

**CONFIDENTIAL**

**PRIVATE PLACEMENT MEMORANDUM**

*Offering of Units*

*in*

**Osprey Bitcoin Trust**

*Sponsor*

**Osprey Funds, LLC**

February 10, 2021

**THIS OFFERING IS AVAILABLE TO “ACCREDITED INVESTORS” ONLY**

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**NOTICES TO PROSPECTIVE INVESTORS**

THE INFORMATION CONTAINED IN THIS CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM, INCLUDING THE APPENDICES HERETO (COLLECTIVELY, THIS “MEMORANDUM”), SUPERSEDES ALL PRELIMINARY VERSIONS HEREOF AND ALL OTHER INFORMATION POTENTIAL INVESTORS MAY HAVE RECEIVED FROM OSPREY FUNDS, LLC (THE “SPONSOR”).

THE UNITS OF OSPREY BITCOIN TRUST (THE “TRUST”) DESCRIBED IN THIS MEMORANDUM HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR THE SECURITIES LAWS OF ANY OF THE STATES OF THE UNITED STATES. THE OFFERING CONTEMPLATED BY THIS MEMORANDUM WILL BE MADE IN RELIANCE UPON AN EXEMPTION OR EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, AND QUALIFICATIONS OR EXEMPTIONS UNDER THE STATE SECURITIES LAWS OF THOSE STATES IN WHICH THE UNITS ARE OFFERED.

THE TRUST WILL NOT BE REGISTERED AS AN INVESTMENT COMPANY UNDER THE U.S. INVESTMENT COMPANY ACT OF 1940, AS AMENDED (THE “INVESTMENT COMPANY ACT”). CURRENTLY, THE COMMODITY FUTURES TRADING COMMISSION (THE “CFTC”) TAKES THE POSITION THAT BITCOIN IS A COMMODITY, ALTHOUGH IT HAS NOT ISSUED REGULATIONS TO FORMALIZE THIS POSITION. THE TRUST IS NOT REGISTERED AS A COMMODITY POOL FOR PURPOSES OF THE COMMODITY EXCHANGE ACT OF 1936, AS AMENDED (THE “CEA”), AND THE SPONSOR IS NOT REGISTERED AS A COMMODITY POOL OPERATOR, A COMMODITY TRADING ADVISOR OR OTHERWISE. THE TRUST AND THE SPONSOR WILL CONTINUE TO MONITOR AND EVALUATE WHETHER ANY SUCH REGISTRATIONS MAY BE OR MAY BECOME REQUIRED.

**THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.**

THIS MEMORANDUM SHALL NOT CONSTITUTE AN OFFER TO SELL OR THE SOLICITATION OF AN OFFER TO BUY NOR SHALL THERE BE ANY SALE OF UNITS IN ANY JURISDICTION IN WHICH SUCH OFFER, SOLICITATION OR SALE IS NOT AUTHORIZED OR TO ANY PERSON TO WHOM IT IS UNLAWFUL TO MAKE SUCH OFFER, SOLICITATION OR SALE. EACH INVESTOR MUST COMPLY WITH ALL LEGAL REQUIREMENTS IN EACH APPLICABLE JURISDICTION IN WHICH IT PURCHASES, OFFERS OR SELLS UNITS OR POSSESSES THIS MEMORANDUM, AND MUST OBTAIN ANY CONSENT, APPROVAL OR PERMISSION REQUIRED BY IT IN CONNECTION WITH THE OFFERING. NEITHER THE SPONSOR, THE TRUST NOR ANY OF THEIR RESPECTIVE AFFILIATES OR SERVICE PROVIDERS MAKES ANY REPRESENTATION OR WARRANTY REGARDING, OR SHALL HAVE ANY RESPONSIBILITY FOR, THE

LEGALITY OF AN INVESTMENT IN THE UNITS UNDER ANY SECURITIES OR SIMILAR LAWS.

THIS MEMORANDUM IS BEING FURNISHED SOLELY FOR THE PURPOSE OF ENABLING PROSPECTIVE INVESTORS TO DETERMINE WHETHER THEY WISH TO PROCEED WITH FURTHER INVESTIGATION OF THE TRUST AND TO MAKE AN INVESTMENT IN THE UNITS. THIS MEMORANDUM IS NOT INTENDED TO FORM THE SOLE BASIS OF ANY INVESTMENT DECISION AND DOES NOT ATTEMPT TO PRESENT ALL THE INFORMATION THAT PROSPECTIVE INVESTORS MAY REQUIRE FOR PURPOSES OF MAKING AN INVESTMENT DECISION. NO PERSON HAS BEEN AUTHORIZED TO MAKE ANY REPRESENTATIONS CONCERNING THE TRUST WHICH ARE INCONSISTENT WITH THOSE CONTAINED IN THIS MEMORANDUM. PROSPECTIVE INVESTORS SHOULD NOT RELY ON ANY INFORMATION NOT CONTAINED IN THIS MEMORANDUM WHEN MAKING AN INVESTMENT DECISION. INSTEAD, INVESTORS MUST, AND BY ACCEPTING DELIVERY OF THIS MEMORANDUM THEY AGREE TO, RELY ON THEIR OWN EXAMINATION OF THE TRUST AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. SEE “RISK FACTORS AND POTENTIAL CONFLICTS OF INTEREST”.

THIS MEMORANDUM SPEAKS AS OF THE DATE HEREOF. NEITHER THE DELIVERY OF THIS MEMORANDUM NOR ANY EVENTUAL SALE OF UNITS SHALL UNDER ANY CIRCUMSTANCES IMPLY THAT INFORMATION CONTAINED HEREIN IS CORRECT AS OF ANY FUTURE DATE OR THAT THERE HAS BEEN NO CHANGE IN THE AFFAIRS OF THE TRUST AFTER THE DATE HEREOF. NOTHING CONTAINED HEREIN IS, OR SHOULD BE RELIED UPON AS, A PROMISE OR REPRESENTATION AS TO FUTURE PERFORMANCE. NEITHER THE TRUST, THE SPONSOR, NOR ANY OF THEIR AFFILIATES OR SERVICE PROVIDERS UNDERTAKES ANY OBLIGATION TO UPDATE OR REVISE THIS MEMORANDUM, EXCEPT AS MAY BE REQUIRED BY LAW.

PROSPECTIVE INVESTORS SHOULD NOT CONSTRUE THE CONTENTS OF THIS MEMORANDUM AS LEGAL, TAX OR FINANCIAL ADVICE. EACH PROSPECTIVE INVESTOR SHOULD, AND BY ACCEPTING DELIVERY OF THIS MEMORANDUM AGREES TO, CONSULT HIS, HER OR ITS OWN PROFESSIONAL ADVISORS AS TO THE LEGAL, TAX, FINANCIAL OR OTHER MATTERS RELEVANT TO THE SUITABILITY OF AN INVESTMENT IN UNITS FOR SUCH INVESTOR.

THE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM, AND MAY NOT BE RESOLD OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE REQUIREMENTS AND CONDITIONS IN THE SECOND AMENDED AND RESTATED TRUST AGREEMENT AND DECLARATION OF TRUST OF OSPREY BITCOIN TRUST (THE “TRUST AGREEMENT”), WHICH TRUST AGREEMENT REQUIRES THE APPROVAL OF THE SPONSOR FOR SUCH TRANSFER. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

## **CONFIDENTIAL**

ANY FINANCIAL PROJECTIONS OR OTHER FORWARD-LOOKING STATEMENTS THAT ARE INCLUDED IN THIS MEMORANDUM OR OTHERWISE FURNISHED IN CONNECTION WITH THIS OFFERING ARE FOR ILLUSTRATIVE PURPOSES ONLY AND ARE BASED ON ASSUMPTIONS BY THE SPONSOR'S MANAGEMENT THAT ARE SUBJECT TO RISKS AND UNCERTAINTIES AND MAY PROVE TO BE INCOMPLETE OR INACCURATE. SEE "RISK FACTORS AND POTENTIAL CONFLICTS OF INTEREST". ACTUAL RESULTS ACHIEVED MAY VARY FROM ANY SUCH PROJECTIONS AND THE VARIATIONS MAY BE MATERIAL. NO REPRESENTATION OR WARRANTY OF ANY KIND IS MADE WITH RESPECT TO THE ACCURACY OR COMPLETENESS OF ANY FINANCIAL PROJECTIONS OR OTHER FORWARD-LOOKING STATEMENTS, ANY ASSUMPTIONS UNDERLYING THEM, THE FUTURE OPERATIONS OF THE TRUST OR THE AMOUNT OF ANY FUTURE INCOME OR LOSS. WITHOUT LIMITATION OF THE FOREGOING, NEITHER THE SPONSOR'S NOR THE TRUST'S ACCOUNTANTS EXPRESS ANY OPINION OR OTHER FORM OF ASSURANCE WITH RESPECT TO ANY SUCH MATTERS. CERTAIN INFORMATION CONTAINED HEREIN REGARDING ECONOMIC TRENDS AND PERFORMANCE IS BASED UPON OR DERIVED FROM INFORMATION PROVIDED BY THIRD PARTIES AND OTHER INDUSTRY SOURCES. THE SPONSOR HAS NOT INDEPENDENTLY VERIFIED AND CANNOT ASSURE THE ACCURACY OF ANY DATA OBTAINED BY OR FROM ANY OF THESE SOURCES.

NO REPRESENTATIONS OR WARRANTIES ARE MADE OR INTENDED, AND NONE SHOULD BE INFERRED, WITH RESPECT TO THE ECONOMIC RETURN OR THE TAX CONSEQUENCES OF AN INVESTMENT IN THE UNITS. NO ASSURANCE CAN BE GIVEN THAT EXISTING LAWS WILL NOT BE CHANGED OR INTERPRETED ADVERSELY TO THE TRUST, THE SPONSOR, THE UNITS OR INVESTORS IN THE UNITS.

WE RESERVE THE RIGHT, IN OUR SOLE DISCRETION AND FOR ANY REASON WHATSOEVER OR NO REASON, TO MODIFY, AMEND OR WITHDRAW ALL OR A PORTION OF THE OFFERING OR TO ACCEPT OR REJECT IN WHOLE OR IN PART ANY PROSPECTIVE INVESTMENT IN THE UNITS OR TO ALLOT TO ANY PROSPECTIVE INVESTOR LESS THAN THE AMOUNT OF UNITS SUCH INVESTOR DESIRES TO PURCHASE. WE SHALL HAVE NO LIABILITY WHATSOEVER TO ANY OFFEREE OR INVESTOR IN THE EVENT ANY OF THE FOREGOING SHALL OCCUR.

IT IS THE RESPONSIBILITY OF ANY INVESTOR PURCHASING THE UNITS TO SATISFY ITSELF AS TO FULL OBSERVANCE OF THE LAWS OF ANY RELEVANT JURISDICTION OUTSIDE THE UNITED STATES IN CONNECTION WITH ANY SUCH PURCHASE, INCLUDING OBTAINING ANY REQUIRED GOVERNMENTAL OR OTHER CONSENTS AND OBSERVING ANY OTHER APPLICABLE REQUIREMENTS.

## **CONFIDENTIALITY**

THIS MEMORANDUM AND ALL OTHER MATERIALS RECEIVED IN CONNECTION WITH THIS OFFERING ARE INTENDED SOLELY FOR THE USE OF THE PERSON TO WHOM THEY HAVE BEEN DELIVERED BY THE SPONSOR OR ITS AUTHORIZED

REPRESENTATIVE AND SOLELY FOR THE PURPOSE OF EVALUATING A POSSIBLE INVESTMENT BY THE RECIPIENT IN THE UNITS DESCRIBED HEREIN, AND ARE NOT TO BE REPRODUCED OR DISTRIBUTED, IN WHOLE OR IN PART, TO ANY OTHER PERSON (OTHER THAN PROFESSIONAL ADVISORS OF THE PROSPECTIVE INVESTOR RECEIVING THIS DOCUMENT FROM THE SPONSOR OR ITS AUTHORIZED REPRESENTATIVE), OR USED FOR ANY OTHER REASON, WITHOUT THE PRIOR WRITTEN CONSENT OF THE SPONSOR. BY ACCEPTING DELIVERY OF THIS MEMORANDUM, YOU AGREE TO THE FOREGOING ON BEHALF OF YOURSELF AND YOUR EMPLOYEES, AGENTS AND ADVISORS. IF YOU ELECT NOT TO PARTICIPATE IN THIS OFFERING, IF YOUR SUBSCRIPTION IS REJECTED OR IF THE TRUST OR THE SPONSOR SO REQUEST, YOU AGREE TO PROMPTLY RETURN THIS MEMORANDUM AND ALL OTHER MATERIALS RECEIVED IN CONNECTION WITH THIS OFFERING WITHOUT RETAINING ANY COPIES OR OTHER REPRODUCTIONS THEREOF, IN WHOLE OR IN PART.

### **NASAA UNIFORM LEGEND**

IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE PERSON OR ENTITY CREATING THE SECURITIES AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISKS OF INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

### **PATRIOT ACT RIDER**

THE INVESTOR HEREBY REPRESENTS AND WARRANTS THAT THE INVESTOR IS NOT, NOR IS IT ACTING AS, AN AGENT, REPRESENTATIVE, INTERMEDIARY OR NOMINEE FOR, A PERSON IDENTIFIED ON THE LIST OF BLOCKED PERSONS MAINTAINED BY THE OFFICE OF FOREIGN ASSETS CONTROL, U.S. DEPARTMENT OF TREASURY. IN ADDITION, THE INVESTOR HAS COMPLIED WITH ALL APPLICABLE U.S. LAWS, REGULATIONS, DIRECTIVES AND EXECUTIVE ORDERS RELATING TO ANTI-MONEY LAUNDERING, INCLUDING BUT NOT LIMITED TO THE FOLLOWING LAWS: (1) THE UNITING AND STRENGTHENING AMERICA BY PROVIDING APPROPRIATE TOOLS REQUIRED TO INTERCEPT AND OBSTRUCT TERRORISM ACT OF 2001, PUBLIC LAW 107-56, AND (2) EXECUTIVE ORDER 13224 (BLOCKING PROPERTY AND PROHIBITING TRANSACTIONS WITH PERSONS WHO COMMIT, THREATEN TO COMMIT OR SUPPORT TERRORISM) OF SEPTEMBER 23, 2001.

**TAX CONSIDERATIONS**

THIS MEMORANDUM PROVIDES NO TAX ADVICE. EACH PROSPECTIVE INVESTOR IS URGED TO CONSULT ITS OWN TAX ADVISOR REGARDING THE U.S. FEDERAL, STATE, LOCAL, AND FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE RECEIPT, OWNERSHIP, AND DISPOSITION OF THE UNITS.

IF ANY PROSPECTIVE INVESTOR HAS ANY QUESTIONS REGARDING THIS OFFERING OR DESIRES ANY ADDITIONAL INFORMATION OR DOCUMENTS TO VERIFY OR SUPPLEMENT THE INFORMATION CONTAINED IN THIS MEMORANDUM, THAT PROSPECTIVE INVESTOR SHOULD CONTACT THE SPONSOR USING THE CONTACT INFORMATION PROVIDED LATER IN THIS MEMORANDUM UNDER THE HEADING “INQUIRIES”.

WE HAVE AGREED TO MAKE AVAILABLE, PRIOR TO THE SALE OF THE UNITS OFFERED PURSUANT TO THIS MEMORANDUM, TO EACH OFFEREE, SUCH OFFEREE’S REPRESENTATIVE, OR BOTH, THE OPPORTUNITY TO ASK QUESTIONS OF, AND RECEIVE ANSWERS FROM, OUR OFFICERS OR ANY OTHER PERSON ACTING ON OUR BEHALF CONCERNING THE TERMS AND CONDITIONS OF THE UNITS AND THE OFFERING AND TO OBTAIN ANY ADDITIONAL INFORMATION, TO THE EXTENT THEY POSSESS SUCH INFORMATION OR CAN ACQUIRE IT WITHOUT UNREASONABLE EFFORT OR EXPENSE, WHICH IS NECESSARY TO VERIFY THE ACCURACY OF THE INFORMATION SET FORTH IN THIS MEMORANDUM OR WHICH AN OFFEREE OR SUCH OFFEREE’S REPRESENTATIVE MAY REASONABLY REQUIRE IN ORDER TO MAKE AN INVESTMENT DECISION CONCERNING THE UNITS.

**OSPREY BITCOIN TRUST****SUMMARY OF THE OFFERING**

The following summary of certain portions of this Memorandum is intended for reference only and is by its nature incomplete. This Memorandum and the other documents accompanying this Memorandum describe in more detail aspects of the investment that are material to prospective investors in the Units. They must be read in their entirety by prospective investors.

Statements contained in this Memorandum as to the content of any other agreement or document are not necessarily complete, and each such statement is deemed to be qualified in all respects by the provisions of those agreements and documents, copies of which are available for examination by prospective investors upon request.

<b>Issuer:</b>	<p>Osprey Bitcoin Trust (the “Trust”), a Delaware trust.</p> <p>The Trust was formed on January 3, 2019, and operates pursuant to the Second Amended and Restated Declaration of Trust and Trust Agreement of Osprey Bitcoin Trust, dated as of November 1, 2020 (as it may be further amended or restated, the “Trust Agreement”), and accepted its first subscription for Units on January 22, 2019. The Trust has since been in continuous operation. The Trust completed an offering of 38,546 Units pursuant to Rule 504 under the Securities Act on August 12, 2020. As of November 1, 2020, the Trust had 1,033,578 Units outstanding and held approximately 1,413 Bitcoins, with an approximate U.S. dollar value of \$19,144,000.00. The Trust’s net asset value (as defined below) per Unit was \$18.52 as of November 1, 2020. On January 5, 2021, the Trust effected a four-to-one (4 to 1) Unit split resulting in in each Unitholder of record as of December 31, 2020, receiving four Units for each outstanding Unit the Unitholder owned. As of January 15, 2021, the Trust had 4,560,652 Units outstanding and held approximately 1,557 bitcoin with an approximate value of \$55,640,000.00. The Trust’s net asset value was \$12.07 as of January 15, 2021.</p>
<b>Sponsor:</b>	Osprey Funds, LLC (the “Sponsor”)
<b>Custodian:</b>	Fidelity Digital Asset Services, LLC (the “Custodian”)
<b>Securities Offered:</b>	A continuous unlimited offering of Units with no par value, each Unit representing a fractional undivided beneficial interest in the Trust (collectively, the “Units”). The Sponsor retains the right to discontinue the offering periodically, from time to time, or for such period as the Sponsor deems necessary or appropriate.



<b>Investment Objective:</b>	The investment objective of the Trust is for the Units to track the price of Bitcoin, as measured at 4:00 P.M. New York time calculated using the Coin Metrics CMBI Bitcoin Index rate <b>available at: <a href="https://cmbi-indexes.coinmetrics.io/cmbibtc">https://cmbi-indexes.coinmetrics.io/cmbibtc</a></b> (“CMBI Bitcoin Index Price”), on each business day, less liabilities and expenses of the Trust. The Units are designed as a convenient and cost-effective method for investors to gain investment exposure to Bitcoin without making a direct investment in Bitcoin.
<b>Bitcoin Market Price:</b>	The Trust will rely on the CMBI Bitcoin Index Price as the “Bitcoin Market Price” to be used when determining the net asset value of the Trust.
<b>NAV:</b>	<p>The net asset value (“NAV”) of the Trust is used by the Trust in its day-to-day operations to measure the net value of the Trust’s assets. The NAV is calculated on each business day and is equal to the aggregate value of the Trust’s assets less its liabilities (which include accrued but unpaid fees and expenses), based on the Bitcoin Market Price. In determining the NAV of the Trust on any business day, the Trust’s Administrator will calculate the price of the Bitcoins held by the Trust as of 4:00 P.M. New York time on such day.</p> <p>The Administrator will also calculate the NAV per Unit of the Trust, which equals the NAV of the Trust divided by the number of outstanding Units (the “NAV per Unit”). The Administrator will calculate the NAV and NAV per Unit on each business day and these amounts will be published as soon thereafter as practicable on the website <a href="http://www.ospreyfund.io">www.ospreyfund.io</a>.</p>

<p><b>Offering Price of the Units, Number of Units Issued:</b></p>	<p>The issuance of Units requires payment to the Trust of the amount of U.S. dollars required for the Units being issued (or, at the sole discretion of the Sponsor, payment of the number of Bitcoins represented by the Units being issued). The number of Units to be issued with respect to the amount of cash (or Bitcoin) paid by an investor will depend on (i) when the subscription of such investor is accepted, and (ii) when such investor's subscription amount is then invested. Such investment is expected to take place within approximately 5 business days or fewer after receiving the subscription amount, but it could take place at a later time. In all events, it is only when the subscription amount is invested that it will be known, based on the then-applicable NAV per Unit, how many Units to issue to the investor. The Trust intends to have all subscriptions reviewed for acceptance, and all subscription amounts invested, with a reasonable degree of speed and efficiency. However, an accepted investor who submits a subscription amount on a particular day should not expect to receive Units based on the latest NAV as of that day. Instead, the investor will receive Units based on the NAV applicable to the day on which that subscription amount is invested, which could be the same day but may more likely be a later day. The Sponsor currently expects that it may issue Units weekly, and allow orders to accumulate between issuances.</p> <p>The Sponsor or its delegate has final determination of all questions as to the number of Units issuable with respect to a particular purchase, including as to how such number may be adjusted in respect of accrued but unpaid fees and expenses of the Trust. Unless otherwise waived by the Sponsor in its sole discretion, the minimum investment accepted by the Trust will be \$25,000.00 (Twenty Five Thousand Dollars) per investor.</p>
<p><b>Use of Proceeds:</b></p>	<p>Proceeds received by the Trust from the issuance and sale of Units will be used to acquire Bitcoin and to accrue forked or airdropped cryptocurrency coins from the Bitcoin Network, or their respective U.S. dollar cash equivalents. Such Bitcoin will in all cases be (1) owned by the Trust and held by the Custodian, (2) disbursed (after conversion to U.S. dollars, as applicable) to pay the Trust's expenses, (3) distributed (after conversion to U.S. dollars, as applicable) to holders of the Trust's Units ("Unitholders") in connection with the redemption of Units, if and when redemptions of Units are ever permitted, (4) distributed (after conversion to U.S. dollars, as applicable), to Unitholders as dividends, if and when dividends are ever paid (see"—Dividends", below) and (5) liquidated in the event that the Trust is terminated or as otherwise required by law or regulation.</p>

<b>Management Fee:</b>	The Trust will pay as an ordinary recurring charge the remuneration due to the Sponsor (the “Management Fee”). The Management Fee equals an annualized 0.49% of the average daily NAV of the Trust for each year. It will accrue daily in Bitcoins and will be payable, at the Sponsor’s sole discretion, in Bitcoins or in U.S. dollars at the Bitcoin Market Price in effect at the time of such payment. The Sponsor expects that the Trust will pay the Management Fee in monthly installments in arrears.
<b>Trust Expenses:</b>	The Sponsor will bear the routine operational, administrative and other ordinary fees and expenses of the Trust (the “Assumed Expenses”); provided, however, that the Trust shall be responsible for all of its audit and index licensing fees, and aggregate legal fees in excess of \$50,000 per annum (excluding legal fees related to its organization, which were paid by the Sponsor) and other non-routine expenses, which will be borne by the Trust as extraordinary expenses. The Trust shall also pay the fees and expenses of the Custodian. The Sponsor paid the costs of the Trust’s organization.
<b>Unit Issuance:</b>	The issuance of Units requires payment to the Trust of the amount of U.S. dollars required for the Units being issued (or, at the sole discretion of the Sponsor, payment of the number of Bitcoins represented by the Units being issued). The Sponsor or its delegate has final determination of all questions as to the number of Units issuable with respect to a particular purchase, including as to how such number may be adjusted in respect of accrued but unpaid fees and expenses of the Trust. The amount of cash (or the number of Bitcoins) required to create a Unit may gradually decrease over time due to the transfer of Trust Bitcoins to pay the Management Fee and the transfer or liquidation of Trust Bitcoins to pay any Trust expenses not assumed by the Sponsor.
<b>Payments by Investors:</b>	Payment for Units in cash may be in the form of a check or wire transfer. In-kind payments may be accepted at the sole discretion of the Sponsor. Upon the acceptance of any particular investment by the Sponsor, the Trust will be permitted to close on the funds received in respect of that investment and make use of those funds. No minimum aggregate offering amount must be raised before the Trust can make use of invested funds.
<b>No Minimum Aggregate Offering Amount:</b>	No minimum aggregate offering amount must be raised before the Trust can make use of invested funds.

<p><b>Exemption from U.S. Federal Securities Registration:</b></p>	<p>The Units are being offered and sold in reliance upon the exemption from the registration requirements of the U.S. federal securities laws set forth in Rule 506 of Regulation D under the Securities Act. Specifically, they are being offered and sold in reliance on Rule 506(c) under the Securities Act solely to accredited investors.</p> <p>The Units are restricted securities under the U.S. federal and state securities laws. They may not be sold, transferred, hypothecated or otherwise disposed of in the absence of an effective registration statement or an exemption from the registration requirements of the Securities Act and pursuant to prior approval by the Sponsor. Any attempt to sell Units without the approval of the Sponsor in its sole discretion will be void <i>ab initio</i>.</p> <p>As noted under “Unit Issuance and Redemption,” at this time, the Sponsor is not accepting redemption requests from Unitholders.</p>
<p><b>Accredited Investors:</b></p>	<p>The Units are being offered to prospective investors who are verified as “accredited investors” (as defined in Rule 501 under the Securities Act) pursuant to a private placement being made in reliance upon an exemption from the registration requirements of federal and state securities laws and will not be registered under federal securities laws or the laws of any state. Each purchaser will be required in connection with the purchase of the Units to make representations confirming that the purchaser is eligible as a prospective investor and that the purchase is purchasing the securities for the purchaser’s own account and not with a view to resale or distribution of the securities. Further independent verification of “accredited investor” status of the purchaser will be required.</p>
<p><b>Plan of Distribution:</b></p>	<p>The Units will be offered by the Trust and the Sponsor and its officers. Currently, the Trust does not expect to use underwriters, finders or other intermediaries to offer or sell Units, but it may choose to do so, and in any such case pay the fees of such intermediaries itself or pass some or all of such fees on to purchasers (in which case the Trust will make advanced disclosure of such fee arrangements to such purchasers). Because Units may be offered, and new Units can be created and issued, on a continuous basis throughout the duration of this offering, a “distribution,” as such term is used in the Securities Act, may be continuously occurring during the duration of this offering. Although the Units may be offered continuously, the Sponsor may, in its discretion, issue Units only periodically. The Sponsor currently expects that it may issue Units weekly, and allow orders to accumulate between issuances.</p>

<b>Duration of Offering:</b>	The Units will be offered continuously with no specific completion date of the offering currently foreseen, and the Trust is not mandating a specific completion date. The Sponsor retains the right to discontinue the offering periodically, from time to time, or for such period as the Sponsor deems necessary or appropriate.
<b>Public Trading:</b>	The Units sold in the offering will be restricted securities under U.S. federal securities laws, and therefore such units will not be freely tradeable for a minimum of one year from the date of purchase under current law. Approximately 4,134,312 Units of the Trust are unrestricted and are freely tradeable under U.S. federal securities laws. On January 14, 2021, the Financial Industry Regulatory Authority (“FINRA”) determined the Units met the criteria for quotation and trading on the over-the-counter market (“OTC Market”) under the ticker symbol “OBTC.” Nevertheless, there can be no assurance that the Units will trade with sufficient liquidity for the quotation to be of practical use to investors. Therefore, investors should be aware that they may be required to bear the financial risks of an investment in the Units for an indefinite period of time. If, as of December 31, 2021, the Units are not quoted and trading on a secondary market in the United States, the Sponsor will dissolve the Trust on or before January 31, 2022.
<b>Dividends:</b>	The Trust does not intend to pay regular dividends. The Trust may pay dividends, at the sole discretion of the Sponsor, upon the sale of Bitcoins resulting from a Bitcoin fork.
<b>No Voting Rights:</b>	Unitholders will have no voting rights in regard to the management of the Trust or otherwise.
<b>No Redemptions:</b>	Currently, Units may not be redeemed. In the future, redemptions may be permitted. However, there can be no assurance as to when redemptions may be permitted, if ever.

<b>ERISA:</b>	The Sponsor intends to restrict the aggregate investment by “benefit plan investors” (as defined below) in the Trust to under 25% of the total value of each class of equity interests of the Trust so that the assets of the Trust will not be deemed to be “plan assets” for purposes of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) or Section 4975 of the Internal Revenue Code.
<b>Fiscal Year End:</b>	The fiscal year of the Trust ends on December 31st of each year.
<b>Termination Event:</b>	Upon dissolution of the Trust and surrender of Units by the Unitholders, Unitholders will receive a distribution in U.S. dollars or Bitcoins or both, at the sole discretion of the Sponsor, after the Sponsor has paid or made provision for the Trust’s obligations.
<b>Withdrawal of the Sponsor:</b>	The Trust shall terminate upon the withdrawal of the Sponsor unless at the time there is at least one Sponsor remaining. The Sponsor may admit an additional Sponsor.
<b>Risk Factors:</b>	Any investment in the Units involves significant risks. See “Risk Factors and Potential Conflicts of Interest” for more information.

## **INFORMATION ABOUT BITCOIN**

### **Overview**

“Bitcoin” is a digital asset, and the first so-called cryptocurrency. It uses peer-to-peer technology to decentralize control of the overall Bitcoin computer network (the “Bitcoin Network”), and blockchain technology to ensure the secure transfer and authenticity of each Bitcoin. Bitcoins are stored on digital wallets and can be used to pay for goods and services. They can also be purchased, sold and traded on websites that facilitate the transfer of Bitcoin in exchange for government-issued currencies or other cryptocurrencies, traded on cryptocurrency exchanges and transferred in individual end-user-to-end-user transactions under a barter system. Bitcoin benefits include security, decentralization, low transaction costs compared to many other payment systems, the potential for universal use and the ability to divide a single Bitcoin by up to eight decimal places.

A Blockchain is a decentralized, distributed ledger that records the provenance of digital assets. The ledger is public and accessible to all, and portions and copies of it are stored in a decentralized manner on the several million computers comprising the Bitcoin Network. Transaction data is permanently recorded in data files called “blocks,” which reflect transactions that have been recorded and authenticated by Bitcoin Network participants known as “miners.” Each newly recorded block of transactions refers back to and “connects” with the immediately preceding recorded block in the ledger. Each new block records outstanding Bitcoin transactions, and outstanding transactions are settled and validated through such recording. The Blockchain is designed to represent a complete, transparent, secure and unbroken history of all the transactions that have occurred on the Bitcoin Network. The Bitcoin Network software source code includes the protocols that govern the creation, or “mining”, of new Bitcoins and the cryptographic system that secures and verifies Bitcoin transactions. New Bitcoins are allocated by the Bitcoin Network protocol through the mining process, subject to a well-known issuance schedule contained within the protocol.

The Blockchain constitutes a record of every Bitcoin, every Bitcoin transaction (including the mining of new Bitcoins) and every Bitcoin address associated with a quantity of Bitcoin. The Bitcoin Network and Bitcoin Network software programs can interpret the Blockchain to determine the exact Bitcoin balance, if any, of any public Bitcoin address listed in the Blockchain as having taken part in a transaction on the Bitcoin Network. Bitcoin Network miners engage in a set of prescribed, complex mathematical calculations in order to add a block to the Blockchain and thereby confirm Bitcoin transactions included in that block’s data. In addition to confirming the authenticity of recent transactions and referencing the preceding block, each block also contains an answer to a mathematical problem. Miners generate potential answers to this mathematical problem at a rapid rate, effectively searching for a correct answer via computational trial-and-error. New blocks cannot be submitted to the network without a correct answer to the mathematical problem. The mathematical problem in each block is extremely difficult to solve, but once a valid solution is found, it is very easy for the rest of the network to confirm that the solution is correct. Once the mathematical problem has been solved, the miner may then transmit a copy of the newly-formed block to peers on the Bitcoin Network, which then update their respective copies of the Blockchain by appending the new block. A new block that is added to the Blockchain serves to take recent, but as yet unconfirmed, transactions and verify that none are fraudulent, and the miner that first solves such block receives a reward of a fixed number of Bitcoin

for the miner's effort. In addition to the block reward, end users pay fees as an incentive for a miner to confirm their transactions in newly created blocks.

The protocol underlying the Bitcoin Network provides the rules by which all users and miners on the Bitcoin Network must operate. Bitcoin Network software automatically adjusts the difficulty of the mathematical problem so that a new block is mined approximately once every ten minutes, which can impact the number of transactions that can be accommodated on the Bitcoin Network. The protocol also lays out the block reward – the amount of Bitcoin that a miner earns upon creating a new block. The initial block reward when the Bitcoin Network was introduced in 2009 was 50 Bitcoin per block. That number has and will continue to halve approximately every four years until approximately 2140, when it is estimated that block rewards will go to zero. The most recent halving occurred on May 11, 2020, which reduced the block reward from 12.5 to 6.25 Bitcoin.

The Bitcoin Network was initially contemplated in a white paper that also described Bitcoin and the operating software to govern the Bitcoin Network. The white paper was purportedly authored by Satoshi Nakamoto; however, no individual with that name has been reliably identified as Bitcoin's creator, and the general consensus is that the name is a pseudonym for the actual inventor or inventors. The first Bitcoin was created in 2009 after Nakamoto released the Bitcoin Network source code (the software and protocol that created and launched the Bitcoin Network). The Bitcoin Network protocol is built using open source software, allowing for any developer to review the underlying code and suggest changes. There is no official company or group that is responsible for making modifications to the Bitcoin Network; however, there are a number of individual developers that regularly contribute to a specific distribution of Bitcoin Network software dubbed "Bitcoin Core." Significant changes to the Bitcoin Network protocol are typically accomplished through a so-called Bitcoin Improvement Proposal or BIP. Such proposals are generally posted on websites, and the proposals explain technical requirements for the protocol change as well as reasons why the change should be accepted.

Because the Bitcoin Network has no central authority, the implementation of a change in the Bitcoin Network is achieved by users and miners downloading and running updated versions of Bitcoin Network software. If a significant proportion of Bitcoin Network users and miners decide to adopt a change to the Bitcoin Network that is not compatible with previous software, then this software will recognize and process transactions differently on a going-forward basis. If another significant proportion of Bitcoin Network users and miners decide not to adopt such change, then these two Bitcoin Network groups would not process transactions in the same way on a going forward basis. In this scenario, the blocks recognized as valid by one group of users will be different from the blocks recognized as valid by the other group of users, which will cause transaction records to diverge, or "fork," on a going-forward basis. If this were to occur, two separate Bitcoin Networks could result, one running the pre-modification software program and the other running the modified version (*i.e.*, a second "Bitcoin" network). In the event of a permanent fork with two separate and incompatible Bitcoin Networks, the price movements of different versions of Bitcoin on different Bitcoin Networks may deviate. In such a case, the Sponsor will evaluate the characteristics of each Bitcoin Network to determine in its sole discretion which Bitcoin Network will provide exposure that best comports with the Trust's investment objective. On August 1, 2017, the Bitcoin Network was forked by a group of developers and miners accepting changes to the Bitcoin Network software intended to increase transaction



capacity. On October 25, 2017, the Bitcoin Network was forked by a group of developers accepting changes to the Bitcoin Network software intended to reduce the use of specialized hardware in the Bitcoin mining process. Blocks mined on these networks now diverge from blocks mined on the Bitcoin Network, which has resulted in the creation of new blockchains whose digital assets are referred to as “Bitcoin Cash” and “Bitcoin Gold,” respectively. The Bitcoin Network, the Bitcoin Cash network, and the Bitcoin Gold network now operate as separate, independent networks. In mid-November of 2017, an additional protocol change labeled “Segwit2x,” which had substantial support from large numbers of Bitcoin users, was cancelled by its proponents shortly before it was due to be implemented. Multiple proposals for increasing the capacity of the Bitcoin Network still exist, and it is possible that one or more of these proposals could result in further network “forks,” which may become increasingly frequent.

To engage in Bitcoin transactions, users generate two mathematically related numbers that are used to authenticate Bitcoin transactions: a “public key,” which is used to generate a “public address,” and a “private key.” The private key is frequently retained in a software program for facilitating Bitcoin transactions, known as a digital or Bitcoin “wallet,” while the public address may be made publicly available. The public address serves as an address to which Bitcoin can be transferred and from which Bitcoin can be sent by the owner of the private key. The Bitcoin Network utilizes the Blockchain to evidence the existence of Bitcoin associated with any “public address” that has been used in a transaction on the Bitcoin Network. A “private key” controls the transfer or “spending” of Bitcoin from its associated public address.

### **Value of Bitcoin**

The value of Bitcoin, as with most assets, is influenced by several factors, including the supply of and demand for Bitcoin, costs associated with mining Bitcoin, rewards issued to miners for verifying transactions, the number of competing cryptocurrencies, how Bitcoin trades, regulations governing its sale and trade, and the protocol itself. Due to the dynamic of these factors as well as others, the value of a Bitcoin is difficult to determine and the price of a Bitcoin can fluctuate. In all events, benefits of transacting in Bitcoin typically include low transaction costs, near-zero transportation costs and low-to-zero storage costs.

### **Regulation of Bitcoin**

#### ***Certain Historical Developments***

In the United States, federal and state approaches to regulation and oversight of cryptocurrencies has varied significantly as between states, the states and the Federal government and among Federal agencies. The regulation on both the state and federal level generally come into focus upon the sale of cryptocurrency that may constitute the sale of a security or when the sale can be considered to have constituted a money transmission under state law or under Financial Crimes Enforcement Network (“FinCEN”) regulations, as part of a money services business.

Many state legislatures have passed crypto-friendly laws hoping to inspire growth in their local economies with the use of cryptocurrency and the underlying blockchain technology. For example, Wyoming currently exempts cryptocurrency from property taxation. Other crypto-

friendly laws that have passed include exemptions from state securities laws, money transmission statutes and other regulatory requirements. Other states have taken a more cautious approach, foreseeing the benefits of blockchain technology and cryptocurrencies but desiring to mitigate the risks associated with investing in cryptocurrencies, particularly through third party service providers such as exchanges, who are susceptible to cyber-security risks and who may charge substantial fees for transactions. For example, New York has passed laws generally considered restrictive of cryptocurrency, while several large cryptocurrency exchanges, such as Gemini, have received New York State trust company charters.

The Federal government has focused its regulation on the administrative agency level (including FinCEN, SEC, CFTC, FINRA), the Consumer Financial Protection Bureau (“CFPB”), the Department of Justice, the Department of Homeland Security, the Federal Bureau of Investigation, the IRS). The Federal government’s focus has been, in part, on the extent to which Bitcoin can be used to launder the proceeds of illegal activities, fund criminal or terrorist enterprises and the safety and soundness of exchanges or other third-party service providers that hold Bitcoin for users. In addition, futures, options, swaps and other derivative contracts that make reference to the price of a “cryptoasset” may constitute a commodity and thus are subjected to regulation by the CFTC under the Commodity Exchange Act. In a series of actions against considering futures contracts linked to the price of Bitcoin now traded on the Chicago Mercantile Exchange and the Chicago Board Options Exchange, it is increasingly likely that the CFTC will continue to seek to regulate such contracts. As of the date of this Memorandum, the SEC has not asserted regulatory authority over the Bitcoin Network or Bitcoin trading or ownership and its staff has informally expressed the view that digital assets, including Bitcoin, should not be classified or treated as securities for purposes of U.S. federal securities laws.

Additionally, the IRS has classified Bitcoin as property that is not currency for U.S. federal income tax purposes.<sup>1</sup> The degree to which such interpretations will become the norm is unknown. The New York State Department of Taxation and Finance, citing the IRS classification, defined Bitcoin and other digital assets as “intangible property,”<sup>2</sup> and a number of other states have issued their own guidance regarding the tax treatment of Bitcoin for state income or sales tax purposes.

### ***Proposed Laws that May Adversely Affect Bitcoin***

In addition to the regulations on a Federal Agency and State level, on May 25, 2017, a bipartisan bill entitled “Combating Money Laundering, Terrorist Financing, and Counterfeiting Act of 2017” was introduced into the U.S. Senate. The proposed bill adds language to existing anti-money laundering provisions to include digital wallets, prepaid access devices and other “digital currency exchangers” if they contain over \$10,000 of digital assets. As of the date of this Memorandum this proposed bill has not yet made it out of committee, however, if enacted, this bill may adversely affect Bitcoin and, consequently, the Trust and its Units. Additionally, on July 15, 2019, a bill entitled “Keep Big Tech Out Of Finance Act” was proposed which seeks to limit the ability of

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<sup>1</sup> Internal Revenue Service, IRS Virtual Currency Guidelines, Notice 2014-14 (Apr. 14, 2014).

<sup>2</sup> New York State Department of Taxation and Finance, Tax Department Policy on Transactions Using Convertible Virtual Currency (Dec. 5, 2014).

large technology platforms, such as Facebook, to establish, maintain, or operate a digital asset. Although neither of these two bills have become law, they point to the larger role that Congress may seek to take in the regulation of digital assets in the coming years.

### ***International Approaches to the Regulation of Bitcoin***

Because factors affecting the value of Bitcoin transcend borders, the approach taken internationally relating to the regulation of Bitcoin may also have an adverse effect on its value and thus on the value of an investment in the Trust. Since December 2013, regulators in jurisdictions including the United States, the United Kingdom, and Switzerland have provided greater regulatory clarity, while Chinese, Icelandic, and Vietnamese government officials have taken steps to limit the participation of their respective financial services sectors from directly interacting with the Bitcoin Network ecosystem, creating additional regulatory uncertainty in those countries.<sup>3</sup>

For example, in China, Bitcoin was recognized to be “virtual Property,” and not a currency. In 2019, the courts in Hangzhou confirmed this assessment and declared Bitcoin as virtual property. On the other hand, China has also placed a blanket ban on initial coin offerings in China, among other measures aimed at suppressing the widespread use of digital assets. The same notice restricted the existing banking and payment industries from using Bitcoin, limiting the scope of the operations of Bitcoin exchanges in one of the largest Bitcoin markets at the time. In January 2017, in response to informal guidance received from the People’s Bank of China (the “PBoC”) concerning the creation of tighter anti-money laundering and foreign exchange controls, the largest China-based Bitcoin exchanges adjusted their terms to pause or limit loans and borrowing services. These exchanges later introduced a 0.2% fixed-rate transaction fee for all bitcoin buy and sell orders, with similar measures soon adopted by many of China’s smaller bitcoin exchanges. Bitcoin withdrawals have also been halted on these exchanges. In March 2017, the PBoC reaffirmed its commitment to regulating Bitcoin exchanges and indicated the possibility of licensing a number of qualified exchanges. These events have substantially reduced trading volume on Chinese Bitcoin exchanges.

In 2016, the Australian government announced its plan to update its anti-money laundering laws to apply to digital currency exchanges, following an inquiry by the government into the country’s tax treatment and regulation of Bitcoin. In Japan, regulations went into effect in April 2017 that recognize digital currencies as a legal method of payment and require market participants,

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<sup>3</sup> See *e.g.*, HM Revenue & Customs, Bitcoin and Other Cryptocurrencies, Revenue and Customs Brief 9-2014 (Mar. 3, 2014); Federal Council of Switzerland, Federal Council Report on Virtual Currencies in Response to the Schwaab (13.3687) and Weibel (13.4070) Postulates (June 25, 2014); Central Bank of Iceland, Significant Risk Attached to Use of Virtual Currency, Release No. 9/2014 (Mar. 19, 2014); State Bank of Vietnam, Press Release on Bitcoins and Other Virtual Currencies (Feb. 28, 2014).and foreign exchange controls, the largest China-based Bitcoin Exchanges adjusted their terms to pause or limit loan and borrowing services. These exchanges later introduced a 0.2% fixed-rate transaction fee for all Bitcoin buy and sell orders, with similar measures soon adopted by many of China’s smaller Bitcoin exchanges. Bitcoin withdrawals have also been halted on these exchanges. In March 2017, the PBoC reaffirmed its commitment to regulating Bitcoin Exchanges and indicated the possibility of licensing a number of qualified exchanges. These events have substantially reduced trading volume on Chinese Bitcoin Exchanges.

including exchanges, to meet certain compliance requirements and be subject to oversight by the Financial Services Agency, a Japanese regulator. The government of Israel and the Israel Tax Authority decided in January 2017 to apply capital gains tax to sales of Bitcoin and other digital currencies. Conversely, regulatory bodies in some countries such as India have declined to exercise regulatory authority when afforded the opportunity. At the other extreme there is Ecuador, Bolivia, and Bangladesh, whom in 2014 banned the use of Bitcoin and other digital currencies.

In July 2016, the European Commission released a draft directive that proposed applying counter-terrorism and anti-money laundering regulations to digital assets, and, in September 2016, the European Banking Authority advised the European Commission to institute new regulation specific to digital assets, with amendments to existing regulation as a stopgap measure.<sup>9</sup>

U.S. regulators, at both the state and federal level, and foreign regulators and legislatures have taken action against digital asset businesses or enacted restrictive regimes in response to adverse publicity arising from cybersecurity risks, potential consumer harm, or digital assets used in connection with criminal activity. The value of Bitcoin could be impacted by such adverse publicity. Various foreign jurisdictions may, in the near future, adopt laws, regulations or directives that affect the Bitcoin Network, the Bitcoin exchange market and their users, particularly Bitcoin exchanges and service providers that fall within such jurisdictions' regulatory scope, which may in turn, impact the price of Bitcoin. Such laws, regulations or directives may conflict with those of the United States and may negatively impact the acceptance of Bitcoin by users, merchants and service providers outside the United States and may therefore impede the growth or sustainability of the Bitcoin economy globally, or otherwise negatively affect the value of Bitcoin. The regulatory uncertainty surrounding the treatment of Bitcoin creates risks for the Trust.

### ***Illicit Use and Fraudulent Activity***

As with any other asset or medium of exchange, Bitcoin can be used to purchase illegal goods, fund unlawful activities or to launder money. Bitcoin has been used for unlawful gambling and for the purchase of illegal goods.

Using Bitcoin provides users with a certain degree of anonymity, insofar as sending and receiving Bitcoin does not involve the use of personal information (*i.e.*, Bitcoin addresses are strings of up to 35 alphanumeric characters that appear random). Anonymity is limited, however, by the nature of Bitcoin transactions, all of which are recorded indelibly on the Blockchain, and by the fact that Bitcoin exchanges conduct AML and KYC verifications on their customers due in part to such anonymity. However, the Trust is unable to track the prior movement of Bitcoin that it may purchase or trade to check for prior illicit activity. In the event of such prior illicit activity, the Trust's Bitcoin may be subject to "clawback" by courts or regulators, which would reduce the value of Units.

During the past several years, a number of Bitcoin businesses have been associated with Bitcoin theft and fraudulent schemes. For example, in 2014, the largest Bitcoin exchange at the time, Mt. Gox, filed for bankruptcy in Japan amid reports the exchange lost up to 850,000 Bitcoin, valued

then at over \$450 million, as well as \$28 million in cash from the exchange's bank accounts. In August 2016, Bitfinex, a Bitcoin exchange located in Hong Kong, reported a security breach that resulted in the theft of approximately 120,000 Bitcoin valued at the time at approximately \$72 million, a loss which was allocated to all Bitfinex account holders (rather than just specified holders whose wallets were affected directly), regardless of whether the account holder held Bitcoin or cash in their account. Similarly, it has been reported that Bitcoin exchange Coincheck lost approximately \$500 million to hackers in 2018 and that Bitcoin exchange Binance lost approximately \$40 million to hackers in 2019. Numerous additional fraudulent and other illicit activities regarding Bitcoin are reported regularly by major media, both in the United States and abroad. Such illicit activity makes investment in Bitcoin potentially riskier than investment in other, more established, vehicles.

### **Additional Bitcoin Products and Trading**

Certain U.S. and non-U.S. based Bitcoin exchanges offer derivative products on Bitcoin such as options, swaps, and futures. Below is a non-exhaustive list of certain cryptocurrency related derivative products, such as options, swaps and futures.

BitMex, based in the Republic of Seychelles, CryptoFacilities, based in the United Kingdom, 796 Exchange, based in China, and OKCoin Exchange China all offer futures contracts settled in Bitcoin. Coinut, based in Singapore, offers Bitcoin binary options and vanilla options based on the Coinut index. Deribit, based in The Netherlands, offers vanilla options and futures contracts settled in Bitcoin. IGMarks, based in the United Kingdom, Avatrade, based in Ireland, and Plus500, based in Israel, all offer Bitcoin contracts for difference.

In 2016, the U.S., the CFTC approved TeraExchange, GTX SEF, LLC and FTSEF LLC as swap execution facilities where Bitcoin swap and non-deliverable forward contracts may be entered into. In July 2017, the CFTC issued an order granting LedgerX, LLC ("LedgerX") registration as a derivatives clearing organization under the CEA. Under the order, LedgerX is authorized to provide clearing services for fully-collateralized digital currency swaps. LedgerX, which was also granted an order of registration as a Swap Execution Facility in July 2017, is the first federally-regulated exchange and clearing house for derivatives contracts settling in digital currencies. LedgerX began trading options and swaps on its platform in October 2017, and CME Group, Inc. currently offers cash-settled Bitcoin futures contracts. Cantor Futures Exchange L.P. launched Bitcoin swaps in December 2017 (Cboe Global Markets offered bitcoin futures from 2017 until 2019). Most recently, in April 2020, the CFTC approved the Bitnomial exchange as a designated contract market to list margined and physically delivered bitcoin futures and options.

Grayscale Bitcoin Trust is a publicly reporting open-ended trust, founded in 2013, which periodically offers investment opportunities to accredited investors. Its shares, which derive their value from the price of Bitcoin, are quoted on the OTCQX marketplace. Bitwise 10 Crypto Index Fund offers a similar product to investors and is quoted on the OTCQX marketplace also.

## **Historical Price of Bitcoin**

The price of Bitcoin is volatile and fluctuations are expected to have a direct impact on the value of the Units. However, movements in the price of Bitcoin in the past are not a reliable indicator of future movements. Movements may be influenced by various factors, including supply and demand, geo-political uncertainties, economic concerns such as inflation, and real or speculative investor interest.

## **Competition**

Bitcoin is not the only available decentralized digital asset. Other digital assets have been developed since the inception of the Bitcoin, including, but not limited to, Ethereum, Litecoin, Monero, and Zcash. Although a competitive digital asset could displace the market share Bitcoin currently occupies, it would face significant headwinds due to the network effect and financial and intellectual investments currently enjoyed by the market leader. As of November 9, 2020, the Bitcoin network market share of the total digital market capitalization was estimated to be approximately 64.2%. Further, many Bitcoin exchanges use Bitcoin as the exchange comparison for other cryptocurrencies. For example, to purchase certain cryptocurrencies you first need to purchase Bitcoins on an exchange and then use the Bitcoin to purchase other cryptocurrencies.

*The above description of Bitcoin, its regulation and trading and other relevant aspects is not meant to be full and complete. The Company recommends that each investor do their own research and consult with their own advisors to understand Bitcoin and how it and other cryptocurrencies operate and the risks involved in investing in Bitcoin and other cryptocurrencies.*

## **RISK FACTORS AND POTENTIAL CONFLICTS OF INTEREST**

An investment in the Trust involves the risk of losing money. Consider the risks below as well as the rest of the information in this Memorandum before making an investment decision.

### **Risks Associated with Investing Directly or Indirectly in Bitcoin**

Bitcoin is an extremely new and nontraditional asset. Bitcoin was released in 2009 and not all information with respect to its origin is known, which limits a potential Unitholder's ability to evaluate the performance of Bitcoin. Digital assets, represented on a decentralized public transaction ledger that is maintained by an open source protocol, are substantively different from traditional assets and investments. Because of the complex nature of Bitcoin itself coupled with an investment with exposure to the performance thereof, an investor in the Trust may face numerous material risks that may not be present in other investments. These risks include:

#### *Bitcoin Exchange Risk.*

The Bitcoin exchanges on which Bitcoin trades are new, developing in complexity and structure and, in many cases, unregulated. Bitcoin exchanges are coming under more intense scrutiny from regulators around the world. Furthermore, many Bitcoin exchanges (including several of the most prominent U.S. dollar-denominated Bitcoin exchanges) do not provide the public with significant

information regarding their ownership structure, management teams, corporate practices or regulatory compliance. As a result, the marketplace may lose confidence in or may experience problems relating to Bitcoin exchanges, including prominent exchanges which handle a significant portion of the volume of Bitcoin trading. Bitcoin exchanges may impose daily, weekly, monthly, or customer-specific transaction or distribution limits, or the Bitcoin exchanges may suspend withdrawals entirely, rendering the exchange of virtual currency for fiat currency difficult or impossible. Bitcoin exchanges generally operate outside of the United States. An investor may have difficulty in successfully pursuing claims in the courts of such countries or enforcing in the courts of such countries a judgment obtained in another country. In general, certain less developed countries lack fully developed legal systems and bodies of commercial law and practices normally found in countries with more developed market economies. Currently, there are no specific regulatory protections in place that would protect an investor in Bitcoin from financial losses if a Bitcoin exchange were to fail or go out of business. Participation in Bitcoin exchanges requires users to assume risks by transferring traditional currencies from a traditional banking institution or Bitcoin from a personal digital wallet account to a third party's account.

A number of Bitcoin exchanges have been closed due to fraud, failure or cyber-security breaches. In many of these instances, the customers of such Bitcoin exchanges were not compensated or made whole for the partial or complete loss of their account balances in such Bitcoin exchanges. While smaller Bitcoin exchanges are less likely to have the infrastructure and capitalization that make larger Bitcoin exchanges more stable, larger Bitcoin exchanges are more likely to be appealing targets for hackers and "malware" (*i.e.*, software used or programmed by attackers to disrupt computer operation, gather sensitive information or gain access to private computer systems). In 2014, the largest Bitcoin exchange at the time, Mt. Gox, filed for bankruptcy in Japan amid reports the exchange lost up to 850,000 Bitcoin, valued then at over \$450 million, as well as \$28 million in cash from the exchanges bank accounts. In August 2016, Bitfinex, a Bitcoin exchange located in Hong Kong, reported a security breach that resulted in the theft of approximately 120,000 Bitcoin valued at the time at approximately \$72 million, a loss which was allocated to all Bitfinex account holders (rather than just specified holders whose wallets were affected directly), regardless of whether the account holder held Bitcoin or cash in their account. Similarly, it has been reported that Bitcoin exchange Coincheck lost approximately \$500 million to hackers in 2018 and that Bitcoin exchange Binance lost approximately \$40 million to hackers in 2019.

A lack of stability in the Bitcoin exchange market and the closure or temporary shutdown of Bitcoin exchanges due to fraud, business failure, hackers or malware, or government-mandated regulation may reduce confidence in the Bitcoin Network and result in greater volatility in the price of Bitcoin. These potential consequences of a Bitcoin exchange's failure could adversely affect the price of Bitcoin, which would be likely to affect the value of the Trust's investments.

#### *Competition Risk.*

The Bitcoin Network and Bitcoin, as an asset, hold a "first-to-market" advantage over other digital assets. This first-to-market advantage is driven in large part by having, as of the date of this Memorandum, the largest user and investor base and the largest number of miners and, consequently, the largest aggregate hashrate securing the Blockchain and verifying its transactions. Having a large mining network results in greater user confidence regarding the security and long-term stability of a digital asset's network and its block chain; as a result, the advantage of more

users and miners makes a digital asset more secure, which makes it more attractive to new users and miners, resulting in a network effect that strengthens the first-to-market advantage. However, it is possible that another digital asset could become materially popular due to either a perceived or exposed shortcoming of the Bitcoin Network protocol that is not immediately addressed by the Bitcoin contributor community or a perceived advantage of an “altcoin” that includes features not incorporated into Bitcoin. In particular, the digital asset “Ethereum,” has gained substantial market share, which may be in part due to perceived institutional backing or potentially advantageous features not incorporated into Bitcoin. Additionally, on August 1, 2017, the Bitcoin network “forked,” creating a new digital asset referred to as Bitcoin Cash which was designed to address perceived limitations of the Bitcoin Network’s block size requirements. On October 25, 2017, the Bitcoin Network again “forked”, creating a new digital asset referred to as Bitcoin Gold which was designed to reduce the use of specialized hardware in the Bitcoin mining process. In mid-November of 2017, an additional protocol change labeled “Segwit2x,” which had substantial support from large numbers of Bitcoin users, was cancelled by its proponents shortly before it was due to be implemented. Multiple proposals for increasing the capacity of the Bitcoin Network still exist, and it is possible that one or more of these proposals could result in further network “forks,” which may become increasingly frequent. If a digital asset obtains significant market share (either in market capitalization, mining power or use as a payment technology), this could reduce Bitcoin’s market share and have an impact on the demand for, and price of, Bitcoin and thereby adversely affect the value of the Trust’s investments.

*Intellectual Property Risk.*

Third parties may assert intellectual property claims relating to the holding and transfer of digital assets and their source code. Regardless of the merit of any intellectual property or other legal action, any threatened action that reduces confidence in the Bitcoin Network’s long-term viability or the ability of end-users to hold and transfer Bitcoin may adversely affect an investment in the Units. Additionally, a successful intellectual property claim could prevent market participants from accessing the Bitcoin Network or holding or transferring their Bitcoin, which could adversely impact the price of Bitcoin and the value of a Trust’s investments.

*Internet and Cybersecurity Risk.*

The Bitcoin Network’s functionality relies on the Internet. A significant disruption of Internet connectivity affecting large numbers of users or geographic areas could impede the functionality of the Bitcoin Network and adversely affect the Trust. In addition, certain features of the Bitcoin Network, such as decentralization, open source protocol, and reliance on peer-to-peer connectivity, may increase the risk of fraud or cyber- attack by potentially reducing the likelihood of a coordinated response in defense or prevention of such attack by network participants.



*Maintenance Risk.*

The Bitcoin Network operates based on an open source protocol maintained by contributors. As an open source project, Bitcoin is not represented by an official organization or authority. As the Bitcoin Network protocol is not sold and its use does not generate revenues for contributors, contributors are generally not compensated for maintaining and updating the Bitcoin Network protocol. The lack of guaranteed financial incentive for contributors to maintain or develop the Bitcoin Network and the lack of guaranteed resources to adequately address emerging issues with the Bitcoin Network may reduce incentives to address the issues adequately or in a timely manner.

Bitcoin Network miners engage in a set of prescribed complex mathematical calculations in order to add a block to the Blockchain and thereby authenticate Bitcoin transactions. Miners that are successful in adding a block to the Blockchain are routinely awarded a fixed number of Bitcoin for their effort. The number of Bitcoins to be released is also finite, and has been fixed at 21 million Bitcoins to be released over time; therefore, the number of Bitcoins that are released to miners as an incentive to authenticate transactions declines at a predictable rate. As the award of new Bitcoin for solving blocks declines, and if transaction fees are not seen as sufficient, miners may not have an adequate incentive to continue mining and may cease their mining operations. This reduction may result in a reduction in the aggregate hashrate of the Bitcoin Network as the incentive for miners will decrease, which would adversely affect the confirmation process for transactions (*i.e.*, temporarily decreasing the speed at which blocks are added to the Blockchain until the next scheduled adjustment in difficulty for block solutions). More significant reductions in aggregate hashrate on the Bitcoin Network could result in material, though temporary, delays in block solution confirmation time. Any reduction in confidence in the confirmation process or aggregate hashrate of the Bitcoin Network may impact the value of Bitcoin, which would be likely to affect the value of the Trust's investments.

Additionally, if a malicious actor obtains a majority of the processing power (referred to herein as "aggregate hashrate") dedicated to mining on the Bitcoin Network, it will be able to exert unilateral control over the addition of blocks to the Blockchain. As long as the malicious actor enjoys this majority it may be able to "double-spend" its own Bitcoin (*i.e.*, spend the same Bitcoin in two or more conflicting transactions) as well as prevent the confirmation of other Bitcoin transactions. A reduction in the hashrate expended by miners on the Bitcoin Network could increase the likelihood of a malicious actor obtaining control in excess of fifty (50) percent of the aggregate hashrate active on the Bitcoin Network. If such a scenario were to materialize, it could adversely affect an investment in the Trust.

*New Asset and Limited Trading History Risk.*

Bitcoin, which is a new technological innovation with a limited history, is a new and highly speculative asset. There is no assurance that usage of Bitcoin will continue to grow. A contraction in the use of Bitcoin may result in increased volatility or a reduction in the price of Bitcoin, which could adversely impact the value of the Trust. Bitcoin was invented in 2009; Bitcoin and its trading history thus have existed for a relatively short time, which limits a potential Unitholder's ability to evaluate an investment in the Trust. Moreover, Bitcoin Derivatives have only recently been introduced to the U.S. marketplace.

*Regulatory Risk.*

To the extent that future regulatory actions or policies limit or enhance the ability to exchange Bitcoin or utilize them for payments, the demand for Bitcoin may be reduced or increased. Furthermore, regulatory actions may limit the ability of end-users to convert Bitcoin into fiat currency (e.g., U.S. dollars) or use Bitcoin to pay for goods and services. Bitcoin currently faces an uncertain regulatory landscape in not only the United States but also in many foreign jurisdictions such as the European Union, China and Russia. Some foreign jurisdictions have banned Bitcoin as a means of payment. Most regulatory bodies have not yet issued official statements regarding intention to regulate or determinations on regulation of Bitcoin, the Bitcoin Network and Bitcoin users. Various foreign jurisdictions may, in the near future, adopt laws, regulations or directives that affect the Bitcoin Network and its users, particularly Bitcoin exchanges and service providers that fall within such jurisdictions' regulatory scope. Such laws, regulations or directives may conflict with those of the United States and may negatively impact the acceptance of Bitcoin by users, merchants and service providers outside of the United States and may therefore impede the growth of the Bitcoin economy. The effect of any future regulatory change on Bitcoin is impossible to predict, but such change could be substantial and adverse to the value of the Trust's investments. Current and future legislation, CFTC and SEC rulemaking and other regulatory developments may affect how Bitcoin is classified (e.g., as a security, property, commodity, currency, etc.) and regulated.

Current IRS guidance indicates that digital assets such as Bitcoin should be treated and taxed as property, and that transactions involving the payment of Bitcoin for goods and services should be treated as barter transactions. This treatment may create a potential tax reporting requirement in any circumstance where the ownership of a Bitcoin passes from one person to another, usually by means of Bitcoin transactions. Foreign jurisdictions may also elect to treat digital assets such as Bitcoin differently for tax purposes. To the extent a foreign jurisdiction with a significant share of the market of Bitcoin users imposes onerous tax burdens on Bitcoin users, or imposes sales or value added tax on purchases and sales of Bitcoin for fiat currency, such actions could result in decreased demand for Bitcoin in such jurisdiction, which could impact the price of Bitcoin and negatively impact the value of the Trust's investments. Accounting standards may also change, creating an obligation to accrue for a tax liability that was not previously required to be accrued for or in situations where it is not expected that will directly or indirectly be ultimately subject to such tax liability.

These regulatory changes have the potential to increase or decrease interest in Bitcoin, which could impact the price of Bitcoin and the value of the Trust's investments.

*Structural Risk.*

A small group of individuals contribute to core Bitcoin decisions. These individuals can propose refinements or improvements to the Bitcoin Network's source code through one or more software upgrades that alter the protocols and software that govern the Bitcoin Network and the properties of Bitcoin, including the irreversibility of transactions and limitations on the mining of new Bitcoin. To the extent that a significant majority of the users and miners on the Bitcoin Network install such software upgrade(s), the Bitcoin Network would be subject to new protocols and software that may adversely affect an investment in the Trust. Moreover, a developer or group of

developers could potentially propose a modification to the Bitcoin Network that is not accepted by a vast majority of miners and users, but that is nonetheless accepted by a substantial population of participants in the Bitcoin Network. If less than a significant majority of the users and miners on the Bitcoin Network install such software upgrade(s), the Bitcoin Network could “fork.” If this were to occur, two separate Bitcoin Networks could result, one running the pre-modification software program and the other running the modified version (*i.e.*, a second “Bitcoin” network). In the event of a permanent fork with two separate and incompatible Bitcoin Networks, the price movements of different versions of Bitcoin on different Bitcoin Networks may deviate. In such case, Sponsor will evaluate the characteristics of each Bitcoin Network to determine in its sole discretion which Bitcoin Network will provide exposure that best comports with the Trust’s investment objective. If the Sponsor determines to provide exposure to the price movements of Bitcoin from a selected Bitcoin Network, and the interest in such selected Bitcoin Network diminishes or increases relative to the Bitcoin Network that was not selected, this could adversely affect the value of the value of the Trust’s investments. On August 1, 2017, the Bitcoin Network was forked by a group of developers and miners accepting changes to the Bitcoin Network software intended to increase transaction capacity. On October 25, 2017, the Bitcoin Network was forked by a group of developers accepting changes to the Bitcoin Network software intended to reduce the use of specialized hardware in the Bitcoin mining process. Blocks mined on these networks now diverge from blocks mined on the Bitcoin Network, which has resulted in the creation of new blockchains whose digital assets are referred to as “Bitcoin Cash” and “Bitcoin Gold.” The Bitcoin Network, the Bitcoin Cash network and the Bitcoin Gold network now operate as separate, independent networks. In mid-November of 2017, an additional protocol change labeled “Segwit2x,” which had substantial support from large numbers of Bitcoin users, was cancelled by its proponents shortly before it was due to be implemented. Multiple proposals for increasing the capacity of the Bitcoin Network still exist, and it is possible that one or more of these proposals could result in further network “forks,” which may become increasingly frequent. It is possible that the consequences of these forks will not be fully appreciated for some time to come.

The nature of the Bitcoin Network’s protocols and open source software makes the protocols vulnerable to alteration. If the individuals responsible for maintaining the protocol are unable to address potential flaws in a timely manner, a malicious actor who detects flaws in the protocol could damage the Bitcoin Network and adversely affect the market for Bitcoin.

#### *Supply Risk.*

There is no registry showing which individuals or entities own Bitcoin or the quantity of Bitcoin owned by any particular person or entity. It is possible, and in fact, reasonably likely, that a small group of early Bitcoin adopters hold a significant proportion of the Bitcoin that has thus far been created. There are no regulations in place that would prevent a large holder of Bitcoin from selling their Bitcoin, which could depress the price of Bitcoin. Additionally, Bitcoin mining operations are awarded a fixed number of Bitcoin for their effort in maintaining the Blockchain. As the incentive to mine Bitcoin decreases, high fixed expenses of professionalized mining operations may lead Bitcoin miners to more immediately sell Bitcoin earned from mining operations on one of the various Bitcoin exchanges. Such Bitcoin sales may impact the price of Bitcoin. Conversely, because current Bitcoin protocols contemplate a fixed supply of Bitcoin, other than Bitcoin generated via mining, an increased demand for Bitcoin may not be met by the existing Bitcoin

supply, which could cause the price of Bitcoin to increase dramatically. The Bitcoin protocol has established the maximum number of Bitcoin that can be created at a total number of 21 million, and it is estimated that this number will be mined by 2140.

Currently, there is relatively small use of Bitcoin in the retail and commercial marketplace in comparison to relatively large use by speculators, contributing to price volatility that could adversely affect an investment in the Trust. Bitcoin and the Bitcoin Network have only recently become accepted as a means of payment for goods and services by a limited number of major retail and commercial outlets, and use of Bitcoin by consumers to pay such retail and commercial outlets remains limited. Conversely, a significant portion of Bitcoin demand is generated by speculators and investors seeking to profit from the short- or long-term holding of Bitcoins. A lack of expansion by Bitcoins into retail and commercial markets, or a contraction of such use, may result in increased volatility, which could adversely affect an investment in the Trust.

#### *Usage Risk.*

A digital asset such as Bitcoin may be used, among other things, to buy and sell goods and services. The Bitcoin Network is a new and rapidly evolving industry. The growth of the digital asset industry in general, and the Bitcoin Network in particular, is subject to a high degree of uncertainty. The factors affecting the further development of the Bitcoin Network include:

- continued worldwide growth in the adoption and use of Bitcoin, which may be impacted by, among other things, negative publicity, perceived illicit uses of Bitcoin, security risks for individual holders of Bitcoin, and software or hardware malfunctions affecting Bitcoin users;
- government and quasi-government regulation of Bitcoin and its use, or restrictions on or regulation of access to and operation of the Bitcoin Network;
- changes in consumer demographics and public tastes and preferences;
- the availability and popularity of other forms or methods of buying and selling goods and services, including new means of using fiat currencies; and
- general economic conditions and the regulatory environment relating to digital assets.

Additionally, Bitcoin exchanges may charge a high fee for effecting transactions. Moreover, in order to incentivize miners to continue to contribute hashrate to the Bitcoin Network, the Bitcoin Network may either formally or informally transition from a set reward to transaction fees earned upon solving for a block. This transition could be accomplished by miners independently or collectively electing to record in the blocks they solve only those transactions that include payment of a sufficiently large transaction fee. If transaction fees paid for Bitcoin transactions become too high, the marketplace may be reluctant to accept Bitcoin as a means of payment and existing users may be motivated to switch from Bitcoin to another digital asset or back to fiat currency.

There is no assurance that the Bitcoin Network, or the service providers necessary to accommodate it, will continue in existence or grow. Furthermore, there is no assurance that the availability of

and access to Bitcoin Network service providers will not be negatively affected by government regulation or supply and demand of Bitcoin. A decline in the popularity or acceptance of the Bitcoin Network may impair the price of Bitcoin, while an increased acceptance of the Bitcoin Network may benefit the price of Bitcoin, either of which could have an impact on the value of the Trust's investments.

*Valuation Risk.*

As an alternative to fiat currencies that are backed by governments, digital assets such as Bitcoin, which are relatively new, are subject to supply and demand forces based upon the desirability of an alternative, decentralized means of buying and selling goods and services, and it is unclear how such supply and demand will be impacted by geopolitical events. Nevertheless, political or economic crises may motivate large-scale acquisitions or sales of Bitcoin either globally or locally. Large-scale purchases or sales of Bitcoin could result in movements in the price of Bitcoin and could negatively or positively impact the value of the Trust's investments. Because Bitcoin is not backed by a government, it is not subject to the protections that apply to other currencies. For instance, no government can be expected to bolster the value of Bitcoin in case of a crash in its value.

Fluctuations in the price of Bitcoin could adversely affect an investment in the Trust. The price of Bitcoin has fluctuated widely over the course of its history, and many factors may affect the value of Bitcoin, including, but not limited to:

- Global Bitcoin supply;
- Global Bitcoin demand, which is influenced by the growth of retail merchants' and commercial businesses' acceptance of Bitcoin as payment for goods and services, the security of online Bitcoin exchanges and public keys associated with Bitcoin, the perception that the use and holding of Bitcoin is safe and secure, and the lack of regulatory restrictions on their use;
- Investors' expectations with respect to the rate of inflation;
- Interest rates;
- Currency exchange rates, including the rates at which Bitcoin may be exchanged for fiat currencies;
- Fiat currency withdrawal and deposit policies of the Bitcoin exchange market;
- Interruptions in service from or failures of the Bitcoin exchange market;
- Investment and trading activities of large investors, including private and registered funds, that may directly or indirectly invest in Bitcoin;
- Monetary policies of governments, trade restrictions, currency devaluations and revaluations;

- Regulatory measures, if any, that restrict the use of Bitcoin as a form of payment or the purchase of Bitcoin on the Bitcoin exchange market;
- The maintenance and development of the open source software protocol of the Bitcoin Network;
- Global or regional political, economic or financial events and situations; and
- Expectations among Bitcoin market participants that the value of Bitcoin will soon change.

In addition, investors should be aware that there is no assurance that Bitcoin will maintain its long-term value in terms of purchasing power in the future or that the acceptance of Bitcoin for payments by mainstream retail merchants and commercial businesses will continue to grow.

### **Market Related Risks**

*The Trust is Subject to Market Risk.*

Market risk refers to the risk that the market price of Bitcoin held by the Trust will rise or fall, sometimes rapidly or unpredictably. An investment in the Trust's Units is subject to market risk, including the possible loss of the entire principal of the investment.

*NAV May Not Always Correspond to the Market Price of Bitcoin and, as a Result, Units May Be Purchased (or Redeemed, if ever permitted) at a Value that Differs From the Market Price of the Units.*

The NAV of the Trust will change as fluctuations occur in the market price of the Trust's Bitcoin holdings. If and when Unitholders are able to trade their Units on a secondary trading market, Unitholders should be aware that the market trading price of a Unit may be different from the NAV per Unit (*i.e.*, Units may trade at a premium over, or a discount to, the NAV), and similarly the market trading price per Unit may be different from the NAV per Unit, for a number of reasons, including price volatility, trading volume and any closings of Bitcoin trading platforms due to fraud, failure, security breaches or otherwise. Consequently, an investor may be able to purchase Units at a discount or a premium to the market trading price per Unit (if and when Units trade on a secondary trading market). This price difference may be due, in large part, but not exclusively, to the fact that supply and demand forces at work in the secondary trading market for Units are related, but not identical, to the supply and demand forces influencing the market price of Bitcoin. Unitholders also should note that the size of the Trust in terms of total Bitcoin held may change substantially over time and as Units are issued and redeemed (if ever permitted).

*Suspension or Disruptions of Market Trading May Adversely Affect the Value of Units.*

On January 14, 2021, FINRA determined the Units met the criteria for quotation and trading on the OTC Market under the ticker symbol "OBTC." Nevertheless, there can be no assurance that, the Units will trade with sufficient liquidity for the quotation to be of practical use to investors. Moreover, quotation may be halted due to market conditions, or in light of the OTC Market rules

and procedures. There can be no assurance that the requirements necessary to maintain the quotation of the Units on the OTC Market will continue to be met.

*The Lack of Active Trading Markets For the Units May Result in Losses on an Investment in the Trust at the Time of Disposition of Units.*

There can be no guarantee that an active trading market for the Units will develop or will be maintained. Even if an active trading market does develop, it may not provide significant liquidity, and the Units may not trade at prices advantageous to Unitholders. If a Unitholder wishes to sell Units at a time when no active market for such Units exists, the price received for the Units (assuming that the Unitholder is able to sell them) likely will be lower than the price a Unitholder would receive if an active market did exist and, accordingly, the Unitholder may suffer significant losses.

*The Trust's Acquisition and Sale of Bitcoin May Impact the Supply and Demand of Bitcoin, which May Have a Negative Impact on the Price of the Units.*

If the number of Bitcoin acquired by the Trust is large enough relative to global Bitcoin supply and demand, further issuances and redemptions (if any) of Units could have an impact on the supply of and demand for Bitcoin in a manner unrelated to other factors affecting the global market for Bitcoin. Such an impact could affect the CMBI Bitcoin Index Price, which would directly affect the price at which Units are quoted on the OTC Market or the price of future Units issued or redeemed (if permitted) by the Trust.

*A Possible "Short Squeeze" Due to a Sudden Increase in Demand for the Units that Largely Exceeds Supply May Lead to Price Volatility in the Units.*

Bitcoin price speculation may involve long and short exposures. To the extent that aggregate short exposure exceeds the number of Units available for purchase (for example, in the event that large redemption requests by Unitholders dramatically affect Unit liquidity), Unitholders with short exposure may have to pay a premium to repurchase Units for delivery to Unit lenders. Those repurchases may, in turn, dramatically increase the price of the Units until additional Units are issued. This is often referred to as a "short squeeze." A short squeeze could lead to volatile price movements in the Units that are not directly correlated to the price of Bitcoin.

*The Trust's Buying and Selling Activity Associated with the Issuance and Redemption (if any) of Units May Adversely Affect an Investment in the Units.*

The Trust's purchase of Bitcoin in connection with Unit issuance orders may cause the price of Bitcoin to increase, which will result in higher prices for the Units. Increases in the Bitcoin prices may also occur as a result of Bitcoin purchases by other market participants who attempt to benefit from an increase in the market price of Bitcoin when Units are issued. The market price of Bitcoin may therefore decline immediately after Units are issued. Selling activity associated with sales of Bitcoin from the Trust in connection with redemption orders may decrease the Bitcoin prices, which will result in lower prices for the Units. Decreases in Bitcoin prices may also occur as a result of selling activity by other market participants. In addition to the effect that purchases and sales of Bitcoin by the Trust may have on the price of Bitcoin, other exchange-traded products with similar investment objectives could represent a substantial portion of demand for Bitcoin at

any given time and the sales and purchases by such investment vehicles may impact the price of Bitcoin. If the price of Bitcoin declines, the trading price of the Units will generally also decline.

*Difficulties or Limitations in the Processes of Issuance and Redemption (if any) of Units May Interfere with Opportunities for Arbitrage Transactions Intended to Keep the Price of the Units Closely Linked to the Price of Bitcoin, Which May Adversely Affect an Investment in the Units.*

If the processes of issuance and redemption of the Units encounter any unanticipated difficulties, potential market participants who would otherwise be willing to purchase or redeem Units to take advantage of any arbitrage opportunity arising from discrepancies between the price of the Units and the price of the underlying Bitcoin may not take the risk that, as a result of those difficulties, they may not be able to realize the profit they expect. If this is the case, the liquidity of Units may decline and the price of the Units may fluctuate independently of the price of Bitcoin and may fall. In addition, the Sponsor may postpone, suspend or reject purchase or redemption orders, as applicable, for a variety of permitted reasons under certain circumstances. To the extent such orders are postponed, suspended or rejected, the arbitrage mechanism resulting from the process through which investors purchase and redeem Units directly with the Trust may fail to closely link the price of the Units to the value of the underlying Bitcoin, as measured using the CMBI Bitcoin Index Price. If this is the case, the liquidity of the Units may decline and the price of the Units may fluctuate independently of the CMBI Bitcoin Index Price and may fall.

### **Risks Related to the Over-the-Counter (“OTC”) Market and Bitcoin Exchanges**

*Fraud and Manipulation in the Markets for Bitcoin May Affect the Value of the Units.*

The price of Bitcoin may be influenced by fraud and manipulation for a number of reasons, including but not limited to the following: most Bitcoin spot markets are not regulated or supervised by a government agency; platforms may lack critical system safeguards, including adequate cyber-security and privacy protections for its users; volatile market price swings or flash crashes; cyber risks, such as hacking customer wallets; and/or platforms selling from their own accounts and putting customers at an unfair disadvantage. Any act of fraud or manipulation in the Bitcoin marketplace may adversely affect an investment in the Units.

*Disruptions at OTC Trading Desks and Potential Consequences of an OTC Trading Desk’s Failure Could Adversely Affect an Investment in the Units.*

There are a limited number of OTC trading desks with which the Trust can transact in Bitcoin to effect issuances and redemptions (if any). A disruption at or withdrawal from the market by any such OTC trading desk may adversely affect the Trust’s ability to purchase or sell Bitcoin, which may potentially negatively impact the market price of the Units. A disruption at one or more OTC trading desks will reduce liquidity in the market and may negatively impact the Trust’s ability to value its Bitcoin. Because there is currently no publicly disseminated and verifiable feed with respect to the price of Bitcoin on a regulated exchange, investors must rely on other pricing sources, such as the CMBI Bitcoin Index Price or prices obtained directly from the OTC trading desks, to obtain the price of Bitcoin.



*Disruptions at Bitcoin Exchanges and Potential Consequences of a Bitcoin Exchange's Failure Could Adversely Affect an Investment in the Units.*

Bitcoin exchanges operate websites on which users can trade Bitcoin for U.S. dollars, other government currencies and other cryptocurrencies. Trades on Bitcoin exchanges are unrelated to transfers of Bitcoin between users via the Bitcoin network. Bitcoin trades on exchanges are recorded on the exchange's internal ledger only, and each internal ledger entry for a trade will correspond to an entry for an offsetting trade in U.S. dollars or other government currency. To sell Bitcoin on a Bitcoin exchange, a user will transfer Bitcoin (using the Bitcoin network) from him or herself to the Bitcoin exchange. Conversely, to buy Bitcoin on a Bitcoin exchange, a user will transfer U.S. dollars or other government currency to the Bitcoin exchange. After completing the transfer of Bitcoin or U.S. dollars, the user will execute his or her trade and withdraw either the Bitcoin (using the Bitcoin network) or the U.S. dollars back to the user. Bitcoin exchanges are an important part of the Bitcoin industry.

Bitcoin exchanges have a limited history. Since 2009, several Bitcoin exchanges have been closed or experienced disruptions due to fraud, failure, security breaches or distributed denial of service attacks, a/k/a "DDoS Attacks." In many of these instances, the customers of such exchanges were not compensated or made whole for the partial or complete losses of their funds, Bitcoins or other cryptocurrencies held at the exchanges. In 2014, the largest Bitcoin exchange at the time, Mt. Gox, filed for bankruptcy in Japan amid reports the exchange lost up to 850,000 Bitcoin, valued then at over \$450 million. Bitcoin exchanges are also appealing targets for hackers and malware. In August 2016, Bitfinex, an exchange located in Hong Kong, reported a security breach that resulted in the theft of approximately 120,000 Bitcoin valued at the time at approximately \$72 million, a loss which was allocated to all Bitfinex account holders (rather than just specified holders whose wallets were affected directly), regardless of whether the account holder held Bitcoin or cash in their account. In February 2017 following a statement by the People's Bank of China, China's three largest exchanges (BTCC, Huobi and OKCoin) suspended withdrawals of users' Bitcoin. Although withdrawals were permitted to resume in late May 2017, Chinese regulators in September 2017 issued a directive to Chinese exchanges to cease operations with respect to Chinese users by September 30, 2017. In July 2017, the Financial Crimes Enforcement Network ("FinCEN") and the U.S. Department of Justice levied a \$110 million fine and an indictment against BTC-e, another Bitcoin exchange and one of its operators for financial crimes. The Department of Justice also seized the Internet domain of the exchange. Similar to the outcome of the Bitfinex breach, losses due to assets seized by FinCEN were allocated among exchange users. In addition, it has been reported that Bitcoin exchange Coincheck lost approximately \$500 million to hackers in 2018 and that Bitcoin exchange Binance lost approximately \$40 million to hackers in 2019. The potential for instability of Bitcoin exchanges and the closure or temporary shutdown of exchanges due to fraud, business failure, hackers, DDoS or malware, or government-mandated regulation may reduce confidence in Bitcoin, which may result in greater volatility in the CMBI Bitcoin Index Price.

Despite efforts to ensure accurate pricing, the CMBI Bitcoin Index Price and the price of Bitcoin generally, remains subject to volatility. Such volatility can adversely affect an investment in the Units.

*Momentum Pricing of Bitcoin May Subject the Bitcoin Price to Greater Volatility and Adversely Affect an Investment in the Units.*

Momentum pricing typically is associated with growth stocks and other assets whose valuation, as determined by the investing public, accounts for anticipated future appreciation in value. The Sponsor believes that momentum pricing of Bitcoin has resulted, and may continue to result, in speculation regarding future appreciation in the value of Bitcoin, inflating and making more volatile the value of a Bitcoin. As a result, Bitcoin may be more likely to fluctuate in value due to changing investor confidence in future appreciation in the Bitcoin price, which could adversely affect an investment in the Units.

### **Operating Risks of the Trust**

*As the Sponsor and its Management Have Little History of Operating the Trust, Their Experience May Be Inadequate or Unsuitable to Manage the Trust.*

The Sponsor has only a limited history of past performance in managing the Trust. Similarly, the Sponsor's management has only a limited history of past performance in managing the Trust. The past performances of the Sponsor and management in other positions are no indication of their ability to manage an investment vehicle such as the Trust. If the experience of the Sponsor and its management is inadequate or unsuitable to manage an investment vehicle such as the Trust, the operations of the Trust may be adversely affected.

*The Trust Has Only a Limited Performance History.*

The Trust has only a limited operating history. Therefore, a potential Unitholder has little performance history, aside from the historical price of Bitcoin, to serve as a factor in evaluating an investment in the Trust.

*The Units are New Securities and Their Value Could Decrease if Unanticipated Operational or Trading Problems Arise.*

The mechanisms and procedures governing the issuance, redemption (if any) and offering of the Units have been developed specifically for the Trust. Consequently, there may be unanticipated problems or issues with respect to the mechanisms of the operations of the Trust and the trading of the Units, which could have a material adverse effect on an investment in the Units. In addition, to the extent that unanticipated operational or trading problems or issues arise, the Trust management's past experience and qualifications may not be suitable for solving these problems or issues.

*Fees and Expenses are Charged Regardless of Profitability and May Result in Depletion of Assets.*

Unitholders in the Trust will pay fees and expenses in connection with their investment in Units, including the Management Fee of an annualized 0.49% of the average daily NAV of the Trust for each year. The Sponsor will bear the routine operational, administrative and other ordinary fees and expenses of the Trust (the "Assumed Expenses"); provided, however, that the Trust shall be responsible for all of its audit and index licensing expenses, and aggregate legal fees in excess of

\$50,000 annually. The Trust shall also pay the extraordinary fees and expenses and the fees and expenses of the Custodian. A Unitholder may never achieve profits, significant or otherwise, by investing in the Trust. In addition, extraordinary expenses resulting from unanticipated events may become payable by the Trust, which may adversely affect the Units.

*The Security of our Bitcoin Holdings cannot be assured, by the Trust, the Custodian or any other person.*

The Trust's Bitcoin holdings will be held by the Custodian subject to security methods and procedures designed to ensure the Trust's control over those holdings and keep those holdings safe from unauthorized use, theft or other misuse. See "Other Parties – Custodian – The Custodian's Role". However, no security measures can provide assurance that the Trust's Bitcoin holdings will not be affected by theft, misuse, cybersecurity breaches or other harms. Moreover, the Trust must use the Custodian's service on an "as is" basis and the Custodian's standard of care is limited to that of "reasonable care". Further, the Custodian is not liable for any loss that is caused, directly or indirectly, by any non-adherence by the Trust to the Custodian's policies and procedures, any action taken to secure the digital assets or accounts of the Trust or other exceptions under the Custodial Services Agreement (the "Custodian Agreement"). In addition, although we may be entitled to indemnification for certain breaches of the Custodian Agreement or the loss or theft of our assets, securing recovery for any such losses may require us to devote substantial time and resources to the task, with no guarantee of success. While the Trust has taken and will continue to take steps to secure its assets, the Trust's assets are continuously subject to risks of theft, fraud and other security breaches, and some or all of the Trust's assets may be lost or otherwise compromised as a result of such security breaches.

*Possibility of Termination of the Trust May Adversely Affect a Unitholder's Portfolio.*

The Sponsor may terminate the Trust in its sole discretion upon the occurrence of certain events, and shall terminate the Trust upon the occurrence of certain other events. If this power is so exercised, Unitholders who may wish to continue to invest in Bitcoin through the Trust will have to find another vehicle, and may not be able to find another vehicle that offers the same features as the Trust. Such detrimental developments could cause a Unitholder to liquidate its investments and upset the overall maturity and timing of its investment portfolio.

*Any Errors, Discontinuance or Changes in Determining the Value of the Bitcoin Held by the Trust May Have an Adverse Effect on the Value of the Units.*

The Administrator will determine the NAV of the Trust and the NAV per Unit on a daily basis as soon as practicable after 4:00 P.M. New York time on each business day. The Administrator's determination will be made based on the price set by the CMBI Bitcoin Index Price. To the extent that such NAV or NAV per Unit is incorrectly calculated, there may be no liability for any error, but such misreporting of valuation data could adversely affect an investment in the Units.

*Unitholders May Be Adversely Affected by Redemption Orders that are Subject to Postponement, Suspension, or Rejection under Certain Circumstances.*

If redemptions of Units are ever permitted, the Sponsor may nevertheless, in its discretion, suspend the right of redemption or postpone the redemption settlement date if (1) the order is not in proper form as determined by the Trust or Sponsor, (2) during an emergency as a result of which delivery, disposal or evaluation of Bitcoin is not reasonably practicable, or (3) for such other period as the Sponsor determines to be necessary for the protection of Unitholders. Any such postponement, suspension or rejection could adversely affect a redeeming investor. For example, the resulting delay may adversely affect the value of the investor's redemption proceeds if the NAV of the Trust declines during the period of delay. The Trust disclaims any liability for any loss or damage that may result from any such suspension or postponement.

*As a Unitholder, You Will Not Have the Rights Normally Associated With Ownership of Units of Other Types of Investment Vehicles. For Example, You Will Have No Voting Rights, in Comparison to Those of Securityholders in Traditional Operating Companies.*

The Trust is a passive investment vehicle with no management and no board of directors. Thus, the Units are not entitled to the same rights as shares issued by a corporation operating a business enterprise with management and a board of directors. By acquiring Units, you are not acquiring the right to elect directors, to vote on certain matters regarding the issuer of your Units or to take other actions normally associated with the ownership of shares, such as the right to bring "oppression" or "derivative" actions. You will only have the extremely limited rights described under "Description of the Units."

*The Value of the Units Will be Adversely Affected if the Trust is Required to Indemnify the Sponsor, the Custodian, or the Cash Custodian as Contemplated in the Trust Agreement, the Custodian Agreement or, the Cash Custody Agreement.*

Under the Trust Agreement, each of the Sponsor and the Trustee has a right to be indemnified from the Trust for any liability or expense it incurs without gross negligence, bad faith or willful misconduct on its part. Under the Trust Agreement, the Trust's officers, directors, employees and agents also have a right to be indemnified from the Trust for any liability or expense they incur without gross negligence, bad faith, or willful misconduct on their part. Similarly, the Custodian Agreement and the Cash Custody Agreement each provide for indemnification of the Custodian and the Cash Custodian, respectively, by the Trust under certain circumstances. That means that it may be necessary to sell assets of the Trust to cover losses or liability suffered by any of the foregoing parties. Any sale of that kind would reduce the NAV of the Trust and the NAV per Unit.

*The Trust's Bitcoin Trading May Subject the Trust to the Risk of Counterparty Non-Performance, Potentially Negatively Affecting the Market Price of the Units.*

For its trading needs, the Trust may buy Bitcoin from and sell Bitcoin to both Bitcoin exchanges and OTC trading counterparties; however, the Trust intends to trade Bitcoin primarily in large orders through OTC trading counterparties. The Trust will maintain delivery versus payment ("DVP") and receive versus payment ("RVP") terms with its Bitcoin exchange and OTC trading

counterparties to reduce counterparty risk. Nevertheless, to the extent a Bitcoin exchange or OTC trading counterparty fails to perform, either by failing to deliver Bitcoin when the Trust buys Bitcoin, or by failing to deliver U.S. dollars when the Trust sells Bitcoin, the Trust may not be able to issue or redeem (if ever permitted) Units, respectively. This exposes the Trust to the risk that a Bitcoin exchange or OTC counterparty will not settle a transaction in accordance with its terms and conditions, thus causing the Trust to suffer a loss. Therefore, the Trust faces the risk of trade failure and non-performance by Bitcoin exchanges and OTC counterparties and such non-performance may cause some or all of the Trust's trades, if any, to be unrealized.

*The Trust's Bitcoin Holdings Could Become Illiquid Which Could Cause Large Losses to Unitholders at Any Time or From Time to Time.*

The Trust may not always be able to liquidate its Bitcoin at a desired price, or at all. It may become difficult to execute a trade at a specific price when there is a relatively small volume of buy and sell orders in the marketplace, including on Bitcoin exchanges and with OTC Bitcoin participants.

A market disruption, such as a foreign government taking political actions that disrupt the market in its currency, its commodity production or exports, or in another major export, can also make it difficult to liquidate a position. In the event of a fork of the Bitcoin network, certain Bitcoin exchanges and/or OTC counterparties may halt deposits and withdrawals of Bitcoin for a set period of time thus reducing liquidity in the markets. Unexpected market illiquidity may cause major losses to Unitholders at any time. The large amount of Bitcoin the Trust may acquire increases the risk of illiquidity by both making its Bitcoin more difficult to liquidate and increasing the losses incurred while trying to do so. To the extent the Trust is unable to purchase or sell Bitcoin at a desired price as a result of illiquidity, the Trust may not be able to effect issuances and redemptions (if permitted) of Units for cash.

*Transactions in Bitcoin are Irreversible and the Trust May Be Unable to Recover Improperly Transferred Bitcoin.*

Bitcoin transactions are irreversible. An improper transfer, whether accidental or resulting from theft, can only be undone by the receiver of the Bitcoin agreeing to send the Bitcoin back to the original sender in a separate subsequent transaction. To the extent the Trust erroneously transfers, whether accidental or otherwise, Bitcoin in incorrect amounts or to the wrong recipients, the Trust may be unable to recover the Bitcoin, which could adversely affect an investment in the Units.

*The Trust's Bitcoin May Be Lost, Stolen, or Subject to Other Inaccessibility.*

There is a risk that part or all of the Trust's Bitcoin could be lost, stolen or destroyed. Although the Trust will secure the Trust's Bitcoin to seek to minimize the risk of loss, the Trust cannot guarantee that such a loss will be prevented. Access to the Trust's Bitcoin could also be restricted by natural events (such as a hurricane, earthquake or pandemic) or human actions (such as a terrorist attack). Any of these events may adversely affect the operations of the Trust and, consequently, an investment in the Units. See the section below entitled "The Bitcoin Security System" for more information relating to the Trust's security measures.

*Any Disruptions to the Computer Technology Used by the Trust or its Service Providers Could Adversely Affect the Trust's Ability to Function and an Investment in the Units.*

The Trust will monitor its technology and may develop and redesign its technology, including enhancements and alterations that may be implemented from time to time, and it expects its service providers to do the same. In doing so, there is risk that failures may occur and result in service interruptions or other negative consequences. Any technology updates that cause disruptions in the proper functioning of the Trust's or any of its service provider's technology systems may have an adverse impact on the Trust and an investment in the Units.

The Trust may take such steps as the Sponsor determines, in its sole judgment, to be required to maintain and upgrade its technology systems, in order to protect against failure, hacking, malware and general security threats, and it expects its service providers to take their own steps to maintain and upgrade their own technology systems with the same goals in mind. The Trust is not liable to Unitholders for the failure or penetration of technology systems absent gross negligence, willful misconduct or bad faith. To the extent technology systems fail or are penetrated, any loss of the Trust's Bitcoin or loss of confidence in the Trust's ability to safeguard its Bitcoin may adversely affect an investment in the Units.

*The Trust's Computer Infrastructure May be Vulnerable to Security Breaches. Any Such Problems Could Cause Interruptions in the Trust's Operations and Adversely Affect an Investment in the Units.*

The Trust's computer infrastructure is potentially vulnerable to physical or electronic computer break-ins, viruses and similar disruptive problems and security breaches. Any such problems or security breaches could give rise to a halt in the Trust's operations, and expose the Trust to a risk of financial loss, litigation and other liabilities. In the event of a security breach, the Trust may cease operations, suspend redemptions or suffer a loss of Bitcoin or other assets. Any of these events, particularly if they result in a loss of confidence in the Trust's ability to operate, could have a material adverse effect on an investment in the Units.

*Technology System Failures Could Cause Interruptions in the Trust's Ability to Operate.*

If the Trust's systems fail to perform, the Trust could experience disruptions in operations and slower response times, which may cause delays in the Trust's ability to buy or sell Bitcoin. Any such failures may also result in the theft, loss or damage of the Trust's Bitcoin. Any such theft, loss or damage of the Trust's Bitcoin would have a negative impact on the value of the Units and adversely affect the Trust's ability to operate. In addition, a loss of confidence in the Trust's ability to secure the Trust's Bitcoin with its technology system may adversely affect the Trust and the value of an investment in the Units.

## **Regulatory Risks**

*Regulation of the Bitcoin Industry Continues to Evolve and is Subject to Change; Future Regulatory Developments Are Impossible to Predict but May Significantly and Adversely Affect the Trust.*

Both domestic and foreign regulators and governments have focused on regulation of Bitcoin. In the U.S., developments include the following:

- On May 7, 2014 the SEC published an investor alert that highlighted fraud and other concerns relating to certain investment opportunities denominated in Bitcoin and fraudulent and unregistered investment schemes targeted at participants in online Bitcoin forums. On July 25, 2017, the SEC issued a Report of Investigation (the “Report”) which concluded that digital assets or tokens issued for the purpose of raising funds may be securities within the meaning of the federal securities laws. The Report emphasized that whether a digital asset is a security is based on the particular facts and circumstances, including the economic realities of the transactions. On January 7, 2020, the SEC issued a press release announcing that compliance by Financial Technology, including digital assets and electronic investments, would be at the top of the SEC’s priorities for 2020. The SEC continues to take action against persons or entities misusing Bitcoin in connection with fraudulent schemes (*i.e.*, Ponzi scheme), inaccurate and inadequate publicly disseminated information, and the offering of unregistered securities.
- On September 17, 2015, the CFTC provided clarity regarding the regulatory treatment of Bitcoin in the Coinflip civil enforcement case. There the CFTC determined that Bitcoin and other virtual currencies are regulated as commodities under the CEA. Based on this determination, the CFTC applied CEA provisions and CFTC regulations to a Bitcoin derivatives trading platform. Also of significance, the CFTC took the position that Bitcoin is not encompassed by the definition of currency under the CEA and CFTC regulations. The CFTC defined Bitcoin and other “virtual currencies” as “a digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value, but does not have legal tender status in any jurisdiction. Bitcoin and other virtual currencies are distinct from ‘real’ currencies, which are the coin and paper money of the United States or another country that are designated as legal tender, circulate, and are customarily used and accepted as a medium of exchange in the country of issuance.” On July 6, 2017, the CFTC granted LedgerX, LLC an order of registration as a Swap Execution Facility for digital assets and on July 24, 2017, the CFTC approved Ledger X, LLC as the first derivatives clearing organization for digital currency. On September 21, 2017, the CFTC filed a civil enforcement action in federal court against a New York corporation and its principal, charging them with fraud, misappropriation, and issuing false account statements in connection with a Ponzi scheme involving investments in Bitcoin, which the CFTC asserted is a commodity subject to its jurisdiction. On October 17, 2017, the CFTC’s LabCFTC office issued A CFTC Primer on Virtual Currencies (“Primer”). As noted in the Primer, beyond instances of fraud or manipulation, the CFTC staff does not claim general jurisdiction over “spot” or cash-market exchanges and transactions involving virtual currencies that do not utilize margin, leverage or financing. On December 1, 2017, the CFTC approved the self-certification

of binary Bitcoin options for the Cantor Exchange and exchange-traded Bitcoin futures contracts for the Chicago Mercantile Exchange Inc. and CBOE Futures Exchange. On December 15, 2017, the CFTC issued a proposed interpretation of the “actual delivery” requirements with respect to virtual currencies under the CEA. Section 2(c)(2)(D) of the CEA provides the CFTC with direct oversight authority over “retail commodity transactions” – defined as agreements, contracts or transactions in any commodity that are entered into with, or offered to retail market participants on a leveraged or margined basis, or financed by the offeror, the counterparty or a person acting in concert with the offeror or counterparty on a similar basis. Such a transaction is subject to the CEA “as if” it were a commodity future. The statute contains an exception for contracts of sale that result in “actual delivery” within 28 days from the date of the transaction. The proposed interpretation establishes two primary factors necessary to demonstrate “actual delivery” of retail commodity transactions in virtual currency: (1) a customer having the ability to: (i) take possession and control of the entire quantity of the commodity, whether it was purchased on margin, or using leverage, or any other financing arrangement, and (ii) use it freely in commerce (both within and away from any particular platform) no later than 28 days from the date of the transaction; and (2) the offeror and counterparty seller (including any of their respective affiliates or other persons acting in concert with the offeror or counterparty seller on a similar basis) not retaining any interest in or control over any of the commodity purchased on margin, leverage, or other financing arrangement at the expiration of 28 days from the date of the transaction.

- Currently, the CFTC takes the position that Bitcoin is a commodity, although it has not issued regulations to formalize this position. The Trust is not registered as a commodity pool for purposes of the CEA, and the Sponsor is not registered as a commodity pool operator, a commodity trading advisor or otherwise. The Trust and the Sponsor will continue to monitor and evaluate whether any such registrations may be or may become required.
- The IRS released guidance in 2014 noting that Bitcoin will be treated as property for U.S. Federal income tax purposes. In 2019, the IRS supplemented its 2014 guidance and released Revenue Ruling 2019-24 (the “revenue ruling”) and a frequently asked questions on reporting virtual currency transactions. The revenue ruling provides more guidance to taxpayers and tax practitioners regarding the treatment of a cryptocurrency hard fork. The frequently asked question section provides clarity on how to report virtual currency transactions for those who hold virtual currency as a capital asset.
- On March 18, 2013, FinCEN issued interpretive guidance relating to the application of the Bank Secrecy Act to distributing, exchanging and transmitting “virtual currencies.” More specifically, it determined that a user of virtual currencies (such as Bitcoin) for its own account will not be considered a money service business (“MSB”) or be required to register, report and perform recordkeeping; however, an administrator or exchanger of virtual currency must be a registered money services business under FinCEN’s money transmitter regulations. As a result, Bitcoin exchanges that deal with U.S. residents or otherwise fall under U.S. jurisdiction are required to obtain licenses and comply with FinCEN regulations. FinCEN released additional guidance clarifying that, under the facts presented, miners acting solely for their own benefit, software developers, hardware



manufacturers, escrow service providers and investors in Bitcoin would not be required to register with FinCEN on the basis of such activity alone, but that Bitcoin exchanges, certain types of payment processors and convertible digital asset administrators would likely be required to register with FinCEN on the basis of the activities described in the October 2014 and August 2015 letters. FinCEN has also taken significant enforcement steps against companies alleged to have violated its regulations, including the assessment in July 2017 of a civil money penalty in excess of \$110 million against BTC-e for alleged willful violation of U.S. anti-money laundering laws. On May 9, 2019 FinCEN published a guidance entitled “Application of FinCEN’s Regulations to Certain Business Models Involving Convertible Virtual Currencies.” In that guidance, FinCEN consolidated and clarified regulatory requirements and prior guidance since 2011. In February 2020, U.S. Treasury Secretary Steven Mnuchin testified in Congress that FinCEN was set to release new requirements related to cryptocurrencies. Such requirements have not yet been released and information relating to their contents is not yet known.

- In a report titled “Strategies for Improving the U.S. Payment System,” published in January 2015 by the Federal Reserve, “Digital Value Transfer Vehicles” technology was identified for further exploration and monitoring. Since then, the Federal Reserve Chairman, Jerome Powell confirmed that the Federal Reserve is in the initial stages of exploring and analyzing the “costs and benefits of pursuing” a central bank digital currency initiative.
- In June 2015, the New York Department of Financial Services (the “NYDFS”) finalized a rule that requires most businesses involved in digital currency business activity in or involving New York, excluding merchants and consumers, to apply for a license (“BitLicense”) from the NYDFS and to comply with anti-money laundering, cyber security, consumer protection, and financial and reporting requirements, among others. As an alternative to the BitLicense in New York, firms can apply for a charter to become limited purpose trust companies qualified to engage in digital currency business activity. Other states have considered regimes similar to the BitLicense, or have required digital currency businesses to register with their states as money transmitters, such as Washington and Georgia, which results in digital currency businesses being subject to requirements similar to those of NYDFS’ BitLicense regime. Certain state regulators, such as the Texas Department of Banking, Kansas Office of the State Bank Commissioner and the Illinois Department of Financial and Professional Regulation, have found that mere transmission of Bitcoin, without activities involving transmission of fiat currency, does not constitute money transmission requiring licensure. The North Carolina Commissioner of Banks has issued guidance providing that North Carolina’s money transmission regulations only apply to the transmission of digital currency and not its use. In July 2017, Delaware amended its General Corporation Law to provide for the creation and maintenance of certain required records by blockchain technology and permit its use for electronic transmission of stockholder communications.
- On September 15, 2015, the Conference of State Bank Supervisors finalized their proposed model regulatory framework for state regulation of participants in “virtual currency activities.” The Conference of State Bank Supervisors’ proposed framework is a non-binding model and would have to be independently adopted, in sum or in part,

by state legislatures or regulators on a case- by-case basis. In July 2017, the Uniform Law Commission (the “ULC”), a private body of lawyers and legal academics from the several U.S. states, voted to finalize and approve a uniform model state law for the regulation of virtual currency businesses, including Bitcoin (the “Uniform Virtual Currency Act”). Having been approved by the ULC, the Uniform Virtual Currency Act now goes to each of the U.S. states and territories for their consideration and would have to be independently adopted, in sum or in part, by state legislatures or regulators on a case-by-case basis.

International developments include the following:

- In China, a December 2013 government notice classified Bitcoin as “virtual commodities,” and not legal tender. The same notice restricted the existing banking and payment industries from using Bitcoin, limiting the scope of the operations of Bitcoin exchanges in one of the largest Bitcoin markets at the time. In January 2017, in response to informal guidance received from the People’s Bank of China (the “PBoC”) concerning the creation of tighter anti-money laundering and foreign exchange controls, the largest China-based Bitcoin exchanges adjusted their terms to pause or limit loans and borrowing services. These exchanges later introduced a 0.2% fixed-rate transaction fee for all bitcoin buy and sell orders, with similar measures soon adopted by many of China’s smaller bitcoin exchanges. Bitcoin withdrawals have also been halted on these exchanges. In September 2017, the PRC released an Announcement on preventing Initial Coin Offerings (ICO) Risks (the “Announcement”). The Announcement effectively banned all ICO activity within the PRC as “unauthorized and illegal public fundraising” and “unauthorized public sales of securities.” The Announcement also made all exchanges in the PRC effectively illegal. These events have substantially reduced trading volume on Bitcoin exchanges and the ability to use Bitcoins to pay for goods and services.
- In July 2016, the Russian Ministry of Finance indicated its support for a proposed law that bans Bitcoin domestically but allows for its use as a foreign currency. In September 2017 the head of the Russian central bank stated that it is categorically against regulating cryptocurrencies as money, as a means by which payment can be made for goods and services, and against equating them with foreign currency. In April 2017, Russian regulators indicated their plan to recognize Bitcoin and other digital currencies as a legitimate financial instrument by 2018, as part of the government’s broader efforts to tackle money laundering. This plan stands in sharp contrast with the government’s previous attempts to ban the conversion of Bitcoin and other “money surrogates” into government currency and impose criminal penalties for such violations. China’s, Russia’s, and other countries’ restrictive stance towards digital assets may reduce the rate of expansion of Bitcoin use or even eliminate the use of Bitcoin entirely in these geographies.
- Sweden and Australia treat Bitcoin as a currency, while Canada and Taiwan have labeled Bitcoin as a digital or virtual currency, distinct from fiat currency. Norway categorizes Bitcoin as a form of asset. The United Kingdom treats Bitcoin as private money and determined that the value added tax will not apply to Bitcoin sales, but it can be charged on the commission instead. In Japan, regulations went into effect in April 2017 that

recognize digital currencies as a legal method of payment and require market participants, including exchanges, to meet certain compliance requirements and be subject to oversight by the Financial Services Agency, a Japanese regulator. The government of Israel and the Israel Tax Authority decided in January 2017 to apply capital gains tax to sales of Bitcoin and other digital currencies. In July 2016, the European Commission released a draft directive that proposed applying counter-terrorism and anti-money laundering regulations to virtual currencies, and, in September 2016, the European Banking authority advised the European Commission to institute new regulation specific to virtual currencies, with amendments to existing regulation as a stopgap measure.

The regulation of Bitcoin, digital assets and related products and services continues to evolve. The inconsistent and sometimes conflicting regulatory landscape may make it more difficult for Bitcoin businesses to provide services, which may impede the growth of the Bitcoin economy and have an adverse effect on consumer adoption of Bitcoin. There is a possibility of future regulatory change altering, perhaps to a material extent, the nature of an investment in the Units or the ability of the Trust to continue to operate. Additionally, to the extent that Bitcoin itself is determined to be a security, commodity future or other regulated asset, or to the extent that a United States or foreign government or quasi-governmental agency exerts regulatory authority over the Bitcoin network, Bitcoin trading or ownership in Bitcoin, such determination may have an adverse effect on the value of your investment in the Trust. In sum, Bitcoin regulation takes many different forms and will, therefore, impact Bitcoin and its usage in a variety of manners.

*The Sale of the Units could be subject to SEC or State Securities Registration*

The offer and sale of the Units in this Rule 506 offering was not registered with the SEC under the Securities Act or with a state regulator under the securities laws of any state. If a regulator or a court determines that the sale of the Units should have been registered, the Trust may be required to provide investors who purchased in the offering the option to rescind their investment on terms favorable to those investors. If this occurs, the Trust may lack sufficient assets to repay all purchasers seeking rescission, the secondary market for the Units, if any, may be negatively impacted, and the value of the Units held by remaining investors may decrease.

*The Trust is Not a Registered Investment Company.*

The Trust is not a registered investment company subject to the Investment Company Act of 1940, as amended (the “1940 Act”). Consequently, Unitholders of the Trust do not have the regulatory protections provided to Unitholders in registered investment companies which, for example, the requirement that investment companies have a certain percentage of disinterested directors and requirements as to the relationship between the investment company and certain of its affiliates.

*The Trust Could be, or Could Become, Subject to the Commodity Exchange Act.*

Currently, the CFTC takes the position that Bitcoin is a commodity, although it has not issued regulations to formalize this position. The Trust is not registered as a commodity pool for purposes of the CEA, and the Sponsor is not registered as a commodity pool operator, a commodity trading

advisor or otherwise. The Trust and the Sponsor will continue to monitor and evaluate whether any such registrations may be or may become required.

*Trading on Bitcoin Markets outside the United States is Not Subject to U.S. Regulation, and May Be Less Reliable than U.S. Markets.*

To the extent any of the Trust's trading is conducted on Bitcoin markets outside the U.S., trading on such markets is not regulated by any U.S. governmental agency and may involve certain risks not applicable to trading in U.S. markets. Certain foreign markets may be more susceptible to disruption than U.S. markets. These factors could adversely affect the performance of the Trust.

*Future Regulations May Require the Trust to Become Registered, or May Impose Other Regulatory Burdens, Which Could Harm the Trust or Even Cause the Trust to Liquidate.*

Current and future legislation, CFTC and SEC rulemaking and other regulatory developments may affect the manner in which Bitcoins are treated for classification and clearing purposes, and the manner in which the Units, the Trust and the Sponsor are regulated. Currently, the CFTC takes the position that Bitcoin is a commodity and has brought enforcement actions against Bitcoin operators who have not registered as futures commission merchants or commodity pool operators, although several court challenges to this position are still pending and the CFTC has not yet issued regulations to formalize its position. Although several U.S. federal district courts have recently held for certain purposes that Bitcoin is a currency or a form of money, these rulings are not definitive and the Sponsor and the Trust cannot be certain as to how future regulatory developments may affect the treatment of Bitcoin under the law. In the face of such developments, new or additional registration and compliance steps may result in extraordinary expenses to the Trust. If the Sponsor decides to terminate the Trust in response to changed regulatory circumstances, the Trust may be dissolved or liquidated at a time that is disadvantageous to Unitholders.

To the extent that Bitcoin is deemed to fall within the definition of a "commodity interest" under the CEA, the Trust and the Sponsor may be subject to additional regulation under the CEA and CFTC regulations. The Sponsor or the Trust may be required to register as a commodity pool operator or commodity trading advisor with the CFTC and become a member of the National Futures Association and may be subject to additional regulatory requirements with respect to the Trust, including disclosure and reporting requirements. These additional requirements may result in extraordinary, recurring and nonrecurring expenses. If the Sponsor or the Trust determines not to comply with such additional regulatory requirements, the Sponsor will terminate the Trust. Any such termination could result in the liquidation of the Trust's Bitcoin at a time that is disadvantageous to Unitholders.

To the extent that Bitcoin is deemed to fall within the definition of a security under U.S. federal securities laws, the Trust and the Sponsor may be subject to additional requirements under the 1940 Act and Investment Advisers Act of 1940, as amended (the "Advisers Act"). The Sponsor or the Trust may be required to register as an investment adviser under the Advisers Act. Such additional registration may result in extraordinary, recurring and non-recurring expenses. If the Sponsor or the Trust determines not to comply with such additional regulatory requirements, the

Sponsor will terminate the Trust. Any such termination could result in the liquidation of the Trust's Bitcoin at a time that is disadvantageous to Unitholders.

*Banks may not provide banking services, or may cut off banking services, to businesses that provide Bitcoin-related services or that accept Bitcoin as payment, which could directly impact the Trust's operations, damage the public perception of Bitcoin and the utility of Bitcoin as a payment system and could decrease the price of Bitcoin and adversely affect an investment in the Units.*

A number of companies that provide Bitcoin-related services have been unable to find banks that are willing to provide them with bank accounts and banking services. This may have an adverse impact on the Trust's operations. Similarly, a number of such companies have had their existing bank accounts closed by their banks. Banks may refuse to provide bank accounts and other banking services to Bitcoin-related companies or companies that accept Bitcoin for a number of reasons, such as perceived compliance risks or costs. The difficulty that many businesses that provide Bitcoin-related services have and may continue to have in finding banks willing to provide them with bank accounts and other banking services may be currently decreasing the usefulness of Bitcoin as a payment system and harming public perception of Bitcoin or could decrease its usefulness and harm its public perception in the future. Similarly, the usefulness of Bitcoin as a payment system and the public perception of Bitcoin could be damaged if banks were to close the accounts of many or of a few key businesses providing Bitcoin-related services. This could decrease the price of Bitcoin and therefore adversely affect an investment in the Units.

*It may be illegal now, or in the future, to acquire, own, hold, sell or use Bitcoin in one or more countries, and ownership of, holding or trading in Units may also be considered illegal and subject to sanctions.*

The United States, China, Russia or other jurisdictions may take additional regulatory actions in the future that further, severely restrict the right to acquire, own, hold, sell or use Bitcoin or to exchange Bitcoin for fiat currency. Such an action may also result in the restriction of ownership, holding or trading in the Units. Such a restriction could subject the Trust or the Sponsor to investigations, civil or criminal fines and penalties, which could harm the reputation of the Trust or its Sponsor, and could result in the termination and liquidation of the Trust at a time that is disadvantageous to Unitholders, or may adversely affect an investment in the Units.

*If regulatory changes or interpretations of the Trust's or Sponsor's activities require registration as money service businesses under the regulations promulgated by FinCEN under the authority of the U.S. Bank Secrecy Act or as money transmitters or digital currency businesses under state regimes for the licensing of such businesses, the Trust and/or Sponsor could suffer reputational harm and also extraordinary, recurring and/or nonrecurring expenses, which would adversely impact an investment in the Units.*

If regulatory changes or interpretations of the Trust's or Sponsor's activities require the registration of the Trust or Sponsor as a money services business under the regulations promulgated by FinCEN under the authority of the U.S. Bank Secrecy Act, the Trust or Sponsor may be required to register and comply with such regulations. If regulatory changes or interpretations of the Trust's

or Sponsor's activities require the licensing or other registration as a money transmitter or business engaged in digital currency activity (*e.g.*, under the New York BitLicense regime) (or equivalent designation) under state law in any state in which the Trust or Sponsor operates, the Trust or Sponsor may be required to seek licensure or otherwise register and comply with such state law. In the event of any such requirement, to the extent that the Sponsor decides to continue the Trust, the required registrations, licensure and regulatory compliance steps may result in extraordinary, nonrecurring expenses to the Trust. Regulatory compliance would include, among other things, implementing anti-money laundering and consumer protection programs.

To the extent the Trust or Sponsor is found to have operated without appropriate state or federal licenses, it may be subject to investigation, administrative or court proceedings, and civil or criminal monetary fines and penalties, all of which would harm the reputation of the Trust or its Sponsor, decrease the liquidity of the Trust, and have a material adverse effect on the price of the Units. If the Sponsor decides to comply with such additional federal or state regulatory obligations and continue the Trust, the required registrations, licensure and regulatory compliance steps may result in extraordinary, nonrecurring expenses to the Trust, possibly affecting an investment in the Units in a material and adverse manner. Furthermore, the Trust and its service providers may not be capable of complying with certain federal or state regulatory obligations applicable to money service businesses' money transmitters and businesses involved in digital currency business activity. If the Sponsor and/or the Trust determines not to comply with such requirements, the Sponsor will act to dissolve and liquidate the Trust. Any such termination could result in the liquidation of the Trust's Bitcoin at a time that is disadvantageous to Unitholders.

### **Potential Conflicts of Interest**

Affiliates of the Sponsor may obtain exposure to Bitcoin through investment in the Units. In addition, affiliates of the Sponsor have substantial direct investments in Bitcoins outside of the Trust. Such affiliates of the Sponsor are permitted to manage such investments, taking into account their own interests, without regard to the interests of the Trust or its Unitholders. To the extent that any substantial investment in Bitcoins is initiated, materially increased or materially reduced, such investment can affect the Bitcoin Market Price. The initiation of, or material increases in, a substantial investment in Bitcoin may result in an increase in the CMBI Bitcoin Index Price. A material reduction in a substantial investment may result in a decrease in the CMBI Bitcoin Index Price, having a negative impact on the value of the Units.

The Sponsor manages and expects to continue to manage other ventures, some of which may now or in the future have business objectives similar to or competing with those of the Trust. The Sponsor is not obligated to devote any specific amount of time to the affairs of the Trust and is not required to accord exclusivity or priority to the Trust in the event of investment opportunities arising from the application of speculative position limits or other factors. Situations may occur where the Trust could be disadvantaged because of the investment activities conducted by the Sponsor for other investment accounts.

### **Tax Risks**

*The treatment of the Trust for U.S. federal income tax purposes is uncertain.*

The Sponsor intends to take the position that the Trust will be treated as a grantor trust for U.S. federal income tax purposes. Assuming that the Trust is a grantor trust, the Trust will not be subject to U.S. federal income tax. Rather, a *pro rata* portion of the Trust's income, gain, losses and deductions will "flow through" to each beneficial owner of Units.

The Trust Agreement was drafted in a manner intended to clarify the Trust's classification as a grantor trust for U.S. federal income tax purposes. However, due to the absence of direct legal authority addressing the classification of an entity such as the Trust, the U.S. Internal Revenue Service (the "IRS") or a court might not agree that the Trust is properly treated as a grantor trust for U.S. federal income tax purposes.

If the IRS were successful in asserting that the Trust is not properly classified as a grantor trust, the Trust might be classified as a partnership for U.S. federal income tax purposes. If the Trust were classified as a partnership for U.S. federal income tax purposes (that is not a publicly traded partnership as discussed below), the tax consequences of owning Units generally would not be materially different from the tax consequences described herein, although there might be certain differences, including with respect to the timing of recognition of gain or loss. In addition, tax information reports provided to Unitholders would be made in a different form. If the Trust were treated as a publicly traded partnership taxable as a corporation for U.S. federal income tax purposes, it would be subject to entity-level U.S. federal income tax (currently at a flat rate of 21%) on its net taxable income and certain distributions made by the Trust to Unitholders could be taxable as dividends to the extent of the Trust's current and accumulated earnings and profits (which, in the case of a Non-U.S. Holder, generally would be subject to U.S. federal withholding tax at a 30% rate (or a lower rate provided by an applicable income tax treaty)).

*The treatment of Bitcoins for U.S. federal income tax purposes is uncertain.*

The Trust intends to take the position that each beneficial owner of Units generally will be treated for U.S. federal income tax purposes as the owner of an undivided interest in the Bitcoins held in the Trust. Due to the absence of direct legal authority, many significant aspects of the U.S. federal income tax treatment of Bitcoins are uncertain, and the Sponsor does not intend to request a ruling from the IRS on these issues. On March 25, 2014, the IRS released a notice (the "Notice") discussing certain aspects of the treatment of convertible virtual currencies (such as Bitcoins) for U.S. federal income tax purposes. In the Notice, the IRS stated that, for U.S. federal income tax purposes, Bitcoins are "property" that is not currency and that Bitcoins may be held as capital assets. However, the Notice is not binding on the IRS and, accordingly, the IRS might not accept, and a court might not uphold, this treatment. If Bitcoins were treated as currency for U.S. federal income tax purposes, gain recognized on the disposition of Bitcoins would constitute ordinary income, and losses recognized on the disposition of Bitcoins could be subject to special reporting requirements applicable to "reportable transactions."

The Notice does not address other significant aspects of the U.S. federal income tax treatment of Bitcoins, including: (i) whether Bitcoins are properly treated as "commodities" for U.S. federal income tax purposes; (ii) whether Bitcoins are properly treated as "collectibles" for U.S. federal income tax purposes, (iii) the proper method of determining a holder's holding period and tax basis for Bitcoins acquired at different times or at varying prices; and (iv) whether and how a holder of

Bitcoins acquired at different times or at varying prices may designate, for U.S. federal income tax purposes, which of the Bitcoins is transferred in a subsequent sale, exchange or other disposition.

Prospective investors are urged to consult their tax advisers regarding the substantial uncertainty regarding the tax consequences of an investment in Bitcoins.

*Future developments in the tax treatment of Bitcoins could adversely affect an investment in the Units.*

On December 5, 2014, the New York State Department of Taxation and Finance issued guidance regarding the application of New York State tax law to virtual currencies such as Bitcoins. The agency determined that New York State would follow the Notice with respect to the treatment of virtual currencies such as Bitcoins for state income tax purposes. Furthermore, the agency took the position that virtual currencies such as Bitcoin are a form of “intangible property,” with the result that the purchase and sale of Bitcoins for fiat currency is not subject to state sales tax (although transactions of Bitcoin for other goods and services may be subject to sales tax under barter transaction treatment). It is unclear if other states will follow the guidance of the New York State Department of Taxation and Finance with respect to the treatment of virtual currencies such as Bitcoins for income tax and sales tax purposes. If a state adopts a different treatment, such treatment may have negative consequences, including the imposition of a greater tax burden on investors in Bitcoin or the imposition of a greater cost on the acquisition and disposition of Bitcoins generally. Any such treatment may have a negative effect on prices in the Bitcoin exchange market and a negative impact on the Units.

The treatment of virtual currencies such as Bitcoins for tax purposes by foreign jurisdictions may differ from the treatment of virtual currencies by the IRS or the New York State Department of Taxation and Finance. If a foreign jurisdiction with a significant share of the market of Bitcoin users imposes onerous tax burdens on Bitcoin users, or imposes sales or value-added tax on purchases and sales of Bitcoins for fiat currency, such actions could result in decreased demand for Bitcoins in such jurisdiction, which could affect the price of Bitcoins and negatively affect an investment in the Units.

Any discussion of U.S. federal income tax matters set forth in this Memorandum or in any appendix hereto was written in connection with the promotion and marketing by the Trust and the Sponsor of the Units. Such discussion is not intended or written to be legal or tax advice to any person and is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding any U.S. federal tax penalties that may be imposed on such person. Each investor should seek advice based on its particular circumstances from an independent tax advisor.

For an additional discussion of certain tax matters, see the section entitled “Certain U.S. Federal Income Tax Considerations”.

### **Certain Other Risks**



*You Should Consult Your Own Legal, Tax and Financial Advisers Regarding the Desirability of an Investment in the Units Because No Independent Advisers Were Appointed to Represent You in connection with the Formation and Operation of the Trust.*

While the Sponsor has consulted with legal, tax and financial advisers regarding the formation and operation of the Trust, no counsel has been appointed to represent you in connection with the offering of the Units. Accordingly, you should consult your own counsel, accountants and other advisers before investing in the Units.

*Competing Claims Over Ownership of Intellectual Property Rights Related to the Trust Could Adversely Affect the Trust and an Investment in the Units.*

The Sponsor believes that all intellectual property rights needed to operate the Trust have been obtained by the Sponsor. However, third parties may allege or assert ownership of intellectual property rights which may be related to the design, structure and operations of the Trust. The negotiation, litigation or settlement of such claims may result in expenses or damages that could adversely affect the Trust or lead to its termination. Third parties may assert intellectual property claims relating to the holding and transfer of Bitcoin and the Bitcoin source code, as well as to the determination of the NAV of the trust or the Units. Regardless of the merit of any intellectual property or other legal action, any threatened action that reduces confidence in Bitcoin's long-term viability or the ability of end-users to hold and transfer Bitcoin may adversely affect an investment in the Units. Additionally, a meritorious intellectual property claim could prevent the Trust and others from accessing the Blockchain, holding or transferring Bitcoin, which could force the termination of the Trust and the liquidation of the Trust's Bitcoin (if such liquidation is possible). As a result, an intellectual property claim against the Trust or other large participants within the Bitcoin industry could adversely affect an investment in the Units or the ability of the Trust to operate.

## **THE TRUST**

The Trust is a Delaware trust formed on January 3, 2019. It operates pursuant to the Second Amended and Restated Declaration of Trust and Trust Agreement of Osprey Bitcoin Trust, dated as of November 1, 2020 (as it may be further amended or restated, the "Trust Agreement"). The Trust's principal place of business is 520 White Plains Road, Suite 500, Tarrytown, NY 10591.

The Trust accepted its first subscription for Units on January 22, 2019. The Trust has since been in continuous operation. The Trust completed an offering of 38,546 additional Units on August 12, 2020. As of November 1, 2020, the Trust had 1,033,578 Units outstanding, and held approximately 1,413 Bitcoins with an approximate U.S. dollar value of \$19,144.00. The Trust's net asset value (as defined below) per Unit was \$5.00 on January 22, 2019; \$9.89 on December 31, 2019; \$13.29 as of May 19, 2020; \$15.90 as of August 12, 2020; and \$18.52 as of November 1, 2020. On January 5, 2021, the Trust effected a four-to-one (4 to 1) Unit split resulting in each Unitholder of record as of December 31, 2020, receiving four Units for each outstanding Unit the Unitholder owned. As of January 15, 2021, the Trust had 4,560,652 Units outstanding and held approximately 1,557 bitcoin] with an approximate value of \$55,640,000. The Trust's NAV was \$12.07 as of January 15, 2021.

The Trust takes various steps to help ensure the security of its Bitcoin. Multiple signatures are required to authorize transactions with the Trust's Bitcoin. Bitcoin held by the Trust's Custodian are subject to the Custodian's security procedures. See "Other Parties – The Custodian", below. The Sponsor expects the Trust's auditor to take steps periodically to confirm the existence and amount of the Bitcoin held by the Trust.

No material litigation or proceeding (including any proceeding involving a conviction for any misdemeanor involving a security or any aspect of the securities business, or any felony, or any administrative proceeding or any disciplinary action by self-regulatory organizations) to which the Trust or any of its officers was named a party, has been commenced or resolved within the past ten years.

The fiscal year of the Trust is the period ending December 31st of each year. The Sponsor may select a different fiscal year.

### **THE SPONSOR**

The Trust's Sponsor is Osprey Funds, LLC, a Delaware limited liability company formed on October 31, 2018. The Sponsor's principal place of business is 520 White Plains Road, Suite 500, Tarrytown, NY 10591. Under the Delaware Limited Liability Company Act and the governing documents of the Sponsor, REX Shares, LLC, the sole member of the Sponsor, is not responsible for the debts, obligations and liabilities of the Sponsor solely by reason of being the sole member of the Sponsor.

No material litigation or proceeding (including any proceeding involving a conviction for any misdemeanor involving a security or any aspect of the securities business, or any felony, or any administrative proceeding or any disciplinary action by self-regulatory organizations) to which the Sponsor or any of its officers was named a party, has been commenced or resolved within the past ten years.

#### **The Sponsor's Role**

The Sponsor arranged for the creation of the Trust. The Sponsor will provide services to the Trust, and will be paid a Management Fee equal to an annualized 0.49% of the average daily NAV of the Trust for each year. It will accrue daily in Bitcoins and will be payable, at the Sponsor's sole discretion, in Bitcoins or in U.S. dollars at the Bitcoin Market Price in effect at the time of such payment. The Sponsor expects that the Trust will pay the Management Fee in monthly installments in arrears.

The Sponsor will bear the routine operational, administrative and other ordinary fees and expenses of the Trust (the "Assumed Expenses"); provided, however, that the Trust shall be responsible for any audit and index license fees, aggregate legal fees in excess of \$50,000 per annum (excluding legal fees related to its organization, which were paid by the Sponsor), and other non-routine expenses, which will be borne by the Trust as extraordinary expenses. The Trust shall also pay the fees and expenses of the Custodian. The Sponsor paid the costs of the Trust's organization and will pay the costs of the initial sale of the Units.

The Sponsor will: (1) select the Trustee, Custodian, Cash Custodian, and any other Trust service providers; (2) negotiate various agreements and fees for the Trust; (3) develop a marketing plan for the Trust on an ongoing basis and prepare marketing materials regarding the Units; (4) maintain the Trust's website; and (5) perform such other services as the Sponsor believes the Trust may require.

The Sponsor will engage the Custodian and the Cash Custodian (the "Service Providers") to assist in implementing the issuance (and redemption) process for the Trust.

Except as set forth below, the Sponsor has agreed to assume the Assumed Expenses, including: (i) the Trust's routine and ordinary monthly fees and expenses (including certain indemnification amounts which, under the Trust Agreement, shall be advanced by the Sponsor until the final disposition of the relevant matters) reimbursable under the Trust Agreement (which, for the avoidance of doubt, shall be paid by the Trust to the extent not paid by the Sponsor); (ii) the costs associated with maintaining the Trust's website; (iii) marketing expenses; and (iv) aggregate legal fees up to \$50,000 per annum. Audit and index licensing fees, aggregate legal fees in excess of \$50,000 per annum, the Custodian's monthly fee., and other non-routine or ordinary fees and expenses will be borne by the Trust as Excluded Expenses. Certain additional expenses, including expenses incurred in extraordinary circumstances, will be paid by the Trust as Extraordinary Expenses under the Trust Agreement. The Sponsor paid the costs of the Trust's organization and will pay the costs of the initial sale of the Units. In the event that the Sponsor forms one or more investment vehicles with a similar investment objective as the Trust, the Trust and such investment vehicle(s) shall bear their common expenses *pro rata*, in proportion to their respective assets under management.

The Sponsor may transfer all or substantially all of its assets to an entity that carries on the business of the Sponsor if at the time of the transfer the successor assumes all of the obligations of the Sponsor under the Trust Agreement. In such an event, the Sponsor will be relieved of all further liability under the Trust Agreement.

The Management Fee is paid by the Trust to the Sponsor as compensation for services performed under the Trust Agreement and for the Sponsor's agreement to pay the Assumed Expenses.

## Sponsor's Organizational Chart

### **REX Shares, LLC (Delaware LLC)**

*Gregory King, CEO*

*Scott Acheychek, President*

*Robert Rokose, CFO and CCO*

100% owned



### **Osprey Funds, LLC (Delaware LLC)**

*Gregory King, President and CEO*

*Robert Rokose, Treasurer and CFO*

*Matt Mascera, Director of Operations*

## Management of the Sponsor

Under the Trust Agreement, all management functions of the Trust have been delegated to and are conducted by the Sponsor and its agents, including without limitation the Custodian and its agents. Gregory King, President and CEO of the Sponsor, may take certain actions and execute certain agreements and certifications for the Trust, in his capacity as the principal officer of the Sponsor. Robert Rokose, Treasurer and CFO of the Sponsor, is primarily responsible for managing the financial affairs of the Trust and may also take certain actions and execute certain agreements and certifications for the Trust, in his capacity as an officer of the Sponsor. Matt Mascera, Director of Operations of the Sponsor, is primarily responsible for handling the day-to-day operations of the Trust.

**Gregory King** has served as President and CEO of the Sponsor since its inception in October 2018. Greg is also the Founder of REX Shares, LLC, parent company to the Sponsor, and has served as CEO of REX Shares since 2015. Greg is the primary author of several financial industry investment innovations, including the first ever exchange-traded note (“ETN”) for Barclays in 2006. In 2009, he co-founded VelocityShares, LLC, a provider of alternative ETPs, partnering with Credit Suisse as product issuer. VelocityShares was acquired by Janus Capital in 2014. During his career, Greg has built and launched over 100 exchange traded investment products listed on the NYSE, Nasdaq and CBOE. Greg received a Master’s in Business Administration from the University of California, Davis, and is a CFA Charter holder. He has been an investor in Bitcoin since 2013.

**Robert Rokose** became Treasurer and CFO of the Sponsor in March 2020. He is also CFO of REX Shares, LLC, parent company to the Sponsor. Bob has 28 years of accounting and financial services experience. His previous roles include CFO of U.S. Funds at JP Morgan Asset Management, Managing Director & CFO for PIMCO/Allianz Funds and Assistant Vice President

& Assistant Controller of publicly held Lexington Global Asset Managers. Mr. Rokose has served as a Financial Services Consultant and has acted in that role since November 2016. From May 2014 to October 2016, Mr. Rokose was Chief Financial Officer and Treasurer of AccuShares Investment Management where he led all financial accounting and reporting for the organization. Bob is a Certified Public Accountant, licensed in the state of New York. He has an undergraduate degree from Pace University and a Masters of Business Administration from the University of Connecticut.

**Matthew Mascera** became Director of Operations of the Sponsor in March 2020. Matt has 23 years of experience in the Financial Services industry. From February 2016 to June 2019, Matt was Director of Operations and Trading at Seaclyff Capital, a long/short equity hedge fund. From 2012 to 2015, Matt was a Senior Vice President in equities at FBR & Co. Previous to that, Matt was an Executive Director at UBS Securities where he had been since 2005. Matt holds a Bachelor's degree in Finance from Tulane University.

## **OTHER PARTIES**

### **TRUSTEE**

Delaware Trust Company serves as Delaware trustee of the Trust under the Trust Agreement. The Trustee has its principal office at 251 Little Falls Drive Wilmington, Delaware 19808. The Trustee is unaffiliated with the Sponsor.

### **The Trustee's Role**

The Trustee is appointed to serve as the trustee of the Trust for the sole purpose of satisfying the requirement of Section 3807(a) of the Delaware Statutory Trust Act ("DSTA") that the Trust have at least one trustee with a principal place of business in the State of Delaware. The duties of the Trustee will be limited to (i) accepting legal process served on the Trust in the State of Delaware and (ii) the execution of any certificates required to be filed with the Delaware Secretary of State which the Delaware Trustee is required to execute under the DSTA. To the extent that, at law or in equity, the Trustee has duties (including fiduciary duties) and liabilities relating thereto to the Trust or the Unitholders, such duties and liabilities will be replaced by the duties and liabilities of the Trustee expressly set forth in the Trust Agreement. The Trustee will have no obligation to supervise, nor will it be liable for, the acts or omissions of the Sponsor, Custodian, Cash Custodian or any other person.

Neither the Trustee, either in its capacity as trustee or in its individual capacity, nor any director, officer, or controlling person of the Trustee is, or has any liability as, the issuer, director, officer or controlling person of the issuer of Units. The Trustee's liability in connection with the issuance and sale of Units is limited solely to the express obligations of the Trustee as set forth in the Trust Agreement.

The Trustee has not prepared or verified, and will not be responsible or liable for, any information, disclosure or other statement in this Memorandum or in any other document issued or delivered in connection with the sale or transfer of the Units. The Trust Agreement provides that the Trustee will not be responsible or liable for the genuineness, enforceability,

collectability, value, sufficiency, location or existence of any of the Bitcoins or other assets of the Trust.

The Trustee is permitted to resign upon at least 60 days' notice to the Trust. The Trustee will be compensated by the Sponsor or the Trust, as applicable, and indemnified by the Sponsor and the Trust, as applicable, against any expenses it incurs relating to or arising out of the formation, operation or termination of the Trust, or the performance of its duties pursuant to the Trust Agreement except to the extent that such expenses result from gross negligence, willful misconduct or bad faith of the Trustee. The Sponsor has the discretion to replace the Trustee.

The Trustee's fees and expenses under the Trust Agreement will be paid by the Sponsor, or the Trust, as applicable.

## **ADMINISTRATOR**

Theorem Fund Services serves as the Administrator. The Administrator has offices at 141 W. Jackson Blvd Suite 4120, Chicago, IL 60604.

### **The Administrator's Role**

The Administrator is generally responsible for the day-to-day administration of the Trust, including keeping the Trust's operational records. The Administrator's principal responsibilities include: (1) valuing the Trust's Bitcoin and calculating the NAV per Unit; (2) supplying pricing information to the Sponsor for the Trust's website; (3) receiving and reviewing reports on the custody of and transactions in cash and Bitcoin from the Cash Custodian and Trust, respectively, and taking such other actions in connection with the custody of cash as the Sponsor instructs; and (4) accounting and other fund administrative services. The Administrator also provides know your customer and anti-money laundering services to the Trust and Sponsor.

The Administrator will liaise with the Trust's legal, accounting and other professional service providers as needed.

The Administrator will keep proper books of registration and transfer of Units at its office located in New York or such office as it may subsequently designate. These books and records are open to inspection by any person who establishes to the Sponsor's satisfaction that such person is a Unitholder at all reasonable times during the usual business hours of the Sponsor. The Sponsor will keep a copy of the Trust Agreement on file in its office which will be available for inspection on reasonable advance notice at all reasonable times during its usual business hours by any Unitholder.

## **TRANSFER AGENT**

Continental Stock Transfer & Trust Company serves as the Transfer Agent. The Transfer Agent has offices at 1 State Street, 30th Floor, New York, NY 10004-1561.

## **The Transfer Agent's Role**

The Transfer Agent, among other things, provides transfer agent services with respect to the issuance and redemption (if any) of Units, the payment, if any, of distributions with respect to the Units, the recording of the issuance of the Units and the maintaining of certain records therewith. The Transfer Agent's responsibilities include: (1) receiving and processing orders from investors for the issuance and redemption (if any) of Units; and (2) coordinating the processing of orders from investors, the Cash Custodian, and the Trust.

## **CUSTODIAN**

Fidelity Digital Asset Services, LLC serves as the Custodian. The Custodian has offices at 245 Summer Street, Boston, MA 02210. Fidelity Digital Asset Services, LLC, is a New York State-chartered, limited liability trust company.

### **The Custodian's Role**

The role of the Custodian is to maintain the security of the Bitcoins of the Trust, as more specifically described below and in the description of the Custodian Agreement.

The Custodian holds the Trust's private keys in accordance with the terms and provisions of the Custodian Agreement. The Custodian segregates the private keys from any other assets it holds for itself or others. The Custodian maintains a Vault Account for the Trust assets, in which the private keys are placed in cold storage. The Custodian will use certain security methods and procedures, such as algorithms, codes, passwords, encryption, biometrics and telephone and video call-backs, as well as other undisclosed methodologies (together, the "Security Procedures") to help ensure the safekeeping of the Trust's Bitcoins and private keys.

The term "cold storage" refers to a safeguarding method by which private keys corresponding to Bitcoins stored on a digital wallet are removed from any computers actively connected to the internet. Computers on which the cold storage wallets reside are described as air-gapped, a reference to their isolation from the Internet and other computers. Cold storage of private keys may involve keeping the wallet holding the keys on a non-networked computer or electronic device or storing the public key and private keys relating to the digital wallet on a storage device or printed medium and deleting the digital wallet from all computers. A digital wallet may receive deposits of Bitcoins but may not send Bitcoins without use of the Bitcoins' private keys.

## **CASH CUSTODIAN**

Signature Bank serves as the Cash Custodian. The Cash Custodian has offices at 565 Fifth Avenue, New York, NY 10017.

### **The Cash Custodian's Role**

The Cash Custodian is responsible for holding the Trust's cash as well as receiving and dispensing cash on behalf of the Trust in connection with issuances and redemptions (if any) of Units.

## **INDEX PROVIDER**

Coin Metrics, Inc., a Delaware corporation (the “Index Provider”), serves as the index provider and calculation agent for the Trust. The Index Provider has offices at 125 High Street, Suite 220, Boston, MA 02110.

### **The Index Provider’s Role**

The role of the Index Provider is to administer and publish the index that the Sponsor will rely on in calculating the Fund’s NAV. The Index Provider’s “Coin Metrics Bletchley Indexes” (“CMBI”) are designed to provide cryptoasset markets with a diverse range of market capitalization-weighted, equal-weighted, and network data-weighted indexes to measure performance of the largest and most utilized global cryptoassets. CMBI products are operated and calculated by Coin Metrics and are designed to serve as an independent, transparent and comprehensive measure of cryptoasset market performance. The Index Provider calculates and publishes CMBI indexes on business days.

## **DESCRIPTION OF THE UNITS**

### **General**

Each Unit is a fractional undivided beneficial interest in the Trust and has no par value. The Trust is authorized under the Trust Agreement to create and issue an unlimited number of Units.

### **Description of Limited Rights under Units**

The Units do not represent a traditional investment and should not be viewed as similar to “shares” of a corporation operating a business enterprise with management and a board of directors. A Unitholder will not have the statutory rights normally associated with the ownership of shares of a corporation. Each Unit is subject to restrictions on transfer described herein, fully paid and non-assessable. But Unitholders will have no voting rights, and the Trust does not intend to pay regular dividends, although it may pay dividends, at the sole discretion of the Sponsor, upon the sale of Bitcoins resulting from a Bitcoin fork. Moreover, the Units do not entitle their holders to any conversion, pre-emptive or redemption rights or any rights to distributions, except as provided below.

#### *No Voting Rights.*

Under the Trust Agreement, Unitholders will have no voting rights in regard to the management of the Trust or otherwise.

#### *Distributions.*

Upon liquidation of the Trust, the Sponsor will distribute to the Unitholders any amounts of the cash proceeds of the liquidation remaining after the satisfaction of all outstanding liabilities of the Trust. Unitholders of record on the record date fixed by the Sponsor for a distribution will be entitled to receive their *pro rata* portion of any distribution.

#### *No Redemption of Units.*



Currently, Units may not be redeemed. In the future, redemptions may be permitted. But there can be no assurance as to when redemptions may be permitted, as determined by the Sponsor in its sole discretion. At such time as the Sponsor decides to allow redemptions, if ever, the Sponsor will amend the Trust Agreement to include Unit redemption procedures.

*Book-Entry Form.*

Individual certificates will not be issued for the Units. Units shall be held in book-entry form by the Transfer Agent. The Sponsor or its delegate shall direct the Transfer Agent (which may be the Sponsor or an Affiliate) to credit or debit the number of Units to the applicable Purchaser. The Transfer Agent shall issue or cancel each Purchaser's Units, as applicable.

**DESCRIPTION OF THE ISSUANCE OF UNITS**

The Trust issues Units from time to time, but only in connection with an accepted investor subscription. The issuance of Units requires payment to the Trust of the amount of U.S. dollars required for the Units being issued (or, at the sole discretion of the Sponsor, payment of the number of Bitcoins represented by the Units being issued), as adjusted in respect of accrued but unpaid fees and expenses of the Trust. The number of Units to be issued with respect to the amount of cash (or Bitcoin) paid by an investor will depend on (i) when the subscription of such investor is accepted, and (ii) when such investor's subscription amount is then invested. Such investment is expected to take place within approximately 5 business days or fewer after receiving the subscription amount, but it could take place at a later time. In all events, it is only when the subscription amount is invested that it will be known, based on the then-applicable NAV per Unit, how many Units to issue to the investor. The Trust intends to have all subscriptions reviewed for acceptance, and all subscription amounts invested, with a reasonable degree of speed and efficiency. However, an accepted investor who submits a subscription amount on a particular day should not expect to receive Units based on the latest NAV as of that day. Instead, the investor will receive Units based on the NAV applicable to the day on which that subscription amount is invested, which could be the same day but may more likely be a later day.

The Sponsor currently expects that it may issue Units weekly, and allow orders to accumulate between issuances. The Sponsor retains discretion to issue Units more frequently if it deems such action advisable.

Fractional Units will not be issued. If an investor pays a subscription amount that is equal to more than a whole number of Units on the day the subscription amount is invested, then the investor will be issued such whole number of Units rounded down to the nearest whole share. No uninvested amount will be refunded to the investor.

Investors do not pay a transaction fee to the Trust in connection with the issuance (or, when permitted, redemption) of Units, but there may be transaction fees associated with the validation of the transfer of Bitcoins by the Bitcoin Network.

Unless the minimum is waived by the Sponsor in its sole discretion, the Trust will issue Units to investors in this offering in a minimum amount of at least \$25,000.00 per investor.

Payment for Units in cash may be in the form of a check or wire transfer. In-kind payments may be accepted at the sole discretion of the Sponsor. Upon the acceptance of any particular investment by the Sponsor, the Trust will be permitted to close on the funds received in respect of that investment and make use of those funds. No minimum aggregate offering amount must be raised before the Trust can make use of invested funds.

The amount of cash (or the number of Bitcoins) required to create a Unit may gradually decrease over time due to the transfer of Trust Bitcoins to pay the Management Fee and the transfer or liquidation of Trust Bitcoins to pay any Trust expenses not assumed by the Sponsor.

*Suspension or Rejection of Orders.*

The issuance of Units may be suspended generally, or refused with respect to particular requested issuances, during any period when the transfer books of the Sponsor are closed or if circumstances outside the control of the Sponsor or its delegates make it for all practical purposes not feasible to process such issuances. The Sponsor may reject any subscription application not presented in proper form as described in the Subscription Packet or if the fulfillment of the order, in the opinion of counsel, might be unlawful, or for any other reason or for no reason. None of the Sponsor or its delegates will be liable for the suspension, rejection or acceptance of any subscription application.

**Redemptions (if any)**

The process of accessing and withdrawing Bitcoins from the Trust for a redemption of Units, if and when redemptions may be permitted, will follow the same general procedure as depositing Bitcoins with the Trust for an issuance of Units, only in reverse.

**Tax Responsibility**

Investors are responsible for any transfer tax, sales or use tax, stamp tax, recording tax, value-added tax or similar tax or governmental charge applicable to the purchase (or, when permitted, redemption) of Units, regardless of whether such tax or charge is imposed directly on the investor, and each investor agrees to indemnify the Sponsor and the Trust if any such investor is required by law to pay any such tax, together with any applicable penalties, additions to tax or interest thereon.

**PLAN OF DISTRIBUTION**

The Units will be offered by the Trust and the Sponsor and its officers, in reliance upon the exemption from broker registration contained in Rule 3a4-1 of the Securities Exchange Act of 1934. Currently, the Trust does not expect to use underwriters, finders or other intermediaries to offer or sell Units, but it may choose to do so, and in any such case pay the fees of such intermediaries itself or pass some or all of such fees on to purchasers (in which case the Trust will make advanced disclosure of such fee arrangements to such purchasers). The aggregate amount of offering expenses expected to be incurred, including legal and other charges, is approximately \$75,000. These expenses will be paid by the Sponsor.

Because Units may be offered, and new Units can be created and issued, on a continuous basis throughout the duration of this offering, a “distribution,” as such term is used in the Securities Act, may be continuously occurring during the duration of this offering. Although the Units may be offered continuously, the Sponsor may, in its discretion, issue Units only periodically. The Sponsor currently expects that it may issue Units weekly, and allow orders to accumulate between issuances. The Sponsor retains discretion to issue Units more frequently if it deems such action advisable.

The Units are being offered and sold in reliance upon the exemption from the registration requirements of the U.S. federal securities laws that is set forth in Rule 506 of Regulation D under the Securities Act. Specifically, they are being offered and sold in reliance on Rule 506(c) under the Securities Act solely to accredited investors as defined in Rule 501 under the Securities Act. Under Rule 506, offers and sales may be made solely to investors that qualify as “accredited investors” as defined in Rule 501 under the Securities Act. Prospective investors will be required to represent and warrant in their subscription documents as to their accredited investor status. The Trust reserves the right, in its sole discretion, to make offers and sales to investors that are not accredited investors, including investors that, either alone or with their advisors or representatives, have, in the Sponsor’s sole judgment, such knowledge and experience in financial and business matters that they are capable of evaluating the merits and risks of the prospective investment.

As part of any purchase order, an investor will be required to fill out a Subscription Agreement, providing representations in writing as to such investor’s status as an accredited investor within the meaning of Rule 501 of Regulation D under the Securities Act. Each such person will be required to make usual and customary representations made in private placements undertaken pursuant to Regulation D under the Securities Act, including: (i) that they have had an opportunity and a reasonable time prior to the purchase date to ask questions and receive answers concerning the terms and conditions of the offering of Units and to obtain any additional information which the Sponsor possesses or can acquire without unreasonable effort or expense that is necessary to verify the accuracy of the information in this Memorandum; and (ii) that they are purchasing the securities for investment purposes only and not with a view to resale.

The Units will be restricted securities under U.S. federal securities laws, and therefore, upon issuance, they will not be freely tradeable for a minimum period of one year under current law, with the prior approval of the Sponsor.

4,134,312 outstanding Units of the Trust were freely transferable as of February 10, 2021. On January 14, 2021, FINRA determined the Units met the criteria for quotation and trading on the OTC Market under the symbol “OBTC.” Nevertheless, there can be no assurance that, if quoted, the Units will trade with sufficient liquidity for the quotation to be of practical use to investors. Therefore, investors should be aware that they may be required to bear the financial risks of an investment in the Units for an indefinite period of time.

Although Units will be offered continuously in this offering, and as of February 10, 2021, the Trust has identified no specific completion date that can be foreseen and the Trust is not mandating a specific completion date. The Trust reserves the right to periodically discontinue the offering and thereafter restart it. The Trust expects to continue conducting offerings of Units, including in compliance with Rule 506(c) of Regulation D under the Securities Act for the foreseeable future.

Under Rule 506(c), the Trust would be able to offer an unlimited amount of Units only to accredited investors, who would be subject to certain investor resale restrictions, including a holding period of up to one year from purchase.

The Trust has agreed to indemnify certain parties against certain liabilities, including liabilities under the Securities Act, and to contribute to payments that such parties may be required to make in respect of those liabilities. The Trust has agreed to reimburse such parties, solely from and to the extent of the Trust's assets, for indemnification and contribution amounts due from the Sponsor in respect of such liabilities to the extent the Sponsor has not paid such amounts when due.

No adverse order, judgment or decree has been entered in connection with this offering by the regulatory authorities in any state or by any court or the SEC.

### **VALUATION OF BITCOINS AND DEFINITION OF NET ASSET VALUE**

The net asset value ("NAV") of the Trust is used by the Trust in its day-to-day operations to measure the net value of the Trust's assets. The NAV is calculated on each business day and is equal to the aggregate value of the Trust's assets less its liabilities (which include accrued but unpaid fees and expenses, both estimated and finally determined), based on the Bitcoin Market Price. In determining the NAV of the Trust on any business day, the Trust's Administrator will calculate the price of the Bitcoins held by the Trust as of 4:00 P.M. New York time on such day.

The Administrator will also calculate the NAV per Unit of the Trust, which equals the NAV of the Trust divided by the number of outstanding Units (the "NAV per Unit"). The Administrator will calculate the NAV and NAV per Unit on each business day and these amounts will be published as soon thereafter as practicable on the Trust's website, at [www.ospreyfund.io](http://www.ospreyfund.io).

The Administrator will rely on the CMBI Bitcoin Index Price as the "Bitcoin Market Price" to be used when determining NAV. If no determination of the NAV of the Trust and the NAV per Unit can be made based on the CMBI Bitcoin Index Price, the Administrator will consult publicly available BTC pricing sources, such as exchanges and indexes, to determine such price. To the extent that the NAV of the Trust or NAV per Unit is ever incorrectly calculated, there may be no liability for any error. Nevertheless, such error could adversely affect an investment in the Units.

## **EXPENSES**

### **Extraordinary and Other Expenses**

The Sponsor will bear the routine operational, administrative and other ordinary fees and expenses of the Trust (the “Assumed Expenses”); provided, however, that the Trust shall be responsible for any audit and index license fees, and aggregate legal fees in excess of \$50,000 per annum (excluding legal fees related to its organization, which were paid by the Sponsor) and other non-routine expenses, which will be borne by the Trust as extraordinary expenses. The Trust shall also pay the fees and expenses of the Custodian. Extraordinary expenses (collectively, “Extraordinary Expenses”), could include, but not be limited to, taxes and governmental charges, expenses and costs of any extraordinary services performed by the Sponsor, the Trustee or any other Service Provider on behalf of the Trust, indemnification expenses, and extraordinary legal fees and expenses. Although the Sponsor can provide no assurance as to the frequency or magnitude of any Extraordinary Expenses, the Sponsor expects that they may occur infrequently, if at all.

### **Disposition of Bitcoins**

Because the Management Fee is payable in Bitcoins each month, the Sponsor, its delegates or the Custodian will withdraw Bitcoins as needed from the Bitcoin Account to pay the Management Fee. In addition, if the Trust incurs any Extraordinary Expenses, the Sponsor, its delegates or the Custodian will withdraw Bitcoins from the Bitcoin Account and sell such Bitcoins in order to pay the Extraordinary Expenses. If the Trust incurs Extraordinary Expenses in U.S. dollars, Bitcoins will be converted to U.S. dollars at the exchange rate at the time of conversion to pay these Extraordinary Expenses. Unitholders do not have the option of choosing to pay their proportionate shares of Extraordinary Expenses in lieu of having their shares of Extraordinary Expenses paid by the Trust’s sale of Bitcoins. Assuming that the Trust is treated a grantor trust for U.S. federal income tax purposes, the payment of expenses by the Trust will result in a taxable event to Unitholders.

Because the number of the Trust’s Bitcoins will decrease as a consequence of the payment of the Management Fee in Bitcoins or the sale of Bitcoins to pay Extraordinary Expenses (and the Trust will incur additional fees associated with converting Bitcoins into U.S. dollars), the number of Bitcoins represented by a Unit will decline at such time and the NAV of the Trust may also decrease. Accordingly, the Unitholders will bear the cost of the Management Fee and any Extraordinary Expenses.

The Sponsor will also cause the sale of the Trust’s Bitcoins if the Sponsor determines that sale is required by applicable law or regulation or in connection with the termination and liquidation of the Trust. The Sponsor will not be liable or responsible in any way for depreciation or loss incurred by reason of any sale of Bitcoins.

## **BOOKS AND RECORDS, REPORTS**

### **Books and Records**

The Sponsor will keep books and records of account of the Trust at its office located in Tarrytown, NY, or at such other office as it may designate. Unitholders wishing to review available books and records of the Trust may contact the Sponsor.

### **Reports to Unitholders**

Starting in 2021, the Sponsor will furnish Unitholders with an annual report of the Trust as soon as reasonably practicable after the end of the Trust's preceding fiscal year, including, but not limited to, annual audited financial statements (including a statement of income and statement of financial condition) prepared in accordance with U.S. generally accepted accounting principles, accompanied by a report of the independent public accounting firm that audited such statements.

## **PRINCIPAL AGREEMENTS**

### **TRUST AGREEMENT**

The Trust Agreement establishes the roles, rights and duties of the Sponsor and the Trustee.

### **Liability of the Sponsor and Indemnification**

The Sponsor and its affiliates (each a "Covered Person") will not be liable to the Trust or any Unitholder for any action taken, or for refraining from taking any action in good faith, having determined that such course of conduct was in the best interests of the Trust. However, the preceding liability exclusion will not protect the Sponsor against any liability resulting from its own willful misconduct, bad faith or gross negligence in the performance of its duties.

Each Covered Person will be indemnified by the Trust and held harmless against any loss, judgment, liability, expense incurred or amount paid in settlement of any claim sustained by it in connection with the Covered Person's activities for the Trust, without fraud, gross negligence, bad faith, willful misconduct or a material breach of the Trust Agreement on the part of such indemnified party arising out of or in connection with the performance of its obligations under the Trust Agreement and under each other agreement entered into by the Sponsor in furtherance of the administration of the Trust (including, without limiting the scope of the foregoing, any Subscription Agreement) or any actions taken in accordance with the provisions of the Trust Agreement. Such indemnity shall include payment from the Trust of the costs and expenses incurred by such indemnified party in defending itself against any claim or liability in its capacity as Sponsor. Any amounts payable to an indemnified party may be payable in advance or shall be secured by a lien on the Trust. The Sponsor may, in its discretion, undertake any action that it may deem necessary or desirable in respect of the Trust Agreement and the interests of the Unitholders and, in such event, the legal expenses and costs of any such actions shall be expenses and costs of the Trust and the Sponsor shall be entitled to be reimbursed therefor by the Trust.

## **Fiduciary and Regulatory Duties of the Sponsor**

The Sponsor is not effectively subject to the duties and restrictions imposed on “fiduciaries” under both statutory and common law. Rather, the general fiduciary duties that would apply to the Sponsor are defined and limited in scope by the Trust Agreement.

The Trust Agreement provides that in addition to any other requirements of applicable law, no Unitholder shall have the right, power or authority to bring or maintain a derivative action, suit or other proceeding on behalf of the Trust unless two or more Unitholders who (i) are not affiliates of one another and (ii) collectively hold at least 30% of the outstanding Units join in the bringing or maintaining of such action, suit or other proceeding.

Beneficial owners may have the right, subject to certain legal requirements, to bring class actions in federal court to enforce their rights under the federal securities laws and the rules and regulations promulgated thereunder by the SEC. Beneficial owners who have suffered losses in connection with the purchase or sale of their beneficial interests may be able to recover such losses from the Sponsor where the losses result from a violation by the Sponsor of the anti-fraud provisions of the federal securities laws.

## **Actions Taken to Protect the Trust**

The Sponsor may, in its own discretion, prosecute, defend, settle or compromise actions or claims at law or in equity that it considers necessary or proper to protect the Trust or the interests of the Unitholders. The expenses incurred by the Sponsor in connection therewith (including the fees and disbursements of legal counsel) will be expenses of the Trust and are deemed to be Extraordinary Expenses. The Sponsor will be entitled to be reimbursed for the Extraordinary Expenses.

## **Successor Sponsors**

If the Sponsor is adjudged bankrupt or insolvent, the Sponsor may terminate and liquidate the Trust and distribute its remaining assets in the Sponsor’s capacity as Liquidating Trustee.

## **Limitation on Trustee’s Liability**

Under the Trust Agreement, the Sponsor has exclusive control of the management of all aspects of the activities of the Trust and the Trustee has only nominal duties and liabilities to the Trust. The Trustee is appointed to serve as the trustee for the sole purpose of satisfying Section 3807(a) of the DSTA which requires that the Trust have at least one trustee with a principal place of business in the State of Delaware. The duties of the Trustee are limited to (i) accepting legal process served on the Trust in the State of Delaware and (ii) the execution of any certificates required to be filed with the Delaware Secretary of State which the Trustee is required to execute under the DSTA.

To the extent the Trustee has duties (including fiduciary duties) and liabilities to the Trust or the Unitholders under the DSTA, such duties and liabilities will be replaced by the duties and liabilities of the Trustee expressly set forth in the Trust Agreement. The Trustee will have no obligation to supervise, nor will it be liable for, the acts or omissions of the Sponsor, Custodian or any other

person. Neither the Trustee, either in its capacity as trustee or in its individual capacity, nor any director, officer or controlling person of the Trustee is, or has any liability as, the issuer, director, officer or controlling person of the issuer of Units. The Trustee's liability is limited solely to the express obligations of the Trustee as set forth in the Trust Agreement.

Under the Trust Agreement, the Sponsor has the exclusive management, authority and control of all aspects of the activities of the Trust. The Trustee has no duty or liability to supervise or monitor the performance of the Sponsor, nor does the Trustee have any liability for the acts or omissions of the Sponsor. The existence of a trustee should not be taken as an indication of any additional level of management or supervision over the Trust. The management authority with respect to the Trust is vested directly in the Sponsor. The Trust Agreement provides that the Trustee is not responsible or liable for the genuineness, enforceability, collectability, value, sufficiency, location or existence of any of the Bitcoins or other assets of the Trust.

### **Possible Repayment of Distributions Received by Unitholders; Indemnification by Unitholders**

The Units are limited liability investments. Investors may not lose more than the amount that they invest plus any profits recognized on their investment. Although it is unlikely, the Sponsor may, from time to time, make distributions to the Unitholders. However, Unitholders could be required, as a matter of bankruptcy law, to return to the estate of the Trust any distribution they received at a time when the Trust was in fact insolvent or in violation of its Trust Agreement. In addition, the Trust Agreement provides that Unitholders will indemnify the Trust for any harm suffered by it as a result of Unitholders' actions unrelated to the activities of the Trust.

The foregoing repayment of distributions and indemnity provisions (other than the provision for Unitholders indemnifying the Trust for taxes imposed upon it by a state, local or foreign taxing authority, which is included only as a formality due to the fact that many states do not have statutory trust statutes therefore the tax status of the Trust in such states might, theoretically, be challenged) are commonplace in statutory trusts and limited partnerships.

### **Indemnification of the Trustee**

The Trustee and any of the officers, directors, employees and agents of the Trustee shall be indemnified by the Trust as primary obligor and held harmless against any loss, damage, liability, claim, action, suit, cost, expense, disbursement (including the reasonable fees and expenses of counsel), tax or penalty of any kind and nature whatsoever, arising out of, imposed upon or asserted at any time against such indemnified person in connection with the performance of its obligations under the Trust Agreement, the creation, operation or termination of the Trust or the transactions contemplated therein; provided, however, that the Trust shall not be required to indemnify any such indemnified person for any such expenses which are a result of the willful misconduct, bad faith or gross negligence of such indemnified person.

### **Holding of Trust Property**

The Trust will hold and record the ownership of the Trust's assets in a manner such that it will be owned for the benefit of the Unitholders for the purposes of, and subject to and limited by the terms and conditions set forth in, the Trust Agreement. Other than by issuance of the Units, the



Trust has not created, incurred or assumed, and will not create, incur or assume, any indebtedness and it has not borrowed, and will not borrow, money from or loan money to any person. The Trustee may not commingle its assets with those of any other person.

The Trustee may employ agents, attorneys, accountants, auditors and nominees and will not be answerable for the conduct or misconduct of any such custodians, agents, attorneys or nominees if such custodians, agents, attorney and nominees have been selected with reasonable care.

### **Resignation, Discharge or Removal of Trustee; Successor Trustees**

The Trustee may resign as Trustee by written notice of its election so to do, delivered to the Sponsor with at least 60 days' notice. The Sponsor may remove the Trustee in its discretion. If the Trustee resigns or is removed, the Sponsor, acting on behalf of the Unitholders, shall appoint a successor trustee. The successor Trustee will become fully vested with all of the rights, powers, duties and obligations of the outgoing Trustee.

### **Amendments to the Trust Agreement**

The Sponsor may amend the Trust Agreement without the consent of any Unitholder if the amendment does not adversely affect the interests of the Unitholders or affect the allocation of profits and losses among the Unitholders or between the Unitholders and the Sponsor. Any amendment that adversely affects the rights of Unitholders, dissolves the Trust or makes any material change to the Trust's basic investment policies or structure must be approved by the affirmative vote of Unitholders owning at least 50% of the outstanding Units.

### **Termination of the Trust**

The Trust will dissolve if any of the following events occur:

- a U.S. federal or state regulator requires the Trust to shut down or forces the Trust to liquidate its Bitcoins or seizes, impounds or otherwise restricts access to Trust assets;
- The Trust is determined to be a "money service business" under the regulations promulgated by FinCEN under the authority of the U.S. Bank Secrecy Act and is required to comply with certain FinCEN regulations thereunder, and the Sponsor has made the determination that dissolution of the Trust is advisable;
- the Trust is required to obtain a license or make a registration under any state law regulating money transmitters, money services business, providers of prepaid or stored value, virtual currency business or similar entities, and the Sponsor has made the determination that dissolution of the Trust is advisable;
- any ongoing event exists that either prevents the Trust from making or makes impractical the Trust's reasonable efforts to make a fair determination of the Bitcoin Market Price;
- any ongoing event exists that either prevents the Trust from converting or makes impractical the Trust's reasonable efforts to convert Bitcoins to U.S. dollars;

- the filing of a certificate of dissolution or revocation of the Sponsor's charter (and the expiration of 90 days after the date of notice to the Sponsor of revocation without a reinstatement of its charter) or upon the withdrawal, removal, adjudication or admission of bankruptcy or insolvency of the Sponsor, or an event of withdrawal (each of the foregoing events an "Event of Withdrawal") unless at the time there is at least one remaining Sponsor;
- the Custodian resigns or is removed without replacement, or
- if, as of December 31, 2021, the Units are not quoted and trading on a secondary market in the United States (which may include the OTC Market), the Sponsor will dissolve the Trust on or before January 31, 2022.

The Sponsor may, in its sole discretion, dissolve the Trust if any of the following events occur:

- the SEC determines that the Trust is an investment company required to be registered under the 1940 Act;
- the CFTC determines that the Trust is a commodity pool under the CEA;
- the Trust becomes insolvent or bankrupt;
- all of the Trust's assets are sold;
- the determination of the Sponsor that the aggregate net assets of the Trust in relation to the operating expenses of the Trust make it unreasonable or imprudent to continue the activities of the Trust;
- the Sponsor receives notice from the IRS or from counsel for the Trust or the Sponsor that the Trust fails to qualify for treatment, or will not be treated, as a grantor trust under the Code; or
- if the Trustee notifies the Sponsor of the Trustee's election to resign and the Sponsor does not appoint a successor trustee within 60 days, the Trust will dissolve.

The death, legal disability, bankruptcy, insolvency, dissolution, or withdrawal of any Unitholder (as long as such Unitholder is not the sole Unitholder of the Trust) shall not result in the termination of the Trust, and such Unitholder, his estate, custodian or personal representative shall have no right to withdraw or value such Unitholder's Units. Each Unitholder (and any assignee thereof) expressly agrees that in the event of his death, he waives on behalf of himself and his estate, and he directs the legal representative of his estate and any person interested therein to waive the furnishing of any inventory, accounting or appraisal of the assets of the Trust and any right to an audit or examination of the books of the Trust, except for such rights as are set forth in Article VIII of the Trust Agreement relating to the books of account and reports of the Trust.

Upon dissolution of the Trust and surrender of Units by the Unitholders, Unitholders will receive a distribution in U.S. dollars or Bitcoins or both, at the sole discretion of the Sponsor, after the

Sponsor has sold the Trust's Bitcoins and has paid or made provision for the Trust's claims and obligations.

### **Governing Law; Consent to Jurisdiction**

The Trust Agreement and the rights of the Sponsor, Trustee, and Unitholders under the Trust Agreement are governed by the laws of the State of Delaware. The Custodian Agreement and Participant Agreements are governed by the laws of the state of New York. The Sponsor, the Trustee and, by accepting Units, each Unitholder, consent to the jurisdiction of the courts of the State of New York and any federal courts located in the borough of Manhattan in New York City.

### **CUSTODIAL SERVICES AGREEMENT**

The Custodial Services Agreement (the "Custodian Agreement") establishes the rights and responsibilities of Fidelity Digital Asset Services, LLC (the "Custodian") with respect to eligible assets, including Bitcoin in the Digital Asset Custody Account and the Vault Account, which together with any other accounts and associated subaccounts constitute the Trust's Bitcoin Account, which is maintained and operated by the Custodian on behalf of the Trust. The Custodian Agreement can be terminated at any time by either the Custodian or the Sponsor upon 30 days' prior written notice, or immediately upon breach or insolvency by the other party or upon the services being provided becoming unlawful to provide.

### **Access to the Bitcoin Account; Deposits, Withdrawals and Storage**

The Custodian has been engaged to keep in safe custody the Trust's digital assets. The Digital Asset Custody Account will be controlled at all times by or on behalf of the Custodian by an affiliate of the Custodian.

The Custodian will provide the Sponsor with the information that is necessary for investors to make deposits to the Digital Asset Custodian Account. To support the Trust's ordinary course deposits and withdrawals, which involve deposits from and withdrawals to Bitcoin accounts owned by investors, the Custodian's services will allow the Sponsor to receive a Bitcoin address for deposits by investors, and to initiate withdrawals to Bitcoin addresses controlled by investors. The Custodian will credit all Bitcoins properly authorized by the Trust or the Sponsor to the Bitcoin Account.

The Custodian will only allow withdrawals of Bitcoins from the Bitcoin Account by authorized representatives of the Sponsor or the Trust and upon receipt of proper instructions. The Custodian may take steps that it determines, in its sole discretion, may be necessary or advisable to inspect and protect the security of the assets in the Trust's accounts, whether digital or otherwise.

### **Standard of Care; Limitations of Liability**

The Trust shall use the Custodian's service on an "as is" basis. The Custodian makes no warranties as to its services, including any warranties that its services are in compliance with any accounting rules, principles or laws and expressly disclaims any warranties unless implied or statutory,

including non-infringement, merchantability or fitness for a particular purpose. The Custodian's standard of care is limited to that of "reasonable care", and the Custodian must take the same standard of care as it does in its role as custodian for any other custody account or assets of the same type.

The Custodian's limitation of liability under the agreement shall be the lesser of: (a) the replacement cost of any assets in the Custodian Account; (b) the market value of the assets (as determined by the Custodian) to which such loss or damage relates at the time the Sponsor reasonably should have been aware of such gross negligence, willful misconduct or fraud by the Custodian. The Custodian shall not be responsible for any losses claimed by the Sponsor until a final, non-appealable, judicial determination that such loss, claim or damage directly resulted from the gross negligence, willful misconduct or fraud of the Custodian. Further, the Custodian is not liable for any loss that is caused, directly or indirectly by the Trust's non-adherence to the Custodian's policies and procedures, an event of force majeure or any action taken to secure the digital assets or accounts of the Trust.

Pursuant to the Custodian Agreement, the Custodian is not responsible for the services provided by the Bitcoin Network, such as verifying and confirming transactions that are submitted to the Bitcoin Network. Furthermore, the Custodian cannot cancel or reverse a transaction that has been submitted to the Bitcoin Network. To the extent the Custodian does not cause or contribute to a loss that the Trust or Sponsor suffers in connection with any Bitcoin transaction initiated pursuant to the Custodian's services, the Custodian will have no liability for such loss.

### **Indemnity**

The Sponsor and the Trust have agreed to indemnify and hold harmless the Custodian, its parent companies, subsidiaries and affiliates, directors, officers, agents and employees from and against any and all claims, damages, losses, liabilities, lawsuits, demands fines, penalties and expenses, including court costs and reasonable attorney fee, arising under or in connection with the Custodian Agreement, except to the extent of the limitations of liability described above. The Sponsor and the Trust have acknowledged in the agreement the risks involved in securing digital assets, risks relating to the exchanges on which they trade and security risks such as fraud.

### **Modification of Agreement**

The Agreement may be modified or amended only upon a written agreement signed by both the Custodian and the Trust.

### **Governing Law; Consent to Jurisdiction**

The Custodian Agreement is governed by New York law.

## **CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS**

The following is a discussion of the material U.S. federal income tax consequences of the ownership of Units. This discussion does not describe all of the tax consequences that may be

relevant to a beneficial owner of units in light of the beneficial owner's particular circumstances, including tax consequences applicable to beneficial owners subject to special rules, such as:

- financial institutions;
- dealers in securities;
- traders in securities or commodities that have elected to apply a mark-to-market method of tax accounting in respect thereof;
- persons holding Units as part of a hedge, "straddle," integrated transaction or similar transaction;
- persons holding Units acquired by them as part of a Unit purchase or redeeming Units in exchange for the underlying Bitcoins represented by the redeemed Units; U.S. Holders (as defined below) whose functional currency is not the U.S. dollar;
- partnerships or other entities or arrangements classified as partnerships for U.S. federal income tax purposes;
- real estate investment trusts;
- regulated investment companies; and
- tax-exempt entities, including individual retirement accounts.

This discussion applies only to Units that are held as capital assets and does not address alternative minimum tax consequences or consequences of the Medicare contribution tax on net investment income. This discussion addresses only the U.S. federal income tax law and does not address the non-income tax laws of the United States (such as federal gift or estate tax laws) or any other tax law such as non-U.S. or state tax laws.

If an entity or arrangement that is classified as a partnership for U.S. federal income tax purposes holds Units, the U.S. federal income tax treatment of a partner will generally depend on the status of the partner and the activities of the partnership. Partnerships holding Units and partners in those partnerships are urged to consult their tax advisers about the particular U.S. federal income tax consequences of owning Units.

This summary is based on the Code, administrative pronouncements, judicial decisions and final, temporary and proposed Treasury regulations as of the date hereof, changes to any of which subsequent to the date hereof (which changes may possibly have retroactive effect) may affect the tax consequences described herein. Prospective investors are urged to consult their tax advisers about the application of the U.S. federal income tax laws to their particular situations, as well as any tax consequences arising under the laws of any state, local or foreign taxing jurisdiction.

## **Tax Treatment of the Trust**

The Sponsor intends to take the position that the Trust will be treated as a grantor trust for U.S. federal income tax purposes. Assuming that the Trust is a grantor trust, the Trust will not be subject to U.S. federal income tax. Rather, a *pro rata* portion of the Trust's income, gain, losses and deductions will "flow through" to each beneficial owner of Units.

The Trust has been formed as a grantor trust for U.S. federal income tax purposes. However, due to the absence of direct legal authority addressing the classification of an entity such as the Trust, the IRS or a court might not agree that the Trust is properly treated as a grantor trust for U.S. federal income tax purposes.

If the IRS were successful in asserting that the Trust is not properly classified as a grantor trust, the Trust might be classified as a partnership for U.S. federal income tax purposes, although due to the uncertain treatment of Bitcoins for U.S. federal income tax purposes (discussed below), there can be no assurance in this regard. If the Trust were classified as a partnership for U.S. federal income tax purposes, the tax consequences of owning Units generally would not be materially different from the tax consequences described herein, although there might be certain differences, including with respect to timing. In addition, tax information reports provided to Unitholders would be made in a different form. If the Trust were not classified as either a grantor trust or a partnership for U.S. federal income tax purposes, it would be classified as a corporation for such purposes. In that event, the Trust would be subject to entity-level U.S. federal income tax (currently at a maximum rate of 21%) on its net taxable income and certain distributions made by the Trust to Unitholders could be taxable as dividends to the extent of the Trust's current and accumulated earnings and profits (which, in the case of Non-U.S. Holders (as defined below), generally would be subject to U.S. federal withholding tax at a 30% rate (or a lower rate provided by an applicable income tax treaty)).

The remainder of this discussion is based on the assumption that the Trust will be treated as a grantor trust for U.S. federal income tax purposes.

## **Uncertainty Regarding the U.S. Federal Income Tax Treatment of Bitcoins**

As discussed below, each beneficial owner of Units generally will be treated for U.S. federal income tax purposes as the owner of an undivided interest in the Bitcoins held in the Trust. Due to the absence of direct legal authority, many significant aspects of the U.S. federal income tax treatment of Bitcoins are uncertain, and the Sponsor does not intend to request a ruling from the IRS on these issues. On March 25, 2014, the IRS released a notice (the "Notice") discussing certain aspects of the treatment of convertible virtual currencies (such as Bitcoins) for U.S. federal income tax purposes. In the Notice, the IRS stated that, for U.S. federal income tax purposes, Bitcoins are "property" that is not currency and that Bitcoins may be held as capital assets. However, the Notice is not binding on the IRS, and accordingly, the IRS might not accept, and a court might not uphold, this treatment. In addition, legislation has been introduced that would, if enacted, cause Bitcoins to be treated as currency for U.S. federal income tax purposes. If Bitcoins were properly treated as currency for U.S. federal income tax purposes, gain recognized on the disposition of Bitcoins would constitute ordinary income, and losses recognized on the disposition of Bitcoin could be subject to special reporting requirements applicable to "reportable

transactions.” The remainder of this discussion assumes that Bitcoins are properly treated for U.S. federal income tax purposes as property that is not currency.

The Notice does not address other significant aspects of the U.S. federal income tax treatment of Bitcoins, including: (i) whether Bitcoins are properly treated as “commodities” for U.S. federal income tax purposes; (ii) whether Bitcoins are properly treated as “collectibles” for U.S. federal income tax purposes; (iii) the proper method of determining a holder’s holding period and tax basis for Bitcoins acquired at different times or at varying prices; and (iv) whether and how a holder of Bitcoins acquired at different times or at varying prices may designate, for U.S. federal income tax purposes, which of the Bitcoins is transferred in a subsequent sale, exchange or other disposition.

Prospective investors are urged to consult their tax advisers regarding the substantial uncertainty regarding the tax consequences of an investment in Bitcoins.

### **Tax Consequences to U.S. Holders**

As used herein, the term “U.S. Holder” means a beneficial owner of a Unit for U.S. federal income tax purposes that is:

- an individual who is a citizen or resident of the United States for U.S. federal income tax purposes;
- a corporation, or other entity treated as a corporation for U.S. federal income tax purposes, created or organized in or under the laws of the United States or of any political subdivision thereof; or
- an estate or trust the income of which is subject to U.S. federal income taxation regardless of its source.

For U.S. federal income tax purposes, each U.S. Holder will be treated as the owner of an undivided interest in the Bitcoins held in the Trust and will be treated as directly realizing its *pro rata* share of the Trust’s income, gains, losses and deductions. When a U.S. Holder purchases Units for cash, the U.S. Holder’s initial tax basis in its *pro rata* share of the Bitcoins held in the Trust will be equal to the amount paid for the Units.

**This discussion assumes that each U.S. Holder will acquire all of its Units for cash on the same date and at the same price per Unit. U.S. Holders that acquire, or contemplate acquiring, multiple lots of Units at different times or prices are urged to consult their tax advisers regarding their tax bases and holding periods in their *pro rata* share of the Bitcoins held in the Trust.**

When the Trust transfers Bitcoins to the Sponsor as payment of the Management Fee, or sells Bitcoins to fund payment of any Extraordinary Expenses, each U.S. Holder will be treated as having sold its *pro rata* share of those Bitcoins for their fair market value at that time (which, in the case of Bitcoins sold by the Trust, generally will be equal to the cash proceeds received by the Trust in respect thereof). As a result, each U.S. Holder will recognize gain or loss in an amount equal to the difference between (i) the fair market value of the U.S. Holder’s *pro rata* share of the Bitcoins that were transferred and (ii) the U.S. Holder’s tax basis for its *pro rata* share of the Bitcoins that were transferred. Assuming that Bitcoins are not treated as currency for U.S. federal

income tax purposes, that gain or loss will generally be short-term capital gain or loss if the U.S. Holder has held its Units for one year or less and long-term capital gain or loss if the U.S. Holder has held its Units for more than one year. The deductibility of long-term capital losses may be subject to significant limitations. A U.S. Holder's tax basis in its *pro rata* share of any Bitcoins transferred by the Trust generally will be determined by multiplying the tax basis of the U.S. Holder's *pro rata* share of all of the Bitcoins held in the Trust immediately prior to the transfer by a fraction the numerator of which is the amount of Bitcoins transferred and the denominator of which is the total amount of Bitcoins held in the Trust immediately prior to the transfer. Immediately after the transfer, the U.S. Holder's tax basis in its *pro rata* share of the Bitcoins remaining in the Trust will be equal to the tax basis in its *pro rata* share of the Bitcoins held in the Trust immediately prior to the transfer, less the portion of that tax basis allocable to its *pro rata* share of the Bitcoins transferred.

Under current U.S. federal income tax law, U.S. Holders may not deduct their *pro rata* shares of the expenses incurred by the Trust.

On a sale or other disposition of Units, a U.S. Holder generally will recognize gain or loss in an amount equal to the difference between (i) the amount realized on the sale of the Units and (ii) the portion of the U.S. Holder's tax basis in its *pro rata* share of the Bitcoins held in the Trust that is attributable to the Units disposed of, determined by multiplying the tax basis of the U.S. Holder's *pro rata* share of all of the Bitcoins held by the Trust immediately prior to such sale or other disposition by a fraction the numerator of which is the number of Units disposed of and the denominator of which is the total number of Units held by such U.S. Holder immediately prior to such sale or other disposition. Assuming that Bitcoins are not treated as currency for U.S. federal income tax purposes, that gain or loss will generally be short-term capital gain or loss if the U.S. Holder has held its Units for one year or less and long-term capital gain or loss if the U.S. Holder has held its Units for more than one year. After any sale of fewer than all of a U.S. Holder's Units, the U.S. Holder's tax basis in its *pro rata* share of the Bitcoins held in the Trust immediately after the sale generally will equal the tax basis in its *pro rata* share of the total amount of the Bitcoins held in the Trust immediately prior to the sale, less the portion of that tax basis that is taken into account in determining the amount of gain or loss recognized by the U.S. Holder upon the sale.

Any brokerage or other transaction fee incurred by a U.S. Holder in purchasing Units will be added to the U.S. Holder's tax basis in the underlying assets of the Trust. Similarly, any brokerage fee or other transaction fee incurred by a U.S. Holder in selling Units will reduce the amount realized by the U.S. Holder with respect to the sale.

### **Tax Consequences to Non-U.S. Holders**

As used herein, the term "non-U.S. Holder" means a beneficial owner of a Unit for U.S. federal income tax purposes that is:

- a nonresident alien individual;
- foreign corporation; or
- a foreign estate or trust.



The term “non-U.S. Holder” does not include (i) nonresident alien individuals present in the United States for 183 days or more in a taxable year, (ii) former U.S. citizens and certain expatriated entities or (iii) persons whose Units are effectively connected with the conduct of a trade or business in the United States. Prospective investors described in the preceding sentence should consult their tax advisers regarding the U.S. federal income tax consequences of owning Units.

The Trust does not expect to generate taxable income other than gain (if any) that will be recognized on the transfer of Bitcoins in payment of the Management Fee and the sale of Bitcoins in connection with the payment of any Extraordinary Expenses. A non-U.S. Holder generally will not be subject to U.S. federal income or withholding tax with respect to any such gain or with respect to any gain the non-U.S. Holder recognizes upon a sale of Units.

### **U.S. Information Reporting and Backup Withholding**

The Trust or the appropriate broker will file certain information returns with the IRS and provide holders of Units with information regarding their share of the Trust’s annual income (if any) and expenses in accordance with applicable Treasury regulations.

A U.S. Holder may be subject to backup withholding in certain circumstances if it fails to provide its taxpayer identification number or to comply with certain certification procedures. In order to avoid the information reporting and backup withholding requirements, a non-U.S. Holder may have to comply with certification procedures to establish that it is not a U.S. person. The amount of any backup withholding will be allowed as a credit against the holder’s U.S. federal income tax liability and may entitle the holder to a refund, provided that the required information is furnished to the IRS.

## **ERISA AND RELATED CONSIDERATIONS**

### **General**

The following section sets forth certain consequences under ERISA and the Code which a fiduciary of an “employee benefit plan” as defined in Section 3(3) of ERISA and subject to the fiduciary responsibility provisions of Part 4 of Title I of ERISA, or of a “plan” as defined in Section 4975(e)(1) of the Code and subject to the requirements of Section 4975 of the Code, who has investment discretion should consider before deciding to invest the plan’s assets in the Trust (such “employee benefit plans” and “plans” being referred to herein as “Plans”, and such fiduciaries with investment discretion being referred to herein as “Plan Fiduciaries”). The following summary is not intended to be complete, but only addresses certain questions under ERISA and the Code that are likely to be raised by a Plan Fiduciary’s own counsel.

In general, Plans include, but are not limited to, corporate pension and profit sharing plans, Keogh plans for self-employed individuals (including partners), individual retirement accounts (“IRAs”) described in Section 408 of the Code, and certain medical benefit plans.

Each Plan Fiduciary must give appropriate consideration to the facts and circumstances that are relevant to an investment in the Trust, including the role an investment in the Trust plays in the Plan’s investment portfolio. Each Plan Fiduciary, before deciding to invest in the Trust, must be

satisfied that investment in the Trust is a prudent investment for the Plan, that the investments of the Plan, including the investment in the Trust, are diversified so as to minimize the risks of large losses, that an investment in the Trust complies with the governing documents of the Plan and related trust, and that an investment in the Trust does not give rise to a transaction prohibited by Section 406 of ERISA and/or Section 4975 of the Code.

EACH PLAN FIDUCIARY CONSIDERING ACQUIRING UNITS SHOULD CONSULT ITS OWN LEGAL AND TAX ADVISERS BEFORE DOING SO REGARDING THE POSSIBILITY OF LIABILITY UNDER ERISA OR THE CODE ARISING FROM SUCH AN ACQUISITION.

### **Restrictions on Investments by Benefit Plan Investors**

ERISA and regulations issued thereunder contain rules for determining when an investment by a Plan in an entity will result in the underlying assets of the entity being deemed to include the assets of the Plan for purposes of ERISA and Section 4975 of the Code (*i.e.*, “plan assets”). These rules provide that assets of an entity will not be deemed the assets of a Plan that purchases an interest therein if the investment by all “benefit plan investors” is not “significant” or certain other regulatory exceptions apply. The term “benefit plan investors” includes all employee benefit plans as defined in Section 3(3) of ERISA, whether or not subject to Title I of ERISA including U.S. and non-U.S. plans, plans described in Section 4975(e)(1) of the Code such as IRAs, governmental plans, church plans (which have not made an election under Section 401(d) of the Code to be subject to Title I of ERISA) and pooled investment vehicles that hold “plan assets” (each, a “Plan Assets Entity”) due to investments made in such entities by already described benefit plan investors. ERISA provides that a Plan Assets Entity is considered to hold plan assets only to the extent of the percentage of the Plan Assets Entity’s equity interests held by benefit plan investors. In addition, all or part of an investment made by an insurance company using assets from its general account may be treated as a benefit plan investor. Investments by benefit plan investors will be deemed not significant if benefit plan investors own, in the aggregate, less than 25% of the total value of each class of equity interests of the entity (determined by excluding the investments of persons with discretionary authority or control over the assets of such entity, of any person who provides investment advice for a fee (direct or indirect) with respect to such assets, and “affiliates” (as defined in the regulations issued under ERISA) of such persons.

In order to avoid causing assets of the Trust to be “plan assets”, the Sponsor intends to restrict the aggregate investment by “benefit plan investors” to less than 25% of the total value of each class of equity interests of the Trust (not including the investments of the Trustee, the Sponsor and any other person who provides investment advice for a fee (direct or indirect) with respect to the assets of the Trust, any other person who has discretionary authority or control over the assets of the Trust, and any entity (other than a benefit plan investor) that is directly or indirectly through one or more intermediaries controlling, controlled by or under common control with any of such entities (including a partnership or other entity for which the Sponsor is the general partner, managing member, investment adviser or provides investment advice), and each of the principals, officers, and employees of any of the foregoing entities who has the power to exercise a controlling influence over the management or policies of such entity or the Trust). Furthermore, because the 25% test is ongoing, the Sponsor may restrict new or additional investments by benefit plan investors, and also may require that existing benefit plan investors redeem from the

Trust to insure that investment in the Trust by benefit plan investors continues to be insignificant. If rejection of subscriptions or such compulsory redemptions are necessary, as determined by the Sponsor in its sole discretion, to avoid causing the assets of the Trust to be “plan assets”, the Sponsor will effect such rejections or redemptions in such manner as the Sponsor, in its sole discretion, determines.

If the assets of the Trust were deemed to be “plan assets”, then certain prohibited transaction restrictions on the operation and administration of the Trust and the duties, obligations and liabilities under ERISA could apply to the transactions entered into by the Trust as though such transactions were entered into directly by the benefit plan investors. This could result in a restriction on the types of investments the Trust could undertake in its course of business, particularly with respect to investments involving, among others, service providers to Plans, Plan Fiduciaries, employers whose employees are covered by a Plan, or the majority owner of such employer and other persons who are classified as parties in interest or disqualified persons with respect to such Plan. Assets of Plans must comply at all times with the “indicia of ownership” rules set forth in Section 404(b) of ERISA.

A Plan Fiduciary that is considering a purchase of Units with Plan assets should consult with its legal advisors regarding compliance with ERISA and the Code. Such Plan Fiduciary will be required to represent that it has been informed of and understands the Trust’s investment objectives, policies and strategies, that the assets of the subject Plan are permitted to be invested in the Trust under the Plan’s governing documents, and that such investment is consistent with such Plan Fiduciary’s responsibilities under ERISA. The Sponsor reserves the right to request from any investor or potential investor any information as the Sponsor deems necessary to monitor the Trust’s investments relating to benefit plan investors. In connection with any transfer of Units permitted by the Sponsor in its sole discretion, each investor will be required to obtain from any potential transferee of its Units the representations set forth in the subscription documents as to the potential transferee’s status as a benefit plan investor.

### **Ineligible Purchasers**

In general, Units may not be purchased with the assets of a Plan if the Trustee, the Sponsor, any placement agent, any of their respective affiliates or any of their respective employees either: (i) has investment discretion with respect to the investment of such Plan assets; (ii) has authority or responsibility to give or regularly gives investment advice with respect to such Plan assets, for a fee, and pursuant to an agreement or understanding that such advice will serve as a primary basis for investment decisions with respect to such Plan assets and that such advice will be based on the particular investment needs of the Plan; or (iii) is an employer maintaining or contributing to such Plan. A party that is described in clause (i) or (ii) of the preceding sentence is a fiduciary under ERISA and the Code with respect to the Plan, and any such purchase might result in a “prohibited transaction” under ERISA and the Code.

Except as otherwise set forth, the foregoing statements regarding the consequences under ERISA and the Code of an investment in the Trust are based on the provisions of the Code and ERISA as currently in effect, and the existing administrative and judicial interpretations thereunder. No assurance can be given that administrative, judicial or legislative changes will not occur that may make the foregoing statements incorrect or incomplete.

ACCEPTANCE OF SUBSCRIPTIONS ON BEHALF OF PLANS IS IN NO RESPECT A REPRESENTATION BY THE SPONSOR OR ANY OTHER PARTY RELATED TO THE TRUST THAT THIS INVESTMENT MEETS THE RELEVANT LEGAL REQUIREMENTS WITH RESPECT TO INVESTMENTS BY ANY PARTICULAR PLAN OR THAT THIS INVESTMENT IS APPROPRIATE FOR ANY PARTICULAR PLAN. THE PLAN FIDUCIARY WITH INVESTMENT DISCRETION SHOULD CONSULT WITH HIS OR HER ATTORNEY AND FINANCIAL ADVISERS AS TO THE PROPRIETY OF AN INVESTMENT IN THE TRUST, IN LIGHT OF THE CIRCUMSTANCES OF THE PARTICULAR PLAN.

### **CONFIDENTIALITY OF INFORMATION**

The prospective investor acknowledges that this Memorandum and information concerning the Trust, its investment plan and the proposed operations included in this Memorandum or otherwise disclosed to the prospective investor in connection with this offering is confidential information (the “Confidential Information”). The prospective investor shall consider all information concerning the Company received by the prospective investor to be Confidential Information.

By accepting this Memorandum, the prospective investor agrees to maintain the confidentiality of the Confidential Information and agrees promptly to return to us this Memorandum and any other documents or information furnished if the prospective investor does not agree to purchase any of the securities offered hereby. Any reproduction or distribution of this Memorandum, in whole or in part, or the disclosure of its contents, without our prior written consent, is prohibited. Any person acting contrary to the foregoing restrictions may place himself and us in violation of federal or state securities laws.

The prospective investor hereby confirms that any information provided by, or any discussions held with, the Company prior to the date of this Memorandum shall be subject to the terms set forth in this section of this Memorandum and in the documents in the Subscription Package by which the prospective investor will subscribe to the securities offered hereby.

### **CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING INFORMATION**

In addition to statements of historical fact, this Memorandum contains forward-looking statements. The presentation of future aspects of investment in Bitcoin, the Units and the Trust found in these statements is subject to a number of risks and uncertainties that could cause actual results to differ materially from those reflected in such statements. Readers are cautioned not to place undue reliance on these forward-looking statements, which reflect management’s analysis only as of the date hereof. Without limiting the generality of the foregoing, words such as “may,” “will,” “expect,” “believe,” “anticipate,” “intend,” or “could” or the negative variations thereof or comparable terminology are intended to identify forward-looking statements.

These forward-looking statements are subject to numerous assumptions, risks and uncertainties that may cause Trust actual results to be materially different from any future results expressed or implied by the Sponsor in those statements. Important facts that could prevent the Trust from achieving any stated goals include, but are not limited to, the following:

- (a) the “Risk Factors” discussed in this Memorandum;
- (b) general economic, market, and business conditions;
- (c) the use of technology by our vendors, including the Custodian, in conducting our business, including disruptions in our computer systems and data centers and our transition to, and quality of, new technology platforms;
- (d) changes in laws or regulations, including those concerning taxes, made by governmental authorities or regulatory bodies;
- (e) other world economic and political developments;
- (f) our ability to maintain a positive reputation;
- (g) litigation with or legal claims and allegations by outside parties; and
- (h) insufficient revenues to cover operating costs, if any.

Consequently, all the forward-looking statements made in this Memorandum are qualified by these cautionary statements, and there can be no assurance that the actual results or developments the Sponsor anticipates will be realized or, even if substantially realized, that they will result in the expected consequences to, or have the expected effects on, the Trust’s operations or the value of the Units. Should one or more of these risks discussed in “Risk Factors and Potential Conflicts of Interest” or other uncertainties materialize, or should underlying assumptions prove incorrect, actual outcomes may vary materially from those described in forward-looking statements. Forward-looking statements are made based on the Sponsor’s beliefs, estimates and opinions on the date the statements are made and neither the Trust nor the Sponsor is under a duty or undertakes an obligation to update forward looking statements if these beliefs, estimates and opinions or other circumstances should change, other than as required by applicable laws. Moreover, neither the Trust, the Sponsor, nor any other person assumes responsibility for the accuracy and completeness of any of these forward-looking statements. Investors are therefore cautioned against placing undue reliance on forward-looking statements.

The Sponsor does not undertake any obligation to publicly revise these forward-looking statements to reflect events or circumstances that arise after the date hereof.

### **SUBSCRIPTION PROCEDURE**

To provide the necessary documents and information, you may go to the Trust’s subscription portal at [www.ospreyfund.io](http://www.ospreyfund.io) (from which you will be redirected to a separate site to complete and e-sign documents and upload driver’s license or passport images).

On behalf of the Trust, the Sponsor may accept or reject subscriptions, in whole or in part, in the Sponsor’s sole discretion. After receipt and review by the Sponsor of a completed Subscription Package, the prospective subscriber will be contacted as to whether the subscriber’s subscription has been accepted and, if so, to specify the number of Units allocated to the subscriber and the date of such allocation.

**INQUIRIES**

Inquiries concerning the Trust, the Units and this offering should be directed to:

Operations  
Osprey Funds, LLC  
520 White Plain Road, Suite 500  
Tarrytown, NY 10591  
Attn: Matt Mascera  
Phone: (914) 214-4174  
[Email: operations@ospreyfund.io](mailto:operations@ospreyfund.io)

## **APPENDIX A – AUDITED FINANCIAL INFORMATION**



**Osprey Bitcoin Trust**  
**Financial Statements and Report of Independent Certified**  
**Public Accountants**

**As of and for the period from January 22, 2019 (commencement of operations) to December 31, 2019**



**Osprey Bitcoin Trust**  
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**December 31, 2019**

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GRANT THORNTON LLP  
757 Third Avenue, 9<sup>th</sup> Floor  
New York, NY 10017

D +1 212 590 0100

## REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

To the Investor and Sponsor of  
**Osprey Bitcoin Trust**

We have audited the accompanying financial statements of Osprey Bitcoin Trust (a Delaware Statutory Trust), which comprise the statement of assets and liabilities, including the schedule of investment, as of December 31, 2019, and the related statements of operations and changes in net assets for the period from January 22, 2019 (commencement of operations) to December 31, 2019, and the related notes to the financial statements.

### **Management's responsibility for the financial statements**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### **Auditor's responsibility**

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant

accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

**Opinion**

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Osprey Bitcoin Trust as of December 31, 2019 and the results of its operations for the period from January 22, 2019 (commencement of operations) to December 31, 2019 in accordance with accounting principles generally accepted in the United States of America.

*Grant Thornton LLP*

New York, New York  
September 10, 2020

# Osprey Bitcoin Trust

## Statement of Assets and Liabilities

### December 31, 2019

(Amounts in U.S. dollars, except units issued and outstanding)

#### Assets:

Investment in Bitcoin, at fair value (cost \$4,933,869)	\$ 9,846,468
<b>Total Assets</b>	<b>\$ 9,846,468</b>

#### Liabilities:

Sponsor's Fee payable	\$ 9,333
<b>Total Liabilities</b>	<b>9,333</b>
<b>Net assets</b>	<b>\$ 9,837,135</b>

#### Net assets:

Paid-in capital	\$ 4,975,161
Accumulated net investment loss	(97,387)
Accumulated net realized gain on investment in Bitcoin	46,753
Accumulated net change in unrealized appreciation on investment in Bitcoin	4,912,608
	<b>\$ 9,837,135</b>

Units issued and outstanding, no par value (unlimited Units authorized)	995,032
Net asset value per Unit	<b>\$ 9.89</b>

The accompanying notes are an integral part of these statements

**Osprey Bitcoin Trust**  
**Schedule of Investment**  
**December 31, 2019**

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**December 31, 2019**

	<u>Number of Bitcoin</u>	<u>Cost</u>	<u>Fair Value</u>	<u>% of Net Assets</u>
Investment in Bitcoin	<u>1376.48</u>	<u>\$ 4,933,869</u>	<u>\$ 9,846,468</u>	<u>100%</u>

The accompanying notes are an integral part of these statements

**Osprey Bitcoin Trust**  
**Statement of Operations**

**As of and for the period from January 22, 2019 (commencement of operations) to December 31, 2019**

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(Amounts in U.S. dollars)

**Investment income:**

Investment income **\$** \_\_\_\_\_

**Expense:**

Sponsor's Fee \_\_\_\_\_ 97,387

**Net investment loss** \_\_\_\_\_ (97,387)

**Net realized gain and net change in unrealized appreciation**

**On investment in Bitcoin:**

Net realized gain on investment in Bitcoin 46,753

Net change in unrealized appreciation on investment in Bitcoin \_\_\_\_\_ 4,912,608

**Net increase in net assets resulting from operations** **\$** 4,861,974

The accompanying notes are an integral part of these statements

**Osprey Bitcoin Trust**  
**Statement of Changes in Net Assets**  
**As of and for the period from January 22, 2019 (commencement of operations) to December 31, 2019**

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(Amounts in U.S. dollars, except units issued and outstanding)

**(Decrease) increase in net assets from operations:**

Net investment loss	\$ (97,387)
Net realized gain on investment in Bitcoin	46,753
Net change in unrealized appreciation on investment in Bitcoin	<u>4,912,608</u>

Net increase in net assets resulting from operations	<u>4,861,974</u>
--	------------------

**Increase in net assets from capital unit transactions:**

Paid-in-Capital	<u>4,975,161</u>
Net increase in net assets resulting from capital unit transactions	<u>4,975,161</u>

Total increase in net assets	9,837,135
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Net assets at the beginning of the period	
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Net assets at the end of the period	<u>\$ 9,837,135</u>
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**Change in Units Outstanding:**

Units outstanding at the beginning of the period	-
Units issued	995,032
Units outstanding at the end of the period	<u>995,032</u>

The accompanying notes are an integral part of these statements



**Osprey Bitcoin Trust**  
**Notes to Financial Statements**  
**As of and for the period from January 22, 2019**  
**(commencement of operations) to December 31, 2019**

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**1. Organization**

Osprey Bitcoin Trust (the “Trust” or “Fund”) is a Delaware Statutory Trust that was formed on January 3, 2019 and commenced operations on January 22, 2019. In general, the Trust holds Bitcoin and, from time to time, issues common units of fractional undivided beneficial interest (“Units”) in exchange for Bitcoin. The investment objective of the Trust is for the Units to track the price of Bitcoin, as measured at 4:00 p.m. Eastern Time using the Bloomberg Bitcoin rate fixing shown under the Bloomberg ticker XBT CFIX Currency (“Bloomberg XBT Price”), less liabilities and expenses of the Trust. The Units are designed as a convenient and cost-effective method for investors to gain investment exposure to Bitcoin similar to a direct investment in Bitcoin.

Osprey Funds LLC (the “Sponsor”) acts as the sponsor of the Trust and is a wholly owned subsidiary of REX Shares, LLC (REX). The Sponsor is responsible for the day-to-day administration of the Trust pursuant to the provisions of the Trust Agreement. The Sponsor is responsible for preparing and providing annual reports on behalf of the Trust to investors and is also responsible for selecting and monitoring the Trust’s service providers. As partial consideration for the Sponsor’s services, the Trust pays the Sponsor a Management Fee as discussed in Notes 2 and 5.

The custodian of the Trust (the “Custodian”) is responsible for safeguarding the Bitcoin, Incidental Rights, and IR Virtual Currency held by the Trust. The Custodian is Xapo, Inc. (“Xapo”), a third-party provider (Xapo was acquired by Coinbase Custody during 2019).

The transfer agent for the Trust (the “Transfer Agent”) is the Sponsor. The responsibilities of the transfer agent are to the issuance and redemption of Units, the payment, if any, of distributions with respect to the Units, the recording of the issuance of the Units and the maintaining of certain records therewith.

**2. Summary of Significant Accounting Policies**

**Basis of Presentation**

The financial statements have been prepared in accordance with generally accepted accounting principles in the United States (“GAAP”). The Trust qualifies as an investment company for accounting purposes pursuant to the accounting and reporting guidance under Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) Topic 946, Financial Services – Investment Companies. The Trust uses fair value as its method of accounting for Bitcoin in accordance with its classification as an investment company for accounting purposes. The Trust is not registered under the Investment Company Act of 1940.

**Osprey Bitcoin Trust**  
**Notes to Financial Statements**  
**As of and for the period from January 22, 2019**  
**(commencement of operations) to December 31, 2019**

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Use of Estimates

GAAP requires management to make estimates and assumptions that affect the reported amounts in the financial statements and accompanying notes. The most significant estimate in the financial statements is the fair value of investments. Actual results could differ from those estimates and these differences could be material.

Issuances and Redemptions of Units

Proceeds received by the Trust from the issuance and sale of Units consist of bitcoin deposits and forked or airdropped cryptocurrency coins from the Bitcoin Network, or their respective U.S. dollar cash equivalents. Such Bitcoins (or cash equivalent) will only be (1) owned by the Trust and held by the Custodian (or, if cash, used by the Sponsor to purchase Bitcoins to be held by the Custodian), (2) disbursed (or converted to U.S. dollars, if necessary) to pay the Trust's expenses, (3) distributed to Accredited Investors (subject to obtaining regulatory approval from the Securities and Exchange Commission ("SEC") described below) in connection with the redemption of Units, (4) distributed (or converted to U.S. dollars, prior to distribution, to Unitholders as dividends, and (5) liquidated in the event that the Trust terminates or as otherwise required by law or regulation.

The Trust conducts its transactions in Bitcoin, including receiving Bitcoin for the creation of Units and delivering Bitcoin for the redemption of Units (if a redemption program were to be established) and for the payment of the Sponsor's Fee. Since its inception, the Trust has not held cash or cash equivalents.

On March 6, 2018, a United States District Court of New York ruled that the Commodity Futures Trading Commission ("CFTC") has standing to exercise its enforcement power over fraud related to virtual currencies sold in interstate commerce. This ruling affirmed the CFTC's position that digital currencies are subject to the anti-fraud and anti-manipulation enforcement authority, thereby asserting jurisdiction over futures, swaps, and other CFTC-regulated derivatives that reference digital currencies. Consistent with the recent ruling, the Trust classifies its investment in Bitcoin as a commodity.

The Trust is currently unable to redeem Units. At some date in the future, the Trust may seek approval from the SEC to operate an ongoing redemption program.

Investment Transactions and Revenue Recognition

The Trust records its investment transactions on a trade date basis and changes in fair value are reflected as the net change in unrealized appreciation or depreciation on investments. Realized gains and losses are calculated using a specific identification method. Realized gains and losses are recognized in connection with transactions including settling obligations for the Sponsor's Fee in Bitcoin.

**Osprey Bitcoin Trust**  
**Notes to Financial Statements**  
**As of and for the period from January 22, 2019**  
**(commencement of operations) to December 31, 2019**

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Management Fees and Trust Expenses

The Trust's only ordinary recurring charge is expected to be the remuneration due to the Sponsor (the "Management Fee"). The Management Fee equals an annual rate of 0.99% of the daily Net Asset Value of the Trust and accrues daily in Bitcoin. The Management Fee is payable at the Sponsor's sole discretion, in Bitcoin or in U.S. Dollars for the Bitcoin Market Price in effect for such Bitcoin at the time of payment.

The Sponsor bears the routine operational, administrative and other ordinary fees and expenses of the Trust (the "Assumed Expenses"); provided, however, the Trust is responsible for all legal expenses of the Trust in excess of \$50,000. The Trust also is responsible for the Management Fee, extraordinary fees and expenses and the fees charged by the Custodian.

Fair Value Measurements

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability (i.e., the 'exit price') in an orderly transaction between market participants at the measurement date.

GAAP utilizes a fair value hierarchy for inputs used in measuring fair value that maximizes the use of observable inputs and minimizes the use of unobservable inputs by requiring that the most observable inputs be used when available. Observable inputs are those that market participants would use in pricing the asset or liability based on market data obtained from sources independent of the Trust. Unobservable inputs reflect the Trust's assumptions about the inputs market participants would use in pricing the asset or liability developed based on the best information available in the circumstances.

The fair value hierarchy is categorized into three levels based on the inputs as follows:

- Level 1 – Valuations based on unadjusted quoted prices in active markets for identical assets or liabilities that the Trust has the ability to access. Since valuations are based on quoted prices that are readily and regularly available in an active market, these valuations do not entail a significant degree of judgment.
- Level 2 – Valuations based on quoted prices in markets that are not active or for which significant inputs are observable, either directly or indirectly.
- Level 3 – Valuations based on inputs that are unobservable and significant to the overall fair value measurement.

The availability of valuation techniques and observable inputs can vary by investment. To the extent that valuations are based on sources that are less observable or unobservable in the market, the determination of fair value requires more judgment. Fair value estimates do not necessarily represent the amounts that may be ultimately realized by the Trust.

**Osprey Bitcoin Trust**  
**Notes to Financial Statements**  
**As of and for the period from January 22, 2019**  
**(commencement of operations) to December 31, 2019**

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Valuation of Bitcoins and definition of Net Asset Value

The net asset value (“NAV”) of the Trust is used by the Trust in its day-to-day operations to measure the net value of the Trust’s assets. The NAV is calculated on each business day and is equal to the aggregate value of the Trust’s assets less its liabilities (which include accrued but unpaid fees and expenses, both estimated and finally determined), based on the Bitcoin Market Price. The Trust utilizes Bloomberg XBT Price as the Bitcoin Market price to determine fair value and is its principal market. In determining the NAV of the Trust on any business day, the Trust will calculate the price of the Bitcoins held by the Trust as of 4:00 P.M. New York time on such day. The Trust will also calculate the NAV per Unit of the Trust, which equals the NAV of the Trust divided by the number of outstanding Units (the “NAV per Unit”). The Trust will calculate the NAV and NAV per Unit on each business day and these amounts will be published as soon thereafter as practicable on the Trust’s website, at [www.ospreyfund.io](http://www.ospreyfund.io). The Trust will use the Bloomberg XBT Price as the “Bitcoin Market Price” to be used when determining NAV. If no determination of the NAV of the Trust and the NAV per Unit can be made based on the Bloomberg XBT Price, the Trust will consult publicly available BTC pricing sources, such as exchanges and indexes, to determine such price. To the extent that the NAV of the Trust or NAV per Unit is ever incorrectly calculated, there may be no liability for any error. Nevertheless, such error could adversely affect an investment in the Units.

**3. Fair Value of Bitcoin**

The investment measured at fair value on a recurring basis and categorized using the three levels of fair value hierarchy consisted of the following as of December 31, 2019:

				<u><b>Fair Value Measurement Category</b></u>		
	<u><b>Number of Bitcoin</b></u>	<u><b>Per Bitcoin Fair Value</b></u>	<u><b>Amount at Fair Value</b></u>	<u><b>Level 1</b></u>	<u><b>Level 2</b></u>	<u><b>Level 3</b></u>
Investment in Bitcoin	1376.48	\$7,153.38	\$9,846.468			\$9,848.468

**Osprey Bitcoin Trust**  
**Notes to Financial Statements**  
**As of and for the period from January 22, 2019**  
**(commencement of operations) to December 31, 2019**

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The following represents the changes in quantity and the respective fair value of Bitcoin for the period ended December 31, 2019:

	<b>Bitcoin</b>	<b>Fair Value</b>
<b>Balance at January 22, 2019 (commencement of operations)</b>	-	\$ -
Bitcoin contributed	1,388.00	4,975,161
Bitcoin distributed for Management Fee, related party	(11.52)	(88,054)
Net realized gain on investment in Bitcoin	-	46,753
Net change in unrealized appreciation on investment in Bitcoin	-	4,912,608
<b>Balance at December 31, 2019</b>	<b>1,376.48</b>	<b>\$ 9,846,468</b>

#### **4. Income Taxes**

The Sponsor believes the Trust qualifies as a grantor trust for U.S. federal income tax purposes. As a grantor trust, the Trust is not subject to U.S. federal income tax. Rather, a pro rata portion of the Trust's income, gains, losses and deductions will "flow through" to each beneficial owner of Units.

If the Trust were not properly classified as a grantor trust, the Trust might be classified as a partnership for U.S. federal income tax purposes. However, due to the uncertain treatment of digital currency, including forks, airdrops and similar occurrences for U.S. federal income tax purposes, there can be no assurance in this regard. If the Trust were classified as a partnership for U.S. federal income tax purposes, the tax consequences of owning Units generally would not be materially different from the tax consequences described herein, although there might be certain differences, including with respect to timing. In addition, tax information reports provided to beneficial owners of Units would be made in a different form. If the Trust were not classified as either a grantor trust or a partnership for U.S. federal income tax purposes, it would be classified as a corporation for such purposes. In that event, the Trust would be subject to entity-level U.S. federal income tax (currently at a maximum rate of 21%) on its net taxable income and certain distributions made by the Trust to Unitholders would be treated as taxable dividends to the extent of the Trust's current and accumulated earnings and profits.

In accordance with GAAP, the Trust has defined the threshold for recognizing the benefits of uncertain tax positions in the financial statements as "more-likely-than-not" to be sustained by the applicable taxing authority and requires measurement of an uncertain tax position meeting the "more-likely-than-not" threshold, based on the largest benefit that is more than 50% likely to be realized. Tax positions not deemed to meet the "more-likely-than-not" threshold are not recorded as a tax benefit or expense in the current period.

The Sponsor of the Trust has evaluated whether or not there are uncertain tax positions that require financial statement recognition and has determined that no reserves for uncertain tax

**Osprey Bitcoin Trust**  
**Notes to Financial Statements**  
**As of and for the period from January 22, 2019**  
**(commencement of operations) to December 31, 2019**

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positions related to federal, state and local income taxes existed as of December 31, 2019. The Trust's 2019 tax return is subject to audit by federal, state and local tax authorities.

**5. Related Parties**

The Trust considers the following entities to be related parties of the Trust: Osprey Funds, LLC and REX Shares, LLC which holds a 100% of the Sponsor's ownership.

For the period from January 22, 2019 (commencement of operations) to December 31, 2019, the Trust incurred Management Fees of \$97,387 recorded in the accompanying statement of operations, of which the Trust had paid \$88,054. As of December 31, 2019, there were unpaid Management Fees of \$9,333 which is recorded in the accompanying statement of assets and liabilities.

The Trust management fee is accrued daily in Bitcoins and will be payable, at the Sponsor's sole discretion, in Bitcoins or in U.S. dollars at the Bitcoin Market Price in effect at the time of such payment. Currently, all management fees have been made in Bitcoin to the Sponsor.

**6. Risks and Uncertainties**

*Investments in Bitcoin*

The Trust is subject to various risks including market risk, liquidity risk, and other risks related to its concentration in a single asset, Bitcoin. Investing in Bitcoin is currently unregulated, highly speculative, and volatile.

The net asset value of the Trust relates primarily to the value of Bitcoin held by the Trust, and fluctuations in the price of Bitcoin could materially and adversely affect an investment in the Units of the Trust. The price of Bitcoin has a limited history. During such history, Bitcoin prices have been volatile and subject to influence by many factors including the levels of liquidity. If Bitcoin exchanges continue to experience significant price fluctuations, the Trust may experience losses. Several factors may affect the price of Bitcoin, including, but not limited to, global Bitcoin supply and demand, theft of Bitcoin from global exchanges or vaults, and competition from other forms of digital currency or payment services.

The Bitcoin held by the Trust are commingled and the Trust's Unitholders have no specific rights to any specific Bitcoin. In the event of the insolvency of the Trust, its assets may be inadequate to satisfy a claim by its Unitholders.

There is currently no clearing house for Bitcoin, nor is there a central or major depository for the custody of Bitcoin. There is a risk that some or all of the Trust's Bitcoin could be lost or stolen. The Trust does not have insurance protection on its Bitcoin which exposes the Trust and its Unitholders to the risk of loss of the Trust's Bitcoin. Further, Bitcoin transactions are

**Osprey Bitcoin Trust**  
**Notes to Financial Statements**  
**As of and for the period from January 22, 2019**  
**(commencement of operations) to December 31, 2019**

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irrevocable. Stolen or incorrectly transferred Bitcoin may be irretrievable. As a result, any incorrectly executed Bitcoin transactions could adversely affect an investment in the Trust.

The SEC has stated that certain digital assets may be considered “securities” under the federal securities laws. The test for determining whether a particular digital asset is a “security” is complex and the outcome is difficult to predict.

If Bitcoin is determined to be a “security” under federal or state securities laws by the SEC or any other agency, or in a proceeding in a court of law or otherwise, it may have material adverse consequences for Bitcoin. For example, it may become more difficult for Bitcoin to be traded, cleared and custodied as compared to other digital assets that are not considered to be securities, which could in turn negatively affect the liquidity and general acceptance of Bitcoin and cause users to migrate to other digital assets. As such, any determination that Bitcoin is a security under federal or state securities laws may adversely affect the value of Bitcoin and, as a result, an investment in the Units.

To the extent that Bitcoin is determined to be a security, the Trust and the Sponsor may also be subject to additional regulatory requirements, including those under the Investment Company Act of 1940, and the Sponsor may be required to register as an investment adviser under the Investment Advisers Act of 1940. If the Sponsor determines not to comply with such additional regulatory and registration requirements, the Sponsor will terminate the Trust. Any such termination could result in the liquidation of the Trust’s Bitcoin at a time that is disadvantageous to Unitholders.

To the extent private keys for Bitcoin addresses are lost, destroyed or otherwise compromised and no backup of the private keys are accessible, the Trust may be unable to access the Bitcoin held in the associated address and the private key will not be capable of being restored by the Bitcoin network. The processes by which Bitcoin transactions are settled are dependent on the Bitcoin peer-to-peer network, and as such, the Trust is subject to operational risk. A risk also exists with respect to previously unknown technical vulnerabilities, which may adversely affect the value of Bitcoin.

## **7. Indemnifications**

In the normal course of business, the Trust enters into contracts with service providers that contain general indemnification clauses. The Trust’s maximum exposure under these arrangements is unknown and this would involve future claims against the Trust that have not yet occurred. Based on experience, the Trust would expect the risk of loss to be remote.

**Osprey Bitcoin Trust**  
**Notes to Financial Statements**  
**As of and for the period from January 22, 2019**  
**(commencement of operations) to December 31, 2019**

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**8. Financial Highlights Per Unit Performance**

<b>Per Unit Data:</b>	<b>2019</b>
<b>Net asset value at January 22, 2019 (commencement of operations)</b>	<b>\$ -</b>
Net investment Loss	(0.10)
Net change in realized gain on investment in Bitcoin	0.05
Net change in unrealized appreciation on investment in Bitcoin	4.94
Net increase in net assets resulting from operations	4.89
In-kind contribution of Bitcoin	5.00
<b>Net asset value at December 31, 2019</b>	<b>\$ 9.89</b>
Total Return	<u>97.7%</u>
<b>Ratio to average net assets:</b>	
Net investment loss	<u>(0.93%)</u>
Expenses	<u>(0.93%)</u>

An individual Unitholder's return, ratios, and per Unit performance may vary from those presented above based on the timing of Unit transactions.

Total return is calculated assuming an initial investment made at the net asset value at the beginning of the year and assuming redemption on the last day of the year.

**9. Subsequent Events**

There are no known events that have occurred through September 10, 2020, the date the financial statements were available to be issued that require disclosure other than that which has already been disclosed in these notes to the financial statements and those noted below.

During March 2020, the Trust changed custodians from Xapo/Coinbase to Unchained Capital. During June 2020, the Trust changed custodians to Fidelity Digital Assets.

During April 2020, The Trust engaged Theorem Fund Services, LLC to provide administrative services commencing on June 1, 2020.

During June 2020 the Trust began a continuous offering of up to \$5,000,000 of Units with no par value, each Unit representing a fractional undivided beneficial interest in the Trust (collectively, the "Units"). The Units are being offered and sold in reliance upon the exemption from the registration requirements of the U.S. federal securities laws set forth in Rule 504 of Regulation D under the Securities Act. The Trust private placement was closed to investors as of August 12, 2020.



**Osprey Bitcoin Trust**  
**Notes to Financial Statements**  
**As of and for the period from January 22, 2019**  
**(commencement of operations) to December 31, 2019**

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On March 11, 2020, the World Health Organization officially declared COVID-19, the disease caused by the novel coronavirus, a pandemic. Management is closely monitoring the evolution of the pandemic, including how it may affect the economy and general population.

**APENDIX B – TRUST AGREEMENT**

**SECOND AMENDED AND RESTATED DECLARATION OF TRUST  
AND TRUST AGREEMENT OF OSPREY BITCOIN TRUST**

**Dated as of November 1, 2020**

**By and Among**

**OSPREY FUNDS, LLC,  
DELAWARE TRUST COMPANY**

**and**

**THE UNITHOLDERS**

**from time to time hereunder**

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## OSPREY BITCOIN TRUST DECLARATION OF TRUST AND TRUST AGREEMENT

This SECOND AMENDED AND RESTATED **DECLARATION OF TRUST AND TRUST AGREEMENT** (“**Trust Agreement**”) of **OSPREY BITCOIN TRUST** is made and entered into as of the 1st day of November, 2020, by and among, **OSPREY FUNDS, LLC**, a Delaware limited liability company, **DELAWARE TRUST COMPANY**, a Delaware corporation, as trustee, and the **UNITHOLDERS** from time to time hereunder.

\* \* \*

### RECITALS

**WHEREAS**, the Sponsor created the Trust for the purpose of creating and issuing Units (as defined below) representing an interest in Bitcoin;

**WHEREAS**; the Sponsor, the Trustee and the Unitholders, from time to time, intend to enter into this Trust Agreement to set forth the respective rights and responsibilities of the parties hereunder;

**NOW, THEREFORE**, in exchange for fair and reasonable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby enter in this Trust Agreement as set forth below.

### ARTICLE I

#### DEFINITIONS; THE TRUST

SECTION 1.1 *Definitions*. As used in this Trust Agreement, the following terms shall have the following meanings unless the context otherwise requires:

**“Actual Exchange Rate”** means the highest exchange rate and lowest fees the Sponsor can find within a reasonable time frame in order to pay the Management Fee in USD.

**“Affiliate”** — An “Affiliate” of a Person means (i) any Person directly or indirectly owning, controlling or holding with power to vote 10% or more of the outstanding voting securities of such Person, (ii) any Person 10% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by such Person, (iii) any Person, directly or indirectly, controlling, controlled by or under common control of such Person, (iv) any employee, officer, director, member, manager or partner of such Person, or (v) if such Person is an employee, officer, director, member, manager or partner, any Person for which such Person acts in any such capacity.

**“Annual Update”** means the annual report that is prepared pursuant to the Alternative Reporting Standard of the OTCQX U.S. Disclosure Guidelines.

**“Assumed Expenses”** shall have the meaning set forth in Section 4.8(a).

**“Bitcoin”** means a type of a virtual currency based on an open source cryptographic protocol existing on the Bitcoin Network, and the assets underlying the Trust's Units and may include “forked” versions of such virtual currency as described in the Memorandum.

**“Bitcoin Account”** means a hot wallet which is online and connected to the internet. The Bitcoin Account is used along with the Trust Storage Account and the Trust Safekeeping Account, as applicable, to receive Unit deposits from Purchasers. Shortly after receipt of the appropriate number of Bitcoins, the Bitcoins are then transferred to the Trust Storage Account and/or the Trust Safekeeping Account, as applicable.

**“Bitcoin Market Price”** has the meaning assigned to such term as provided in the currently effective Memorandum.

**“Bitcoin Network”** means the open source protocol of the peer-to-peer bitcoin computer network upon which Bitcoin is based.

**“Bitcoin Purchase Amount”** means the amount of Bitcoin or cash submitted by a Purchaser to purchase Units.

**“Business Day”** means each weekday on which banks are open in New York, New York.

**“Certificate of Trust”** means the Certificate of Trust of the Trust, including all amendments thereto, in the form attached hereto as Exhibit A, filed with the Secretary of State of the State of the state of Delaware.

**“Code”** means the Internal Revenue Code of 1986, as amended.

**“Corporate Trust Office”** means the principal office at which at any particular time the corporate trust business of the Trustee is administered, which office at the date hereof is located at 251 Little Falls Drive, Wilmington, DE 19808.

**“Covered Person”** means the Sponsor and its Affiliates and their respective members, managers, directors, officers employees, agents and controlling persons.

**“Custodian”** Fidelity Digital Asset Services, LLC or any other Person from time to time engaged to provide custodian services or related services to the Trust pursuant to authority delegated by the Sponsor.

**“Delaware Trust Statute”** means the Delaware Statutory Trust Act, Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. § 3801 et seq., as the same may be amended from time-to-time.

**“Event of Withdrawal”** has the meaning set forth in Section 12.1(a) hereof.

**“Excluded Expenses”** has the meaning set forth in Section 4.8(a).

**“Extraordinary Expenses”** has the meaning set forth in Section 4.8(b).

**“Fiscal Year”** has the meaning set forth in Article IX hereof.



**“Indemnified Parties”** has the meaning assigned to such term in Section 2.4.

**“Internal Revenue Service”** or **“IRS”** means the U.S. Internal Revenue Service or any successor thereto.

**“Liquidating Trustee”** has the meaning assigned thereto in Section 12.2.

**“Management Fee”** means a fee that accrues daily at an annual rate of 0.49% of the NAV of the Trust and is payable to the Sponsor by the Trust monthly in arrears.

**“Management Fee Exchange Rate”** means the exchange rate that will be used to convert the Management Fee from USD to the appropriate number of Bitcoins. It is calculated based upon the Bitcoin Market Price at 4:00 p.m., Eastern time in the case of daily accruals and as of the last day of each month for withdrawal and payment in arrears. The Management Fee Exchange Rate does not include fees and expenses for converting USD into Bitcoins.

**“Memorandum”** means the Confidential Private Placement Memorandum, as the same may at any time and from time to time be amended or supplemented.

**“Net Asset Value”** means the aggregate value, expressed in USD, of the Trust's assets, less its liabilities (which include estimated accrued but unpaid fees and expenses). The Sponsor or its delegate shall calculate and publish the Trust's NAV each business day as of 4:00 p.m., Eastern time, or as soon thereafter as practicable.

In order to calculate the NAV, the Sponsor shall:

1. Determine the Bitcoin Market Price.
2. Multiply the Bitcoin Market Price by the Trust's aggregate number of Bitcoins owned as of 4:00 p.m., Eastern time on the immediately preceding day.
3. Add the dollar value of the Bitcoins receivable under pending Purchases.
4. Add the accrued but unpaid interest, if any and the value of other Trust assets, if any.
5. Subtract the accrued but unpaid Management Fee (and Extraordinary Expenses, if any).
6. Subtract other Trust expenses and liabilities, if any.

In the event that the Sponsor determines that the methodology used to determine the Bitcoin Market Price is not an appropriate basis for valuation of the Trust's Bitcoins, the Sponsor shall determine an alternative methodology.

**“Net Asset Value Per Unit”** means the Net Asset Value divided by the number of Units outstanding on the date of calculation.

**“OTCQX”** means the OTCQX tier of the OTC Markets Group Inc.

**“OTCQX Application”** means the application that is required by the OTCQX which, if approved, will then enable the Units to be traded on the OTCQX.

**“OTCQX Fees”** means the fees outlined by Part 5 of the OTCQX Rules for U.S. Companies, as amended from time to time.

**“Percentage Interest”** shall be a fraction, the numerator of which is the number of any Unitholder's Units and the denominator of which is the total number of Units of the Trust outstanding as of the date of determination.

**“Permitted Investment”** means short-term obligations of (or guaranteed by) the United States or any agency or instrumentality thereof and in certificates of deposit or interest-bearing bank accounts of any bank or trust companies having a minimum stated capital and surplus of \$50,000,000. All such obligations must mature prior to the next distribution date, and be held to maturity.

**“Person”** means any natural person, partnership, limited liability company, statutory trust, corporation, association, or other legal entity.

**“Purchase Order”** has the meaning assigned thereto in Section 3.2(a)(i).

**“Purchase Order Date”** has the meaning assigned thereto in Section 3.2(a)(i).

**“Purchaser”** means a Person that, (i) has entered into a Subscription Agreement with the Sponsor and the Trust, and (ii) has access to a Purchaser Self-Administered Account.

**“Purchaser Self-Administered Account”** means a Bitcoin wallet address previously known to the Custodian as belonging to the Purchaser.

**“Quarterly Update”** means the quarterly report that is prepared pursuant to the Alternative Reporting Standard of the OTCQX U.S. Disclosure Guidelines.

**“Sponsor”** means Osprey Funds, LLC, or any substitute therefor as provided herein, or any successor thereto by merger or operation of law.

**“Subscription Agreement”** means an agreement among the Trust, the Sponsor and a Purchaser, substantially in the form of Exhibit B hereto, as it may be amended, modified or supplemented from time to time.

**“Transfer Agent”** means the Sponsor or any other Person from time to time engaged to provide such services or related services to the Trust pursuant to authority delegated by the Sponsor.

**“Treasury Regulations”** means regulations, including proposed or temporary regulations, promulgated under the Code. References herein to specific provisions of proposed or temporary

regulations shall include analogous provisions of final Treasury Regulations or other successor Treasury Regulations.

**“Trust”** means Osprey Bitcoin Trust, a Delaware statutory trust formed pursuant to the Certificate of Trust, the business and affairs of which are governed by this Trust Agreement.

**“Trust Agreement”** means this Declaration of Trust and Trust Agreement, as it may at any time or from time-to-time be amended.

**“Trust Storage Account”** means a wallet that is not online and not connected to the internet, used for storage of the Trust's Bitcoins where they are readily accessible and available to pay Redemption Units and Trust expenses.

**“Trust Safekeeping Account”** means a wallet that is not online and not connected to the internet, used for “deep” cold storage of the Trust's Bitcoins where they are not readily accessible and can only be accessed as provided by the rules of the Custodian.

**“Trustee”** means Delaware Trust Company, its successors and assigns, or any substitute therefor as provided herein, acting not in its individual capacity but solely as trustee of the Trust.

**“Trust Estate”** means the all the Bitcoins on deposit in the Trust's accounts, and all proceeds from the sale of Bitcoin while such proceeds are held on deposit in the Trust's accounts, as well as any rights of the Trust pursuant to any other agreements to which the Trust is a party.

**“Unitholder”** means any person or entity who is or becomes an owner of Units of the Trust.

**“Units”** means the common units of fractional undivided beneficial interest in the profits, losses, distributions, capital and assets of, and ownership of, the Trust. Units may be owned by the Sponsor or a Unitholder.

SECTION 1.2 *Name.* The name of the Trust is “Osprey Bitcoin Trust” in which name the Sponsor shall cause the Trust to carry out its purposes as set forth in Section 1.5, make and execute contracts and other instruments in the name and on behalf of the Trust and sue and be sued in the name and on behalf of the Trust.

### SECTION 1.3 *Delaware Trustee; Offices.*

(i) The sole Trustee of the Trust is Delaware Trust Company, which is located at the Corporate Trust Office or at such other address in the State of Delaware as the Trustee may designate in writing to the Unitholders. The Trustee shall receive service of process on the Trust in the State of Delaware at the foregoing address. In the event Delaware Trust Company resigns or is removed as the Trustee, the Trustee of the Trust in the State of Delaware shall be the successor Trustee, subject to Section 2.1.

(ii) The principal office of the Trust, and such additional offices as the Sponsor may establish, shall be located at such place or places inside or outside the State of Delaware as the Sponsor may designate from time to time in writing to the Trustee and the

Unitholders. Initially, the principal office of the Trust shall be at c/o Osprey Funds, LLC, 44 Post Road West, Westport, Connecticut, 06880.

SECTION 1.4 *Declaration of Trust.* The Trust Estate shall be held in trust for the Unitholders. It is the intention of the parties hereto that the Trust shall be a statutory trust, under the Delaware Trust Statute and that this Trust Agreement shall constitute the governing instrument of the Trust. It is not the intention of the parties hereto to create a general partnership, limited partnership, limited liability company, joint stock association, corporation, bailment or any form of legal relationship other than a Delaware statutory trust that is treated as a grantor trust for U.S. federal income tax purposes and for purposes of applicable state and local tax laws. Nothing in this Trust Agreement shall be construed to make the Unitholders partners or members of a joint stock association. Effective as of the date hereof, the Trustee and the Sponsor shall have all of the rights, powers and duties set forth herein and in the Delaware Trust Statute with respect to accomplishing the purposes of the Trust. The Trustee has filed the certificate of trust required by Section 3810 of the Delaware Trust Statute in connection with the formation of the Trust under the Delaware Trust Statute.

SECTION 1.5 *Purposes and Powers.* The purposes of the Trust shall be to accept subscriptions for Units in Bitcoin in accordance with Article III hereof, to distribute Bitcoin upon redemptions of Units in accordance with Article VI hereof, and to enter into any lawful transaction and engage in any lawful activities in furtherance of or incidental to the foregoing. The Trust shall not engage in any business activity and shall not acquire or own any assets other than Bitcoin, forked or airdropped cryptocurrency coins from the Bitcoin Network or cash from the sale of Bitcoin, as provided in this Trust Agreement, or take any of the actions set forth in Section 4.4. The Trust shall have all of the powers specified in Section 3.1 hereof as powers which may be exercised by a Sponsor on behalf of the Trust under this Trust Agreement. Nothing in this Trust Agreement shall be construed to give the Trustee or the Sponsor the power to vary the investment of the Unitholders within the meaning of Section 301.7704-4(c) or similar provisions of the Treasury Regulations, nor shall the Trustee or the Sponsor take any action that would vary the investment of the Unitholders.

SECTION 1.6 *Tax Treatment.* Each of the parties hereto, by entering into this Trust Agreement, (i) expresses its intention that, unless the IRS determines otherwise, in a ruling issued to the Trust (provided that the Trust, the Trustee and the Sponsor are under no obligation to seek such ruling) or unless required to do so by a “determination” as defined in Section 1313 of the Code, this Trust shall be treated as a grantor trust for U.S. federal income tax purposes; (ii) the Units will qualify under applicable tax law as interests in a grantor trust which holds the Trust Estate, (iii) agrees that it will file its own U.S. federal, state and local income, franchise and other tax returns in a manner that is consistent with clause (i) of this Section 1.6 and with the classification of the Trust as a grantor trust, and (iv) agrees to use reasonable efforts to notify the Sponsor promptly upon a receipt of any notice from any taxing authority having jurisdiction over such holders of Units with respect to the treatment of the Units as anything other than interests in a grantor trust.

SECTION 1.7 *Legal Title.* Legal title to all of the Trust Estate shall be vested in the Trust as a separate legal entity; provided, however, that where applicable law in any jurisdiction requires any part of the Trust Estate to be vested otherwise, the Sponsor may cause legal title to the Trust Estate

or any portion thereof to be held by or in the name of the Sponsor or any other Person (other than a Unitholder) as nominee.

## **ARTICLE II**

### **THE TRUSTEE**

**SECTION 2.1 *Term; Resignation.*** Delaware Trust Company has been appointed and hereby agrees to serve as the Trustee of the Trust. The Trust shall have only one Trustee unless otherwise determined by the Sponsor. The Trustee shall serve until such time as the Trust is terminated or if the Sponsor removes the Trustee or the Trustee resigns. The Trustee may have normal banking and trust relationships with the Sponsor and their respective Affiliates; provided that none of (i) the Sponsor, (ii) any Person involved in the organization or operation of the Sponsor or the Trust or (iii) any Affiliate of any of them may be the Trustee hereunder. The Trustee is appointed to serve as the trustee of the Trust in the State of Delaware for the purpose of satisfying the requirement of Section 3807(a) of the Delaware Trust Statute that the Trust have at least one trustee with a principal place of business in Delaware. It is understood and agreed by the parties hereto that the Trustee shall have none of the duties or liabilities of the Sponsor and shall have no obligation to supervise or monitor the Sponsor or otherwise manage the Trust.

The Trustee is permitted to resign upon at least sixty (60) days' notice to the Sponsor upon which date such resignation shall be effective.

**SECTION 2.2 *Powers.*** Except to the extent expressly set forth in Section 1.3 and this Article, the duty and authority to manage the affairs of the Trust is vested in the Sponsor, which duty and authority the Sponsor may further delegate as provided herein, all pursuant to Section 3806(b)(7) of the Delaware Trust Statute. The duties of the Trustee shall be limited to (i) accepting legal process served on the Trust in the State of Delaware, (ii) the execution of any certificates required to be filed with the Secretary of State of the State of Delaware which the Trustee is required to execute under Section 3811 of the Delaware Trust Statute, and (iii) any other duties specifically allocated to the Trustee in this Trust Agreement. The Trustee shall provide prompt notice to the Sponsor of its performance of any of the foregoing. The Sponsor shall reasonably keep the Trustee informed of any actions taken by the Sponsor with respect to the Trust that would reasonably be expected to affect the rights, obligations or liabilities of the Trustee hereunder or under the Delaware Trust Statute.

**SECTION 2.3 *Compensation and Expenses of the Trustee.*** The Trustee shall be entitled to receive from the Trust or the Sponsor, as applicable, reasonable compensation for its services hereunder as set forth in a separate fee agreement and shall be entitled to be reimbursed by the Trust or the Sponsor, as applicable, for reasonable out-of-pocket expenses incurred by it in the performance of its duties hereunder, including without limitation, the reasonable compensation, out-of-pocket expenses and disbursements of counsel and such other agents as the Trustee may employ in connection with the exercise and performance of its rights and duties hereunder. Though it is not intended or expected that the Trustee will ever handle funds, however, to the extent that the Trustee receives Trust funds the Trustee may earn compensation in the form of short-term interest ("float") on items like uncashed distribution checks (from the date issued until the date cashed), funds that the

Trustee is directed not to invest, deposits awaiting investment direction or received too late to be invested overnight in previously directed investments.

#### SECTION 2.4 *Indemnification.*

(i) The Trust hereby agrees to be primary obligor and shall (i) compensate (to the extent not paid by the Sponsor on the Trust's behalf) the Trustee in accordance with a separate fee agreement with the Trustee, (ii) reimburse the Trustee for all reasonable expenses (including reasonable fees and expenses of counsel and other experts) and (iii) indemnify, defend and hold harmless the Trustee and any of the officers, directors, employees and agents of the Trustee (the “**Indemnified Persons**”) from and against any and all losses, damages, liabilities, claims, actions, suits, costs, expenses, disbursements (including the reasonable fees and expenses of counsel including legal fees and expenses in connection with the enforcement of its indemnification rights hereunder), taxes and penalties of any kind and nature whatsoever (collectively, “**Expenses**”), to the extent that such Expenses arise out of or are imposed upon or asserted at any time against such Indemnified Persons with respect to the performance of this Trust Agreement, the creation, operation or termination of the Trust or the transactions contemplated hereby; provided, however, that the Trust shall not be required to indemnify any Indemnified Person for any Expenses which are a result of the willful misconduct, bad faith or gross negligence of, an Indemnified Person. To the fullest extent permitted by law and by the requirement for treatment of the Trust as a grantor trust for tax purposes, Expenses to be incurred by an Indemnified Person shall, from time to time, be advanced by, or on behalf of, Sponsor prior to the final disposition of any matter upon receipt by Osprey of an undertaking by, or on behalf of, such Indemnified Person to repay such amount if it shall be determined that the Indemnified Person is not entitled to be indemnified under this Agreement.

(ii) As security for any amounts owing to the Trustee hereunder, the Trustee shall have a lien against the Trust property, which lien shall be prior to the rights of the Sponsor, or any other beneficial owner of the Trust. The obligations of the Trust and the Sponsor to indemnify the Indemnified Persons under this Section 2 shall survive the termination of this Trust Agreement and the resignation or removal of the Trustee.

SECTION 2.5 *Successor Trustee.* Upon the resignation or removal of the Trustee, the Sponsor shall appoint a successor Trustee by delivering a written instrument to the outgoing Trustee. Any successor Trustee must satisfy the requirements of Section 3807 of the Delaware Trust Statute. The successor Trustee shall become fully vested with all of the rights, powers, duties and obligations of the outgoing Trustee under this Trust Agreement, with like effect as if originally named as Trustee, and the outgoing Trustee shall be discharged of its duties and obligations under this Trust Agreement. Any business entity into which the Trustee may be merged or converted or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any entity succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, to the fullest extent permitted by law without the execution or filing of any paper or any further act on the part of any of the parties hereto.

SECTION 2.6 *Liability of Trustee.* Except as otherwise provided in this Article, in accepting the trust created hereby, Delaware Trust Company acts solely as Trustee hereunder and

not in its individual capacity, and all Persons having any claim against Delaware Trust Company by reason of the transactions contemplated by this Trust Agreement and any other agreement to which the Trust is a party shall look only to the Trust Estate for payment or satisfaction thereof. The Trustee shall not be liable or accountable hereunder to the Trust or to any other Person or under any other agreement to which the Trust is a party, except for the Trustee's own fraud, gross negligence, bad faith or willful misconduct. In particular, but not by way of limitation:

(i) the Trustee shall not be personally liable for any error of judgment made in good faith by the Trustee;

(ii) The Trustee shall have no liability or responsibility for the validity or sufficiency of this Trust Agreement or for the form, character, genuineness, sufficiency, value or validity of the Trust Estate;

(iii) The Trustee has not prepared or verified, and shall not be responsible or liable for, any information, disclosure or other statement in the Memorandum or in any other document issued or delivered in connection with the sale or transfer of the Units;

(iv) The Trustee shall not be responsible or liable for the genuineness, enforceability, collectability, value, sufficiency, location or existence of any of the Bitcoins or other assets of the Trust;

(v) The Trustee shall have no duty to, make any investigation as to the accuracy and completeness of any representation or warranty made by the Trust in any agreement entered into by the Trust;

(vi) The Trustee shall not be liable for any actions taken or omitted to be taken by it in accordance with the instructions of the Sponsor or the Liquidating Trustee;

(vii) The Trustee shall not have any liability for the acts or omissions of the Sponsor, the Custodian, their respective delegates or any other Person;

(viii) The Trustee shall have no duty or obligation to supervise the performance of any obligations of the Sponsor, the Custodian, or their respective delegates, any Purchaser or any other Person;

(ix) No provision of this Trust Agreement shall require the Trustee to act or expend or risk its own funds or otherwise incur any financial liability in the performance of any of its rights or powers hereunder;

(x) Under no circumstances shall the Trustee be liable for indebtedness evidenced by or other obligations of the Trust arising under this Trust Agreement or any other agreements to which the Trust is a party;

(xi) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Trust Agreement, or to institute, conduct or defend any litigation under this Trust Agreement or any other agreements to which the Trust is a party, at the request, order or direction of the Sponsor unless the Sponsor has offered to Delaware Trust Company (in its capacity

as Trustee and individually) security or indemnity satisfactory to it against the costs, expenses and liabilities that may be incurred by Delaware Trust Company (including, without limitation, the reasonable fees and expenses of its counsel) therein or thereby;

(xii) Notwithstanding anything contained herein to the contrary, the Trustee shall not be required to take any action in any jurisdiction other than in the State of Delaware if the taking of such action will (i) require the consent or approval or authorization or order of or the giving of notice to, or the registration with or taking of any action in respect of, any state or other governmental authority or agency of any jurisdiction other than the State of Delaware, (ii) result in any fee, tax or other governmental charge under the laws of any jurisdiction or any political subdivision thereof in existence as of the date hereof other than the State of Delaware becoming payable by the Trustee or (iii) subject the Trustee to personal jurisdiction, other than in the State of Delaware, for causes of action arising from personal acts unrelated to the consummation of the transactions by the Trustee, as the case may be, contemplated hereby; and

(xiii) To the extent that, at law or in equity, the Trustee has duties (including fiduciary duties) and liabilities relating thereto to the Trust, the Unitholders or to any other Person, the Trustee acting under this Trust Agreement shall not be liable to the Trust, the Unitholders or to any other Person for its good faith reliance on the provisions of this Trust Agreement. The provisions of this Trust Agreement, to the extent that they restrict or eliminate the duties and liabilities of the Trustee otherwise existing at law or in equity are agreed by the parties hereto to replace such other duties and liabilities of the Trustee.

(xiv) The Trustee shall not be liable for punitive, exemplary, consequential, special or similar damages however styled, including without limitation, lost profits, or for any losses due to forces beyond the control of the Trustee, including, without limitation, strikes, work stoppages, acts of war or terrorism, insurrection, revolution, nuclear or natural catastrophes or acts of God and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services provided to the Trustee by third parties.

#### *SECTION 2.7 Reliance; Advice of Counsel.*

(a) In the absence of bad faith, the Trustee may conclusively rely upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Trust Agreement in determining the truth of the statements and the correctness of the opinions contained therein, and shall incur no liability to anyone in acting or not acting on any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper believed by it to be genuine and believed by it to be signed by the proper party or parties and need not investigate any fact or matter pertaining to or in any such document; provided, however, that the Trustee shall have examined any certificates or opinions so as to reasonably determine compliance of the same with the requirements of this Trust Agreement. The Trustee may accept a certified copy of a resolution of the board of directors or other governing body of any corporate party as conclusive evidence that such resolution has been duly adopted by such body and that the same is in full force and effect. As to any fact or matter the method of the determination of which is not specifically prescribed herein, the Trustee may for all purposes hereof rely on a certificate, signed by the president or any vice president or by the treasurer or other authorized officers of the



relevant party, as to such fact or matter, and such certificate shall constitute full protection to the Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon.

(b) In the exercise or administration of the Trust hereunder and in the performance of its duties and obligations under this Trust Agreement, the Trustee, at the expense of the Trust (i) may act directly or through its agents, attorneys, custodians or nominees pursuant to agreements entered into with any of them, and the Trustee shall not be liable for the conduct or misconduct of such agents, attorneys, custodians or nominees if such agents, attorneys, custodians or nominees shall have been selected by the Trustee with reasonable care and (ii) may consult with counsel, accountants and other skilled professionals to be selected with reasonable care by it. The Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the opinion or advice of any such counsel, accountant or other such Persons.

**SECTION 2.8 *Payments to the Trustee.*** Any amounts paid to the Trustee pursuant to this Article shall be deemed not to be a part of the Trust Estate immediately after such payment. Any amounts owing to the Trustee under this Trust Agreement shall constitute a claim against the Trust Estate. *Notwithstanding* any other provision of this Trust Agreement, all payments to the Trustee, including fees, expenses and any amounts paid in connection with indemnification of the Trustee in accordance with the terms of this Trust Agreement will be payable only in U.S. Dollars.

### **ARTICLE III**

#### **UNITS; CAPITAL CONTRIBUTIONS; CREATIONS AND ISSUANCE OF UNITS**

**SECTION 3.1 *General.*** The Sponsor shall have the power and authority, without Unitholder approval, to issue Units from time to time as it deems necessary or desirable. The number of Units authorized shall be unlimited, and the Units so authorized may be represented in part by fractional Units, calculated to one one-hundred-millionth of one Bitcoin. From time to time, the Sponsor may divide or combine the Units into a greater or lesser number without thereby changing the proportionate beneficial interests. The Sponsor may issue Units in exchange for contributions of Bitcoin or cash (or for no consideration if pursuant to a Unit dividend or split-up), all without action or approval of the Unitholders. All Units when so issued on the terms determined by the Sponsor shall be fully paid and non-assessable. Every Unitholder, by virtue of having purchased or otherwise acquired a Unit, shall be deemed to have expressly consented and agreed to be bound by the terms of this Trust Agreement.

#### **SECTION 3.2 *Offer of Units; Procedures for Creation.***

(a) **General.** The following procedures, as supplemented by the more detailed procedures specified in the Exhibits, annexes, attachments and procedures, as applicable, to the Subscription Agreement, which may be amended from time to time in accordance with the provisions of the Subscription Agreement (and any such amendment will not constitute an amendment of this Trust Agreement), will govern the Trust with respect to the creation and issuance of Units. Subject to the limitations upon and requirements for issuance of Units stated herein and in such procedures, the number of Units which may be issued by the Trust is unlimited.

(i) On any Business Day, a Purchaser may deposit the Bitcoin Purchase Amount with the Custodian and submit an order to create Units (a “**Purchase Order**”) from the Trust via notification to the Sponsor or its delegate in the manner provided in the Subscription Agreement. Creation Orders must be received by 3:00 p.m., Eastern time on a Business Day (the “**Purchase Order Date**”). The Sponsor or its delegate will process Purchase Orders only from Purchasers with respect to whom a Subscription Agreement is in full force and effect.

(ii) Any Purchase Order is subject to rejection by the Sponsor or its delegate pursuant to Section 3.2(b).

(iii) After receiving the Bitcoin Purchase Amount and accepting a Purchaser's Purchase Order, the Sponsor or its delegate will have the Transfer Agent credit the Units to fill the Purchaser's Purchase Order within one Business Day immediately following the Purchase Order Date.

(iv) Determination of Units Issue. The number of Units to be issued with respect to the Bitcoin Purchase amount shall be determined using the most recently available Bitcoin Market Price. Each Unit will be worth \$5.00 at inception of the Trust. The Sponsor or its delegate has final determination of all questions as to the determination of the number of Units issuable with respect to a particular Bitcoin Purchase Amount.

(v) Delivery of Required Deposits. A Purchaser who places a Purchase Order shall deliver the Bitcoin Purchase Amount to the (i) Bitcoin Account, the Trust Storage Account, the Trust Safekeeping Account, at the Sponsor's instruction or (ii) a cash denominated account, at the direction of the Sponsor or its delegate, in each case by no later than 6:00 p.m., Eastern time on the Purchase Order Day. If the Bitcoin Purchase Amount is denominated in Bitcoin, the Purchaser may only initiate delivery of the Bitcoin Purchase Amount from a Participant Self-Administered Account. Such Bitcoin denominated Bitcoin Purchase Amount deposits other than those received from a Participant Self-Administered Account shall be rejected. The expense and risk of delivery, ownership and safekeeping of Bitcoins, until such Bitcoins have been received by the Trust, shall be borne solely by the Purchaser. Upon receipt of the Bitcoin Purchase Amount, the Custodian or delegated agent, as the case may be, shall transfer the Bitcoin Purchase Amount to the Trust Storage Account, the Trust Safekeeping Account or a cash account, as applicable. The Sponsor or its delegate shall then direct the Transfer Agent to credit the number of Units ordered to the Purchaser's account on the next Business Day after the Purchase Order Date.

(vi) The Custodian may accept delivery of Bitcoins by such other means as the Sponsor, from time to time, may determine to be acceptable for the Trust.

(a) Notwithstanding anything to the contrary in this Section 3.2, the Sponsor shall have the authority to issue Units, from time to time, pursuant to Rule 504 under the Securities Act, under such terms and conditions as are disclosed to purchasers in the relevant offering documents and as the Sponsor deems necessary or advisable to comply with applicable law or regulation.

(b) Rejection. The delivery of the Units against deposit of the Bitcoin Purchase Amount may be suspended generally, or refused with respect to particular requested creations, during any period when the transfer books of the Sponsor or its delegate are closed or if any such action is deemed necessary or advisable by the Sponsor or its delegate or for any reason at any time or from time to time. None of the Sponsor, its delegates, or the Custodian shall be liable for the rejection or acceptance of any Purchase Order or Bitcoin Purchase Amount.

### SECTION 3.3 *Book-Entry-Only System.*

(a) Units shall be held in book-entry form by the Transfer Agent. The Sponsor or its delegate shall direct the Transfer Agent (which may be the Sponsor or an Affiliate) to credit or debit the number of Units to the applicable Purchaser. The Transfer Agent shall issue or cancel each Purchaser's Units, as applicable.

(c) Secondary or Successor Custodian. If a successor to the Custodian shall be employed, the Trust and the Sponsor shall establish procedures acceptable to such successor with respect to the matters addressed in this Section.

SECTION 3.4 *Assets of the Trust.* The Trust Estate shall irrevocably belong to the Trust for all purposes, subject only to the rights of creditors of the Trust and except as may otherwise be required by applicable tax laws, and shall be so recorded upon the books of account of the Trust.

SECTION 3.5 *Liabilities of the Trust.* The Trust Estate shall be charged with the liabilities of the Trust; and all expenses, costs, charges and reserves attributable to the Trust. The Sponsor shall have full discretion, to the extent not inconsistent with applicable law, to determine which items shall be treated as income and which items as capital, and each such determination and allocation shall be conclusive and binding upon the Unitholders.

### SECTION 3.6 *Distributions.*

(d) Distributions on Units, if any, may be paid with such frequency as the Sponsor may determine, which may be daily or otherwise, to the Unitholders from the Trust Estate, after providing for actual and accrued liabilities. All distributions on Units thereof shall be distributed pro rata to the Unitholders in proportion to the total outstanding Units held by such Unitholders at the date and time of record established for the payment of such distribution. Such distributions may be made in cash or Units as determined by the Sponsor or pursuant to any program that the Sponsor may have in effect at the time for the election by each Unitholder of the mode of the making of such distribution to that Unitholder.

(e) The Units shall represent units of beneficial interest in the Trust Estate. Each Unitholder shall be entitled to receive its pro rata share of distributions in accordance with Section 3.6(a).

SECTION 3.7 *Voting Rights.* Notwithstanding any other provision hereof, on each matter submitted to a vote of the Unitholders, each Unitholder shall be entitled to a single vote for each Unit held by such Person, or a proportionate fraction thereof if such Unit is fractional, with the number of Units held by such Person determined by the number of Units in its name on the books of the Trust in accordance with Section 3.3.

SECTION 3.8 *Equality*. All Units shall represent an equal proportionate beneficial interest in the assets of the Trust subject to the liabilities of the Trust, and each Unit shall be equal to each other Unit. The Sponsor may from time to time divide or combine the Units into a greater or lesser number of Units without thereby changing the proportionate beneficial interest in the assets of the Trust or in any way affecting the rights of Unitholders.

## ARTICLE IV

### THE SPONSOR

SECTION 4.1 *Management of the Trust*. Pursuant to Section 3806(b)(7) of the Delaware Trust Statute, the Trust shall be managed by the Sponsor in accordance with this Trust Agreement. The Sponsor may delegate as provided herein, the duty and authority to manage the affairs of the Trust. Any determination as to what is in the interests of the Trust made by the Sponsor in good faith shall be conclusive. In constructing the provisions of this Trust Agreement, the presumption shall be in favor of a grant of power to the Sponsor. The enumeration of any specific power in this Trust Agreement shall not be construed as limiting the aforesaid power.

SECTION 4.2 *Authority of Sponsor*. In addition to and not in limitation of any rights and powers conferred by law or other provisions of this Trust Agreement, and except as limited, restricted or prohibited by the express provisions of this Trust Agreement or the Delaware Trust Statute, the Sponsor shall have and may exercise on behalf of the Trust, all powers and rights necessary, proper, convenient or advisable to effectuate and carry out the purposes and objectives of the Trust, which shall include, without limitation, the following:

(a) To enter into, execute, deliver and maintain, and to cause the Trust to perform its obligations under, contracts, agreements (including but not limited to Subscription Agreements substantially in the form of Exhibit B hereto) and any or all other documents and instruments, and to do and perform all such things as may be in furtherance of Trust purposes or necessary or appropriate for the offer and sale of the Units, including, but not limited to, contracts with third parties various services, provided, however, that such services may be performed by an Affiliate or Affiliates of the Sponsor so long as the Sponsor has made a good faith determination that: (A) the Affiliate which it proposes to engage to perform such services is qualified to do so (considering the prior experience of the Affiliate or the individuals employed thereby); (B) the terms and conditions of the agreement pursuant to which such Affiliate is to perform services for the Trust are no less favorable to the Trust than could be obtained from equally-qualified unaffiliated third parties; and (C) the maximum period covered by the agreement pursuant to which such Affiliate is to perform services for the Trust shall not exceed one year, and such agreement shall be terminable without penalty upon one hundred twenty (120) days' prior written notice by the Trust;

(b) To establish, maintain, deposit into, sign checks and/or otherwise draw upon accounts on behalf of the Trust with appropriate banking and savings institutions, and execute and/or accept any instrument or agreement incidental to the Trust's purposes, any such instrument or agreement so executed or accepted by the Sponsor in the Sponsor's name shall be deemed executed and accepted on behalf of the Trust by the Sponsor;

(c) To deposit, withdraw, pay, retain and distribute the Trust Estate or any portion thereof in any manner consistent with the provisions of this Trust Agreement;

(d) To supervise the preparation of the Memorandum and supplements and amendments thereto;

(e) To pay or authorize the payment of distributions to the Unitholders and expenses of the Trust;

(f) To act as Transfer Agent and perform functions customarily preferred by a transfer agent;

(g) To prepare, or cause to be prepared, and file, or cause to be filed, an application to enable the Units to be traded on the OTCQX or any other financial market deemed by the Sponsor to be in the interest of Unitholders and to take any other action and execute and deliver any certificate or documents that may be necessary to effectuate such trading; and

(h) In the sole and absolute discretion of the Sponsor, to admit an additional Sponsor. Notwithstanding the foregoing, the Sponsor may not admit Affiliate(s) of the Sponsor as an additional Sponsor if it has received notice of its removal as a Sponsor, pursuant to Section 7.2(d).

**SECTION 4.3 *Obligations of the Sponsor.*** In addition to the obligations expressly provided by the Delaware Trust Statute or this Trust Agreement, the Sponsor shall:

(a) Devote such of its time to the business and affairs of the Trust as it shall, in its discretion exercised in good faith, determine to be necessary to carry out the purposes of the Trust for the benefit of the Trust and the Unitholders;

(b) Execute, file, record and/or publish all certificates, statements and other documents and do any and all other things as may be appropriate for the formation, qualification and operation of the Trust and for the conduct of its business in all appropriate jurisdictions;

(c) Retain independent public accountants to audit the accounts of the Trust;

(d) Employ attorneys to represent the Sponsor and as necessary, the Trust;

(e) Select and enter into agreements with the Trust's Trustee and any other service provider;

(f) Use its best efforts to maintain the status of the Trust as a grantor trust for U.S. federal income tax purposes under Subpart E, Part I of Subchapter J of the Code;

(g) Monitor all fees charged to the Trust, and the services rendered by the service providers to the Trust, to determine whether the fees paid by, and the services rendered to, the Trust are at competitive rates and are the best price and services available under the circumstances, and if necessary, renegotiate the fee structure to obtain such rates and services for the Trust;

(h) Have fiduciary responsibility for the safekeeping and use of the Trust Estate, whether or not in the Sponsor's immediate possession or control, and the Sponsor will not employ or permit others to employ the Trust Estate in any manner except for the benefit of the Trust, including, among other things, the utilization of any portion of the Trust Estate as compensating balances for the exclusive benefit of the Sponsor. The Sponsor shall at all times act with integrity and good faith and exercise due diligence in all activities relating to the Trust and in resolving conflicts of interest;

(i) Receive directly or through its delegates from Purchaser and process properly submitted Purchase Orders, as described in Section 3.2(a);

(j) Invest (except purchasing Bitcoins pursuant to a Purchase Order) or reinvest any cash held by the Trust (including reserves) in anything other than Permitted Investments.

(k) In connection with Purchase Orders, receive directly or through its delegates the number of Bitcoins in an amount equal to the Bitcoin Purchase Amount from Purchasers;

(l) In connection with Purchase Orders, after receiving the Bitcoin Purchase Amount and accepting a Purchaser's Purchase Order, the Sponsor or its delegate will direct the Transfer Agent to credit the Units to fill the Purchaser's Purchase Order within one Business Day immediately following the Purchase Order Date;

(m) Receive directly or through its delegates from Purchasers and process properly submitted Redemption Orders, as described in Section 6.1(a);

(n) In connection with Redemption Orders, after receiving the Redemption Order specifying the number of Units that the Unitholder wishes to redeem and confirming the Unitholder's Self-Administered Account information, the Sponsor or its delegates instructs the Custodian to send the Unitholder a number of Bitcoins equal to the Bitcoin Redemption Amount and directs the Transfer Agent to debit the number of Units redeemed from the Unitholder's account on the next business day after the redemption order date;

(o) Interact with the Custodian and any other party as required;

(p) The Sponsor, on behalf of the Trust, shall cause the Trust to comply with all rules, orders and regulations of the OTCQX to which the Trust is subject as a result of the approval of the OTCQX Application and the Sponsor will take all such other actions which may reasonably be taken which are necessary for the Units to remain traded on the OTCQX until the Trust is either terminated or if the Units are no longer traded on the OTCQX. In addition, the Sponsor is authorized and shall take, all actions to prepare and, to the extent required by this Agreement or by law, mail to Unitholders any reports, press releases or statements, financial or otherwise, that the Sponsor determines are required to be provided to Unitholders by applicable law or governmental regulation or the requirements of OTCQX, as applicable;

(q) Delegate those of its duties hereunder as it shall determine from time to time to one or more Distributors, add any additional service providers, if needed and as applicable;

(r) Perform such other services as the Sponsor believes that the Trust may from time to time require; and

(s) In general, to do everything necessary, suitable or proper for the accomplishment of any purpose or the attainment of any object or the furtherance of any power herein set forth, either alone or in association with others, and to do every other act or thing incidental or appurtenant to or growing out of or connected with the aforesaid purposes, objects or powers.

The foregoing clauses shall be construed both as objects and powers, and the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the general powers of the Sponsor. Any action by the Sponsor hereunder shall be deemed an action on behalf of the Trust, and not an action in an individual capacity.

**SECTION 4.4 *General Prohibitions.*** The Trust shall not:

(a) Receive any property other than Bitcoin or U.S. Dollars upon the issuance or sale of Units;

(b) Hold any property other than cash, Permitted Investments, Bitcoins (including any forked version thereof) or airdropped cryptocurrency coins;

(c) Redeem the Units other than to fund a redemption request from a Unitholder, as provided in Section 4.10 or Section 5.2 or upon the dissolution of the Trust;

(d) Borrow money from or loan money to any Unitholder (including the Sponsor) or other Person;

(e) Except as expressly contemplated by this Agreement, create, incur, assume or suffer to exist any lien, mortgage, pledge conditional sales or other title retention agreement, charge, security interest or encumbrance, except for liens for taxes not delinquent or being contested in good faith and by appropriate proceedings and for which appropriate reserves have been established;

(f) Commingle its assets with those of any other Person, except to the extent as permitted under applicable law and the regulation;

(g) Permit rebates to be received by the Sponsor or any Affiliate of the Sponsor, or permit the Sponsor or any Affiliate of the Sponsor to engage in any reciprocal business arrangements which would circumvent the foregoing prohibition;

(h) Enter into any contract with the Sponsor or an Affiliate of the Sponsor (except for selling agreements for the sale of Units) which has a term of more than one year and which does not provide that it may be canceled by the Trust without penalty on one hundred twenty (120) days prior written notice or for the provision of services, except at rates and terms at least as favorable as those which may be obtained from third parties in arm's length negotiations;

(i) Cause the Trust to elect to be treated as an association taxable as a corporation for U.S. federal income tax purposes.

**SECTION 4.5 *Liability of Covered Persons.*** A Covered Person shall have no liability to the Trust or to any Unitholder or other Covered Person for any loss suffered by the Trust which arises out of any action or inaction of such Covered Person if such Covered Person, in good faith, determined that such course of conduct was in the best interest of the Trust and such course of conduct did not constitute fraud, gross negligence, bad faith or willful misconduct of such Covered Person. Subject to the foregoing, neither the Sponsor nor any other Covered Person shall be personally liable for the return or repayment of all or any portion of the capital or profits of any Unitholder or assignee thereof, it being expressly agreed that any such return of capital or profits made pursuant to this Trust Agreement shall be made solely from the assets of the Trust without any rights of contribution from the Sponsor or any other Covered Person. A Covered Person shall not be liable for the conduct or misconduct of any delegatee selected by the Sponsor with reasonable care.

**SECTION 4.6 *Fiduciary Duty.***

(a) To the extent that, at law or in equity, the Sponsor has duties (including fiduciary duties) and liabilities relating thereto to the Trust, the Unitholders or to any other Person, the Sponsor acting under this Trust Agreement shall not be liable to the Trust, the Unitholders or to any other Person for its good faith reliance on the provisions of this Trust Agreement subject to the standard of care in Section 4.6 herein. The provisions of this Trust Agreement, to the extent that they restrict or eliminate the duties and liabilities of the Sponsor otherwise existing at law or in equity are agreed by the parties hereto to replace such other duties and liabilities of the Sponsor. To the fullest extent permitted by law, no person other than the Sponsor and the Trustee shall have any duties (including fiduciary duties) or liabilities at law or in equity to the Trust and the Unitholder or any other person.

(b) Unless otherwise expressly provided herein:

(i) whenever a conflict of interest exists or arises between the Sponsor or any of its Affiliates, on the one hand, and the Trust or any Unitholder or any other Person, on the other hand; or

(ii) whenever this Trust Agreement or any other agreement contemplated herein or therein provides that the Sponsor shall act in a manner that is, or provides terms that are, fair and reasonable to the Trust, any Unitholder or any other Person, the Sponsor shall resolve such conflict of interest, take such action or provide such terms, considering in each case the relative interest of each party (including its own interest) to such conflict, agreement, transaction or situation and the benefits and burdens relating to such interests, any customary or accepted industry practices, and any applicable generally accepted accounting practices or principles. In the absence of bad faith by the Sponsor, the resolution, action or terms so made, taken or provided by the Sponsor shall not constitute a breach of this Trust Agreement or any other agreement contemplated herein or of any duty or obligation of the Sponsor at law or in equity or otherwise.

(c) The Sponsor and any Affiliate of the Sponsor may engage in or possess an interest in other profit-seeking or business ventures of any nature or description, independently or



with others, whether or not such ventures are competitive with the Trust and the doctrine of corporate opportunity, or any analogous doctrine, shall not apply to the Sponsor. If the Sponsor acquires knowledge of a potential transaction, agreement, arrangement or other matter that may be an opportunity for the Trust, it shall have no duty to communicate or offer such opportunity to the Trust, and the Sponsor shall not be liable to the Trust or to the Unitholders for breach of any fiduciary or other duty by reason of the fact that the Sponsor pursues or acquires for, or directs such opportunity to another Person or does not communicate such opportunity or information to the Trust. Neither the Trust nor any Unitholder shall have any rights or obligations by virtue of this Trust Agreement or the trust relationship created hereby in or to such independent ventures or the income or profits or losses derived therefrom, and the pursuit of such ventures, even if competitive with the purposes of the Trust, shall not be deemed wrongful or improper. Except to the extent expressly provided herein, the Sponsor may engage or be interested in any financial or other transaction with the Trust, the Unitholders or any Affiliate of the Trust or the Unitholders.

(d) To the fullest extent permitted by law and notwithstanding any other provision of this Agreement or in any agreement contemplated herein or applicable provisions of law or equity or otherwise, whenever in this Trust Agreement a Person is permitted or required to make a decision (a) in its “sole discretion” or “discretion” or under a grant of similar authority or latitude, the Person shall be entitled to consider only such interests and factors as it desires, including its own interests, and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Trust, the Unitholders or any other Person, or (b) in its “good faith” or under another express standard, the Person shall act under such express standard and shall not be subject to any other or different standard. The term “good faith” as used in this Trust Agreement shall mean subjective good faith as such term is understood and interpreted under Delaware law.

#### SECTION 4.7 *Indemnification of the Sponsor.*

(a) The Sponsor shall be indemnified by the Trust against any losses, judgments, liabilities, expenses and amounts paid in settlement of any claims sustained by it in connection with its activities for the Trust, provided that (i) the Sponsor was acting on behalf of or performing services for the Trust and such liability or loss was not the result of fraud, gross negligence, bad faith, willful misconduct, or a material breach of this Trust Agreement on the part of the Sponsor and (ii) any such indemnification will only be recoverable from the Trust Estate. All rights to indemnification permitted herein and payment of associated expenses shall not be affected by the dissolution or other cessation to exist of the Sponsor, or the withdrawal, adjudication of bankruptcy or insolvency of the Sponsor, or the filing of a voluntary or involuntary petition in bankruptcy under Title 11 of the Code by or against the Sponsor.

(b) Notwithstanding the provisions of Section 4.7(a) above, the Sponsor and any Person acting as broker-dealer for the Trust shall not be indemnified for any losses, liabilities or expenses arising from or out of an alleged violation of U.S. federal or state securities laws unless (i) there has been a successful adjudication on the merits of each count involving alleged securities law violations as to the particular indemnitee and the court approves the indemnification of such expenses (including, without limitation, litigation costs), (ii) such claims have been dismissed with prejudice on the merits by a court of competent jurisdiction as to the particular indemnitee and the court approves the indemnification of such expenses (including, without limitation, litigation

costs) or (iii) a court of competent jurisdiction approves a settlement of the claims against a particular indemnitee and finds that indemnification of the settlement and related costs should be made.

(c) The Trust shall not incur the cost of that portion of any insurance which insures any party against any liability, the indemnification of which is herein prohibited.

(d) Expenses incurred in defending a threatened or pending civil, administrative or criminal action suit or proceeding against the Sponsor shall be paid by the Trust in advance of the final disposition of such action, suit or proceeding, if (i) the legal action relates to the performance of duties or services by the Sponsor on behalf of the Trust; (ii) the legal action is initiated by a third party who is not a Unitholder or the legal action is initiated by a Unitholder and a court of competent jurisdiction specifically approves such advance; and (iii) the Sponsor undertakes to repay the advanced funds with interest to the Trust in cases in which it is not entitled to indemnification under this Section 4.7.

(e) The term “Sponsor” as used only in this Section 4.7 shall include, in addition to the Sponsor, any other Covered Person performing services on behalf of the Trust and acting within the scope of the Sponsor's authority as set forth in this Trust Agreement.

(f) In the event the Trust is made a party to any claim, dispute, demand or litigation or otherwise incurs any loss, liability, damage, cost or expense as a result of or in connection with any Unitholder's (or assignee's) obligations or liabilities unrelated to Trust business, such Unitholder (or assignees cumulatively) shall indemnify, defend, hold harmless, and reimburse the Trust for all such loss, liability, damage, cost and expense incurred, including attorneys' and accountants' fees.

#### SECTION 4.8 *Expenses and Limitations Thereon.*

(a) Management Fee.

(i) The Trust shall pay a Management Fee (**“Management Fee”**) which accrues daily at an annual rate of 0.49% of the NAV of the Trust and is payable to the Sponsor monthly in arrears.

(ii) Although the Management Fee is calculated in USD, the Management Fee shall be paid in the equivalent number of Bitcoins monthly in arrears. The exchange rate that shall be used to convert the Management Fee from USD to the appropriate number of Bitcoins shall be calculated based upon the Bitcoin Market Price at 4:00 p.m., Eastern time in the case of daily accruals and as of the last day of each month for withdrawal and payment in arrears (**“Management Fee Exchange Rate”**). The Management Fee Exchange Rate does not include fees and expenses for converting USD into Bitcoins.

(iii) After converting the Management Fee from USD into the required number of Bitcoins based upon the Actual Exchange Rate, the Sponsor, its delegates, or the Custodian shall withdraw the corresponding number of Bitcoins from the Trust Storage Account.

(iv) In order to pay the Management Fee in USD, the Sponsor may be required to convert the Management Fee, as reflected by the appropriate number of Bitcoins, into USD. The Sponsor shall use its best efforts within a reasonable time frame in order to seek the Actual Exchange Rate. It is expected that the Management Fee Exchange Rate and the Actual Exchange Rate may differ.

(v) At the Sponsor's election, the Sponsor may elect to (i) direct its delegates or the Custodian to withdraw the Bitcoin amount comprising the Management Fee, (ii) convert the Management Fee to USD and (iii) pay such dollar amount to the Sponsor, who will then pay itself as well as the relevant Assumed Expenses (as defined below). Alternatively, the Sponsor may elect to (i) direct its delegates or the Custodian to withdraw the Bitcoin amount comprising the Management Fee, (ii) convert the Management Fee to USD and (iii) pay certain Assumed Expenses from the Management Fee and the remaining amount, if any, to the Sponsor.

(vi) As consideration for receipt of the Management Fee, the Sponsor shall assume and pay all routine and ordinary administrative and operating expenses of the Trust (the “**Assumed Expenses**”) other than audit fees, index license fees, aggregate legal fees in excess of \$50,000 and the fees of the Custodian (the “**Excluded Expenses**”) and Extraordinary Expenses (as defined below).

(b) Extraordinary Expenses. In certain extraordinary circumstances, the Trust may pay expenses in addition to the Management Fee and the Excluded Expenses, such as, but not limited to, taxes and governmental charges, expenses and costs, expenses and indemnities related to any extraordinary services performed by the Sponsor (or any other Service Provider, including the Trustee) on behalf of the Trust to protect the Trust or the interests of Unitholders, indemnification expenses, fees and expenses related to public trading on OTCQX (collectively, “**Extraordinary Expenses**”).

(c) The Sponsor, its delegates or the Custodian shall withdraw Bitcoins as needed from the Trust Storage Account to pay the Management Fees (as well as the Excluded Expenses and Extraordinary Expenses, if any).

The Sponsor or any Affiliate of the Sponsor may only be reimbursed for the actual cost to the Sponsor or such Affiliate of any expenses which it advances on behalf of the Trust for which payment the Trust is responsible. In addition, payment to the Sponsor or such Affiliate for indirect expenses incurred in performing services for the Trust in its capacity as the Sponsor of the Trust, such as salaries and fringe benefits of officers and directors, rent or depreciation, utilities and other administrative items generally falling within the category of the Sponsor's “overhead,” is prohibited.

**SECTION 4.9 *Business of Unitholders.*** Except as otherwise specifically provided herein, any of the Unitholders and any shareholder, officer, director, employee or other person holding a legal or beneficial interest in an entity which is a Unitholder, may engage in or possess an interest in business ventures of every nature and description, independently or with others, and the pursuit of such ventures, even if competitive with the business of the Trust, shall not be deemed wrongful or improper.

SECTION 4.10 *Voluntary Withdrawal of the Sponsor.* The Sponsor may withdraw voluntarily as the Sponsor of the Trust only upon one hundred and twenty (120) days' prior written notice to all Unitholders and the Trustee. If the withdrawing Sponsor is the last remaining Sponsor, the Trust shall liquidate in accordance with Section 12.1(a)(vi) hereof. In the event of its removal or withdrawal, the Sponsor shall be entitled to a redemption of its Units at the Net Asset Value. If the Sponsor withdraws and a successor Sponsor is named, the withdrawing Sponsor shall pay all expenses as a result of its withdrawal.

SECTION 4.11 *Authorization of Memorandum.* Each Unitholder (or any permitted assignee thereof) hereby agrees that the Trust, the Sponsor and the Trustee are authorized to execute, deliver and perform the agreements, acts, transactions and matters contemplated hereby or described in or contemplated by the Memorandum on behalf of the Trust without any further act, approval or vote of the Unitholders, notwithstanding any other provision of this Trust Agreement, the Delaware Trust Statute or any applicable law, rule or regulation.

SECTION 4.12 *Litigation.* The Sponsor is hereby authorized to prosecute, defend, settle or compromise actions or claims at law or in equity as may be necessary or proper to enforce or protect the Trust's interests. The Sponsor shall satisfy any judgment, decree or decision of any court, board or authority having jurisdiction or any settlement of any suit or claim prior to judgment or final decision thereon, first, out of any insurance proceeds available therefor, next, out of the Trust's assets and, thereafter, out of the assets (to the extent that it is permitted to do so under the various other provisions of this Agreement) of the Sponsor.

## **ARTICLE V**

### **TRANSFER OF UNITS**

SECTION 5.1 *General Prohibition.* A Unitholder may not sell, assign, transfer or otherwise dispose of, or pledge, hypothecate or in any manner encumber any or all of his Units or any part of his right, title and interest in the capital or profits in the Trust except as permitted in this *Article* and any act in violation of this Article shall not be binding upon or recognized by the Trust (regardless of whether the Sponsor shall have knowledge thereof), unless approved in writing by the Sponsor.

#### *SECTION 5.2 Transfer of Sponsor's Units.*

(a) Upon an Event of Withdrawal (as defined in Section 12.1(0)), the Sponsor's Units shall be purchased by the Trust for a purchase price in cash equal to the Net Asset Value thereof. The Sponsor will not cease to be a Sponsor of the Trust merely upon the occurrence of its making an assignment for the benefit of creditors, filing a voluntary petition in bankruptcy, filing a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, filing an answer or other pleading admitting or failing to contest material allegations of a petition filed against it in any proceeding of this nature or seeking, consenting to or acquiescing in the appointment of a trustee, receiver or liquidator for itself or of all or any substantial part of its properties.

(b) To the full extent permitted by law, and on sixty (60) days' prior written notice to the Unitholders, nothing in this Trust Agreement shall be deemed to prevent the merger of the Sponsor with another corporation or other entity, the reorganization of the Sponsor into or with any other corporation or other entity, the transfer of all the capital stock of the Sponsor or the assumption of the rights, duties and liabilities of the Sponsor by, in the case of a merger, reorganization or consolidation, the surviving corporation or other entity by operation of law or the transfer of the Sponsor's Units to an Affiliate of the Sponsor. Without limiting the foregoing, none of the transactions referenced in the preceding sentence shall be deemed to be a voluntary withdrawal for purposes of Section 4.10 or an Event of Withdrawal for purposes of Section 5.2(a).

**SECTION 5.3 *Transfer of Units.*** (a) Except for Units originally offered and sold in a transaction pursuant to Rule 504 under the Securities Act and freely transferable under applicable law or regulation, the Units are 'restricted securities' that cannot be resold, pledged, or otherwise transferred without registration under the Securities Act and state securities laws or exemption therefrom and may not be resold, pledged or otherwise transferred without the prior written consent of the Sponsor, which it may withhold in its sole discretion for any reason or for no reason. The Sponsor may provide such written consent in the Memorandum.

(b) Units shall be transferable on the books of account for the Trust only by the record holder thereof or by his or her duly authorized agent upon delivery to the Sponsor or the Transfer Agent or similar agent of a duly authorized instrument of transfer, and such evidence of the genuineness of each such execution of such other matters as may be required by the Sponsor. Upon such delivery, and subject to any further requirements specified by the Sponsor, the transfer shall be recorded on the books of account for the Trust. Until a transfer is so recorded, the Unitholder of record of the Units shall be deemed to be the Unitholder with respect to such Units for all purposes hereunder and neither the Sponsor nor the Trust, the Transfer Agent nor any similar agent or registrar or any officer, employee or agent of the Trust shall be affected by any notice of a proposed transfer.

## **ARTICLE VI**

### **REDEMPTIONS**

**SECTION 6.1 *Redemption of Units.*** The Trust may redeem Units upon receiving regulatory approval from the SEC or otherwise as determined by the Sponsor in its sole discretion. Prior to the Trust accepting such redemptions, the Sponsor shall amend this Trust Agreement to include Unit redemption procedures consistent with any such regulatory approval, pursuant to Section 10.1 hereof. Notwithstanding any provision herein to the contrary, a Unit may be redeemed no earlier than twelve (12) months after its date of issuance by the Trust.

## **ARTICLE VII**

### **UNITHOLDERS**

**SECTION 7.1 *No Management or Control; Limited Liability; Exercise of Rights through a Participant.*** The Unitholders shall not participate in the management or control of the Trust nor shall they enter into any transaction on behalf of the Trust or have the power to sign for or bind

the Trust, said power being vested solely and exclusively in the Sponsor. Except as provided in Section 7.3 hereof, no Unitholder shall be bound by, or be personally liable for, the expenses, liabilities or obligations of the Trust in excess of his share of the Trust Estate. Except as provided in Section 7.3 hereof, each Unit owned by a Unitholder shall be fully paid and no assessment shall be made against any Unitholder. No salary shall be paid to any Unitholder in his capacity as a Unitholder, nor shall any Unitholder have a drawing account or earn interest on its share of the Trust Estate. By the purchase and acceptance or other lawful delivery and acceptance of Units, each owner shall be deemed to be a Unitholder and beneficiary of the Trust and vested with beneficial undivided interest in the Trust to the extent of the Units owned beneficially by such Unitholder, subject to the terms and conditions of this Trust Agreement.

**SECTION 7.2 *Rights and Duties.*** The Unitholders shall have the following rights, powers, privileges, duties and liabilities:

(a) The Unitholders shall have the right to obtain from the Sponsor information on all things affecting the Trust, provided that such is for a purpose reasonably related to the Unitholder's interest as a beneficial owner of the Trust.

(b) The Unitholders shall receive the share of the distributions provided for in this Trust Agreement in the manner and at the times provided for in this Trust Agreement.

(c) Except for the Unitholders' redemption rights set forth in Article VI hereof, Unitholders shall have the right to demand the return of their capital only upon the dissolution and winding up of the Trust and only to the extent of funds available therefor as provided in Section 12.2. In no event shall a Unitholder be entitled to demand or receive property other than cash upon the dissolution and winding up of the Trust. No Unitholder shall have priority over any other Unitholder as to distributions. The Unitholder shall not have any right to bring an action for partition against the Trust.

(d) Except as expressly set forth in this Trust Agreement, the Unitholders shall have no voting or other rights with respect to the Trust.

**SECTION 7.3 *Limitation of Liability.***

(a) Except as provided in Section 4.7(f) hereof, and as otherwise provided under Delaware law, the Unitholders shall be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the general corporation law of Delaware and no Unitholder shall be liable for claims against, or debts of the Trust in excess of his share of the Trust Estate, except in the event that the liability is founded upon misstatements or omissions contained in such Unitholder's Participant Agreement delivered in connection with his purchase of Units. In addition, and subject to the exceptions set forth in the immediately preceding sentence, the Trust shall not make a claim against a Unitholder with respect to amounts distributed to such Unitholder or amounts received by such Unitholder upon redemption unless, under Delaware law, such Unitholder is liable to repay such amount.

(b) The Trust shall indemnify to the full extent permitted by law and the other provisions of this Agreement, and to the extent of the applicable Trust Estate, each Unitholder against

any claims of liability asserted against such Unitholder solely because he is a beneficial owner of one or more Units as a Unitholder.

(c) Every written note, bond, contract, instrument, certificate or undertaking made or issued by the Sponsor shall give notice to the effect that the same was executed or made by or on behalf of the Trust and that the obligations of such instrument are not binding upon the Unitholders individually but are binding only upon the assets and property of the Trust, and no resort shall be had to the Unitholders' personal property for satisfaction of any obligation or claim thereunder, and appropriate references may be made to this Trust Agreement and may contain any further recital which the Sponsor deems appropriate, but the omission thereof shall not operate to bind the Unitholders individually or otherwise invalidate any such note, bond, contract, instrument, certificate or undertaking. Nothing contained in this Section 7.3 shall diminish the limitation on the liability of the Trust to the extent set forth in Section 3.4 and 3.5 hereof.

#### SECTION 7.4 *Derivative Actions.*

In addition to any other requirements of applicable law including Section 3816 of the Delaware Trust Statute, no Unitholder shall have the right, power or authority to bring or maintain a derivative action, suit or other proceeding on behalf of the Trust unless two or more Unitholders who (i) are not affiliates of one another and (ii) collectively hold at least 10% of the outstanding Units join in the bringing or maintaining of such action, suit or other proceeding.

### ARTICLE VIII

#### BOOKS OF ACCOUNT AND REPORTS

SECTION 8.1 *Books of Account.* Proper books of account for the Trust shall be kept and shall be audited annually by an independent certified public accounting firm selected by the Sponsor in its sole discretion, and there shall be entered therein all transactions, matters and things relating to the Trust as are required by the applicable law and regulations and as are usually entered into books of account kept by trusts. The books of account shall be kept at the principal office of the Trust and each Unitholder (or any duly constituted designee of a Unitholder) shall have, at all times during normal business hours, free access to and the right to inspect and copy the same for any purpose reasonably related to the Unitholder's interest as a beneficial owner of the Trust. Such books of account shall be kept, and the Trust shall report its profits and losses on, the accrual method of accounting for financial accounting purposes on a Fiscal Year basis as described in Article X.

#### SECTION 8.2 *Quarterly Updates, Annual Updates and Account Statements.*

(a) The Sponsor will prepare and publish the Trust's Quarterly Updates and Annual Updates as required by the OTCQX's Alternative Reporting Standards and any other applicable rules and regulations of the OTCQX, in each case as and when applicable.

(b) The Unitholders will have access to the Trust's website, which shall allow Unitholders to view their unaudited account statements, as available.

SECTION 8.3 *Tax Information.* Appropriate tax information (adequate to enable each Unitholder to complete and file its U.S. federal tax return) shall be delivered to each Unitholder as soon as practicable following the end of each Fiscal Year but generally no later than March 15. All such tax returns and information will be filed in a manner consistent with the treatment of the Trust as a grantor trust. The Trust's taxable year shall be the calendar year. The Trust shall comply with all United States federal withholding requirements respecting distributions to, or receipts of amounts on behalf of, Unitholders that the Sponsor reasonably believes are applicable under the Code. The consent of Unitholders shall not be required for such withholding.

SECTION 8.4 *Calculation of Net Asset Value.* Net Asset Value shall be calculated at such times as the Sponsor shall determine from time to time.

SECTION 8.5 *Maintenance of Records.* The Sponsor shall maintain: (a) for a period of at least six Fiscal Years all books of account required by Section 8.1 hereof; a list of the names and last known address of, and number of Units owned by, all Unitholders, a copy of the Certificate of Trust and all certificates of amendment thereto, together with executed copies of any powers of attorney pursuant to which any certificate has been executed; copies of the Trust's U.S. federal, state and local income tax returns and reports, if any; and (b) for a period of at least six Fiscal Years copies of any effective written Trust Agreements, Participant Agreements, including any amendments thereto, and any financial statements of the Trust. The Sponsor may keep and maintain the books and records of the Trust in paper, magnetic, electronic or other format at the Sponsor may determine in its sole discretion, provided the Sponsor uses reasonable care to prevent the loss or destruction of such records. If there is a conflict between this Section 8.5 and the rules and regulations of the OTCQX with respect to the maintenance of records, the records will be maintained pursuant to the rules and regulations of the OTCQX.

## **ARTICLE IX**

### **FISCAL YEAR**

SECTION 9.1 *Fiscal Year.* The Fiscal Year shall begin on the 1<sup>st</sup> day of January and end on the 31<sup>st</sup> day of December of each year. The first Fiscal Year of the Trust commenced on January 3, 2019 and shall end on December 31, 2019. The Fiscal Year in which the Trust shall terminate shall end on the date of such termination.

## **ARTICLE X**

### **AMENDMENT OF TRUST AGREEMENT; MEETINGS**

SECTION 10.1 *Amendments to the Trust Agreement.*

(a) The Sponsor may, without the approval of the Unitholders, make such amendments to this Trust Agreement which (i) are necessary to add to the representations, duties or obligations of the Sponsor or surrender any right or power granted to the Sponsor herein, for the benefit of the Unitholders, (ii) are necessary to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein or in the Memorandum, or to make any other provisions with respect to matters or questions arising under this Trust



Agreement or the Memorandum which will not be inconsistent with the provisions of the Trust Agreement or the Memorandum, or (iii) the Sponsor deems advisable, provided, however, that no amendment shall be adopted pursuant to this clause 10.1(a) unless the adoption thereof (A) is not adverse to the interests of the Unitholders; (B) is consistent with Section 1.5 and Section 4.1 hereof; and (C) does not adversely affect the limitations on liability of the Unitholders, as described in Article VII hereof or the status of the Trust as a grantor trust for U.S. federal income tax purposes. Amendments to this document which adversely affect (i) the rights of Unitholders, (ii) the appointment of a new Sponsor pursuant to Section 4.2(h) above, (iii) the dissolution of the Trust pursuant to Section 12.1(a) below and (iv) any material changes in the Trust's purpose or structure shall occur only upon the written approval or affirmative vote of Unitholders holding Units equal to at least a majority (over 50%) of the Units.

Notwithstanding any provision to the contrary contained in Sections 10.1(a) hereof, the Sponsor may, without the approval of the Unitholders, amend the provisions of this Trust Agreement if the Trust is advised at any time by the Trust's accountants or legal counsel that the amendments made are necessary to ensure that the Trust's status as a grantor trust will be respected for U.S. federal income tax purposes.

(b) Upon amendment of this Trust Agreement, the Certificate of Trust shall also be amended, if required by the Delaware Trust Statute, to reflect such change. At the expense of the Sponsor, the Trustee shall execute and file any amendment to the Certificate of Trust if so directed by the Sponsor.

(c) No amendment affecting the rights or duties of the Trustee shall be binding upon or effective against the Trustee unless consented to by the Trustee in writing. No amendment shall be made to this Trust Agreement without the consent of the Trustee if the Trustee reasonably believes that such amendment adversely affects any of the rights, duties or liabilities of the Trustee. The Trustee shall be under no obligation to execute any amendment to the Trust Agreement or to any agreement to which the Trust is a party until it has received an instruction letter and certification from the Sponsor, in form and substance reasonably satisfactory to the Trustee (i) directing the Trustee to execute such amendment, (ii) representing and warranting to the Trustee that such execution is authorized and permitted by the terms of the Trust Agreement and (if applicable) such other agreement to which the Trust is a party and does not conflict with or violate any other agreement to which the Trust is a party and (iii) confirming that such execution and acts related thereto are covered by the indemnity provisions of the Trust Agreement in favor of the Trustee and do not adversely affect the Trustee. The Trustee may, but is not required to enter into any amendment that has an adverse effect on the Trustee.

(d) To the fullest extent permitted by law, no provision of this Trust Agreement may be amended, waived or otherwise modified orally but only by a written instrument adopted in accordance with this Section.

**SECTION 10.2** *Meetings of the Trust.* Meetings of the Unitholders may be called by the Sponsor and will be called by it upon the written request of Unitholders holding Units equal to at least 30% of the Units. Such call for a meeting shall be deemed to have been made upon the receipt by the Sponsor of a written request from Unitholders representing the requisite percentage of Units. The Sponsor shall deposit in the United States mails, within 15 days after receipt of said

request, written notice to all Unitholders thereof of the meeting and the purpose of the meeting, which shall be held on a date, not less than 30 nor more than 60 days after the date of mailing of said notice, at a reasonable time and place. Any notice of meeting shall be accompanied by a description of the action to be taken at the meeting and an opinion of independent counsel as to the effect of such proposed action on the liability of Unitholders for the debts of the Trust. Unitholders may vote in person or by proxy at any such meeting.

**SECTION 10.3**      *Action Without a Meeting.* Any action required or permitted to be taken by Unitholders by vote may be taken without a meeting by written consent setting forth the actions so taken. Such written consents shall be treated for all purposes as votes at a meeting. If the vote or consent of any Unitholder to any action of the Trust or any Unitholder, as contemplated by this Trust Agreement, is solicited by the Sponsor, the solicitation shall be effected by notice to each Unitholder given in the manner provided in Section 13.5. The vote or consent of each Unitholder so solicited shall be deemed conclusively to have been cast or granted as requested in the notice of solicitation, whether or not the notice of solicitation is actually received by that Unitholder, unless the Unitholder expresses written objection to the vote or consent by notice given in the manner provided in Section 13.5 below and actually received by the Trust within 20 days after the notice of solicitation is affected. The Covered Persons dealing with the Trust shall be entitled to act in reliance on any vote or consent which is deemed cast or granted pursuant to this Section and shall be fully indemnified by the Trust in so doing. Any action taken or omitted in reliance on any such deemed vote or consent of one or more Unitholders shall not be void or voidable by reason of timely communication made by or on behalf of all or any of such Unitholders in any manner other than as expressly provided in Section 13.5.

## **ARTICLE XI**

### **TERM**

**SECTION 11.1** *Term.* The term for which the Trust is to exist shall be perpetual, unless terminated pursuant to the provisions of Article XII hereof or as otherwise provided by law.

## **ARTICLE XII**

### **TERMINATION**

**SECTION 12.1** *Dissolution of the Trust.*

(a)      *Events Requiring Dissolution of the Trust.* The Trust shall dissolve at any time upon the happening of any of the following events

(i)      a United States federal or state regulator requires the Trust to shut down or forces the Trust to liquidate its Bitcoins or seizes, impounds or otherwise restricts access to Trust assets;

(ii)     the Trust is determined to be a “money service business” under the regulations promulgated by FinCEN under the authority of the US Bank Secrecy Act and is

required to comply with certain FinCEN regulations thereunder, and the Sponsor has made the determination that dissolution of the Trust is advisable;

(iii) the Trust is required to obtain a license or make a registration under any state law regulating money transmitters, money services business, providers of prepaid or stored value or similar entities, virtual currency business, and the Sponsor has made the determination that dissolution of the Trust is advisable;

(iv) any ongoing event exists that either prevents the Trust from making or makes impractical the Trust's reasonable efforts to make a fair determination of the Bitcoin Market Price;

(v) any ongoing event exists that either prevents the Trust from converting or makes impractical the Trust's reasonable efforts to convert Bitcoins to USD;

(vi) the filing of a certificate of dissolution or revocation of the Sponsor's charter (and the expiration of 90 days after the date of notice to the Sponsor of revocation without a reinstatement of its charter) or upon the withdrawal, removal, adjudication or admission of bankruptcy or insolvency of the Sponsor, or an event of withdrawal (each of the foregoing events an **“Event of Withdrawal”**) unless at the time there is at least one remaining;

(vii) the Custodian resigns or is removed without replacement; or

(viii) if as of December 31, 2021, the Units are not quoted and trading on a secondary market in the United States (which may include the OTCQX Venture Market tier of the OTC Markets Group, Inc., any other market operated by the OTC Markets Group, Inc, or a national securities exchange), the Sponsor shall dissolve the Trust on or before January 31, 2022.

(b) *Discretionary Dissolution of the Trust.* The Sponsor may, in its sole discretion, dissolve the Trust if any of the following events occur:

(i) the SEC determines that the Trust is an investment company required to be registered under the Investment Company Act of 1940;

(ii) the CFTC determines that the Trust is a commodity pool under the Commodity Exchange Act;

(iii) the Trust becomes insolvent or bankrupt;

(iv) all of the Trust's assets are sold;

(v) the determination of the Sponsor that the ongoing management and operation of the Trust is imprudent or impractical and contrary to the interest of Unitholders, or that the aggregate net assets of the Trust in relation to the expenses of the Trust make it unreasonable or imprudent to continue the business of the Trust;

(vi) the Sponsor receives notice from the IRS or from counsel for the Trust or the Sponsor that the Trust fails to qualify for treatment, or will not be treated, as a grantor trust under the Code; and

(vii) if the Trustee notifies the Sponsor of the Trustee's election to resign and the Sponsor does not appoint a successor trustee within 60 days, the Trust will dissolve.

(c) The death, legal disability, bankruptcy, insolvency, dissolution, or withdrawal of any Unitholder (as long as such Unitholder is not the sole Unitholder of the Trust) shall not result in the termination of the Trust, and such Unitholder, his estate, custodian or personal representative shall have no right to withdraw or value such Unitholder's Units. Each Unitholder (and any assignee thereof) expressly agrees that in the event of his death, he waives on behalf of himself and his estate, and he directs the legal representative of his estate and any person interested therein to waive the furnishing of any inventory, accounting or appraisal of the assets of the Trust and any right to an audit or examination of the books of the Trust, except for such rights as are set forth in Article VIII hereof relating to the Books of Account and reports of the Trust.

SECTION 12.2 *Distributions on Dissolution.* Upon the dissolution of the Trust, the Sponsor (in such capacity, the “**Liquidating Trustee**”) shall take full charge of the Trust Estate. The Liquidating Trustee shall have and may exercise, without further authorization or approval of any of the parties hereto, all of the powers conferred upon the Sponsor under the terms of this Trust Agreement, subject to all of the applicable limitations, contractual and otherwise, upon the exercise of such powers, and provided that the Liquidating Trustee shall not have general liability for the acts, omissions, obligations and expenses of the Trust. Thereafter, in accordance with Section 3808(e) of the Delaware Trust Statute, the affairs of the Trust shall be wound up and all assets shall be liquidated as promptly as is consistent with obtaining the fair value thereof, and the proceeds therefrom shall be applied and distributed in the following order of priority: (a) to the expenses of liquidation and termination and to creditors, including Unitholders who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the Trust (whether by payment or the making of reasonable provision for payment thereof) other than liabilities for distributions to Unitholders, and (b) to the Sponsor and each Unitholder pro rata in accordance with their respective Percentage Interests.

SECTION 12.3 *Termination; Certificate of Cancellation.* Following the dissolution and distribution of the assets of the Trust, the Trust shall terminate and Sponsor or Liquidating Trustee, as the case may be, shall instruct the Trustee to execute and cause such certificate of cancellation of the Certificate of Trust to be filed in accordance with the Delaware Trust Statute at the expense of the Sponsor or the Liquidating Trustee as the case may be. Notwithstanding anything to the contrary contained in this Trust Agreement, the existence of the Trust as a separate legal entity shall continue until the filing of such certificate of cancellation.

## ARTICLE XIII

### MISCELLANEOUS

SECTION 13.1 *Governing Law.* The validity and construction of this Trust Agreement and all amendments hereto shall be governed by the laws of the State of Delaware, and the rights of all

parties hereto and the effect of every provision hereof shall be subject to and construed according to the laws of the State of Delaware without regard to the conflict of laws provisions thereof; provided, however, that causes of action for violations of U.S. federal or state securities laws shall not be governed by this Section 13.1, and provided, further, that the parties hereto intend that the provisions hereof shall control over any contrary or limiting statutory or common law of the State of Delaware (other than the Delaware Trust Statute) and that, to the maximum extent permitted by applicable law, there shall not be applicable to the Trust, the Trustee, the Sponsor, the Unitholders or this Trust Agreement any provision of the laws (statutory or common) of the State of Delaware (other than the Delaware Trust Statute) pertaining to trusts which relate to or regulate in a manner inconsistent with the terms hereof: (a) the filing with any court or governmental body or agency of trustee accounts or schedules of trustee fees and charges, (b) affirmative requirements to post bonds for trustees, officers, agents, or employees of a trust, (c) the necessity for obtaining court or other governmental approval concerning the acquisition, holding or disposition of real or personal property, (d) fees or other sums payable to trustees, officers, agents or employees of a trust, (e) the allocation of receipts and expenditures to income or principal, (f) restrictions or limitations on the permissible nature, amount or concentration of trust investments or requirements relating to the titling, storage or other manner of holding of trust assets, or (g) the establishment of fiduciary or other standards or responsibilities or limitations on the acts or powers of trustees or managers that are inconsistent with the limitations on liability or authorities and powers of the Trustee or the Sponsor set forth or referenced in this Trust Agreement. Section 3540 of Title 12 of the Delaware Code shall not apply to the Trust. The Trust shall be of the type commonly called a “statutory trust,” and without limiting the provisions hereof, but subject to Sections 1.5 and 1.6, the Trust may exercise all powers that are ordinarily exercised by such a statutory trust under Delaware law. Subject to Sections 1.5 and 1.6, the Trust specifically reserves the right to exercise any of the powers or privileges afforded to statutory trusts and the absence of a specific reference herein to any such power, privilege or action shall not imply that the Trust may not exercise such power or privilege or take such actions.

#### SECTION 13.2 *Provisions In Conflict With Law or Regulations.*

(a) The provisions of this Trust Agreement are severable, and if the Sponsor shall determine, with the advice of counsel, that any one or more of such provisions (the “**Conflicting Provisions**”) are in conflict with the Code, the Delaware Trust Statute or other applicable U.S. federal or state laws or the rules and regulations of the OTCQX, the Conflicting Provisions shall be deemed never to have constituted a part of this Trust Agreement, even without any amendment of this Trust Agreement pursuant to this Trust Agreement; provided, however, that such determination by the Sponsor shall not affect or impair any of the remaining provisions of this Trust Agreement or render invalid or improper any action taken or omitted prior to such determination. No Sponsor or Trustee shall be liable for making or failing to make such a determination.

(b) If any provision of this Trust Agreement shall be held invalid or unenforceable in any jurisdiction, such holding shall not in any manner affect or render invalid or unenforceable such provision in any other jurisdiction or any other provision of this Trust Agreement in any jurisdiction.

SECTION 13.3 *Merger and Consolidation.* The Sponsor may cause (i) the Trust to be merged into or consolidated with, converted to or to sell all or substantially all of its assets to,

another trust or entity; (ii) the Units of the Trust to be converted into beneficial interests in another statutory trust (or series thereof); or (iii) the Units of the Trust to be exchanged for units in another trust or company under or pursuant to any U.S. state or federal statute to the extent permitted by law. For the avoidance of doubt, the Sponsor, with written notice to the Unitholders, may approve and effect any of the transactions contemplated under (i) — (iii) above without any vote or other action of the Unitholders.

**SECTION 13.4 *Construction.*** In this Trust Agreement, unless the context otherwise requires, words used in the singular or in the plural include both the plural and singular and words denoting any gender include all genders. The title and headings of different parts are inserted for convenience and shall not affect the meaning, construction or effect of this Trust Agreement.

**SECTION 13.5 *Notices.*** All notices or communications under this Trust Agreement (other than notices of pledge or encumbrance of Units, and reports and notices by the Sponsor to the Unitholders) shall be in writing and shall be effective upon personal delivery, or if sent by mail, postage prepaid, or if sent electronically, by facsimile or by overnight courier; and addressed, in each such case, to the address set forth in the books and records of the Trust or such other address as may be specified in writing, of the party to whom such notice is to be given, upon the deposit of such notice in the United States mail, upon transmission and electronic confirmation thereof or upon deposit with a representative of an overnight courier, as the case may be. Notices of pledge or encumbrance of Units shall be effective upon timely receipt by the Sponsor in writing.

All notices that are required to be provided to the Trustee shall be sent to:

Delaware Trust Company  
Attention: Corporate Trust Administration  
251 Little Falls Drive  
Wilmington, Delaware 19808

All notices that the Trustee is required to provide shall be sent

to: if to the Trust, at

Osprey Bitcoin Trust  
520 White Plains Road, Suite 500  
Tarrytown, NY 10591  
Attention: Chief Financial Officer

if to the Sponsor, at

Osprey Funds, LLC  
520 White Plains Road  
Tarrytown, NY 10591  
Attention: Chief Financial Officer

SECTION 13.6 *Counterparts*. This Trust Agreement may be executed in several counterparts, and all so executed shall constitute one agreement, binding on all of the parties hereto, notwithstanding that all the parties are not signatory to the original or the same counterpart.

SECTION 13.7 *Binding Nature of Trust Agreement*. The terms and provisions of this Trust Agreement shall be binding upon and inure to the benefit of the heirs, custodians, executors, estates, administrators, personal representatives, successors and permitted assigns of the respective Unitholders. For purposes of determining the rights of any Unitholder or assignee hereunder, the Trust and the Sponsor may rely upon the Trust records as to who are Unitholders and permitted assignees, and all Unitholders and assignees agree that the Trust and the Sponsor, in determining such rights, shall rely on such records and that Unitholders and assignees shall be bound by such determination.

SECTION 13.8 *No Legal Title to Trust Estate*. Subject to the provisions of Section 1.7 in the case of the Sponsor, the Unitholders shall not have legal title to any part of the Trust Estate.

SECTION 13.9 *Creditors*. No creditors of any Unitholders shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to the Trust Estate.

SECTION 13.10 *Integration*. This Trust Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto.

SECTION 13.11 *Goodwill; Use of Name*. No value shall be placed on the name or goodwill of the Trust, which shall belong exclusively to Osprey Funds, LLC.

**IN WITNESS WHEREOF**, the undersigned have duly executed this Declaration of Trust and Trust Agreement as of the day and year first above written.

**DELAWARE TRUST COMPANY**, as Trustee

By: \_\_\_\_\_  
Name:  
Title:

**OSPREY FUNDS, LLC**, as Sponsor

By: \_\_\_\_\_  
Name:  
Title: