Occupy the SEC

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August 30, 2023

Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549–1090

Re: Proposed Rule Changes Regarding Bitcoin-Based ETFs
Ark 21Shares Bitcoin ETF, File No. SR-CboeBZX-2023-028
Invesco Galaxy Bitcoin ETF, File No. SR-CboeBZX-2023-038
iShares Bitcoin Trust, File No. SR-NASDAQ-2023-016
Valkyrie Bitcoin Fund, File No. SR-NASDAQ-2023-019
VanEck Bitcoin Trust, File No. SR-CboeBZX-2023-040
WisdomTree Bitcoin Trust, File No. SR-CboeBZX-2023-042
Wise Origin Bitcoin Trust, File No. SR-CboeBZX-2023-044
Bitwise Bitcoin ETP Trust, File No. SR-NYSEARCA-2023-44

Dear Sir or Madam:

Occupy the SEC[1] ("OSEC") submits this comment letter in response to the Security and Exchange Commission's ("Agency") request for comments on proposed rule changes ("Proposals") to list and trade certain shares of bitcoin exchange-traded products ("ETFs") identified above. We oppose such listings as violative of the Exchange Act's mandate that exchange rules "prevent fraudulent and manipulative acts and practices, . . . protect investors and the public interest; and are not designed to permit unfair discrimination between customers."[2]

Knowledgeable and risk-seeking investors already have available to them a plethora of options to invest in bitcoin if they so choose. For instance, they could invest directly in bitcoin itself, an overseas spot bitcoin ETF, or a bitcoin futures ETF. In fact, the proposed ETFs are not directed at sophisticated investors.

To the contrary, the proposed ETFs' real target appears to be unsophisticated retail investors who are familiar with the hype surrounding bitcoin and would like to invest in it, but do not have the

[1] Occupy the SEC (http://occupythesec.org) is a group of concerned citizens, activists, and financial professionals that works to ensure that financial regulators protect the interests of the public, not Wall Street.
[2] 15 U.S. Code § 78f(b)(5) (2022).

technical know-how to open a crypto wallet and have not opened a new account in a specialized brokerage like Robinhood. This population is in most need of the Agency's protection, and we therefore laud the SEC for its demonstrated circumspection regarding cryptocurrencies generally, and its reluctance to approve the specific Proposals discussed here.

For one thing, the proposed ETFs will do nothing to mitigate the inherent risk and volatility of the underlying asset, bitcoin. An ETF that is based on a risky asset can only add a layer of risk and illiquidity over the flaws of that asset. The volume in any of the proposed ETFs will never approach the volume of spot bitcoin. This means that customers who buy these ETFs will be plagued by high margins, outsized tail risk, and liquidity risk. Further, academic research has shown that the very structure of funds can produce price inefficiencies, particularly in volatile markets: "[t]he prices of exchange-traded funds . . . can deviate significantly from their net asset values (NAVs)," even despite arbitrage opportunities that should theoretically erase those deviations.[3] Further, ETFs often involve high management fees that could be avoided through spot purchases.

Another problem with the proposed ETFs is that they would lead to a dilution of liquidity in the already-volatile bitcoin spot market. Current Bitcoin holders using specialty broker-dealers like Robinhood may decide to consolidate their holdings into a traditional brokerage account, and rely on a bitcoin spot ETF to ostensibly retain their exposure to bitcoin. Also, many would-be purchasers of spot bitcoin will instead opt for one of the proposed ETFs. These actions will draw much-needed liquidity out of the already-oligopolistic[4] bitcoin market.

The key to normalizing the bitcoin market and allowing it to achieve its stated democratic objectives is to allow for increased, safe, and informed investments that add volume and create reliable entry/exit opportunities for investors in spot bitcoin. The proposed ETFs would undermine these objectives, thereby exacerbating the extant risks in spot bitcoin.

We acknowledge that the Proposals involve a surveillance arrangement by Coinbase, which putatively reduces the risk of market manipulation. However, we have serious doubts about the efficacy or reliability of such surveillance. For one thing, just this year the New York Department of Financial Services entered a $100 million settlement with Coinbase after an investigation "found wide-ranging and long-standing failures in [the company's] anti-money laundering program, including with regard to its know your customer/customer due diligence, transaction monitoring, and suspicious activity reporting systems, among others."[5] Moreover, utilizing just Coinbase for surveillance purposes introduces a single point of failure. If Coinbase

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[3] Antti Petajisto, *Inefficiencies in the Pricing of Exchange-Traded Funds*, Financial Analysts Journal, First Quarter 2017, *at* https://www.cfainstitute.org/en/research/financial-analysts-journal/2017/inefficiencies-in-the-pricing-of-exchange-traded-funds.

[4] Nick Arnosti & S. Matthew Weinberg, *Bitcoin: A Natural Oligopoly*, Management Science, Vol. 68, No. 7 (2022).

[5] Press Release, New York Department of Financial Services, Superintendent Adrienne A. Harris Announces $100 Million Settlement with Coinbase, Inc. after DFS Investigation Finds Significant Failings in the Company's Compliance Program (Jan. 4, 2023), *at* https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202301041.

were to suffer technical challenges, ransomware attacks, or other operational challenges, the effectiveness of the entire bitcoin ETF surveillance system could be compromised.
Further, given the dynamic nature of bitcoin and crypto trading, surveillance methods that worked in the past may not work when applied to the proposed ETFs. Coinbase is also a relatively new entity and may not have the expertise or operational capacity to keep up with new techniques and tactics that malfeasors could use to manipulate prices or exploit vulnerabilities in the proposed ETFs.

Risk-seeking, sophisticated investors already have a plethora of investment options to gain exposure to bitcoin and its derivatives. These sophisticated investors are unlikely to avail of the proposed high-cost ETFs and therefore having little to gain from them. The real gain to be had is by ETF sponsors and related financial institutions who are seeking to latch onto the bitcoin bandwagon with hopes of reaping large profits. Unfortunately, those profits would arrive at the undue expense of retail investors. These ETFs will also be fertile ground for high-pressure brokers exploiting the hype and volatility to take advantage of unsophisticated investors.

For these reasons, we believe that the Proposals should be rejected. Thank you for your attention to this matter of great public interest.

Sincerely,
/s/
Occupy the SEC

Akshat Tewary
Josh Snodgrass
et al.