



May 21, 2024

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

Re: SR-BOX-2024-07; SR-CBOE-2024-005; SR-ISE-2024-03; SR-ISE-2024-14; SR-MIAX-2024-03; SR-NYSEAMER-2024-10; SR-PEARL-2024-03

Dear Ms. Countryman:

Better Markets¹ appreciates the opportunity to comment on proposed rule changes filed by BOX Exchange LLC, Cboe Exchange, Inc., MIAX International Securities Exchange LLC, MIAX PEARL LLC, Nasdaq ISE, LLC, and NYSE American LLC (the “Exchanges”) seeking to list and trade options on exchange-traded product (“ETP”) shares that represent interests in either a specified bitcoin trust or in any trust that holds bitcoin (the “Proposals”).²

In January 2024, the SEC approved the listing and trading of spot bitcoin ETPs.³ That decision was a historic mistake that allows the mass marketing of a worthless, volatile, and fraud-filled financial product to retail investors.⁴ The SEC should not compound that mistake by allowing even riskier options on spot bitcoin ETPs to be marketed to retail investors too.

The SEC should not approve the listing and trading of options on spot bitcoin ETPs so soon after its approval of spot bitcoin ETPs themselves. Instead, the SEC should wait to determine how widely held and actively traded are the spot bitcoin ETPs. Although the spot bitcoin ETPs saw tremendous growth immediately after their approval, that growth has waned recently. The SEC should proceed especially cautiously because options on spot bitcoin ETPs will expose retail investors to a tremendous amount of risk. Options on spot bitcoin ETPs also pose systemic risks to the financial system that the SEC must be careful to guard against.

¹ Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans’ jobs, savings, retirements, and more.

² SR-BOX-2024-07; SR-CBOE-2024-005; SR-ISE-2024-03; SR-ISE-2024-14; SR-MIAX-2024-03; SR-NYSEAMER-2024-10; SR-PEARL-2024-03.

³ Exchange Act Release No. 99306 (Jan. 10, 2024), 89 Fed. Reg. 3008 (Jan. 17, 2024).

⁴ See Press Release, *SEC’s Approval of a Bitcoin Crypto ETF is an Historic Mistake That Will Harm Investors, Markets, and Financial Stability*, Better Markets (Jan. 10, 2024), <https://bettermarkets.org/newsroom/secs-approval-of-a-bitcoin-crypto-etf-is-an-historic-mistake-that-will-harm-investors-markets-and-financial-stability/>.

I. The SEC should evaluate the market for spot bitcoin ETPs before approving options.

The Commission asked whether the Exchanges “should include data demonstrating that the shares of each of the specified Bitcoin ETPs on which an Exchange proposes to list options are ‘widely held and actively traded,’ as required by the Exchanges’ rules.” The answer is yes.

Although investor demand for spot bitcoin ETPs appeared to be strong immediately after their approval, there is already evidence that this demand “appears to be waning.”⁵ Earlier this month, investors pulled \$558 million from spot bitcoin ETPs in one day, “marking the funds’ largest single daily outflows since they launched in mid-January.”⁶ That included \$167 million leaving the Grayscale Bitcoin Trust, “which has seen over \$17 billion in outflows since it converted to an ETF in January.”⁷ BlackRock’s iShares Bitcoin Trust also “recorded its first daily outflows, at \$36 million.”⁸ Overall, the “flow of funds into spot Bitcoin ETFs has significantly decreased since peaking on March 12 at a daily net inflow of \$1.05 billion,” including a recent stretch of four consecutive weeks of outflows exceeding \$1 billion.”⁹

The most recent data therefore “captures the demand (or lack thereof) for bitcoin ETFs.”¹⁰ Despite the headlines that inflows into spot bitcoin ETPs generated after their launch, the data shows “a demand drop-off” for spot bitcoin ETPs “in recent weeks.”¹¹ For example, Fidelity’s Wise Origin Bitcoin Fund saw \$8 billion in inflows in the first 63 days after its launch but “just \$94 million in the 21 trading days since.”¹² Similarly, Blackrock’s iShares Bitcoin Trust saw inflows of nearly \$155 billion in the first 71 trading days but just \$24 million in the following 13 trading days.¹³ And it has seen zero or negative flows nine times in that span.¹⁴ In addition, trading volumes in spot bitcoin ETPs also “have continued to slide.”¹⁵ “These volumes highlight ETP investors are participating less in the crypto ecosystem at present.”¹⁶ The SEC should wait and evaluate the market for spot bitcoin ETPs to determine the extent to which they are widely held and actively traded before approving options on spot bitcoin ETPs.¹⁷

⁵ Vicky Ge Huang, *Spot Bitcoin ETFs Suffer Largest Daily Outflows Since Launch*, The Wall Street Journal (May 2, 2024), https://www.wsj.com/livecoverage/stock-market-today-earnings-05-02-2024/card/spot-bitcoin-etfs-suffer-largest-daily-outflows-since-launch-ZypFxeziO1uVwjzT6N1u?mod=Searchresults_pos13&page=1.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Hope C, *US Spot Bitcoin ETFs Regain Net Inflow of \$116M After One Month of Outflows*, Yahoo Finance (May 14, 2024), <https://finance.yahoo.com/news/us-spot-bitcoin-etfs-regain-045928521.html>.

¹⁰ Ben Strack, *Strong start, slowing demand: The first 4 months of US spot bitcoin ETFs*, Blockworks (May 13, 2024), <https://blockworks.co/news/bitcoin-etf-performance-first-four-months>.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* (quoting CoinShares research head James Butterfill).

¹⁷ See Niamh Rowe, *It took a decade for spot Bitcoin ETFs to be approved. How much longer for options?*,

II. Options on spot bitcoin ETPs would threaten retail investors.

The SEC should be especially cautious before approving options on spot bitcoin ETPs due to the risks that options trading poses for retail investors. “Options further increase investor risk.”¹⁸ “Trading options—basic or advanced—involves risks that are not normally present when investing directly in underlying stocks.”¹⁹ Options trading, therefore, poses “considerably more problems for retail investors due to the financial instrument’s inherent complexity, its significant price volatility, and its executory contract structure, which all subject an investor to significant potential downside losses.”²⁰ “As a result of their relative lack of experience and comparatively low net worth, retail investors are particularly prone to incurring life-changing significant losses, especially given that they appear to suffer a fundamental misunderstanding of options trading, which leads them to trade beyond their means.”²¹

Indeed, the meme stock frenzy surrounding GameStop in 2021 “highlighted two significant problems with allowing retail investors to invest in exchange-traded options: their failure to fundamentally comprehend the financial instrument and, consequently, their significant losses.”²² Options trading fueled the meme stock frenzy.²³ And individual investors played a big role.²⁴ “Inexperienced traders are unlikely to understand how options work, however, or to evaluate the risk associated with their positions accurately.”²⁵ Consequently, “[m]any investors lost money, including some who lost more than they could afford to lose.”²⁶

As a result, although the proponents of options on spot bitcoin ETPs say that these products would allow investors to hedge their positions in spot bitcoin and better manage risk, the inevitable marketing of such options to retail investors could cause tremendous harm. Although that marketing would probably include disclosures about the risks of options trading, such disclosures are “likely futile in a digital environment where online brokers have increasingly sophisticated understanding of user behavior and incentives to craft intentionally

Fortune (Feb. 2, 2024), <https://fortune.com/crypto/2024/02/02/spot-bitcoin-etf-options-trading-sec-cftc-occ/> (quoting Terrence Yang, managing director of Swan Bitcoin, as saying that “inflows and outflows are not that stable” for spot bitcoin ETPs, that the SEC may want to wait “before they offer yet another product,” and that the bitcoin ETP market should “settle and find its footing” before the SEC approves options).

¹⁸ Jill E. Fisch, *GameStop and the Reemergence of the Retail Investor*, 102 B.U. L. REV. 1799, 1819 (2022).

¹⁹ Abraham J.B. Cable, *Regulating Democratized Investing*, 83 OHIO ST. L. J. 671, 694 (2022).

²⁰ Chris Mao, *Stealing from the Poor: Regulating Robinhood’s Exchange-Traded Options For Retail Investors*, 107 CORNELL L. REV. 323, 326 (2021).

²¹ *Id.* at 326-37.

²² *Id.* at 324, 334.

²³ See, e.g., Gunjan Banerji, *Options Activity Tied to Avis, Meme Stocks Explodes*, The Wall Street Journal (Nov. 3, 2021), <https://www.wsj.com/articles/options-activity-tied-to-avis-meme-stocks-explodes-11635962468>; Gunjan Banerji, *AMC, Other Meme Stocks Turn Options Market Upside Down*, The Wall Street Journal (June 8, 2021), <https://www.wsj.com/articles/amc-other-meme-stocks-turn-options-market-upside-down-11623144602>; Alexander Osipovich, *GameStop Stock Frenzy: What You Need to Know*, The Wall Street Journal (Jan. 27, 2021), https://www.wsj.com/articles/how-gamestops-reddit-and-options-fueled-stock-rally-happened-11611743400?mod=article_inline.

²⁴ See, e.g., Banerji, *supra* note 23 (Nov. 3, 2021).

²⁵ Fisch, 102 B.U. L. REV. at 1819.

²⁶ *Id.* at 1825.

ineffective disclosure.”²⁷ The rise of online trading platforms such as Robinhood, which use digital engagement practices to entice investors to trade as much as possible, has already fueled “a boom in the trading of risky options by retail investors.”²⁸ These platforms make it “extraordinarily easy” for “retail investors to trade in options, which belies how complex and extraordinarily risky these products are.”²⁹ Indeed, “options trades are typically unsuitable” for retail investors who have “little if any stock market experience and less money to lose.”³⁰ If this is the case for options on traditional securities such as stocks, the availability of options on a volatile product like spot bitcoin ETPs could leave a trail of destruction in its wake.

III. Options on spot bitcoin ETPs could lead to market instability.

It is already the case that “higher derivatives activity alongside lower liquidity . . . in some corners of the market can mean higher volatility.”³¹ As discussed above, options trading led to tremendous volatility in the meme stock trading frenzy in January 2021. Although options may be used as a hedging strategy, that hedging activity “can fuel greater instability in the stock market.”³² That is because “[s]hort-term trading using derivatives including options can increase the prospect of a violent shakeout if individual stocks or major indexes take an abrupt turn.”³³ This is especially problematic given Bitcoin’s “lack of liquidity.”³⁴ “If you’re [trading options] in a type of market that is not liquid, where there’s not enough buyers and sellers, you’re moving the market, which is really bad, because you’re affecting the price.”³⁵ So options trading in spot bitcoin ETPs could harm the market as a whole as well as individual investors.

Indeed, the approval of options on spot bitcoin ETPs could pose risks to the broader financial system. That is because the SEC’s approval of spot bitcoin ETPs already “deepen[ed] ties between the volatile world of cryptocurrencies and the traditional finance system, potentially creating new unforeseen risks.”³⁶ The International Monetary Fund previously warned, before the approval of spot bitcoin ETPs, that crypto assets “could potentially pose financial stability risks due to their extreme volatility.”³⁷ Spot bitcoin ETPs exacerbate these risks. These

²⁷ Cable, 83 OHIO ST. L. J. at 675-76.

²⁸ Dennis M. Kelleher, Jason Grimes, and Andres Chovil, *Securities-Democratizing Equity Markets With and Without Exploitation: Robinhood, GameStop, Hedge Funds, Gamification, High Frequency Trading, and More*, 44 W. NEW ENG. L. REV. 51, 87 (2022).

²⁹ *Id.*

³⁰ *Id.*

³¹ Gunjan Banerji, *Individuals Embrace Options Trading, Turbocharging Stock Markets*, The Wall Street Journal (Sept. 26, 2021), <https://www.wsj.com/articles/individuals-embrace-options-trading-turbocharging-stock-markets-11632661201>.

³² *Id.*

³³ *Id.*

³⁴ Rowe, *supra* note 17.

³⁵ *Id.* (alteration in original) (quoting Terrence Yang, managing director of Swan Bitcoin).

³⁶ Elizabeth Howcroft and Hannah Lang, *US bitcoin ETFs raise questions over broader financial system risks*, Reuters (Jan. 31, 2024), <https://www.reuters.com/business/finance/us-bitcoin-etfs-raise-questions-over-broader-financial-system-risks-2024-01-31/>.

³⁷ Arthur E. Wilmarth, Jr., *We Must Protect Investors and Our Banking System from the Crypto Industry*, 101 WASH. U. L. REV. 235, 245 (2023) (quoting Tara Iyer, IMF, *Cryptic Connections: Spillovers Between*

products, if widely adopted, “could pose risks to other parts of the financial system during times of market stress by exacerbating bitcoin price volatility, or creating dislocations between the price of the ETF and bitcoin.”³⁸ That can “cause stress for institutions heavily exposed to the products or which rely on them for liquidity management.”³⁹ Options on spot bitcoin ETPs would further entangle the crypto industry with traditional finance and aggravate these risks.

“Derivatives have consistently exacerbated financial crises.”⁴⁰ And the “untethered access to options (by both retail and professional investors) combined with the turbocharge of information flow through social media, and forums like Reddit, have created modern conditions for bubbles to quickly form.”⁴¹ In light of bitcoin’s already existing notorious volatility, the SEC should tread carefully before approving the trading of options on spot bitcoin ETPs.

Conclusion

We hope these comments are helpful as the Commission considers these matters.

Sincerely,



Benjamin L. Schiffrin
Director of Securities Policy

Better Markets, Inc.
2000 Pennsylvania Avenue, NW
Suite 4008
Washington, DC 20006
(202) 618-6464

bschiffrin@bettermarkets.org
<http://www.bettermarkets.org>

Crypto and Equity Markets, at 3, Global Financial Stability Notes No. 2022/01 (Jan. 2022), <https://www.imf.org/en/Publications/global-financial-stability-notes/Issues/2022/01/10/Cryptic-Connections-511776>).

³⁸ Howcroft and Lang, *supra* note 36.

³⁹ *Id.*

⁴⁰ Dr. Ryan Clements, *Misaligned Incentives in Markets: Envisioning Finance That Benefits All of Society*, 19 DEPAUL BUS. & COM. L.J. 1, 61 (2020-2021).

⁴¹ *Id.*