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August 19, 2021

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

Re: SR-CboeBZX-2021-029, Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to List and Trade Shares of the Krypto Bitcoin ETF Trust under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

Dear Ms. Countryman:

Krypto Investment Advisors, LLC, as sponsor, (the “Sponsor”) is pleased to respond to the request for written comments by the Securities and Exchange Commission (the “Commission” or the “SEC”), as communicated in Order Instituting Proceedings for File SR-CboeBZX-2021-029, with respect to a proposed rule change to list and trade shares (the “Shares”) of the Krypto Bitcoin ETF Trust (the “Trust”). We appreciate the opportunity to respond to the specific questions raised by the Commission in consideration of this proposal. We have reprinted the questions raised by the Commission below, along with our responses.

1. What are commenters' views on whether the proposed Trust and Shares would be susceptible to manipulation? What are commenters' views generally on whether the Exchange's proposal is designed to prevent fraudulent and manipulative acts and practices? What are commenters' views generally with respect to the liquidity and transparency of the bitcoin markets, the bitcoin markets' susceptibility to manipulation, and thus the suitability of bitcoin as an underlying asset for an exchange-traded product?

Response:

The Trust and its shares are inherently resistant to manipulation due to the process by which Shares are created and redeemed. Authorized participants will create and redeem Trust Shares exclusively through the in-kind exchange of bitcoin and Trust Shares in blocks of 50,000 shares (a “Creation Basket”). The Administrator determines the required deposit for a given day by dividing the number of bitcoin held by the Trust as of the opening of business on that business day, adjusted for the amount of bitcoin constituting estimated accrued but unpaid fees and expenses of the Trust as of the opening of business on that business day, by the quotient of the number of Shares outstanding at the opening of business, divided by 50,000. The procedures by

which an authorized participant can redeem one or more Creation Baskets mirrors the procedures for the creation of Creation Baskets.

The creation and redemption of Trust Shares through the in-kind exchange mechanism is solely dependent on the *amount* of bitcoin to be received or delivered by the Trust and is completely independent of the *value* of bitcoin at that point in time. By comparison, a number of unregistered over-the-counter bitcoin funds (“OTC Bitcoin Funds”) currently operate by receiving cash from investors and then purchasing bitcoin in the secondary spot market. The size and timing of these cash bitcoin transactions can contribute to the value of these Funds’ OTC quoted prices deviating from net asset value (“NAV”) at that point in time. In contrast, and due to the in-kind creation and redemption mechanism, the Trust and its Shares will not be subjected to this potential source of NAV deviation.

An additional important benefit of the Trust’s in-kind creation and redemption mechanism is the provision of an arbitrage pricing mechanism, whereby authorized participants are able to make arbitrage profits by trading the price deviations between the Trust’s secondary market prices and NAV. This arbitrage pricing mechanism ensures that the Trust’s Share prices in the secondary market trade at price levels at or near NAV.

We agree that the Exchange’s proposal is designed to prevent fraudulent and manipulative acts and practices. Both the Exchange and the CME are members of the Intermarket Surveillance Group¹ (the “ISG”) and the Exchange therefore meets the requirement of having a comprehensive surveillance-sharing agreement in place with a regulated market of significant size. We further believe that the CME Bitcoin Futures market meets the Commission’s definition of a “significant market” and “market of significant size” and that (a) there is a reasonable likelihood that a person attempting to manipulate an exchange-traded product (“ETP”) would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.

We will further discuss the data supporting our opinion that the CME Bitcoin Futures market is a “market of significant size” in Question 4 below. The CME began offering trading in Bitcoin Futures in 2017 and Micro Bitcoin Futures in May, 2021. Both of these futures contracts use a spot price index provided by the CME CF Bitcoin Real-Time Index (BRTI) and cash settlement of futures in U.S. Dollars by using the CME CF Bitcoin Reference Rate (BRR). According to the CME, these indices have been calculated since 2016, with pricing data derived from underlying spot exchanges including Bitstamp, Coinbase, Gimini, itBit, and Kraken. The BRR and BRTI indices are also registered benchmarks under the European Benchmarks Regulation (EU BMR).

Because the Trust’s Reference Rate is based materially on the same methodology and reliant on the same spot market trading information as the BRTI and BRR, we assert that an interrelationship between the CME Bitcoin Futures market and the Trust exists. It is further reasonable to state that any effort to manipulate the Trust’s NAV or secondary market pricing

¹ For a list of the current members and affiliate members of the ISG, see www.isgportal.com.

would also require an attempted manipulation of the CME Bitcoin Futures prices. Since both the Exchange and CME are members of the ISG, such attempted misconduct would be effectively detected and deterred.

We agree with the Exchange's assertion that the bitcoin spot market is resistant to price manipulation. Since bitcoin is traded on hundreds of spot exchanges in geographically diverse locations, the dispersed nature of market liquidity and the level of capital necessarily deployed across these exchanges render an attempted manipulation of the global bitcoin spot market challenging and highly unlikely, if not impossible. Moreover, there exists a large presence of arbitrageurs in the form of automated market makers, high-frequency, and algorithmic trading firms established to specifically seek profits by actively trading any temporary dislocations in the bitcoin price between bitcoin trading venues. Any attempt to manipulate the price of bitcoin prices on cryptocurrency exchanges where these firms are active would require exceeding the liquidity supply of these arbitrageurs that are effectively eliminating any cross-market pricing deviations.

The Commission has previously granted approval for the listing of numerous Commodity-Based Trust Shares², including precious metals ETPs in gold, silver, platinum, and palladium, beginning in 2004 with the approval of the SPDR Gold Trust ("GLD Order").³ In that approval order, the Commission noted that "Information sharing agreements with markets trading securities underlying a derivative are an important part of a self-regulatory organization's ability to monitor for trading abuses in derivative products. It is not possible, however, to enter into an information sharing agreement with the OTC gold market. Nevertheless, the Commission believes that the unique liquidity and depth of the gold market, together with the MOU with NYMEX (of which COMEX is a Division) and NYSE Rules 1300(b) and 1301, create the basis for the NYSE to monitor for fraudulent and manipulative practices in the trading of the Shares." The Commission further stated that "the OTC market for gold has many of the same qualities as the market for foreign currencies. In particular, the gold spot market is extremely deep and liquid. The LBMA estimates that the monthly average daily volume for 2003 ranged from a high of 19 million to a low of 13.6 million troy ounces per day.⁴ In addition, COMEX figures for 2003 indicate that the average daily volume for gold futures contracts was 4.9 million ounces per day".⁵

² Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

³ See Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) ("NYSE Approval Order").

⁴ There are no authoritative published figures for overall worldwide volume in gold trading. The LBMA publishes statistics compiled from the six members offering clearing services. Information regarding clearing volume estimates by the LBMA can be found at https://www.lbma.org.uk/clearing_table.htm.

⁵ Information regarding average daily volume estimates by the COMEX (a division of NYMEX) can be found at https://www.nymex.com/jsp/markets/md_annual_volume6.jsp#2 The statistics are based on gold futures contracts, each of which relates to 100 ounces of gold.

In the GLD Order, the Commission noted 2003 LBMA average daily gold clearing statistics, with a high of 19 million and low of 13.6 million troy ounces, as evidence of an extremely deep and liquid spot market for gold. Translating these average daily gold volumes into notional U.S. dollar terms therefore provides a reasonable benchmark, against which one may evaluate the relative depth and liquidity of other spot commodity markets, including bitcoin. According to the LBMA, the average gold spot price in 2003 was \$417.25 per troy ounce⁶, so the high average daily LBMA volume was \$7.9 billion (19 million troy ounces), and the low average of \$5.67 billion (13.6 million troy ounces). For the six-month period ending August 13, 2021, average daily spot bitcoin trading volume across approximately 40 spot exchanges was \$9.88 billion.⁷ We believe this \$9.88 billion average daily volume figure is a reasonable, if not conservative⁸, estimate of the global bitcoin spot market size and that the bitcoin spot market therefore meets, and exceeds, the Commission's definition of an extremely deep and liquid market, as this figure clearly exceeds the average daily gold market figures noted above.

In the GLD Order, the Commission also noted that 2003 average daily COMEX gold futures volume averaged 4.9 million ounces per day and that an MOU with NYMEX (of which COMEX is a Division) existed to provide sharing of trading information. Using the 2003 average daily gold price of \$417.25, the notional average daily COMEX gold futures trading equaled \$2.04 billion. CME Bitcoin futures average daily trading volume for the six-month period ending August 13, 2021 was \$2.2 billion, again exceeding that of the COMEX gold futures observed as being deep and liquid.

The Trust's Reference Rate is based on materially the same methodology (except calculation time) as the CME CF Bitcoin Reference Rate, which is the rate on which Bitcoin Futures contracts are cash-settled in U.S. dollars at the CME, and is calculated by sampling data from underlying spot markets, including Bitstamp, Coinbase, Gemini, itBit, and Kraken. For the six-month period ending August 12, 2021, the aggregate average daily spot bitcoin trading volume across these five exchanges was \$1.49 billion.⁹

In addition to OTC markets, spot precious metals transactions are also routinely executed with precious metals dealers acting as Principal, either electronically on websites hosted by the dealers or in-person at the dealers' physical locations. We would therefore argue that price discovery and liquidity in the spot precious metals markets through dealers as Principal actors is

⁶ 2003 average spot gold price sourced from: <https://www.lbma.org.uk/prices-and-data/precious-metal-prices#>

⁷ Messari bitcoin spot trading data sourced from: <https://messari.io/asset/bitcoin/historical> using data sampled from approximately 40 spot bitcoin exchanges.

⁸ Additional data suggests that average daily spot bitcoin trading during this six-month period ending August 12, 2021 was over \$33 billion. Source: <https://coinmarketcap.com/currencies/bitcoin/historical-data>

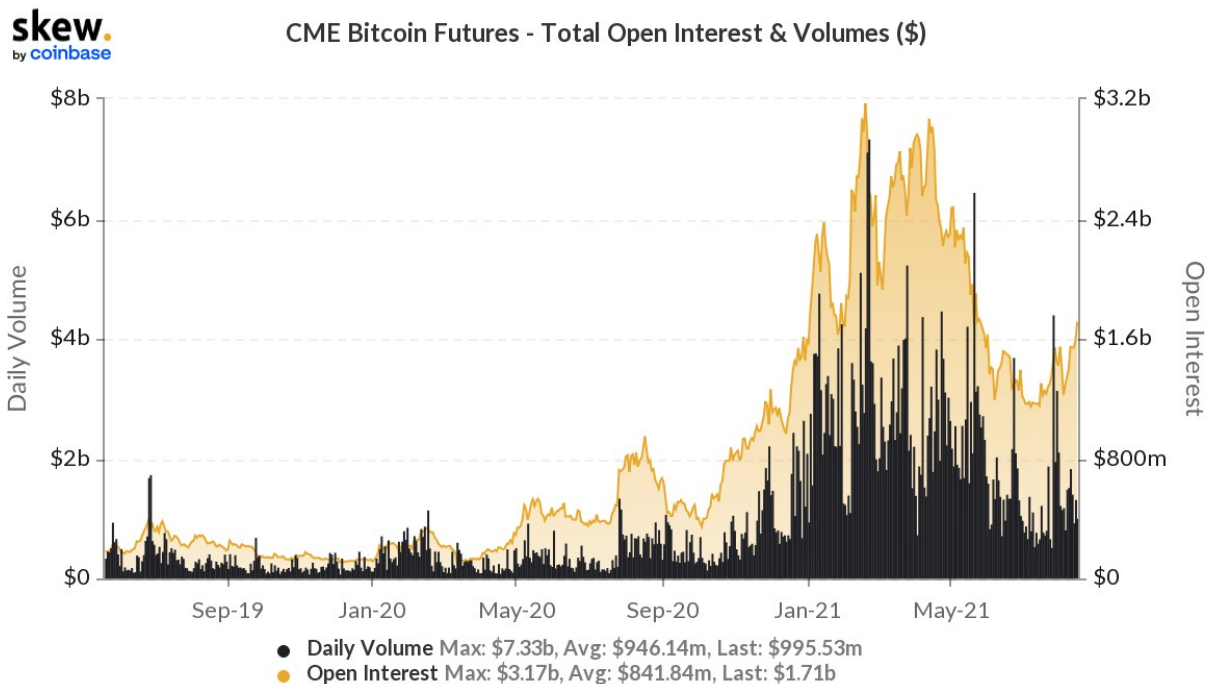
⁹ Historical bitcoin trading data sourced from: <https://analytics.skew.com/dashboard/bitcoin-spot>

substantially less efficient and transparent than the bitcoin spot market trading on centralized cryptocurrency exchanges, which primarily use central limit order books.

2. What are commenters' views of the Exchange's assertion that regulatory and financial landscapes relating to bitcoin and other digital assets have changed significantly since 2016? Are the changes that the Exchange identifies sufficient to support the determination that the proposed listing and trading of the Shares are consistent with the Act?

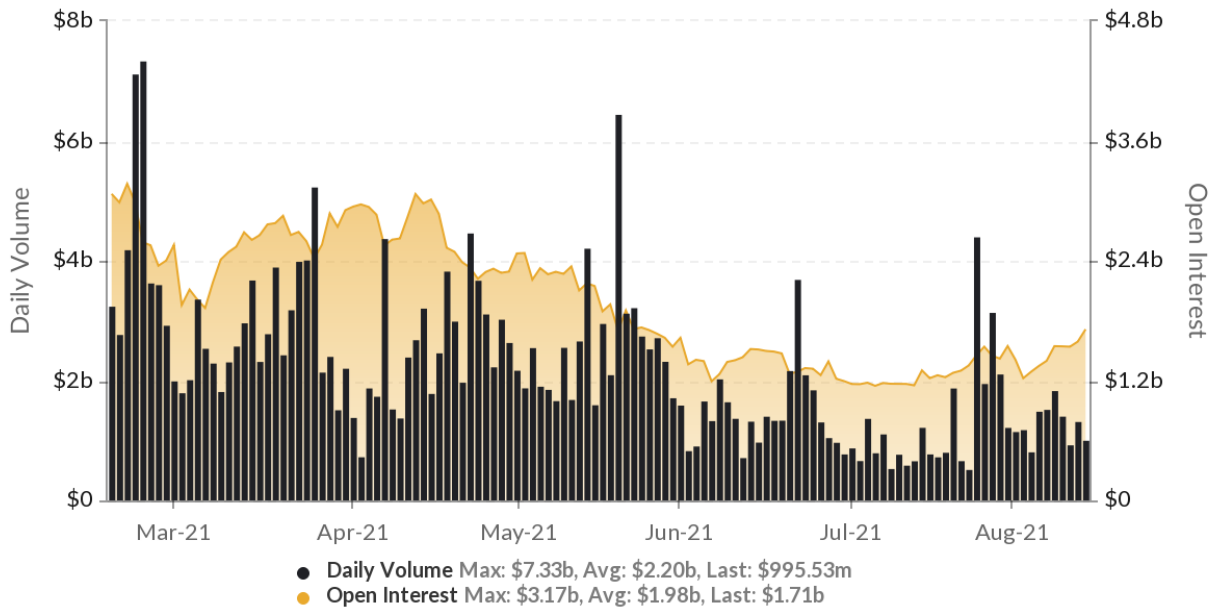
Response:

We agree with the Exchange's assertion that regulatory and financial landscapes relating to bitcoin and other digital assets have changed significantly since 2016. As the Exchange noted, the bitcoin spot market has grown approximately 100 times larger since 2016 and recently reached a market capitalization of over \$1 trillion. CME Bitcoin Futures trading volume has continued to increase substantially and in July 2021 increased by approximately 220% versus July 2020 and year-to-date through July 2021 futures trading volume increased by 156% versus year-to-date July 2020. CME Bitcoin Futures reached a record daily notional traded value of \$7.33 billion on February 23, 2021 and a record open interest value of \$3.17 billion on February 19, 2021. In the 6-month period ending August 13, 2021, CME Bitcoin Futures average daily trading volume reached \$2.20 billion and average open interest of \$1.98 billion.¹⁰



¹⁰ Statistics and charts sourced from <https://analytics.skew.com/dashboard/bitcoin-futures>

CME Bitcoin Futures - Total Open Interest & Volumes (\$)



The regulatory landscape relating to bitcoin and other digital assets has changed significantly since 2016. The CFTC has brought numerous enforcement actions against cryptocurrency trading platforms.¹¹ 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.¹² The New York Department of Financial Services (“NYDFS”) has issued BitLicenses to twenty-nine entities, including well-established payments companies such as PayPal, Inc. and Square, Inc. and limited purpose trust charters to organizations providing custody of digital assets, including the Trust’s Custodian, Fidelity Digital Asset Services, LLC, and Coinbase Custody Trust.¹³ The U.S. Treasury’s Financial Crimes Enforcement Network (“FinCEN”) has released extensive rules and guidance

¹¹ 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 (October 1, 2020) available at: <https://www.cftc.gov/PressRoom/PressReleases/8270-20>.

¹² 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>.

¹³ A list of entities regulated by the NYDFS is available at: https://www.dfs.ny.gov/apps_and_licensing/virtual_currency_businesses/regulated_entities

regarding the applicability of the Bank Secrecy Act (“BSA”) and implementing regulations to virtual currency businesses.¹⁴ 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.¹⁵

Governments outside of the United States have also made substantial progress in enacting regulations pertaining to the bitcoin and digital asset industry. As an example, in January 2019, the Singapore Government enacted the Payment Services Act, bringing cryptocurrency dealing or exchange services under the supervision of the Monetary Authority of Singapore, Singapore’s central bank and financial regulator.¹⁶

We believe that the changes in the regulatory and financial landscape since 2016 that the Exchange has identified are sufficient to support the determination that the proposed listing and trading of the Shares are consistent with the Act. The fact that global bitcoin and cryptocurrency markets are subject to increasing levels of regulation, oversight, and enforcement actions by global governments and regulatory bodies, only serves to reinforce this belief.

3. The Exchange states that “approving this proposal . . . [would] allow U.S. investors with access to bitcoin in a regulated and transparent exchange-traded vehicle that would act to limit risk” associated with exposure through other means. Further, the Exchange asserts that “the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues.” What are commenters’ views regarding such assertions?

Response:

We agree with the Exchange’s statements set forth above. U.S. investors have shown an increasing preference for utilizing ETPs to invest across a wide-range of asset classes, including equities, fixed income, commodities, and currencies. As of June 2021, there are over 2,400 ETPs in the U.S. market with total assets of over \$6.3 trillion.¹⁷ With the absence of a bitcoin

¹⁴ 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>

¹⁵ 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.

¹⁶ See Payment Services Act available at: <https://www.mas.gov.sg/regulation/acts/payment-services-act>

¹⁷ U.S. ETP market statistics provided by: <https://etfgi.com/>

ETP available in the U.S. market, investor options for gaining exposure to bitcoin are limited to: (i) investing in OTC Bitcoin Funds, (ii) purchasing spot bitcoin directly, (iii) purchasing CME Bitcoin Futures contracts, or (iv) purchasing bitcoin ETP's in non-U.S. jurisdictions. Each of the aforementioned investment options presents varying levels of pricing, market, and regulatory risk to investors which we believe are substantially reduced, if not mitigated entirely, by the Trust's operational and regulatory structure.

(i) OTC Bitcoin Funds, Premium/Discount Volatility, and Liquidity

We agree with the Exchange's assertion that as the market for OTC Bitcoin Funds has grown into tens of billions of dollars, so too has the potential investor risk. OTC Bitcoin Funds do not offer an in-kind creation/redemption mechanism which allows an arbitrage pricing mechanism to force the exchange-quoted market prices for an ETP to trade at, or near, its NAV. Instead, OTC Bitcoin Funds have historically traded at prices with extreme deviations from NAV. As the Exchange noted, the largest OTC Bitcoin Fund had grown to over \$35.0 billion in AUM¹⁸ as of February 2021 and had historically traded at a premium ranging between 5% to 40%, and, at times, higher than 250%.¹⁹ As the premium or discount to NAV in an OTC Bitcoin Fund varies over time, investor capital is placed at-risk when they purchase shares of a fund that does not reflect the per-share value of the fund's underlying assets. This risk to investor capital is best evidenced by comparing the total returns of the Fund's shares purchased in the OTC market versus total returns of the Fund's NAV, if held over the same period. On a year-to-date basis through August 13, 2021, the largest OTC Bitcoin Fund's total return was 19.91% versus its NAV return of 56.56%. On a one-year basis through August 13, 2021, the Fund's total return was 192.7% versus its NAV return of 288.6%. It is therefore clear that investors who purchased this OTC Bitcoin Fund's shares in the OTC market have experienced substantial capital losses and under-performance relative to the Fund's NAV return.

Generally, only accredited investors are able to purchase shares directly from OTC Bitcoin Funds at NAV, in exchange for cash or bitcoin, while retail (non-accredited) investors are prohibited from doing the same. This has essentially created a direct payment from retail investors to more sophisticated investors. Sophisticated investors have previously, and routinely, purchased shares of the OTC Bitcoin Funds at NAV, held the shares for a period of generally six-months, but as short as three-months, before they are eligible for sale in the OTC market, and then selling in the OTC market to retail investors and pocketing the then premium to NAV as a profit source. With profits realized at the expense of retail investors, these funds have generally

¹⁸ As of February 19, 2021. Compare to an AUM of approximately \$2.6 billion on February 26, 2020, the date on which the Commission issued the most recent disapproval order for a bitcoin ETP. See Securities Exchange Act Release No. 88284 (February 26, 2020), 85 FR 12595 (March 3, 2020) (SR-NYSEArca-2019-39) (the "Wilshire Phoenix Disapproval"). While the price of one bitcoin has increased approximately 400% in the intervening period, the total AUM has increased by approximately 1240%, indicating that the increase in AUM was created beyond just price appreciation in bitcoin.

¹⁹ Largest OTC Bitcoin Fund premium/discount to NAV and total return performance data provided by: <https://ycharts.com/>

re-invested the proceeds from sale in an attempt to repeat the process again. Sophisticated market participants have referred to this potential source of profit at the expense of retail investors as a “free put option” embedded in the OTC Bitcoin Funds. Some sophisticated investors have found this potential profit opportunity so lucrative that they have taken the process a step further and hedged their bitcoin exposure in the Fund’s shares they own in anticipation of collecting risk-free profits through the expected premium at the point of future sale in the OTC market.

As noted above, the volatility of the premium or discount in OTC market prices over OTC Bitcoin Funds NAV presents direct investment risks to retail investors. However, sophisticated investors are also placed at potentially substantial investment risk by this same volatility of premium or discount to NAV. An additional important consideration is the fact that the largest OTC Bitcoin Fund’s shares cannot be redeemed with or sold back to the Fund in exchange for bitcoin or cash (essentially reversing the initial purchase or creation of Shares). Rather, the only means for investors who have purchased the Fund’s shares at NAV from the Fund to exit their positions is to sell the Fund’s shares in the OTC market. Further, in late February 2021, the largest OTC Bitcoin Fund began trading in the OTC market at a persistent discount to NAV, with the largest discount to-date of over 21% experienced on May 13, 2021. Sophisticated investors who previously created shares directly with the Fund at NAV before shares began trading at a discount are now facing potentially substantial losses in capital, as they are now holding an asset worth less in the OTC market than the NAV of bitcoin represented by the shares owned. Further, as a number of regulated investment vehicles, including mutual funds, ETFs, and other institutional investors have increasingly adopted this OTC Bitcoin Fund as the easiest option for bitcoin exposure in their investment portfolios, the capital losses caused by the discount to NAV may be substantial and widespread.

Accredited and institutional investors that have created investment strategies around making periodic investments at NAV directly with the largest OTC Bitcoin Fund also face an additional risk through lack of liquidity, as this fund periodically closes and does not accept any further investment through private placement, as is currently the case as of August 16, 2021. An investment vehicle such as a mutual fund or ETF could therefore be unable to deploy its capital in compliance with its investment mandate because either the OTC Bitcoin Fund is closed to new investment at the time or there is not enough liquidity or share availability in the OTC market to efficiently deploy capital.

As the Trust intends to offer an in-kind creation and redemption mechanism available during the Exchange’s trading hours, the Shares should trade at or near NAV, due to the arbitrage pricing mechanism previously described above.

OTC Bitcoin Funds are also not listed on an exchange, and are therefore not subject to the same transparency and regulatory oversight by a listing exchange as the Trust’s Shares would be. In the case of the Trust, the existence of a surveillance sharing agreement between the Exchange and the Bitcoin Futures market provides increased investor protections compared to OTC Bitcoin Funds.

(ii) Spot Bitcoin Exposure

Exposure to bitcoin through an ETP provides a number of investor advantages when compared to buying spot bitcoin directly on a cryptocurrency exchange. The Trust utilizes the services of a regulated, third-party Custodian to custody the Trust's bitcoin assets. The Custodian is a chartered trust company that carries insurance covering the Trust's bitcoin assets held in custody in hot and cold storage. The Trust's Custodian will perform its duties in a manner that meets the definition of a qualified custodian under the Investment Advisers Act of 1940, as amended. This includes, among others, the use of cold (offline) storage to hold private keys and the employment by the Custodian of a certain degree of cybersecurity measures and operational industry best practices. Investors that purchase and store bitcoin at a cryptocurrency exchange are not afforded these protections. Rather, cryptocurrency exchanges will typically hold investors' bitcoin in hot (internet-connected) storage and generally do not provide any insurance for bitcoin balances or commitments to observe any particular cybersecurity standards or methods.

Investors that choose to instead hold spot bitcoin directly in private, self-hosted wallets are exposed to potential loss of some or all of their bitcoin holdings through ineffective management of private keys (e.g. lost or stolen passwords or lost or stolen keys and devices) or lack of proper cybersecurity measures (e.g. computer hacking of private hot wallets). The Trust's Custodian is a licensed and regulated entity that is highly experienced in the custody of bitcoin and digital assets and has dedicated and trained employees, procedures, and independent audit oversight to manage the private keys to the Trust's bitcoin. The custodial arrangements of the Trust therefore present distinct investor advantages for protection of bitcoin assets as compared to investors owning bitcoin directly.

(iii) Bitcoin Futures

CME Bitcoin Futures provide distinct advantages to bitcoin market participants but, much like the multitude of other listed futures contracts on a wide variety of underlying assets available to U.S. investors, they generally remain beyond the scope of comfort level of retail investors. Because CME Bitcoin Futures are leveraged products and require the active management of contract positions and position margin, they are generally not suitable for retail investors seeking a "buy and hold" investment that offers exposure to bitcoin. Because CME Bitcoin Futures have expiration, to maintain the same basis exposure to bitcoin, contracts must be rolled to further calendar months, which exposes investors to potential capital losses due to the nature and characteristics of the forward-months futures curve.

Investors holding CME Bitcoin Futures positions that are subject to decreases in market price are also exposed to the risk of margin calls, should margin positions be deemed insufficient to meet the CME's margin requirements at that time. Investors are therefore at risk of liquidation, should calls for additional futures margin not be met promptly. This risk is eliminated entirely in the case of investors holding non-margin bitcoin investment alternatives, such as a bitcoin ETP, among others.

(iv) Purchases of Bitcoin ETPs in Non-US Markets

Securities regulators in a number of European²⁰ and Canadian markets have either approved, or otherwise allowed, the listing and trading of bitcoin ETPs. The Exchange further noted that the Purpose Bitcoin ETF, a Canadian bitcoin ETP, reached over \$421 million in AUM within two days of initial exchange listing, and recently surpassed \$1.0 billion in AUM.²¹ We agree with the Exchange’s assertion that the rapid growth in AUM in the Purpose Bitcoin ETF is an explicit demonstration of wide investor demand for a North American market listed bitcoin ETP. The Purpose Bitcoin ETF and other Canadian listed bitcoin ETPs, in addition to Canadian dollars, also offer investors share classes of units denominated in U.S. dollars, thereby potentially increasing the attraction of U.S. investors. Without an approved bitcoin ETP in the U.S. market, U.S. investors may seek to purchase these shares in order to gain exposure to bitcoin. The purchase of these foreign listed bitcoin ETPs creates another source of risk for U.S. investors, as the separate regulatory regimes, geographic boundaries, and language barriers present difficulties associated with any potential cross-border litigation. This risk source would be eliminated if investors instead had the ability to purchase a U.S. listed bitcoin ETP.

4. According to the Exchange, “[n]early every measurable metric related to [Chicago Mercantile Exchange’s] Bitcoin Futures has trended consistently up since launch and/or accelerated upward in the past year.” Based on data provided and the academic research cited by the Exchange, do commenters agree that the Chicago Mercantile Exchange (“CME”) now represents a regulated market of significant size? What are commenters’ views on whether there is a reasonable likelihood that a person attempting to manipulate the Shares would also have to trade on CME to manipulate the Shares? What of the Exchange’s assertion that the combination of (a) CME bitcoin futures leading price discovery; (b) the overall size of the bitcoin market; and (c) the ability for market participants to buy or sell large amounts of bitcoin without significant market impact helps to prevent the Shares from becoming the predominant force on pricing in either the bitcoin spot or CME bitcoin futures markets?

Response:

We believe the CME Bitcoin Futures market data, statistics, and academic research²² that the Exchange has presented is sufficient evidence to support the Exchange’s assertion that CME

²⁰ Specifically, these funds include the Purpose Bitcoin ETF, Bitcoin ETF, VanEck Vectors Bitcoin ETN, WisdomTree Bitcoin ETP, Bitcoin Tracker One, BTCetc bitcoin ETP, Amun Bitcoin ETP, Amun Bitcoin Suisse ETP, 21Shares Short Bitcoin ETP, and CoinShares Physical Bitcoin ETP.

²¹ Purpose Bitcoin ETF data source: <https://www.purposeinvest.com/funds/purpose-bitcoin-etf>

²² See Hu, Y., Hou, Y. and Oxley, L. (2019). “What role do futures markets play in Bitcoin pricing? Causality, cointegration and price discovery from a time-varying perspective” (available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7481826/>). This academic research paper concludes that “There exist no episodes where the Bitcoin spot markets dominates the price discovery processes with regard to Bitcoin futures. This points to a conclusion that the price formation originates solely in the Bitcoin futures market. We can, therefore, conclude that the Bitcoin futures markets dominate the dynamic price discovery process based upon time-varying

Bitcoin Futures is a market of significant size. The CME Bitcoin Futures market data presented in Question #2 above further supports the Exchange's assertion and illustrates the continued growth of average daily trading volume and open interest in CME Bitcoin Futures since the date of the Exchange's filing.

We further agree that there is a reasonable likelihood that a person attempting to manipulate the Shares would also have to trade on CME to manipulate the Shares. Because Bitcoin Futures lead the price in the spot market, an attempt to manipulate the spot market would require participation in the Bitcoin Futures market. It follows then, that an attempted manipulation of Shares would similarly require participation in the Bitcoin Futures market because both the CME CF Bitcoin Real-Time Index (BRTI) and CME CF Bitcoin Reference Rate, upon which futures are settled, are calculated by observing prices in the underlying spot bitcoin markets. As mentioned previously, the Trust's Reference Rate is based materially on the same methodology as the BRTI and BRR. It is therefore a reasonable assumption that any effort to manipulate the Trust's NAV or Share price would also require an attempted manipulation of the CME Bitcoin Futures prices. Since both the Exchange and CME are members of the ISG, such attempted misconduct would be effectively detected and deterred.

We agree with the Exchange's assertion that the combination of (a) CME bitcoin futures leading price discovery; (b) the overall size of the bitcoin market; and (c) the ability for market participants to buy or sell large amounts of bitcoin without significant market impact helps to prevent the Shares from becoming the predominant force on pricing in either the bitcoin spot or CME bitcoin futures markets. In addition to the CME bitcoin futures data discussed previously, bitcoin's market cap has exceeded \$1 trillion, with significant trading liquidity provided to market participants. The Exchange referenced research from CoinRoutes, and noted that a large market buy or sell order for \$10 million of bitcoin can be executed at a cost of 20 basis points and with a market impact of 50 basis points.²³ Purchases or sales of bitcoin using more advanced methods such as limit orders and executing through OTC bitcoin trading desks are reasonably likely to have less market impact.

5. What are commenters' views on the Exchange's statement, generally, that bitcoin is resistant to price manipulation and that other means to prevent fraudulent and manipulative acts and practices exist to justify dispensing with the requisite surveillance sharing agreement with a regulated market of significant size related to bitcoin? What of the Exchange's assertion in support of such statement that significant liquidity in the spot market and the impact of market orders on the overall price of bitcoin mean that attempting to move the price of bitcoin is costly? What of the assertion that offering only in-kind creations and redemptions provides unique protections against potential attempts

information share measures. Overall, price discovery seems to occur in the Bitcoin futures markets rather than the underlying spot market based upon a time varying perspective.”

²³ These statistics are based on samples of bitcoin liquidity in USD (excluding stablecoins or Euro liquidity) based on executable quotes on Coinbase Pro, Gemini, Bitstamp, Kraken, LMAX Exchange, BinanceUS, and OKCoin during February 2021.

to manipulate the Shares and that the price the Sponsor uses to value the Trust's bitcoin “is not particularly important”?

Response:

We agree with the Exchange’s assertion that the bitcoin spot market is resistant to price manipulation and that other means to prevent fraudulent and manipulative acts and practices exist to justify dispensing with the requisite surveillance sharing agreement. In the GLD Order, the Commission noted that “Information sharing agreements with markets trading securities underlying a derivative are an important part of a self-regulatory organization’s ability to monitor for trading abuses in derivative products. It is not possible, however, to enter into an information sharing agreement with the OTC gold market. Nevertheless, the Commission believes that the unique liquidity and depth of the gold market, together with the MOU with NYMEX (of which COMEX is a Division) and NYSE Rules 1300(b) and 1301, create the basis for the NYSE to monitor for fraudulent and manipulative practices in the trading of the Shares.” The Commission further stated that “The Commission believes that the OTC market for gold has many of the same qualities as the market for foreign currencies. In particular, the gold spot market is extremely deep and liquid. The LBMA estimates that the monthly average daily volume for 2003 ranged from a high of 19 million to a low of 13.6 million troy ounces per day. In addition, COMEX figures for 2003 indicate that the average daily volume for gold futures contracts was 4.9 million ounces per day”.

The Commission clearly indicated in the GLD Order that it is possible to dispense with the requisite surveillance sharing agreement with a regulated market of significant size if a basis is created for the exchange to monitor for fraudulent and manipulative trading practice. This basis was created through the combination of a deep and liquid spot market, an information sharing agreement with a commodity futures exchange, and exchange trading rules to govern the trading of ETF shares by liquidity providers. We believe the bitcoin market is deep and liquid, note that the Exchange is a member of the ISG, as is the CME that lists bitcoin futures, and the Exchange has rules in-place to govern the trading of the Trust’s Shares. We therefore believe there is a solid base of evidence to support the Commission’s approval of Exchange’s proposed rule change.

We have previously illustrated that the average daily trading volume in the bitcoin spot market exceeds that of the average daily gold OTC volume that the Commission stated in the GLD Order is an “extremely deep and liquid market.” We also showed that CME Bitcoin futures average daily trading volume for the six-month period ending August 13, 2021 was \$2.2 billion, again exceeding that of the COMEX gold futures noted in the GLD Order.

The Exchange has trading rules in-place to govern the trading of the Trust’s Shares. Rule 14.11(e)(4)(G), requires that any registered market maker (“Market Maker”) in the Shares 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 registered Market Maker may have or over which it may exercise investment discretion. No registered 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 registered 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 (see, e.g., Rule 4.2), the registered Market Maker in Commodity-Based Trust Shares 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.

As bitcoin is traded on hundreds of spot exchanges in geographically diverse locations, the dispersed nature of market liquidity and the level of capital necessarily deployed across these exchanges render an attempted manipulation of the global bitcoin spot market challenging and highly unlikely, if not impossible. Moreover, there exists a large presence of arbitrageurs in the form of automated market makers, high-frequency, and algorithmic trading firms established to specifically seek profits by actively trading any temporary dislocations in the bitcoin price between bitcoin trading venues. Any attempt to manipulate the price of bitcoin prices on cryptocurrency exchanges where these firms are active would require exceeding the liquidity supply of these arbitrageurs that are effectively eliminating any cross-market pricing deviations.

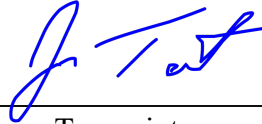
We agree with the Exchange that offering only in-kind creation and redemption will provide unique protections against potential attempts to manipulate the Shares. Authorized participants that create Shares with the Trust are required to deliver a certain number of bitcoin per share (regardless of the valuation used) and receive a certain number of bitcoin per share when redeeming Shares. The amount of bitcoin per Share to be delivered to, or received from the Trust in creations and redemptions is completely independent of the value of bitcoin or the Reference Rate at any particular point in time. Further, the Trust's expenses are paid to the Sponsor in bitcoin, not cash, and these expense payments are completely independent of the value of bitcoin or the Reference Rate. This not only mitigates the risk associated with potential manipulation, but also discourages manipulation of the Reference Rate because there is little financial incentive to do so.

The fact that creations and redemptions are only available in-kind makes the manipulability of the Reference Rate significantly less important. Specifically, because the Trust will not accept cash to buy bitcoin in order to create new shares or, barring a forced redemption of the Trust or under other extraordinary circumstances, be forced to sell bitcoin to pay cash for redeemed shares, the price that the Sponsor uses to value the Trust's bitcoin is not particularly important. The in-kind creation and redemption mechanism provides an arbitrage pricing mechanism, whereby authorized participants actively and competitively trade the price deviations between the Trust's secondary market prices and NAV. This arbitrage pricing mechanism helps ensure that the Trust's Share prices in the secondary market trade at price levels at or near NAV.

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We appreciate the opportunity to provide our comments and additional information in support of the Exchange's proposed rule change to list and trade shares of the Trust. We believe the proposed rule change is consistent with Section 6(b)(5) of the Act, which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. We therefore believe the proposed rule change should be approved.

Kind Regards,



Jason Toussaint
Chief Executive Officer
Krypto Investment Advisors, LLC