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[REDACTED]

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Securities and Exchange Commission  
100 F St. NW  
Washington, DC 20549-9303  
[Rule-comments@sec.gov](mailto:Rule-comments@sec.gov)

Re: Bitcoin ETPs

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

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<sup>1</sup> All opinions are strictly my own and do not necessarily represent those of Georgetown University or anyone else. I am very grateful to Georgetown University for financial support. Over the years I have served as a Visiting Academic Fellow at the NASD (predecessor to FINRA), served on the boards of the EDGX and EDGA stock exchanges, served as Chair of the Nasdaq Economic Advisory Board, and performed consulting work for brokerage firms, stock exchanges, other self-regulatory organizations, government agencies, market makers, industry associations, and law firms. I am the academic director for the FINRA Certified Regulatory and Compliance Professional (CRCP<sup>®</sup>) program at Georgetown University. I've also visited over 80 stock and derivative exchanges around the world. As a finance professor, I practice what I preach in terms of diversification and own modest and well-diversified holdings in most public companies, including brokers, asset managers, market makers, and exchanges.

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

## Summary

- The SEC should approve these proposals.
- The SEC should drop its “just say no” approach to cryptos and provide an appropriate path to compliance.
- Make IIVs easier to find.
- The 50,000 share Creation Unit is too big.

Dear SEC:

I have long been a bit-skeptic about bitcoin, as my detractors on Twitter like to remind me. Its mysterious origin, murky governance, and uncertain use cases continue to make me skeptical of its long-term value. I can sympathize with the SEC’s reluctance to add its imprimatur to any product associated with bitcoin. There is a fear that SEC approval will unleash the marketing forces of our financial services industry to make unsophisticated or reckless investors lose part of their retirement savings on magic crypto thingies.

## **IT’S TOO LATE! THE COW HAS LEFT THE BARN!**

The SEC has already approved a futures-based bitcoin ETF. Heck, the SEC has approved a LEVERAGED futures-based ETF! If the SEC is concerned that bitcoin is just plain bad, it should never have approved any of those.

The SEC has continually rejected spot-based ETFs while allowing futures-based ones to trade. This makes no sense. The spot and futures markets are closely locked together through arbitrage, and the difference in market prices between the spot bitcoin price and the futures price is negligible. Thus, a spot bitcoin ETF is the same for all practical purposes as a futures-based ETF. The SEC knows this, but attempts to hide behind a transparent fig leaf by claiming that the SROs who

are proposing these ETFs have not met their burden to prove that bitcoin is not being manipulated.

This absurd position has seriously damaged the SEC's credibility as an expert agency that understands the markets it regulates. The SEC's slow and incoherent approach to crypto regulation has not helped either. This is affecting the SEC's standing in Congress as Congress debates crypto-related legislation (as well as the SEC's budget.)

Just because bitcoin is a speculative asset that could easily wind up worthless does not mean that investors should not have the right to trade it on our well-regulated exchanges. Our markets contain many speculative assets that could easily wind up worthless, including biotech lottery tickets as well as options.

The current crop of proposals has additional surveillance agreements in place. This gives the SEC a face-saving way to approve bitcoin ETFs before yet another humiliating defeat in the courts. The SEC should take advantage of this and approve these proposals without further delay.

### **The SEC should stop wasting resources fighting bitcoin ETFs!**

The SEC does not have the budget it needs to effectively police our financial markets. However, it is squandering the resources it does have on the regulatory and legal proceedings regarding bitcoin ETFs. It is hard for Congress to justify an appropriate budget for the SEC when it wastes its limited resources on endless regulatory proceedings and fruitless litigation.

### **The SEC should provide a common-sense path to compliance for crypto entities.**

We regulate financial markets for very good reasons. Financial history (along with recent crypto experience) has shown that unregulated financial markets are rife with fraud, manipulation, intermediary failures, sales abuses and systemic risk. We need good rules of the road, along with good cops on the beat, to keep the bad guys from ruining it for everyone.

Most cryptos are security-like financial assets: Crypto outfits raise money-like things from investors in order to develop new businesses. People speculate on

these products in order to make money. At first glance, it might make sense to make them follow all of the same time-tested financial regulations in exactly the same way as current products. Same risk, same regulation, right?

Not so fast. The crypto world has developed new techniques of capital formation, security trading, and settlement. It is not clear at all that it is optimal to apply exactly the same regulatory requirements. Uber and Lyft provide rides for hire just like traditional taxis, but use different technology. It makes no sense to make them follow exactly the same rules as traditional taxis. Ubers and Lyfts don't need bullet-proof shields to protect drivers from robbery because they don't carry cash. They don't need to be painted yellow. They don't need mechanical fare meters because the fares are calculated in advance and displayed to consumers.

Fortunately, the SEC has broad powers to interpret the securities laws, both in its rulemaking authority and its enforcement priorities. As former SEC Chairman Harvey Pitt once stated,

*“US securities laws can be summarized in two sentences:*

- 1) IT shall be illegal.*
- 2) The SEC decides what IT is.”*

In particular, the SEC has broad exemptive authority.<sup>2</sup> This means that the SEC has the flexibility to carve out a regulatory regime for cryptos. Furthermore, the SEC has broad authority under Dodd-Frank §914h to regulate all sales practices of RIAs and broker dealers. The statute does NOT limit its regulatory authority over broker-dealer sales practices to just securities. Thus, even if the courts rule that a particular digital asset is not a security, the SEC can still regulate how broker-dealers and RIAs sell such products.

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<sup>2</sup> Section 36 of the Securities Exchange Act of 1934, 15 U.S. Code § 78mm states “Except as provided in subsection (b), but notwithstanding any other provision of this chapter, the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this chapter or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.”

Likewise, the '33 Act has similar authority. See 15 U.S. Code § 77z-3: “The Commission, by rule or regulation, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this subchapter or of any rule or regulation issued under this subchapter, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.”

The SEC should take the following “light touch” approach to the regulation of digital assets. Using a common-sense approach will allow technological progress to occur while providing appropriate levels of investor protection. As always, the SEC can rely upon traditional regulation by enforcement when it finds evidence of fraud and manipulation.

The SEC should declare a truce with the crypto industry and cease enforcement action against firms that make good-faith efforts to comply with the following:

1. Issuers of digital assets must register them with the SEC using a “Form Digital Asset” that contains fundamental information regarding the identity and background of the issuers in plain English. This form will be comparable to the “white papers” used to sell digital assets. These details include:
  - a. Names of key participants, their background, their compensation, any criminal or regulatory charges against them, other digital asset projects they are associated with.
  - b. Description of the business and how it works
  - c. Description of the governance and legal status of the entity such as form of incorporation (if any) and jurisdiction of incorporation (if any).
  - d. Information concerning the number of digital assets to be issued in the current offering and future plans for additional digital asset offerings.
  - e. Information regarding the identities (if known) about anyone holding 1% or the rights to more than 1% of the digital assets.
  - f. Information concerning the secondary market for digital assets such as markets that trade the digital asset, recent prices and trading volumes.
  - g. Clear information as to the rights of the digital asset holders.
  - h. Any plans or promises regarding distributions to digital asset holders or repurchases and/or burning of digital assets.
  - i. Financial statements of the entity (balance sheet, income statement, and statement of cash flows) and whether or not they are audited.
  - j. Make continuing information regarding the operation of the project available in plain English via publicly accessible media that is reasonably expected to be globally available for an indefinite period. This includes regular reports on the operation of the project and prompt disclosure of any material changes in the information required above.

- k. Conduct their activities with high standards of commercial honor.
2. Brokers trafficking in digital assets must apply the same customer protections as they do for securities, including compliance with Regulation Best Interest and the Customer Protection Rule.
3. Operators of centralized exchanges and decentralized exchanges (DEXs) must register with the SEC as special purpose national securities exchanges that only trade digital assets. The initial burden should be a bit lighter than current requirements for Automated Trading Systems (ATS). Crypto exchanges must demonstrate that they are building surveillance capabilities to prevent, detect, and punish manipulation on their platforms. They must also do due diligence before listing digital assets for trading. Exchanges that custody customer assets must have policies and procedures in place to segregate those assets from those of the operator of the exchange.

The SEC should start with simple rules and procedures. These should be examined and modified over time as experience dictates.

### **Make Intraday Indicative Values (IIVs) easier to find.**

It is good that ETF issuers provide near real-time estimates of the value of the underlying portfolio. While market professionals discount the usefulness of .IIV data due to the 15-second time lags involved, they are still quite useful to retail investors to determine whether the current retail price of an ETF is reasonably related to the underlying portfolio value.

Alas, while the IIVs have ticker symbols, they are not carried in the standard quotation data feeds and are unavailable on many brokerage web sites. The Commission should require the .IIV data to be carried in the standard quote feeds so that all investors can use them.

### **The 50,000 share Creation Unit is too big**

There is no good reason that the Creation Unit should be 50,000 shares. An overly large creation unit makes it unwieldy for arbitrageurs to create or redeem shares. As only Authorized Participants (APs) can create or redeem shares, there is no danger of retail investors lining up to clog the system with create/redeem requests. The Creation Unit should be no larger than 100 shares.

Respectfully submitted,

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