

September 29, 2023

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: ARK 21Shares Bitcoin ETF, File No. SR-CboeBZX-2023-028

Dear Ms. Countryman:

As the Chairman of Fortress Investment Group LLC (“Fortress”), a \$45 billion global asset management firm, I am writing to share my perspective on the blockchain technology investment landscape. Fortress first invested in Bitcoin in 2012 and I am currently the largest claimholder in the Mt. Gox bankruptcy estate. As an early Bitcoin investor and believer in blockchain technology, I have unfortunately seen first-hand the fraud and lack of regulatory compliance in the industry since its inception, and the harm suffered by retail investors as a result. The absence of investor protections has led to billions of dollars of losses due to exchange collapses and hacks, inferior products with high fees, unregulated trading venues, and poor risk management.

There is currently an opportunity for the Securities and Exchange Commission (“SEC”) to significantly improve the market structure as it relates to affordable access to Bitcoin-related products. I believe Bitcoin is the most innovative technology in blockchain, and with a market capitalization of over \$500 billion, retail investors have clearly expressed a demand to own Bitcoin. Investor surveys from Gallup and Pew Research Center have estimated that 20-30 million Americans have traded cryptocurrencies.¹ Unfortunately, many incumbent companies in the space have not served their customers well, and their lack of regulatory compliance has created danger to investors beyond the volatility and risk inherent in new technologies. Until now, investors who want to allocate capital to Bitcoin have been faced with a menu of bad choices: unregulated exchanges which also serve as custodians, fintech apps which are more lightly regulated than traditional brokerage firms, and closed-end trusts which have high fees and often trade at a significant discount or premium to their underlying value.

These millions of investors deserve protection. The ARK 21Shares Bitcoin ETF application under consideration, as well as similar proposals from Blackrock, Fidelity, Grayscale, Invesco, and Bitwise, aim to create products which are safer and more affordable than the unregulated

¹ See *Bitcoin Making Inroads With Younger U.S. Investors* (July 22, 2021), available at <https://news.gallup.com/poll/352508/bitcoin-making-inroads-younger-investors.aspx>; *16% of Americans say they have ever invested in, traded or used cryptocurrency* (Nov. 11, 2021), available at <https://www.pewresearch.org/short-reads/2021/11/11/16-of-americans-say-they-have-ever-invested-in-traded-or-used-cryptocurrency/>.

crypto-native platforms which have thus far been the only way for investors to deploy capital into this new technology.

The SEC's 2021 approval of Bitcoin futures ETFs was a significant improvement in this regard. These investment vehicles have been trading for nearly 2 years and have received over \$1 billion of capital from investors. They have performed well even through periods of extreme market volatility. However, futures-based ETFs are widely viewed as being inferior to spot ETFs due to potential tracking error as well as higher fees and transaction costs.

Allowing well-regulated, well-capitalized firms to create spot Bitcoin ETFs would bring Bitcoin further inside the traditional regulatory perimeter and advance the SEC's goal of investor protection. It would foster competition which should, over time, lead to lower fees, better liquidity, and lower transaction costs. Approval of a spot Bitcoin ETF would place fiduciary and market surveillance responsibilities on multiple players including leading issuers like Blackrock and Fidelity, Authorized Participants, Market Makers, the CME (as options will trade on the various spot Bitcoin ETFs), and the underlying exchange (*i.e.*, NASDAQ, CBOE and/or NYSE). The involvement of these parties in the spot Bitcoin ETF market would enhance regulatory oversight and improve market transparency.

Approval of these products would place the United States on equal competitive footing with capital markets which already have spot Bitcoin ETFs, including Switzerland, Germany, Canada, Brazil, Australia, Sweden, and the Netherlands. Investors in these markets have benefitted from the availability of these regulated products, and United States investors deserve the same.

I appreciate the opportunity to comment and strongly encourage approval of the ARK 21Shares Bitcoin ETF filing without further delay as well as similar spot Bitcoin ETF filings currently under consideration.

Sincerely,



Peter L. Briger, Jr.
Chairman
Fortress Investment Group LLC