always be in a position to hedge their exposure using exclusively the CME Market, which will make them more likely to provide liquidity to the Fund thus making its market price converge to its NAV.

Preventing Manipulation

While the Commission has raised valid concerns about the potential influence of unregulated Bitcoin markets on the daily settlement price on CME Market, the Sponsor believes that the proposed methodology described above provides a significant and sufficient degree of insulation from such influences, for the following reasons:

1. *Regulated market influence:* The daily settlement price of Bitcoin Futures Contracts on the CME Market, which is the basis for the NAV calculation of both futures contracts and physical 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 Market is characterized by high liquidity and trading volume, such that any attempt to influence the daily settlement price 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 highly detectable by the CME Market'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 used in the NAV calculation methodology incorporates all maturities of Bitcoin Futures 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

[74] *See, e.g.,* Wu, Jinghong; Xu, Ke. *Fractional cointegration in bitcoin spot and futures markets.* The Journal of Futures Markets. Vol. 41, Is. 9 (September 2021), available at: *https://onlinelibrary.wiley.com/doi/epdf/10.1002/fut.22216#pane-pcw-references;* Chang, Alexander and Herrmann, William and Cai, William. *Efficient Price Discovery in the Bitcoin Markets* (October 14, 2020), available at SSRN: *https://ssrn.com/abstract=3733924;* Kapar, Burcu; Olmo, Jose. *An analysis of price discovery between Bitcoin futures and spot markets.* Economics Letters, Vol. 174 (January 2019), available at: *https://www.sciencedirect.com/science/article/abs/pii/S0165176518304440.*

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 Fund's 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.

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 be highly adherent to the Fund's Intraday Net Asset Value, since APs can always create and redeem shares of the Fund hedging with a basket of Bitcoin Futures Contracts and the value of the creation basket is determined based on the NAV of the Fund, which is calculated using the FBSP prices that is based on such basket of Bitcoin Futures Contracts. Consequently, the likelihood of a potential manipulator of the ETP to succeed by exclusively trading in unregulated Bitcoin markets would depend on how much the prices in these markets have an impact over the CME Bitcoin Futures Contracts prices. The likelihood that a potential manipulator would undertake such an effort is also decreased 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 the CME Bitcoin Futures Contracts, to assess the impact that a manipulation on those markets would have on CME. The Sponsor collected one-minute bars data between January 18, 2023 and July 26, 2023 [75] of prices for the nearest CME Bitcoin Futures Contract (''CME Futures'') and the following alternative Bitcoin prices (''ABP''): spot Bitcoin (in USD) on each of NQBTCS's Core Exchanges,[76] spot Bitcoin (in USDT), and BTCUSDT USDs-Margined Perpetuals on Binance. For each day and each ABP, a simple regression model was estimated with one-minute CME Futures log-returns as the dependent variable, and two independent variables: (1) the log CME Futures closing price of the previous minute (as a control variable) and (2) the difference between the ABP log return and the 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 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 CME Futures are more sensitive to and strongly influenced by the divergence, while a lower coefficient (closer to zero) would suggest that 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 estimation of the real impact that manipulation in an ABP would have over the CME Futures price because the estimations 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: [77]

	Estimated Parameters				Market Depth	
ABP	**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 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 CME futures, the average coefficient of 0.39 means that in order to manipulate CME Futures prices by 1%, the would-be manipulator would have to distort Coinbase prices by more than 2.5% (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 estimations, 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

[75] 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.

[76] The core exchanges as of December 31, 2022 were BitStamp, Coinbase, Gemini, itBit, and Kraken.

[77] 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.

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.

In summary, while the Sponsor acknowledges the potential for influence from trades settled in unregulated Bitcoin markets, the Sponsor believes that the NAV calculation methodology, coupled with the inherent characteristics of the CME, provides a significant degree of protection against such influence being deliberately used to manipulate the Fund's market price or NAV without it being subject to detection by CME market surveillance.

Investment Strategy

The Sponsor believes that the investment strategy of the Fund is designed to mitigate the risk of manipulation by diversifying its holdings and is responsive to the Commission's concerns with respect to an ETP that holds spot Bitcoin. Instead of holding 100% spot Bitcoin, which could make it more susceptible to price manipulation in the spot market, the Fund will hold a mix of Spot Bitcoin, Bitcoin Futures Contracts, and cash. This diversified portfolio is subject to investment restrictions, which further reduces the potential for manipulation, as explained below:

1. *Diversification:* By holding a combination of Spot Bitcoin, Bitcoin Futures Contracts, and cash, the Fund reduces its exposure to any single asset class. This diversification also makes it more difficult for a would-be manipulator to influence the NAV of the Fund by manipulating the price of spot Bitcoin alone; for instance, even if a manipulator were able to influence the spot price of Bitcoin, their actions would only affect a portion of the Fund's portfolio, thereby limiting the overall impact of such manipulation on the Fund's NAV.

2. *Investment restrictions:* The Fund's holdings of Spot Bitcoin would be subject to investment restrictions, which are further discussed below. These restrictions cap the amount of Spot Bitcoin that the Fund can hold, further reducing the potential for manipulation by, for example, preventing the Fund from becoming so large in relation to the spot market that it could be manipulated without influencing the futures market. The Sponsor believes that these investment restrictions ensure that any significant trading activity aimed at manipulating the Fund would likely spill over into the CME Market, a regulated market with robust surveillance mechanisms in place to detect and deter manipulation, and with which the Exchange could receive information pursuant to common ISG membership.

3. *Reduced dependence on spot market:* By holding Bitcoin Futures Contracts and cash in addition to Spot Bitcoin, the Fund reduces its dependence on the spot market, thereby mitigating concerns about potential manipulation in unregulated Bitcoin spot exchanges. Instead, the Fund will rely on Bitcoin Futures Contracts and Bitcoin futures EFPs that are traded on the CME Market, a regulated exchange, which provides a higher level of transparency and oversight compared to unregulated spot exchanges.

4. *Dynamic adjustment:* The mix of Spot Bitcoin, Bitcoin Futures Contracts, and cash in the Fund's portfolio can be dynamically adjusted based on market conditions and regulatory developments. This flexibility allows the Fund to respond quickly to any signs of potential manipulation or other market abuses, further enhancing its resilience against manipulation.

In summary, by diversifying its holdings and imposing investment restrictions, the Fund reduces its vulnerability to manipulation in any single market, thereby protecting investors and maintaining the integrity of the Fund.

Investment Restrictions on Spot Bitcoin

According to the Sponsor, the Fund will be subject to investment restrictions on Spot Bitcoin (the ''Investment Restrictions'') that are specific constraints on its exposure to Bitcoin, particularly with respect to spot holdings. These investment restrictions are designed to mitigate the risk of manipulation of the Fund's Shares by insulating the Fund from events impacting the Bitcoin spot market, are not fixed, and may be adjusted based on factors such as the Commission's recognition of the CME as a regulated market of significant size related to spot Bitcoin, the NAV of the Fund, and the prevailing trading conditions on the core exchanges of the Benchmark.

The Sponsor believes that the Investment Restrictions are intended to ensure that the Fund's notional exposure to Bitcoin will be restricted to a set proportion and are currently set at 100% of the 30-day Average Daily Traded Volume (''ADTV'') on the core exchanges of the NQBTCS that are subject to regulatory and reporting rules in the United States, including companies that are publicly traded in the United States.[78] The Sponsor believes that the Investment Restrictions serve two main purposes:

1. They deter potential manipulative actions directed towards the Fund's Shares by making the cost-benefit tradeoff highly unfavorable for the manipulator. To manipulate the Fund's price using an unregulated spot market, a manipulator would need to transact a volume that surpasses the Fund's total exposure in spot Bitcoin, making the potential costs of manipulation outweigh the benefits.

2. They ensure that the Fund's trading activities do not become the primary driving force behind price variations in the Bitcoin spot market. By restricting the Fund's notional exposure to a proportion of the ADTV, this constraint ensures that the Fund's trading activities are always a fraction of the overall market activity, thereby reducing the potential for the Fund to unduly influence market prices.

As an example, in the 30-day period ending on August 31, 2023, the ADTV of spot Bitcoin on Coinbase was $293 million. Thus, the Fund's notional exposure to Bitcoin is restricted to up to $293 million, meaning that if the Fund's AUM is, for example, $250 million, it could have up to 100% allocation to Spot Bitcoin. However, if the Fund's AUM is, for example, $1 billion, it could still only have up to $293 million of notional exposure to Spot Bitcoin, which would be the equivalent of up to 29% of the Fund's NAV, and the rest of the portfolio would need to be allocated to Bitcoin Futures Contracts, cash, or cash equivalents.

To ensure that the Fund's trading activities do not become the primary driving force of the Spot Bitcoin price, the Sponsor intends to keep its notional allocation to spot Bitcoin as a small proportion of the overall trading activity of spot bitcoin.

The Sponsor intends to do so by restricting the maximum notional exposure to Spot Bitcoin to a proportion of the 30-day ADTV, with the ADTV data based on the most trusted exchanges (meeting the double requirements of being a core exchange per the NQBTCS methodology and being subject to regulatory and reporting rules in the United States, which make them liable for any false volume data reporting).

Currently, only one exchange meets those requirements, and over the last three months, it accounted for 4.30% to 5.70% of all Bitcoin trading, whereas the largest unregulated spot Bitcoin exchange accounted for over 50% of the spot Bitcoin volume.[79]

[78] The Sponsor believes that the methodology could significantly reduce the potential influence of malicious agents targeting the Fund by only accepting data from sources subject to regulatory regimes that obligate them to ensure the integrity of data reported. As of the date of this filing, Coinbase Inc. is the only Bitcoin Exchange to satisfy this criterion.

[79] Source: *https://www.theblock.co/data/crypto-markets/spot/the-block-legitimate-volume-index-btc-only.*

SPOT BITCOIN 30-DAY ADTV[80]

	June 30, 2023	July 31, 2023	August 31, 2023
Top 10 Exchanges	$7,646.21 million	$5,569.71 million	$6,853.92 million.
Single Core Exchange meeting Sponsor's requirement	$419.60 million	317.43 million	$293.84 million.
Single Core Exchange's market share	5.5%	5.7%	4.3%.
All 5 Core Exchanges	$624.74 million	$438.04 million	$411.51 million.
All 5 Core Exchanges' market share	8.2%	7.9%	6.0%.

The Sponsor believes that it is therefore unlikely that the single exchange on which the Sponsor bases the ADTV data on will be the primary driver of spot Bitcoin price given its rather small market share. As a result, even with the Fund's notional Spot Bitcoin exposure limited at 100% of the ADTV on that single exchange, the Fund's Spot Bitcoin holdings would likely represent only 4.30% to 5.79% of the daily liquidity of the spot Bitcoin market and thus is unlikely to become the primary driver of the spot market price formation.

Additionally, with the spot Bitcoin notional exposure at 4.30% to 5.70% of ADTV, a would-be manipulator would need to trade on exchanges that account for most of the liquidity and, in particular, the largest one. The Sponsor believes that the cost benefit analysis of attempting to distort the price on the largest exchange, which accounts for approximately 50% of the liquidity (or approximately 9 times the size of the Fund), to manipulate the price of the Fund would not be compelling.

In summary, the Sponsor believes that the Investment Restrictions are a key tool in the Fund's strategy to prevent manipulation. By limiting the Fund's exposure to the spot market and ensuring that the Fund's trading activities do not become the predominant influence on market prices, these restrictions provide a robust defense against potential manipulation attempts.

Creations and Redemptions

According to the Sponsor (and as discussed further below), the Fund uses cash creations and redemptions. With respect to Spot Bitcoin, an Authorized Purchaser delivers cash to the Fund instead of Spot Bitcoin in the creation process, and an Authorized Purchaser receives cash instead of Spot Bitcoin in the redemption process. The cash delivered or received during the creation or redemption process is then used by the Sponsor to purchase or sell 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 Spot Bitcoin and Bitcoin Futures Contracts and, based on the Investment Restrictions and target portfolio exposure, may decide to engage in an EFP transaction on CME to buy or sell Spot Bitcoin for the equivalent position in Bitcoin Futures Contracts.

The Sponsor believes that this method protects against manipulation in the creation and redemption process and of the Fund's market price from trading in unregulated spot markets. Investment in spot Bitcoin will not be directly related to creation or redemption of Fund Shares, but instead on target portfolio exposure, such that trades can be performed in smaller sizes and at unpredictable times, reducing the risk of creation or redemption manipulation.

The Sponsor believes that the use of cash creations and redemptions in the Fund serves as a deterrent to manipulation in several ways:

1. *Decoupling from spot market:* By using cash instead of Spot 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, but instead on target portfolio exposure. 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 Market, which is sufficiently liquid and can reasonably be relied upon to assist in detecting and deterring fraudulent or manipulative misconduct.

4. *Reduced influence from unregulated spot exchanges:* In-kind creation may create a direct relationship between the Fund's market price and prices on unregulated exchanges such as Binance by arbitrage, because an AP could buy or sell Bitcoin from Binance 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 going through pricing and trading on the CME Market. Thus, the Sponsor believes that, by removing this 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 exchanges, such that the Exchange's common ISG membership with the CME Market 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.

Exchange for Physical Transactions

EFP transactions, also known as Exchange for Related Position or EFRP transactions,[81] are a type of private agreement between two parties to trade a futures position for the underlying asset. In the context of the Fund, these transactions will be used to purchase and sell Spot Bitcoin by delivering or receiving the equivalent futures position.

In an EFP transaction, two parties exchange equivalent but offsetting positions in a Bitcoin Futures Contract and the underlying physical Bitcoin. One party is the buyer of futures and the seller of the physical Bitcoin, and the other party takes the opposite position (seller of futures and buyer of physical). While the EFP is a privately-negotiated transaction between the two parties to the trade, the consummated transaction must be reported to CME Market and its conditions and prices are subject to CME Market's market regulation oversight.

EFPs may be transacted at such commercially reasonable prices as are mutually agreed upon by the parties to the transaction, provided that the price conforms to the applicable futures price increments set forth for the relevant Futures contract. The Sponsor believes that EFPs executed at off-market prices

[80] Source: Messari, volume data is for USD, USDT and USDC traded against Bitcoin Core Exchanges.

[81] *See https://www.cmegroup.com/clearing/operations-and-deliveries/accepted-trade-types/efp-efr-eoo-trades.html.*

are more likely to be reviewed by CME's Market Regulation. CME's Rule 538 establishes that ''EFPs 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.''

Because both sides of the trade track the same benchmark (Bitcoin), an EFP is market-neutral. 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 Bitcoin. Because the Fund proposes to use EFP transactions to purchase and sell Spot Bitcoin, the only non-cash assets held by the Fund (Bitcoin Futures Contracts and Bitcoin) are traded on CME Market. Because the Exchange and the CME Market are both ISG members, information shared by the CME Market with the Exchange can be used to assist in detecting and deterring fraudulent or manipulative misconduct related to those assets.

In the proposed strategy for the operation of the Fund, every time the Fund is required to purchase or sell Bitcoin, the Sponsor will perform a request for quotation auction (''RFQ Auction'') with multiple market makers using the settlement price as the reference for the futures contracts. Market makers present their quotes in terms of basis points (''bps''), where 1bp = 0.01% between the futures contract price and the spot price. The Sponsor will then confirm the trade with the best offer and report the EFP transaction to the CME Market. The Sponsor believes that performing an RFQ Auction with multiple market makers is an efficient price formation mechanism that generates enough competition and attracts sufficient liquidity to minimize the transaction costs for the ETP.

As an example, assume that the Fund needs to buy 50 bitcoins (BTC) in exchange for 10 units of the next maturity of Bitcoin Futures Contracts (''BTCA''). The Sponsor will perform an RFQ Auction by requesting 3 market makers to provide their best price for buying BTCA versus BTC. The Market Makers provide a bid/ask quote in terms of basis between the futures and spot. Market Maker 1 (MM1) bids +22bps, Market Maker 2 (MM2) bids +20bps, and Market Maker 3 (MM3) bids +25bps. The Sponsor will then agree to pay the best bid of +25bps from MM3. Assuming BTCA is at $26,060, the price for the spot transaction is fixed at $25,995.01. The transaction is then reported within the time period and in the manner specified by the CME Market. Upon completion of the EFP, the Fund and MM3 would have different positions but same exposure:

- The Fund was long 10 Bitcoin Futures Contracts and now has converted this exposure into 50 Bitcoins.
- MM3 had 50 Bitcoins and now holds an equal position long 10 Bitcoin Futures Contracts.

The table below illustrates the steps in this EFP transaction:

Steps	MM3	Fund
1. Starting position	50 BTC	10 BTCA.
2. EFP is privately negotiated	MM3 and the Fund agree to terms of the EFP: • Fund sells/MM3 buys 10 BTCA at $26,060. • Fund buys/MM3 sells 50 BTC at 25,995.01 (+25bps).	
3. MM3 sends bitcoin to the Fund	−50 BTC	+50 BTC.
4. EFP reported to CME	+10 BTCA	−10 BTCA.
5. Final position	10 BTCA	50 BTC.

As required by CME Market's regulation, the Fund and all other parties related to the transaction will maintain all records relevant to this transaction, including order tickets, RFQ Auction message history, and custody transaction records, and provide them to CME upon request for surveillance purposes pursuant to CFTC Regulation 1.35.

EFP volumes are reported daily on the CME Group website. Historically, trading activity in EFP transactions is sporadic as it depends on the demand for a regulated conversion between futures and spot positions. Nonetheless, the Sponsor believes that a large number of liquidity providers are ready to execute this type of transaction and can provide enough liquidity to support the proposed ETP's demand. A subset of firms that are ready to provide liquidity on EFP Bitcoin transactions is available on CME's website.[82]

The Sponsor believes that EFP transactions are a powerful tool in preventing market manipulation for several reasons:

1. *Regulated environment:* EFP transactions occur on the CME Market, which is a regulated exchange with processes in place to prevent market manipulation, including monitoring transaction prices and investigating potential manipulations, as outlined in CME Rule 538.[83] All transactions are monitored and subject to rules and regulations designed to prevent market manipulation. Moreover, all parties to an EFP transaction are required to maintain all records relevant to the transaction pursuant to CFTC Regulation 1.35, thus providing the ability for CME and the CFTC to conduct surveillance inquiries and investigations in an efficient and effective manner for the protection of customers and ensuring market integrity. Furthermore, as an additional protection measure, to enforce the highest standard on the sourcing of such underlying physical Bitcoin, the Sponsor represents that it will only participate in EFP transactions with broker-dealers that are FINRA regulated or part of corporate groups that are, which would provide another layer of regulatory oversight in how Bitcoin exposures are sourced, as those counterparties already have an ongoing commercial relationship with the Sponsor and are active participants in trading Bitcoin regulated products worldwide.

2. *Surveillance-sharing agreement:* NYSE Arca and the CME Market are both members of the ISG, which allows for the sharing of information and cooperation in investigations, which can help detect and deter market manipulation.

3. *Transparency:* EFP transactions must be reported to the CME Market, which is a regulated exchange, providing transparency and making it more difficult for manipulative practices to go unnoticed. Parties to EFP transactions must maintain all records relevant to the CME futures contract and the related position transaction, pursuant to CFTC Regulation 1.35, adding another layer of regulatory scrutiny and transparency. In addition, EFP transactions volumes are required to be reported with the daily large trader positions by each clearing member, omnibus account, and foreign broker.

4. *Market-neutrality:* Because EFP transactions involve exchanging equivalent

[82] *See https://www.cmegroup.com/trading/bitcoin-brokers-and-block-liquidity-providers.html.*

[83] *See https://www.cmegroup.com/rulebook/files/cme-group-Rule-538.pdf.*

but offsetting positions, they are market-neutral. As a result, EFP transactions do not create imbalances in the market that could be exploited for manipulative purposes.

5. *Unpredictability:* EFP transactions are privately negotiated between the fund and other parties, making them less predictable and therefore more difficult to manipulate.

The Sponsor believes that, by using EFP transactions to purchase and sell spot Bitcoin, the Fund would ensure that its operations are conducted in a regulated, transparent, and market-neutral manner, significantly reducing the dependency on and the risk of manipulation from unregulated spot exchanges.

Settlement of BTC Contracts and MBT Contracts

According to the Registration Statement, 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.[84]

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 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 Standard Time (EST).

According to the Registration Statement, to determine the value of Bitcoin Futures Contracts, the Fund's Administrator will use the Bitcoin Futures Contract settlement price on the exchange on which the contract is traded, except that the ''fair value'' of Bitcoin Futures Contracts (as described in more detail below) may be used when 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. EST. The Fund's NAV will include any unrealized profit or loss on open Bitcoin futures contacts 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 Bitcoin Futures Contract has closed at its price fluctuation limit, the fair value determination will attempt to estimate the price at which such 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. EST 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 Sponsor and by Hashdex Asset Management Ltd. (the ''Digital Asset Adviser'') via an FBSP methodology that is sensitive to both the tenor of a Bitcoin Futures Contract and the final settlement price for such contract. The calculation produces a set of weighting factors, with each factor indicating the contribution of the corresponding Bitcoin Futures Contract to the estimated current spot price of Bitcoin. The estimated spot price is the component of the result corresponding to a tenor of zero days. The Sponsor and Digital Asset Advisor will not use data from Bitcoin exchanges or directly from spot Bitcoin trading activity in determining the value of Spot 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 Indicative Fund Value (''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. to reflect changes in the value of the Fund's holdings during the trading day.

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.[85]

Creation and Redemption of Shares

According to the Registration Statement, the Shares issued by the Fund may only be purchased by Authorized Purchasers and only in blocks of 12,500 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 Authorized Purchasers may redeem Shares and only in blocks of 12,500 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.

Authorized Purchasers will be the only persons that may place orders to create and redeem Creation Baskets. Authorized Purchasers must be (1) either registered broker-dealers or other securities market participants, such as

[84] 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.

[85] Several major market data vendors display and/or make widely available IFVs taken from the Consolidated Tape Association (''CTA'') or other data feeds.

banks and other financial institutions, that are not required to register as broker-dealers to engage in securities transactions, and (2) DTC Participants. An Authorized Purchaser is an entity that has entered into an Authorized Purchaser Agreement with the Sponsor.

An Authorized Purchaser delivers cash to the Fund in the creation process, and an AP receives cash in the redemption process. The cash delivered or received during the creation or redemption process is then used by the Sponsor to purchase or sell 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 Spot Bitcoin and Bitcoin Futures Contracts and, based on the Investment Restrictions, may decide to engage in an EFP transaction on CME to buy or sell Spot Bitcoin for the equivalent position in Bitcoin Futures Contracts.

Creation Procedures

According to the Registration Statement, on any ''Business Day,'' an Authorized Purchaser may place an order with the 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 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 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 Authorized Purchaser agrees to deposit cash with the Custodian.

Redemption Procedures

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

The redemption procedures allow Authorized Purchasers to redeem Creation Baskets. Individual shareholders may not redeem directly from the Fund. By placing a redemption order, an Authorized Purchaser agrees to deliver the Creation 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.

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

Delivery of Redemption Distribution

According to the Registration Statement, an Authorized Purchaser who places a purchase order will transfer to the Custodian the required amount of cash and/or 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 Authorized Purchaser and the Custodian when the purchase order is placed (the ''Purchase Settlement Date''). Upon receipt of the deposit amount, the Custodian will direct DTC to credit the number of Creation Baskets ordered to the Authorized Purchaser's DTC account on the Purchase Settlement Date.

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 Bitcoin Futures Contracts will be readily available from the applicable futures exchange websites, 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.

Complete real-time data for the 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 Bitcoin Futures Contracts will also be available on such websites, as well as other financial informational sources. 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 Benchmark value 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.[86] 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 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 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 Benchmark value 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 a.m. to 8 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 8.500–E(g), which sets forth certain restrictions on Equity Trading Permit Holders (''ETP Holders'') acting as registered Market Makers in Trust Issued Receipts [sic] 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, the Fund will be in compliance with Rule 10A–3 under the Act, the Trust will rely on the exception contained in Rule 10A–3(c)(7).[87] 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 the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[88] 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 CSSA. The Exchange is also able to obtain information regarding trading in the Shares, the physical commodities underlying the futures contracts 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.

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.[89]

All statements and representations made in this filing regarding (a) the description of the portfolios of the Fund

[86] *See* NYSE Arca Rule 7.12–E.

[87] *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).

[88] 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.

[89] For a list of the current members of ISG, *see 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.

or Benchmark, (b) limitations on portfolio holdings or the Benchmark, 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 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 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) [90] 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 would reflect the change in the Fund's name, as set forth in the Registration Statement. Specifically, the proposed rule change would reflect a change in the Fund's name from the Hashdex Bitcoin Futures ETF to the Hashdex Bitcoin ETF. The proposed change is also designed to remove impediments to and perfect the mechanism of a free and open market, promote just and equitable principles of trade, and protect investors and the public interest by ensuring that the Fund's name is consistent with the Registration Statement and reflects the Fund's proposed updated investment strategy.

The Exchange believes that 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 the NQBTCS would provide reliable pricing on which to base the Benchmark because it is administered by an independent index administrator, it is intended to provide an institutional-grade reference price for Bitcoin, and the pricing methodology underlying the NQBTCS is reasonably designed to be resistant to potential price manipulation. Specifically, NQBTCS is calculated via a rigorous and publicly available methodology that incorporates trade data captured from cryptocurrency exchanges that meet eligibility criteria of the NCI and that is designed to adjust for variances in price, volume and volatility across a wide range of sources, as well as to protect against the impact of anomalous trading activity that could impact the NQBTCS price. Accordingly, the proposed use of NQBTCS would remove impediments to and perfect the mechanism of a free and open market and, in general to protect investors and the public interest by allowing the Fund to calculate a Benchmark that would track Bitcoin pricing broadly, consistent with the proposed change regarding the Fund's investment strategy as discussed above.

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 Bitcoin futures and Spot 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 Spot Bitcoin, Bitcoin futures and cash would remove impediments to and perfect the mechanism of a free market and protect investors and the public interest because it would allow the Fund to limit its exposure to any single asset class, while offering investors exposure to Spot Bitcoin without relying on unregulated products or markets. The Exchange also believes that the Sponsor has designed the Fund to includes features intended to provide a robust framework for mitigating the risks of market manipulation, such as its proposed investment strategy, its use of futures-based pricing for Spot Bitcoin, the proposed Investment Restrictions, the use of EFP transactions on the CME Market for Spot Bitcoin, and the use of 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. The Exchange also believes that, given these features of the Fund, the CME Market could 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 Market to do so, such that information shared pursuant to NYSE Arca and the CME Market's common ISG membership would aid the Exchange in detecting and deterring potential misconduct.

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

[90] 15 U.S.C. 78f(b)(5).

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 Bitcoin Futures Contracts) occurring on US futures exchanges, which are members of the ISG. The intraday, closing prices, and settlement prices of the Bitcoin Futures Contracts 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.

Complete real-time data for the 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 Bitcoin Futures Contracts will also be available on such websites, as well as other financial informational sources. 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 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 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.* 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 October 24, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[91]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–21789 Filed 10–2–23; 8:45 am]

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[91] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98559; File No. SR–OCC–2023–003]

Self-Regulatory Organizations; Options Clearing Corporation; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Partial Amendment No. 1, Concerning Clearing Member Cybersecurity Obligations

September 27, 2023.

On March 21, 2023, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2023–003 pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 [2] thereunder to amend certain provisions in OCC's Rules relating to each Clearing Member's obligation to address a ''Security Incident'' (*i.e.,* the occurrence of a cyber-related disruption or intrusion) of that Clearing Member.[3] The proposed rule change was published for public comment in the **Federal Register** on April 5, 2023.[4] The Commission has received comments regarding the proposed rule change.[5]

On May 18, 2023, pursuant to Section 19(b)(2) of the Exchange Act,[6] the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[7] On May 24, 2023, OCC filed Partial Amendment No. 1 to the proposed rule change.[8] On July 3, 2023, the Commission instituted proceedings, pursuant to Section 19(b)(2)(B) of the Exchange Act,[9] to determine whether to approve or disapprove the Proposed Rule Change, as modified by Partial Amendment No. 1 (hereinafter defined as ''Proposed Rule Change'').[10]

Section 19(b)(2) of the Exchange Act [11] provides that proceedings to determine whether to approve or disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of filing of the proposed rule change. The time for conclusion of the proceedings may be extended for up to 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination.[12] The 180th day after publication of the Notice in the **Federal Register** is October 2, 2023.

The Commission is extending the period for Commission action on the Proposed Rule Change. The Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change so that the Commission has sufficient time to consider the issues raised by the Proposed Rule Change and to take action on the Proposed Rule Change. Accordingly, pursuant to Section 19(b)(2)(B)(ii)(II) of the Exchange Act,[13] the Commission designates December 1, 2023, as the date by which the Commission should either approve or disapprove the Proposed Rule Change SR–OCC–2023–003.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–21784 Filed 10–2–23; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Notice of Filing *infra* note 4, at 88 FR at 20195.

[4] Securities Exchange Act Release No. 97225 (Mar. 30, 2023), 88 FR 20195 (Apr. 5, 2023) (File No. SR–OCC–2023–003) (''Notice of Filing'').

[5] Comments on the proposed rule change are available at *https://www.sec.gov/comments/sr-occ-2023-003/srocc2023003.htm.*

[6] 15 U.S.C. 78s(b)(2).

[7] Securities Exchange Act Release No. 97525 (May 18, 2023), 88 FR 33655 (May 24, 2023) (File No. SR–OCC–2023–003).

[8] Securities Exchange Act Release No. 97602 (May 26, 2023), 88 FR 36351 (Jun. 2, 2023) (File No. SR–OCC–2023–003) (''Partial Amendment No. 1'').

[9] 15 U.S.C. 78s(b)(2)(B).

[10] Securities Exchange Act Release No. 97832 (July 3, 2023), 88 FR 43640 (July 10, 2023) (File No. SR–OCC–2023–003).

[11] 15 U.S.C. 78s(b)(2).

[12] 15 U.S.C 78s(b)(2)(B)(ii)(II).

[13] *Id.*

[14] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98572; File No. SR–ICC–2023–013]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to ICC's Treasury Operations Policies and Procedures

September 27, 2023.

I. Introduction

On August 15, 2023, ICE Clear Credit LLC (''ICC''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise the ICC Treasury Operations Policies and Procedures (''Treasury Policy''). The proposed rule change was published for comment in the **Federal Register** on August 28, 2023.[3] The Commission has not received any comments on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

ICC is registered with the Commission as a clearing agency for the purpose of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 98200 (Aug. 22, 2023), 88 FR 58628 (Aug. 28, 2023) (File No. SR–ICC–2023–013) (''Notice'').