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**Via E-mail: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)**

August 19, 2021

J. Matthew DeLesDernier, Assistant Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

RE: Order Instituting Proceedings to Determine Whether to Approve Proposed Rule Change to List and Trade Shares of the Kryptoin Bitcoin ETF Trust under BZX Rule 14.11(e)(4) (the "Order")

Dear Mr. DeLesDernier,

Gemini Trust Company, LLC ("Gemini") is submitting this letter to (i) respond to the Securities and Exchange Commission's (the "Commission") request for comments to the Order and (ii) express its support for the proposed rule change (the "Proposal") by Cboe BZX Exchange, Inc. (the "Exchange") to list and trade shares of the Kryptoin Bitcoin ETF Trust ("Kryptoin ETF").

As the Commission may be aware, the Kryptoin ETF has selected Gemini to act as its proposed bitcoin custodian. Gemini has extensive experience safeguarding digital assets to meet customers' security needs in a compliant manner subject to robust regulatory oversight. Gemini also has significant experience supporting the operations of digital-asset backed exchange-traded products ("ETPs"), primarily as the digital asset custodian for ETPs listed on Canadian exchanges. We believe that the Kryptoin ETF and the Exchange, in partnership with Gemini, are well-positioned to operate an ETP and make it available to U.S. customers.

Gemini is dedicated to the secure and compliant growth of the digital asset ecosystem. As further detailed below, we are a New York limited purpose trust company chartered under New York Banking Law ("NYBL") and supervised by the New York State Department of Financial Services ("NYDFS"), the same supervisory authority for New York State chartered banks. To this end, we operate at the highest standards. For example, Gemini is the world's only digital assets platform to achieve the SOC 1 Type II and SOC 2 Type II certification for both its exchange and custody operations as audited by Deloitte LLP. A SOC 1 examination evaluates the design and implementation of an organization's financial operations and reporting controls, while the SOC 2

examination evaluates the design and implementation of an organization's security systems, information accessibility, and confidentiality controls. These certifications serve as independent third-party verification that Gemini's operations and security compliance structures meet robust industry standards.

As the bitcoin market has continued to evolve, so too has demand among market participants to gain exposure to bitcoin through a regulated ETP. For example, as mentioned above, Gemini is a custodian for several ETPs currently listed on Canadian exchanges and we believe there is comparable interest for exposure to bitcoin in the United States.

We believe the Proposal is a responsible approach to meet this demand, and it offers greater investor protection and transparency than existing alternatives for retail customers to gain proxy exposure to bitcoin. As a custodian, Gemini will ensure that the Kryptoin ETF's underlying bitcoin assets are stored in its proprietary offline storage system, providing the highest level of security and comfort to the Commission and investors.

As further detailed in the Exchange's comments addressing the Commission's historical concerns about the bitcoin markets, we believe certain of the Commission's concerns are ameliorated by the growth of the overall bitcoin market and related growth of regulated bitcoin derivatives.<sup>1</sup>

An additional factor in support of the Proposal is the choice of a robust reference rate that includes a composite of bitcoin prices from underlying exchanges, including the spot price of bitcoin on the Gemini exchange. Gemini and other regulated digital asset exchanges and custodians have a history of operations in compliance with a regulatory framework developed specifically to address activities in digital assets. For Gemini, this includes, among other things, compliance with guidance put forth by NYDFS to implement "measures designed to effectively detect, prevent, and respond to fraud, attempted fraud, and similar wrongdoing."<sup>2</sup> Gemini meets this obligation through automated systems and robust internal controls and surveillance. The growing sophistication of market surveillance tools and strategies in the market for bitcoin as well as the growing proportion of bitcoin activity occurring on regulated exchanges is a key development to mollify concerns about price manipulation or other manipulative practices in the bitcoin market. We believe that bitcoin market conditions have improved and matured since the Commission last opined on an ETP proposal, and that investors would best be served and protected by the Commission providing a viable, regulated path to retail participation.

### **Gemini will Custody the Kryptoin ETF's Bitcoin in a Secure and Compliant Manner**

In this part of the letter, Gemini provides additional information and background about its operations and approach to digital asset custody, to provide further assurance to the Commission about the operations of the Kryptoin ETF. Gemini was founded with a "security-first" mentality. We have built our business on a foundation of regulatory compliance, and we believe that investor protection is paramount to the continued evolution and maturity of the cryptocurrency asset class.

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<sup>1</sup> See Exchange 19b-4, pp. 17-21, 23-24.

<sup>2</sup> See NYDFS, "Guidance on Prevention of Market Manipulation and Other Wrongful Activity." February 7, 2018.

As mentioned above, Gemini is a New York trust company regulated by the NYDFS. Gemini is also registered with FinCEN as a money service business and maintains money transmitter licenses (or the statutory equivalent) in all states where this is required. We are subject to capital reserve requirements, cybersecurity requirements, and banking compliance standards set forth by the NYDFS and the NYBL. Gemini's exchange and custody operations are subject to the supervision and oversight of the NYDFS and have similar regulatory obligations to that of a New York State chartered bank. As one of the original regulatory bodies to supervise digital asset activities, the NYDFS has developed technical expertise tailored to digital asset activity. Gemini undergoes holistic examination and complies with obligations related to, among other things, capitalization, AML, and comprehensive cybersecurity oversight.<sup>3</sup>

Gemini makes available to customers different solutions for custody of digital assets. The Kryptoin ETF will rely on Gemini's segregated custody product, referred to as Gemini Custody™. The Gemini Custody product is catered towards institutional customers that are seeking to store their digital assets in separate and dedicated custodial accounts. In a Gemini Custody account, the Kryptoin ETF's bitcoin will be custodied at a single blockchain address, segregated from all other accounts. The ETF's bitcoin will not be commingled with the digital assets of other customers or Gemini's own digital assets. Gemini maintains a diverse network of secure facilities that are geographically distributed across the United States to safeguard its custody infrastructure. Each facility is access-guarded, monitored, and controlled on a 24/7 basis. All of Kryptoin ETF's bitcoin will be held in an offline "cold storage" solution in Hardware Security Modules ("HSMs"), which are purpose-built devices to store cryptographic material. All HSMs used for the Gemini Custody™ product have achieved the highest security level of US federal government standards (FIPS 140-2). These HSMs are physically protected at Gemini's network of secure facilities. To carry out a transfer from Kryptoin ETF's account, a quorum of these secure facilities must be involved to sign ("multi-sig") the transaction, which has the goal of eliminating single points of failure.

In addition, Gemini maintains digital asset insurance and employs security best practices to ensure that our services are secured and constantly being updated to best protect against any vulnerabilities. Gemini is regularly audited by major financial and audit firms and as mentioned, has achieved the SOC 1 Type II and SOC 2 Type II certifications for our custody product.

We believe our approach to custody, security and compliance should mitigate any Commission concerns about the operation of the Kryptoin ETF or security around digital asset collateral.

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<sup>3</sup> See NYDFS Cybersecurity Requirements, Part 500, which includes, among other things, requirements for governance including a chief information security officer, penetration testing and vulnerability assessments, audit, application security, cybersecurity personnel and intelligence, multi-factor authentication, training and monitoring, encryption of non-public information, incident response plan, and data breach notification.

***Conclusion***

We thank the Commission for considering Gemini's letter responding to the request for comments on the Order. We respectfully submit that the current underlying bitcoin market solves for many of the Commission's historical concerns, and that the time is ripe for the United States to continue to lead innovation by allowing for retail investor friendly and well-regulated exchange traded vehicles—all under the oversight of the Commission.