

**Congress of the United States**  
**Washington, DC 20515**

September 26, 2023

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

Dear Chair Gensler,

We write to ensure the Securities and Exchange Commission (SEC) does not continue to discriminate against spot bitcoin exchange traded products (ETPs). The SEC is responsible for making certain that products that comply with investor protection standards are made available to investors.<sup>1</sup> This position was affirmed 3-0 by the United States Court of Appeals for the District of Columbia last month in *Grayscale Invs., LLC v. SEC*. The Circuit Court upheld Grayscale's position that the SEC violated the Administrative Procedures Act when it denied Grayscale's application to convert Grayscale Bitcoin Trust (GBTC) to a spot bitcoin ETP.

In its decision, the Court of Appeals held that Grayscale's proposed bitcoin ETP is "materially similar, across relevant regulatory factors, to the approved bitcoin futures ETPs." It further found the SEC's "unexplained discounting of the obvious financial and mathematical relationship between the spot and futures markets falls short of the standard for reasoned decision making." The Court of Appeals concluded that "in the absence of a coherent explanation, this unlike regulatory treatment of like products is unlawful." The Court's finding underscores the fundamental point. A spot bitcoin ETP is indistinguishable from a bitcoin futures ETP. Thus, the SEC's current posture is untenable moving forward.

During your time at the SEC, you have consistently stated that digital asset firms should "come in and register" with the SEC. Market participants have relied on your statements and have filed applications for a regulated spot bitcoin ETP. Following the Court of Appeals' decision, there is no reason to continue to deny such applications under inconsistent and discriminatory standards.

A regulated spot bitcoin ETP would provide increased protection for investors by making access to bitcoin safer and more transparent. Congress has a duty to ensure the SEC approves investment products that meet the requirements set out by Congress. To that end, we urge you to

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<sup>1</sup> See Letter from Congressman French Hill and Congressman Tom Emmer to Chair Gensler (Apr. 18, 2023); Letter from Congressmen Emmer, Soto, Davidson, Auchincloss, Donalds, Gottheimer, Budd and Torres to Chair Gensler (Mar. 16, 2022).

approve the listing of spot-bitcoin ETPs immediately. We appreciate your attention to this important matter.

Sincerely,



Mike Flood  
Member of Congress



Wiley Nickel  
Member of Congress



Tom Emmer  
Member of Congress



Ritchie Torres  
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