

Congress of the United States
Washington, DC 20515

May 1, 2024

The Honorable Gary Gensler
Chair
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chair Gensler,

We write to ensure that the Securities and Exchange Commission (SEC) does not continue to discriminate against spot Bitcoin exchange traded products (ETPs) and approves the listing and trading of options on spot Bitcoin ETPs without further delay. While the Commission has permitted the listing of options on Bitcoin futures ETFs, applications for the listing of options on spot Bitcoin ETPs, first filed on January 19, 2024, were delayed yet again by the SEC on April 8, 2024.¹ There is no principled basis for the SEC to continue to delay the approval of the listing of options on spot Bitcoin ETPs.

The scenario at hand is all too familiar for those who witnessed the SEC's prolonged refusal to approve the listing and trading of spot Bitcoin ETPs despite the approval of Bitcoin futures ETFs. Until the United States Court of Appeals of the District of Columbia Circuit found that such disparate treatment was arbitrary and capricious, the SEC unnecessarily limited investor access to this evolving market to the detriment of millions of investors.² Similarly, the Commission has permitted the listing and trading of options for shares of Bitcoin futures ETFs, while declining to rule on options for spot Bitcoin ETFs. It has been almost two months since NYSE applied for the listing of options on spot Bitcoin ETFs. In the case of Bitcoin Futures ETFs, the SEC permitted options to be listed and begin trading the very next day. Why the difference in treatment?

It is not just Bitcoin futures that get preferential treatment. The SEC permits the listing and trading of options on all other major commodity-based trusts. To date, the SEC has permitted the listing and trading of options on Gold ETFs, Silver ETFs, Palladium ETFs, and Platinum ETFs.³ In fact, in a recent comment letter, one Bitcoin ETF sponsor noted that it was "not aware of any

¹ Notice of Filing of a Proposed Rule Change to Amend Rule 5.3-O to Permit the Listing and Trading of Options on Commodity-Based Trust Shares, Securities Exchange Act Release No. 34-9939 (Jan. 19, 2024) (SR-NYSEARCA-2024-06); Notice of Filing of Amendment Number 1 of a Proposed Rule Change to Amend Options 4, Section 3, Criteria for Underlying Securities, Release No. 34-99396; (Jan 19, 2024) (SR-ISE-2024-03); Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change to Amend Rule 915 to Permit the Listing and Trading of Options on the Bitwise Bitcoin ETF, the Grayscale Bitcoin Trust, and Any Trust That Holds Bitcoin, Securities Exchange Act Release No. 34-99921 (April 8, 2024) (SR-NYSEAMER-2024-10)

² Grayscale Invs., LLC v. SEC, No. 22-1142 (D.C. Cir. Aug. 29, 2023).

³ See NYSE Arca Rule 5.3-O(g)(iv) which permits the listing and trading of options on the SPDR Gold Trust; NYSE Arca Rule 5.3-O(g)(v) which permits the listing and trading of options on the iShares COMEX Gold Trust; NYSE Arca Rule 5.3-O(g)(vi) which permits the listing and trading of options on the iShares Silver Trust; NYSE Arca Rule 5.3-O(g)(viii) which permits the listing and trading of options on the ETFS Silver Trust or ETFS Gold Trust; and NYSE Arca Rule 5.3-O(g)(ix) which permits the listing and trading of options on the ETFS Palladium Trust or ETFS Platinum Trust.

commodity-based ETP that has been approved, but a 19b-4 application that was filed for options overlaying the ETP was not approved.”

Approving options on spot Bitcoin ETPs is not only critical to a healthy spot Bitcoin ETP market, it is crucial to the Bitcoin ETP investors the SEC seeks to protect. Allowing for the trading of additional financial instruments such as options creates the opportunity for more market participants to express their views on an underlying asset’s price, which results in more robust markets and ultimately lowers costs to investors. Giving investors access to options on Bitcoin ETP products would allow for more liquidity, better price efficiency and less volatility in the Bitcoin ETP market. Importantly, approval of options on spot Bitcoin ETPs would bring Bitcoin and spot Bitcoin ETPs further into the regulatory perimeter by giving exposure to more regulated participants.

We urge you, without delay, to either approve options on spot Bitcoin ETPs or to provide an explanation for the Commission’s difference in treatment between options for Bitcoin futures ETFs—which are currently trading—and options for the spot Bitcoin ETPs. We appreciate your attention to this important matter.

Sincerely,



Mike Flood
Member of Congress



Wiley Nickel
Member of Congress

cc: The Honorable Hester M. Peirce, Commissioner, Securities and Exchange Commission
The Honorable Caroline A. Crenshaw, Commissioner, Securities and Exchange Commission
The Honorable Mark T. Uyeda, Commissioner, Securities and Exchange Commission
The Honorable Jaime Lizárraga, Commissioner, Securities and Exchange Commission