

May 2, 2025



Ms. Vanessa Countryman, Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

**Re: Nasdaq’s Crypto ETP Response to the February 21, 2025 Statement by
Commissioner Hester Peirce Entitled “There Must Be Some Way Out of
Here”**

Dear Ms. Countryman:

Nasdaq, Inc. (“Nasdaq”) appreciates the opportunity to respond to the request for comment from the Securities and Exchange Commission’s (“SEC” or “Commission”) Crypto Task Force (“Task Force”), and to engage with the Task Force on this timely dialogue toward regulatory clarity for crypto issues, and in particular, crypto exchange-traded products (“ETPs”).¹ Nasdaq is a leading operator of many of the world’s largest and most innovative securities exchanges, and a leading provider of technology to markets and market participants worldwide. Nasdaq also has a unique global footprint in the ETP ecosystem, which includes ETP listings on The Nasdaq Stock Exchange LLC as well as on its European markets. We also provide trade execution reporting platforms, ETP options and indexing services in financial systems across the globe. Nasdaq operates regulated exchanges that are home to various crypto ETP listings in the United States and the Nordics. Nasdaq Stockholm listed for trading in May 2015 the first physically-backed bitcoin-referenced security available on a regulated exchange,² followed by listing in October 2017 the first physically-backed ether-referenced security,³ after approval of each by the Swedish Financial Supervisory Authority. Nasdaq is also the provider of multiple crypto indexes including the Nasdaq Crypto Index (“NCI”), which launched in May 2020 to measure the performance of a significant portion of the digital asset market.⁴

With our experience operating across multiple regulatory regimes across the world, Nasdaq brings a cross-jurisdictional perspective to digital asset market oversight. Informed by this perspective, we believe in fair, transparent, efficient, competitive and inclusive markets, and we support regulatory developments that advance those critical goals. We feel that it is vital to participate in any efforts to foster innovation in digital assets by enhancing the crypto ETP regulatory landscape. We commend Commissioner Peirce and the Task Force’s proactive

¹ See Commissioner Hester Peirce’s statement “There Must Be Some Way Out of Here” (February 21, 2025) (“Request for Comment”).

² See CoinShares Bitcoin Tracker One at <https://coinshares.com/etps/xbt-provider/bitcoin-tracker-one>.

³ See CoinShares Ether Tracker One at <https://coinshares.com/etps/xbt-provider/ether-tracker-one>.

⁴ See Nasdaq Crypto Index (NCI) at <https://www.nasdaq.com/solutions/global-indexes/thematic/crypto>.

approach in seeking the public’s input for greater crypto clarity.⁵ We support a balanced framework that enables innovative crypto ETP offerings while maintaining regulatory safeguards that protect investors and market integrity. Accordingly, we believe the following should serve as guiding principles for the Commission and other stakeholders in considering an appropriate framework:

Investor protection is as important for digital assets trading as it is for equities, options, and other financial instruments. To protect investors in this space, Nasdaq believes that digital asset-based ETPs should be offered by well-regulated ETP issuers, traded via well-regulated brokers and intermediaries, and traded on well-regulated platforms.

ETPs are known to improve liquidity, transparency, price discovery, and efficiency in the underlying market. Digital assets can similarly benefit from the ETP wrapper, provided there are mechanisms—such as in-kind creations and redemptions—to help ensure that the ETP closely tracks the value of its underlying assets.

A holistic framework should support related digital asset-based products like exchange-listed digital asset index options, other options on digital asset ETPs, and related options exchange mechanisms.⁶ These developments could provide market participants with more tailored risk management strategies and facilitate more efficient hedging for their digital asset portfolios with regulated exchange tools, which can ultimately deepen liquidity and build confidence in the digital asset as an investable asset.⁷ However, the digital asset ecosystem continues to be held back by arcane and overly conservative interpretations of existing rules, including restrictions that prohibit the use of FLEX trading for bitcoin and ether options and that prevent higher position limits for these same digital asset options despite the highly liquid profiles for some of the underlying digital asset ETPs. Imposing stricter limitations on digital asset-based options could deprive market participants of these vital risk management tools typically

⁵ On April 25, 2025, Nasdaq submitted a separate comment letter addressing other topics in Commissioner Peirce’s Request for Comment related to digital asset taxonomy, registration, trading, and tokenization (“Digital Asset Letter”). See <https://www.sec.gov/files/ctf-written-input-nasdaq-042525.pdf>. In addition, Nasdaq currently has a proposal pending with the Commission to list and trade bitcoin index options, and has submitted a comment letter specifically requesting the Task Force to address the security status of its product. See Letter re: SR-PHLX-2025-08, Nasdaq Bitcoin Index Options (March 17, 2025) (“Bitcoin Index Options Letter”). See also Securities Exchange Act Release No. 102440 (February 18, 2025), 90 FR 10545 (February 24, 2025) (SR-PHLX-2025-08).

⁶ See *supra* note 5. In addition, Nasdaq currently has two pending proposals to enhance the trading of options on the iShares Bitcoin Trust (“IBIT”) by proposing to increase the position limits for IBIT options and by proposing to allow flexible exchange (“FLEX”) options trading on IBIT options. See Securities Exchange Act Release Nos. 102065 (December 31, 2024), 90 FR 704 (January 6, 2025) (SR-ISE-2024-62) (proposal to increase the position limits on IBIT); and 102132 (January 7, 2025), 90 FR 3266 (January 14, 2025) (SR-PHLX-2025-72) (proposal to permit FLEX trading on IBIT).

⁷ For example, the ability for a market maker to hedge their portfolio and manage risk is directly correlated to a market maker’s ability to provide liquidity in options. See Bitcoin Index Options Letter, at 3.

available for non-digital asset options.⁸ We urge the Commission to modernize its approach and support the development of the digital asset ecosystem on national securities exchanges along more consistent lines.

We recommend that the Commission Staff work with national securities exchanges and market participants to establish clear and consistent standards for evaluating crypto ETP proposals while the Commission deliberates a comprehensive digital assets regulatory framework. These standards should be grounded in sound market principles, with a recognition that failing to provide this much-needed clarity risks pushing innovation, investment, and competition elsewhere for no good reason, undermining the strength and leadership of the U.S. markets.⁹ A balanced framework, developed with leadership from the SEC and with industry input, should holistically assess factors such as the use of transparent and efficient pricing mechanisms, market capitalization, and trading volume, and also note the unique characteristics of the digital asset, including widespread ownership and decentralized global market. Other commenters have pointed out the need for consistent standards that incorporate some combination of the foregoing factors.¹⁰ This approach should serve until such time as the Commission, with support from Congress and in collaboration with the Commodity Futures Trading Commission, establishes a comprehensive regulatory framework for digital assets.

Nasdaq supports the development of a broader regulatory framework for digital assets, including a clear taxonomy along the lines articulated in Nasdaq’s Digital Asset Letter, which can be applied to regulated investment vehicles like crypto ETPs and listed options.¹¹ We believe all categories of digital assets should be available for

⁸ For example, bitcoin options across U.S. options exchanges are currently set at the lowest available positions limits even though the liquidity profiles of some of the underlying bitcoin ETPs are well above the requisite minimum trading volume to qualify for higher position limits. *See, e.g.*, Securities Exchange Release Act Nos. 102065 (December 31, 2024), 90 FR 704 (January 6, 2025) (SR-ISE-2024-62) (proposal to increase the position limits on IBIT); and 102402 (Feb. 11, 2025), 90 FR 9765 (SR-NYSEARCA-2025-07) (proposal to increase the position limits for options on the Grayscale Bitcoin Trust).

⁹ The Commission could, for example, draw on a number of pending or approved crypto ETP rule filings that discuss the considerations we highlight in our letter. *See infra* notes 26 and 27. In addition, listing exchanges in other jurisdictions such as in Europe have rules and/or guidance in place for the listing of crypto ETPs. *See, e.g.*, SIX Swiss Exchange, Additional Rules for the Listing of Exchange Traded Products, available at <https://www.ser-ag.com/dam/downloads/regulation/listing/listing-rules/aretp-en.pdf>; Directive on Crypto-Assets as Underlying Instruments, available at <https://www.ser-ag.com/dam/downloads/regulation/listing/listing-rules/dca-en.pdf>; and Nasdaq Nordic Guidance on the Requirements for Products Referencing Crypto Assets, available at <https://www.nasdaq.com/docs/2025/01/29/Nasdaq-Nordic-Guidance-on-the-Requirements-for-Products-Referencing-Crypto%20Assets-Jan-28-2025.pdf>.

¹⁰ *See, e.g.*, Coinbase Letter (March 19, 2025) and Figure Markets Letter (March 25, 2025). Other commenters have generally expressed support for approving crypto ETPs. *See, e.g.*, Virtu Financial Letter (March 20, 2025) and Alternative Investment Management Association Letter (March 25, 2025).

¹¹ Specifically, the Digital Asset Letter distinguishes between Digital Asset Financial Securities, Digital Asset Investment Contracts, Digital Asset Commodities, and Other Digital Assets, while also recognizing certain

inclusion in ETPs and listed options (including index options), if the safeguards and parameters discussed below are met. This would include digital asset securities, digital asset commodities, and other digital assets. It would also include investment contracts that exhibit some of the attributes of securities, but have not been fully categorized. In Nasdaq’s Digital Asset Letter, we refer to these as Temporarily Unclassified Digital Assets, but these may trade pursuant to a safe harbor or other regulatory status and would still be eligible for inclusion in an ETP or listed option if other safeguards discussed below are met.

A comprehensive surveillance sharing agreement (“SSA”) should not be the only method to address concerns around fraud and manipulation in crypto ETPs. We believe the factors noted above should guide the SEC’s framework as a more flexible and appropriate alternative. Although the Commission has already recognized in the context of approving spot bitcoin and spot ether ETPs that listing exchanges can demonstrate other means to prevent fraud and manipulation to justify dispensing with a SSA, such as showing a high correlation between the CME futures market and the underlying spot market, relying exclusively on the standard articulated in the spot bitcoin and ether approvals would be far too limiting given the breadth of digital asset products and market realities.¹² We believe this “other means” standard should be further refined, expanded, and applied consistently across listing exchanges to accommodate a broader scope of digital asset products, enhance clarity and reduce opportunities for regulatory arbitrage.

Once the framework for crypto ETPs—including thresholds around some of the objective factors laid out above—is settled, we recommend that the Commission work with listing exchanges and market participants to promptly establish generic listing standards for qualifying spot crypto ETPs. Doing so would quickly promote efficiencies and consistency by allowing qualifying ETPs to come to market more quickly through the existing SEC Rule 19b-4(e) process, similar to how other ETPs are generically listed today.

Nasdaq generally supports the informal safe harbor that the SEC has established for existing crypto issuers and trading platforms to continue to allow new and innovative products to flourish as we create and transition to a new regulatory framework for digital assets. However, Nasdaq also recognizes the need to get a workable framework in place quickly to evaluate the initial listing of crypto ETPs. The potential risks of prolonged uncertainty are twofold. First, new product applications may sit on the shelf and lose value. Second, without clear standards,

digital assets as Temporarily Unclassified Digital Assets. *See supra* note 5. As defined therein, “Digital Asset Financial Securities” are tokenized versions of all instruments that the Securities Act of 1933 defines as “securities,” except investment contracts. “Digital Asset Investment Contracts” are tokenized investment contracts, which would remain securities subject to the Commission’s jurisdiction. “Digital Asset Commodities” would meet the definition of commodities set forth in the Commodities Exchange Act, with clarifications that such Digital Asset Commodities have certain defining characteristics like fungibility, utility, and decentralization. “Other Digital Assets” are neither securities nor commodities. “Temporarily Unclassified Digital Assets” are those that are not yet clearly classified in the above buckets.

¹² *See infra* note 22.

legitimate product applications might be unjustly denied, and investors may be left with suboptimal options by being deprived of the benefits of the ETP wrapper. But more broadly, for digital assets to mature as an asset class, a complete ecosystem must be in place. The SEC and national securities exchanges play a critical role in developing that ecosystem by establishing standards for the products providing exposure to these assets, and supporting market practices that promote transparency and investor protection.

Europe has already taken a more proactive stance in the listing of spot crypto-based ETPs, with a wide range of digital assets offered in ETPs beyond bitcoin and ether.¹³ This broader market access has positioned European financial centers as early movers in the digital asset space. Meanwhile, the U.S. has so far limited its offerings to spot bitcoin and spot ether ETPs, potentially putting U.S. markets at a competitive disadvantage as innovation and investor demand continue to grow globally. Nasdaq believes this further underscores the importance of regulatory clarity and timely action to ensure that the U.S. remains a leader in financial markets and innovation.

With all of this in mind, we look forward to engaging in continuous dialogue with the Task Force and SEC Staff to promptly establish a well-balanced and clear approach that allows for innovative products to come to market consistently and efficiently while upholding regulatory safeguards that protect investors and market integrity.

I. Investor Protection and the Role of Gatekeepers in the ETP Ecosystem

ETPs play an important role in upholding investor protection by providing access to certain asset classes through regulated investment vehicles. The ETP ecosystem is supported by well-regulated intermediaries such as ETP issuers, national securities exchanges, and broker-dealers, each playing an important role in protecting investors. For example, ETP issuers are responsible for proper disclosures to the investing public. Exchanges are responsible for listing and trading the ETP pursuant to rules designed to prevent fraud and manipulation, and in general to protect investors. Broker-dealers are responsible for executing trades in ETP shares and are subject to fiduciary duties like the duty of suitability and best execution. Investors entrust these parties with not only their capital, but also their confidence in the integrity of the marketplace. As the Commission continues to consider ETP proposals for digital assets, Nasdaq believes it is vital to recognize the potential for these gatekeepers to bring greater safeguards and stability to this evolving asset class.

II. Benefits of the ETP Wrapper

ETPs play an important role in improving liquidity, transparency, price discovery, and efficiency in the underlying market. By opening up previously hard-to-access asset classes such as commodities, fixed income, foreign securities, and crypto (*i.e.*, spot bitcoin and spot ether) to

¹³ See, e.g., <https://www.six-group.com/en/market-data/etp/etp-explorer.html> for a list of the crypto ETPs on the SIX Swiss Exchange, and <https://www.xetra.com/xetra-en/instruments/etfs-etps/fokus-crypto-etns> for a list of crypto ETPs on Xetra.

a broader investor base, ETPs often drive more liquidity into the underlying asset class. Notably during times of market stress, the percentage of overall market volume for ETPs increases as investors turn to these products for liquidity and price discovery. For example, the rapid adoption of fixed income ETPs has added an additional source of liquidity to the bond market and helped modernize fixed income market structure with solutions such as portfolio trading and the growing use of electronic execution tools.¹⁴ When liquidity in the bond market deteriorated during the COVID sell-off, investors turned to fixed income ETPs for real time pricing and efficient access to the underlying asset class.¹⁵

Well-regulated intermediaries like authorized participants in the primary market and market makers on the secondary market support the functioning of ETPs by helping ensure that the ETP price aligns to the underlying value of the ETP's holdings. Authorized participants are financial institutions that create and redeem shares of the fund while market makers regularly provide two-sided quotes in the fund shares on an exchange.¹⁶ Both are incentivized to compete for arbitrage opportunities that arise when the ETP's price deviates the value of its underlying holdings, which contributes to market efficiency and supports investor confidence.¹⁷

Other digital assets outside of bitcoin and ether could similarly benefit from the ETP wrapper by enhancing accessibility and liquidity in the underlying digital asset through efficient and transparent access. Through a crypto ETP, an investor can also avoid the complexities of storing and securing the digital asset itself. To ensure that investors reap the full benefits of the wrapper, however, Nasdaq understands from ETP issuers that there needs to be robust mechanisms in place to ensure that the price of the crypto ETP does not deviate from the intrinsic value of the underlying for an extended period of time. A primary way to achieve this is through the creation and redemption process. Bitcoin and ether ETPs currently only allow cash creations and redemptions, but in-kind creations and redemptions that are typical for non-crypto ETPs would allow these crypto ETPs to operate more efficiently.¹⁸ To that end, Nasdaq is

¹⁴ See "The Modernization of Bond Market Trading and its Implications," available at <https://www.ssga.com/us/en/intermediary/insights/modernization-of-bond-market-trading-and-its-implications>.

¹⁵ See "Exchange Traded Funds Thematic Note – Findings and Observations during COVID-19 induced market stresses," available at <https://www.iosco.org/library/pubdocs/pdf/IOSCPD682.pdf>.

¹⁶ See "iShares Investigates: ETF Market Realities," available at <https://www.blackrock.com/corporate/literature/whitepaper/ishares-investigates-etf-market-realities-answers-to-ten-popular-questions-about-etfs-june-2019.pdf>.

¹⁷ Id.

¹⁸ Nasdaq currently has an in-kind proposal pending with the SEC for IBIT. See Securities Exchange Act Release No. 102366 (February 6, 2025), 90 FR 9446 (February 12, 2025) (SR-NASDAQ-2025-008) (providing that authorized participants would be able to source bitcoin rather than provide cash to the ETP and/or receive bitcoin from the ETP. This means that the authorized participant, its designated agent or client, would be responsible for buying and selling the bitcoin rather than the ETP itself, which would potentially lessen the impact on the market of the ETP on both sides of the transaction by allowing the authorized participant to decide how and where to source the underlying bitcoin for creations and deciding how, where, and whether to sell the underlying bitcoin for redemptions).

heartened to see that the Task Force is considering important issues such as in-kind creations and redemptions for crypto ETPs, while recognizing that more progress will need to be made on some of the underlying issues in order to operationalize these changes.¹⁹

Another important way to help ensure that the crypto ETP price closely tracks the underlying value of its holdings is to ensure there is a transparent and robust pricing mechanism for the ETP's underlying assets. In this respect, the reliability, frequency, and dissemination of pricing information for the underlying digital asset should be critical components in the Commission's analysis of a crypto ETP proposal. We believe the Commission should positively view pending crypto ETP proposals that use robust pricing benchmarks or indexes that are designed to mitigate the effects of fraud and manipulation, as discussed further in Section III.

III. Beyond the Surveillance Sharing Agreement

Today, a listing exchange is required to demonstrate that its rules are designed to prevent fraudulent and manipulative acts and practices under the Section 6(b)(5) of the Securities Exchange Act of 1934 ("Exchange Act").²⁰ For spot bitcoin and spot ether ETPs, the Commission focused on whether the listing exchange had a SSA with a regulated market of significant size related to the ETP's holdings.²¹ The Commission did not find that such a market existed, but also found "sufficient 'other means' of preventing fraud and manipulation" existed to justify dispensing with an SSA with a regulated market of significant size and proceeded to approve the spot bitcoin and ether ETPs on that basis.²²

¹⁹ See Commissioner Hester Peirce's statement "The Journey Begins" (February 4, 2025), available at <https://www.sec.gov/newsroom/speeches-statements/peirce-journey-begins-020425>.

²⁰ 15 U.S.C. 78f(b)(5).

²¹ See Securities Exchange Act Release Nos. 78262 (July 8, 2016), 81 FR 78262 (July 14, 2016) (the "Winklevoss Proposal"). The Winklevoss Proposal was subsequently disapproved by the Commission. See Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the "Winklevoss Order"). See also Securities Exchange Act No. 99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (Self-Regulatory Organizations; NYSE Arca, Inc.; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units) ("Spot Bitcoin ETP Approval Order"); and 100224 (May 23, 2024), 89 FR 46937 (May 30, 2024) (Self-Regulatory Organizations; NYSE Arca, Inc.; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Shares of Ether-Based Exchange-Traded Products) ("Spot ETH ETP Approval Order").

²² For example, in approving the spot bitcoin ETPs, the SEC found that there were "sufficient 'other means' of preventing fraud and manipulation," including that: [B]ased on the record before the Commission and the improved quality of the correlation analysis in the record, including the Commission's own analysis, the Commission is able to conclude that fraud or manipulation that impacts prices in spot bitcoin markets would likely similarly impact CME bitcoin futures prices. And because the CME's surveillance can assist in detecting those impacts on CME bitcoin futures prices, the Exchanges' comprehensive surveillance-sharing agreement with the CME—a U.S. regulated market whose bitcoin futures market is consistently highly correlated to spot bitcoin, albeit not of "significant size" related to spot bitcoin—can be reasonably

Nasdaq believes that further adjustments in the current regulatory standards are needed to capture the distinct and quickly evolving market structure of digital assets. While the Commission has previously focused on SSAs with regulated markets of significant size in considering crypto ETPs, Nasdaq believes that investor protection and market oversight can also be achieved through a broader set of objective criteria and mechanisms.

This would also align the treatment of crypto ETPs with other types of commodity-based ETPs that the Commission has previously approved, which focused more on the rules of the ETP listing exchange itself (including the exchange’s ability to surveil for trading in the ETP shares themselves) rather than focusing on the investment merits of the underlying spot or futures markets.²³ As Commissioners Peirce and Uyeda previously pointed out in the context of prior bitcoin ETP disapprovals, the Commission applied a unique, heightened standard under Section 6(b)(5) of the Exchange Act related to digital assets. For example, Commissioner Peirce in her 2018 dissent of the Winklevoss Order pointed out that the Commission “erroneously” read the requirements of Section 6(b)(5) by focusing on “the characteristics of the spot market for bitcoin, rather than on the ability of the BZX—pursuant to its own rules—to surveil trading of and to deter manipulation in the ETP shares listed and traded on BZX.”²⁴ Five years later, both Commissioners Peirce and Uyeda issued a joint dissent indicating that the Commission’s standard for crypto ETPs has not even been applied when approving contemporaneous commodity-based ETPs, and concluding that they believed that “spot bitcoin ETPs should be

expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the [Spot Bitcoin ETPs]. See Spot Bitcoin ETP Approval Order, 89 FR at 3009. The Commission made similar findings in the Spot ETH ETP Approval Order. See Spot ETH ETP Approval Order, 89 FR at 46938.

²³ See, e.g., Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Shares of the Franklin Responsibly Sourced Gold ETF under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares), Securities Exchange Act Release No. 94746, 87 FR 24357 (Apr. 25, 2022) (approving a responsibly-sourced gold ETP); Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Shares of the Sprott ESG Gold ETF under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares), Securities Exchange Act Release No. 94518, 87 FR 18837 (Mar. 31, 2022) (approving an ESG gold ETP). See also Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Listing and Trading of Shares of iShares Gold Trust Micro under NYSE Arca Rule 8.201-E, Securities Exchange Act Release No. 84881, 86 FR 22996 (Apr. 30, 2021) (notice of immediate effectiveness of rule change to allow listing and trading of physical gold ETP). Crypto ETPs are typically filed as commodity-based trust shares under the respective rules of the listing exchange. In addition, both bitcoin and ether ETPs were approved as commodity-based trust shares.

²⁴ See Dissent of Commissioner Hester M. Peirce to Release No. 34-83723; File No. SR-BatsBZX-2016-30 (“Winklevoss Dissent”). Commissioner Peirce reiterates this in her 2020 dissent of the Commission’s disapproval order for NYSE Arca’s proposal to list and trade shares of the United States Bitcoin and Treasury Investment Trust: “As I explained in the Winklevoss Dissent, [Section 6(b)(5)] requires the Commission to look to the rules of the exchange seeking to list the product, not the attributes of the assets or markets underlying the product to be traded. The statute says nothing about the underlying markets...The Commission has looked not to the rules of the listing exchange but instead to the quality (or, more accurately, *the merits*) of the underlying bitcoin spot or futures market.” See Dissenting Statement of Hester M. Peirce in Response to Release No. 34-88284; File No. SR-NYSEArca-2019-39.

subject to the same standards the Commission has used for every other type of commodity-based ETPs...”²⁵

Nasdaq strongly agrees with Commissioners Peirce and Uyeda that more consistent standards between crypto ETPs and other commodity-based ETPs are needed. Instead of requiring SSAs, the Commission could instead consider whether there are other sufficient safeguards in place to mitigate fraud and manipulation. Existing crypto ETP proposals already point to safeguards other than SSAs such as:

- The use of a transparent and robust pricing mechanism for the crypto ETP designed to closely track the underlying digital asset market;²⁶ and
- The objective characteristics related to the underlying, such as the existence of large scale, geographically dispersed, and highly liquid trading in the underlying.²⁷

As indicated in existing crypto ETP proposals, the use by the ETP issuer of a pricing benchmark designed to mitigate concerns related to fraud and manipulation can be vital to ensuring that the crypto ETP price more closely reflects the value of its underlying asset.

In this regard, the reliability, frequency, and dissemination of pricing data are critical components for consideration. As noted in existing crypto ETP proposals, a pricing benchmark that reflects inputs from multiple constituent markets (rather than a single venue) that meet defined criteria can be a meaningful indicator of benchmark integrity.²⁸ Crypto exchanges that are licensed by an independent public governing body, comply with anti-money laundering (“AML”) and know-your-customer (“KYC”) standards, and have mechanisms in place to support

²⁵ See Statement Regarding the Commission’s Disapproval of a Proposed Rule Change to List and Trade Shares of the VanEck Bitcoin Trust.

²⁶ See, e.g., Securities Exchange Release Nos. 102426 (Feb. 14, 2025), 90 FR 10093 (SR-CboeBZX-2025-21) (21Shares Core XRP Trust proposal); 102539 (March 7, 2025), 90 FR 12016 (SR-NASDAQ-2025-019) (Grayscale Polkadot Trust proposal); 102475 (Feb. 24, 2025), 90 FR 10964 (SR-NYSEARCA-2025-12) (Grayscale Cardano Trust proposal); and 102570 (March 11, 2025), 90 FR 12429 (March 17, 2025) (SR-NYSEARCA-2025-19) (Bitwise Dogecoin ETF). Approved bitcoin and ether ETP proposals also point to the use of pricing benchmarks designed to mitigate concerns around fraud and manipulation. See, e.g., Securities Exchange Release Nos. 100216 (May 22, 2024), 89 FR 46514 (May 29, 2024) (SR-CboeBZX-2023-070) (ARK 21Shares Ethereum ETF proposal); 101218 (September 30, 2024), 89 FR 80970 (October 4, 2024) (SR-NASDAQ-2024-028) (Hashdex bitcoin and ether proposal); and 99298 (January 9, 2024), 89 FR 2661 (SR-NYSEARCA-2021-90) (Grayscale Bitcoin Trust proposal). See also Securities Exchange Act Release Nos. 99306 (January 10, 2024), 89 FR 3008 (January 17, 2024); 100224 (May 23, 2024), 89 FR 46937 (May 30, 2024); and 101998 (December 19, 2024), 89 FR 106707 (December 30, 2024).

²⁷ See, e.g., Securities Exchange Act Release Nos. 102651 (March 13, 2025), 90 FR 12824 (March 19, 2025) (SR-CboeBZX-2025-039) (Franklin Solana ETF proposal); 102445 (February 19, 2025), 90 FR 10769 (February 26, 2025) (SR-CboeBZX-2025-019) (WisdomTree XRP Fund proposal); and 102443 (February 19, 2025), 90 FR 10667 (February 25, 2025) (SR-NASDAQ-2025-012) (CoinShares XRP ETF proposal). See also Coinbase Letter (March 19, 2025) and Figure Markets Letter (March 25, 2025).

²⁸ See supra note 26.

real-time price discovery help enhance market integrity and investor confidence in the digital assets listed and traded on these platforms.²⁹

As further indicated in crypto ETP proposals, pricing benchmarks that use weighted pricing data and apply rules-based methodologies to mitigate the impact of anomalous trading activity (*e.g.*, manipulation, illiquidity, large block trading, or operational issues) may provide additional safeguards.³⁰ The presence of codified governance policies by the benchmark provider to support and oversee benchmark integrity can further support transparency.³¹

Further, Nasdaq believes that the size, volume, and liquidity of the spot market can be meaningful factors in mitigating concerns around fraud and manipulation in the absence of a SSA. As existing crypto ETP proposals and other commenters have pointed out, some combination of objective metrics around market capitalization, trading history and volume, and other considerations around the unique nature of a digital asset (*e.g.*, continuous, geographically disperse nature of digital asset trading) can help mitigate concerns around fraud and manipulation,³² especially when paired with transparent and robust pricing mechanisms discussed above³³ and robust exchange surveillance mechanisms to monitor trading in the ETP itself.³⁴ A larger market cap for a digital asset could mitigate concerns around fraud and manipulation due to the magnitude of capital required to move its price. The length of time that a digital asset has been actively traded can also provide insight into the asset's market stability. For this, Nasdaq proposes that the time period start when the digital asset listed and traded on a licensed crypto exchange (versus when the digital asset was first launched on the blockchain). As it relates to trading volume, higher average daily volume over a period of time and across

²⁹ For example, to be considered eligible for designation as a constituent market in NCI, some of Nasdaq's primary considerations are whether the crypto exchange: (1) is licensed by a public independent governing body, (2) have reliable and transparent API that provides real-time and historical data, (3) has effective AML/KYC controls in place, (4) has effective trade monitoring and surveillance, (5) demonstrates robust IT infrastructure, and (6) evidences commitment to cooperate with regulators and law enforcement. See Nasdaq Digital Assets Indexes Guidelines for Core Exchanges and Core Custodians at https://indexes.nasdaqomx.com/docs/Nasdaq_Digital_Assets_Indexes_Guidelines_Core_Exchanges_Core_Custodians.pdf. Other third party index providers set out similar criteria for constituent crypto exchanges. See, e.g., CF Benchmarks indices documentation at <https://www.cfbenchmarks.com/documentation/indices>; CoinDesk Digital Asset Indices Policy Methodology at <https://downloads.coindesk.com/cd3/CDI/CoinDesk+Digital+Asset+Indices+Policy+Methodology.pdf>

³⁰ See supra note 26. We also make similar arguments in our Bitcoin Index Options Letter, and demonstrate how highly correlated the CME CF Bitcoin Reference Rate – New York Variant (“BRRNY”) is to IBIT (one of the several spot bitcoin ETPs that track BRRNY). See supra note 5.

³¹ See supra note 26.

³² See supra notes 10 and 27.

³³ See supra notes 10 and 26.

³⁴ See supra notes 23-25, with accompanying text.

multiple venues can reduce the potential for manipulation due to the capital required to influence prices, and can mitigate the effects of price swings.³⁵

As others have also pointed out, the continuous, geographically dispersed nature of the digital asset, with widespread ownership of the asset and 24/7/365 trading taking place across multiple jurisdictions, can also be a strength.³⁶ 24/7/365 trading can provide constant arbitrage opportunities across multiple digital asset trading venues, and if one crypto exchange experiences irregular activity (*e.g.*, anomalous trading activity indicating manipulation, large block trading, or operational issues that compromise price representation), others could provide a counterbalance. The presence of numerous crypto exchanges could also mean that price formation is a collective process such that no single venue would unilaterally set the price.

Lastly, the exchanges generally have existing surveillance procedures to monitor trading in the ETP shares and existing rules in place that would, for example, require the crypto ETP to adhere to initial and continued listing standards,³⁷ impose obligations on registered market makers in the ETP shares intended to deter market manipulation and other misconduct,³⁸ and give the exchange the ability to halt trading in the ETP shares, including in response to market conditions inconsistent with fair and orderly trading.³⁹ When tied together with the presence of other well-regulated participants such as ETP issuers, authorized participants, and market makers as discussed above, these multi-layered protections can provide meaningful safeguards against fraud and manipulation, even in the absence of a SSA.

We believe the foregoing factors can be assessed with the Commission's leadership to promptly arrive at consistent, objective, and meaningful standards that will help guide the existing crypto ETP proposals and proposals that are similarly structured to spot bitcoin and spot ether ETPs on the market. We also believe that the above framework can be applied to multi-digital asset ETP proposals by applying these standards to a majority of the digital asset components of such ETPs.

³⁵ Additionally, as an example, SIX Swiss Exchange requires that the digital asset (among other criteria): (1) have a market capitalization of at least USD 500 million, (2) demonstrate average daily liquidity of at least USD 50 million over the past 30 calendar days before submitting the application; and (3) have a trading history of at least 180 calendar days. See Directive on Crypto-Assets as Underlying Instruments, available at <https://www.ser-ag.com/dam/downloads/regulation/listing/listing-rules/dca-en.pdf>.

³⁶ See supra notes 10 and 27.

³⁷ See, e.g., Cboe BZX Rule 14.11(e)(4)(E); Nasdaq Rule 5711(d)(vi); and NYSE Arca Rule 8.201-E(e).

³⁸ See, e.g., Nasdaq Rule 5711(d)(viii), which limits certain trading activities for registered market makers in the ETP shares, and requires that they make available to Nasdaq certain records of transactions by the market maker in the underlying commodity, related futures or options on futures, or any other related derivatives, as may be requested by the Exchange. Other ETP listing exchanges have similar rules. See, e.g., Cboe BZX Rule 14.11(e)(4)(G) and NYSE Arca Rule 8.201-E(g).

³⁹ See, e.g., Nasdaq Rules 4120 and 4121. Nasdaq (and other ETP listing exchanges) have also made representations in prior crypto ETP filings that our surveillances are adequate to properly monitor the trading of the ETP shares on the exchange to deter and detect violations of exchange rules and the applicable federal securities laws. See supra notes 22, 26 and 27.

Ultimately, the proposals outlined above should be viewed as temporary steps to facilitate the listing of digital asset-based ETPs in the interim period before a regulatory framework for digital assets is finalized by the Commission. We view the establishment of clear and consistent standards as a necessary bridge to a more formalized regulatory structure for digital assets. In that context, our recommendations are offered as practical interim solutions that uphold investor protections and market integrity while supporting innovation in this rapidly evolving space.

IV. Regulatory Consistency for 1933 Act ETPs and 1940 Act ETFs

So far, the Commission has allowed a number of exchange-traded funds (“ETFs”) registered as investment companies under the Investment Company Act of 1940 (“1940 Act”) to have indirect exposure to digital assets.⁴⁰ These 1940 Act ETFs do not hold digital assets directly; rather, they gain indirect exposure by investing in other financial instruments like futures contracts and swaps tied to those assets.⁴¹ These are typically structured to be compliant with Rule 6c-11 under the 1940 Act, which allows the fund to come under the exchange’s generic listing standards for 6c-11 ETFs and come to market without the need for further SEC approval.⁴² Spot crypto-based ETPs, in contrast, seek to hold the digital assets directly, and must go through a separate registration process under the Securities Exchange Act of 1933 (“1933 Act”) as well as a parallel rule filing SEC approval process pursuant to the provisions of Section 19(b)(1) of the Exchange Act and Rule 19b-4 thereunder to permit the listing and trading of the crypto ETP on the listing exchange.

Nasdaq recommends that the Commission take a more consistent approach in evaluating 1933 Act ETPs and 1940 Act ETFs by focusing its analysis at the digital asset level, not just at the investment wrapper level. Consistent with the Commission’s mission to promote fair, orderly, and efficient markets, a more consistent regulatory framework should be applied to both 1933 Act and 1940 Act ETFs to ensure a level playing field and mitigate the potential for regulatory arbitrage. If the regulatory landscape evolves and the Commission allows 1940 Act ETFs to have more direct exposure to digital assets, it would further underscore the need to level the playing field across these products.⁴³

⁴⁰ ETFs are a specific type of ETP. See <https://www.finra.org/investors/investing/investment-products/exchange-traded-funds-and-products>.

⁴¹ The Exchange notes that as of the date of this letter, no 1940 Act ETFs on the market have direct exposure to digital assets. The crypto exposure is indirect in that the ETFs are typically structured to hold up to 25% in the shares of a wholly-owned subsidiary treated as a controlled foreign corporation (“CFC”) for U.S. federal tax purposes, and it is the CFC that invests in the financial instrument tied to the digital asset (e.g., CME bitcoin futures). See, e.g., Proshares Bitcoin Strategy ETF, CoinShares Valkyrie Bitcoin and Ether Strategy ETF, Volatility Shares Solana ETF, and Teucrium 2x Long Daily XRP ETF. To the extent regulations and past SEC guidance change to allow, for instance, the CFC to directly hold the digital asset itself, Nasdaq would advocate for similar regulatory parity in the treatment of those 1940 Act ETFs with 1933 Act ETPs holding the same digital assets as well.

⁴² Rule 6c-11-compliant 1940 Act ETFs are listed on Nasdaq under Nasdaq Rule 5704 (Exchange Traded Fund Shares).

⁴³ See supra note 41.

Nasdaq believes there is a need to move more expeditiously on evaluating spot crypto ETPs registered under the 1933 Act, particularly if there is a 1940 Act ETF already on the market that is ultimately tied to the same digital asset (albeit through indirect exposure), and to allow 1933 Act spot crypto ETPs to come under exchange generic listing standards. Given that certain crypto futures-based ETFs registered under the 1940 Act have been able to come to market under exchange generic listing standards without a separate Rule 19b-4 approval process, we believe it is appropriate to consider whether spot crypto ETPs (particularly those ultimately tied to the same digital asset) should be treated consistently and come under exchange generic listing standards as well. Nasdaq urges the Commission to explore ways to bring greater consistency and timeliness to the review process for 1933 Act spot crypto ETPs.

Similarly, once foundational regulatory standards are in place, Nasdaq recommends that the Commission take the next step toward regulatory parity between 1933 Act crypto ETPs and 1940 Act crypto ETFs by permitting the generic listing of 1933 Act spot crypto ETPs more generally, as outlined in the following section.

V. Generic Listing of Spot Crypto ETPs

Nasdaq strongly believes that the generic listing of spot crypto ETPs should be permitted to facilitate a more efficient process for listing these products. We believe the interim solutions proposed above for evaluating crypto ETPs, such as robust and transparent pricing mechanisms, market capitalization, trading volume, can form the foundation for rules-based generic listing standards.

Generic listing standards would allow Nasdaq and other ETP listing exchanges to list qualifying crypto ETPs pursuant to Rule 19b-4(e) under the Exchange Act, similar to how other ETPs, including 1940 Act ETFs, and index options come to market today.⁴⁴

Currently, every 1933 Act spot crypto ETP proposal must be submitted for Commission approval pursuant to the provisions of Section 19(b)(1) of the Exchange Act and Rule 19b-4 thereunder. This individualized process has historically taken an extended period, which delays the product's launch and thereby defers an investors' investment opportunity. While we understand that an objective framework for evaluating these products must be settled in the first instance, we believe that after these questions are promptly addressed, these objective, transparent criteria can form the basis of generic listing standards for qualifying spot crypto ETPs.

Importantly, even under generic listing standards, the crypto ETP issuer would still need to undergo review of their registration statement with the Commission, similar to other ETPs that qualify under generic listing standards today, including 1940 Act ETPs. Exchange generic listing standards would simply streamline the SEC review process, instead of requiring two separate tracks with the Commission's Divisions of Investment Management or Corporation

⁴⁴ See, e.g., Nasdaq Rule 5704 (Exchange Traded Fund Shares), Nasdaq Rule 5705(b) (Index Fund Shares), Nasdaq Rule 5735 (Managed Fund Shares), Nasdaq ISE Options 4A, Section 3(b) (Narrow-Based Index Options), and Nasdaq ISE Options 4A, Section 3(d) (Broad-Based Index Options).

Finance (for the registration statement) and Trading and Markets (for the 19b-4 rule filing), thereby creating greater efficiencies.

VI. Conclusion

We strongly support the efforts of the Task Force in seeking the public's input for greater crypto clarity, and look forward to working with the Task Force, SEC staff, and the industry to promote a clear, balanced, and forward-looking regulatory regime for crypto ETPs. Investor protection should remain a cornerstone of any framework, particularly as digital asset markets continue to evolve and attract broader participation. We are deeply committed to improving the U.S. capital markets for issuers, investors, and investment managers in order to keep our capital markets the envy of the world. Investor confidence in all aspects of the capital markets is paramount and critical to ensuring their long-term viability.

Sincerely,



John A. Zecca
Executive Vice President
Chief Legal & Regulatory Officer
Nasdaq, Inc.

Cc: The Honorable Paul S. Atkins, Chairman, SEC
The Honorable Mark T. Uyeda, Commissioner, SEC
The Honorable Hester M. Peirce, Commissioner, SEC
The Honorable Caroline A. Crenshaw, Commissioner, SEC
Richard Gabbert, SEC Crypto Task Force, Chief of Staff
Michael Selig, SEC Crypto Task Force, Chief Counsel
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