

May 8, 2025

By Email

Commissioner Hester M. Peirce
Chair of SEC Crypto Task Force
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U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

Re: Crypto Exchange-Traded Products

Dear Commissioner Peirce and Members of the SEC Crypto Task Force:

On behalf of The Digital Chamber (“TDC”), we respectfully provide this submission in response to Commissioner Hester M. Peirce’s February 21, 2025 statement soliciting public input on regulatory issues related to blockchain technology and crypto assets (the “Statement”).¹ In particular, this letter addresses Questions 35 through 39 of the Statement related to the Commission’s review of listing applications for crypto asset-based exchange-traded products (“ETPs”). TDC is providing responses to many of the other questions posed by the Statement in separate submissions.

Formed in 2014, TDC is the world’s largest digital asset and blockchain trade association. TDC represents more than 200 companies innovating in the digital asset and blockchain industry. Guided by the principle of industry compliance with applicable law, TDC seeks to foster a legal and regulatory environment in which digital asset users can enjoy regulatory clarity as they apply blockchain technologies to an array of commercial, technological, and social purposes. TDC encourages industry compliance with the federal securities laws through initiatives like the Token Alliance, a network of 400+ TDC-member thought leaders and technologists that have developed numerous tools and resources for industry participants and policymakers as they engage with the digital asset economy.

As explained herein, we believe that the Commission should adopt clear, evidence-based standards for reviewing crypto-asset based ETPs. The Commission should look to the generic listing standards frequently relied on by exchange-traded funds prior to the adoption of Rule 6c-11 under the Investment Company Act as a guide for developing a framework for the approval of

¹ Comm’r Hester M. Peirce, *There Must Be Some Way Out of Here*, U.S. Sec. & Exch. Comm’n (Feb. 21, 2025), <https://www.sec.gov/newsroom/speeches-statements/peirce-statement-rfi-022125>.

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ETPs. Such a framework would lift the uncertainty that has plagued the industry since the adoption of the so-called “Winklevoss standard” and encourage innovation among product sponsors.

TDC is grateful for the opportunity to submit these responses. In addition to the specific questions asked by the Statement, we are also summarizing our views on other regulatory issues regarding crypto-asset ETPs, including in-kind creations and redemptions, staking, custody and the interaction with the Investment Company Act of 1940. We hope that the Commission and the Crypto Task Force find this material helpful, and we welcome the opportunity to discuss these suggestions with you and the Commission’s staff.

RESPONSES TO STATEMENT’S QUESTIONS

35. If the listing exchange does not have an SSA with a regulated market and no regulated market for the crypto asset underlying an ETP exists, could the listing exchange address concerns regarding fraud and manipulation based on the size and liquidity of the underlying spot market? What would be an appropriate measure of size and liquidity that would address these concerns? Are there more appropriate ways to address concerns regarding fraud and manipulation?

In evaluating whether to grant the listing application of a crypto ETP product, the Commission should not require (i) the listing exchange to have a surveillance-sharing agreement (“SSA”) with a regulated market of significant size, or (ii) the existence of a regulated market for the underlying ETP assets. Historically, prior to the adoption of the so-called Winklevoss standard, Rule 19b-4 orders did not require listing exchanges to demonstrate that the underlying markets were regulated or met a minimum size threshold.²

In the context of previously approved metals-based ETPs, the Commission has occasionally considered the size of the underlying market, but it has never made the existence of an SSA with a sufficiently large market a necessary condition for approval. In fact, some approval orders reflected the view that the introduction of an ETP could improve the functioning and transparency of the underlying asset’s market.³

² See, e.g., ETFs Palladium Trust, Exchange Act Release No. 61220 (Dec. 22, 2009), 74 FR 68895, 68896 (Dec. 29, 2009).

³ See, iShares Silver Trust, Exchange Act Release No. 53521 (Mar 24, 2006), 71 FR 14967, 14974 (“The Commission agrees with Amex that, like other derivative products, the Silver Shares will increase the efficiency and transparency of the market for the underlying instrument, i.e., silver. In this regard, the Commission finds that the proposed rule change is in the public interest. The Commission also does not

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It is also important to note that the markets for the underlying assets of physical commodity ETPs have generally been unregulated, and in many cases, less regulated than the markets for crypto assets. U.S. crypto markets, for example, typically operate under Money Services Business (“*MSB*”) licenses and are subject to the enforcement authority of the Commodity Futures Trading Commission (“*CFTC*”). Therefore, the sufficient size and liquidity of the underlying market—regardless of its regulated status—should be adequate for the Commission to grant approval of a crypto ETP listing application.

The Commission should look to the pre-Rule 6c-11 generic listing standards for exchange-traded funds (“*ETFs*”) for instruction on what appropriate metrics for approving new ETP products. Based on those standards, we believe the following conditions could serve as the basis for a generic listing standard for crypto ETPs going forward.

- At least 90% of the weight of the reference index or portfolio should have a “circulating supply” (i.e., a measure of market capitalization excluding holdings of insiders and tokens subject to lock-ups) of at least \$500 million. This threshold is designed to align with the conditions imposed by other jurisdictions, such as Switzerland, and approximates the market capitalization threshold for mid-cap equities. At current levels, this standard would capture approximately the 100 largest tokens by market capitalization.

- The component assets that, in the aggregate, account for at least 90% of the weight of the index or portfolio should each have a minimum average worldwide daily trading volume during the last six months of at least \$50,000,000. Such a standard would capture approximately the 70 largest tokens by market capitalization.

These thresholds are sufficiently high to ensure that any ETP does not corner the market for any particular asset and that a robust and efficient market exists for the tokens comprising a particular portfolio.

When a particular proposed product is unable to meet the conditions of a generic listing standard, the Commission should also consider other means of detecting and preventing fraud and manipulation:

- Many crypto asset exchanges have market monitoring programs that are equivalent to those of U.S. stock exchanges, and these should be viewed favorably.

believe that the Silver Shares are likely to cause serious liquidity problems in the silver market such that approval of the proposed rule change is not consistent with the Act.”)

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- The diversity of trading venues for crypto assets adds additional layers of security, as it becomes increasingly difficult for would-be manipulators to act across multiple platforms.
- The Commission should consider less stringent requirements for diversified portfolios, given the inherent protections provided by diversification. For example, requiring that 80% of a diversified portfolio complies with the above requirements would align with the Investment Company Act “names rule” and would allow sponsors to offer exposure to smaller-cap or new-issue tokens without adding material risk to the overall portfolio.

In summary, the Commission should focus on the size and liquidity of the underlying spot market, rather than the existence of an SSA or a regulated market, as the primary means of addressing concerns regarding fraud and manipulation. The adoption of clear, quantitative thresholds and recognition of robust market monitoring practices will provide a balanced and effective regulatory approach.

36. How should the Commission consider market capitalization, unique number of wallets, trading volume, the number of spot markets, geographic distribution of spot markets, size and frequency of price divergences, or speed of price convergence/arbitrage?

Market Capitalization

Market capitalization should be given significant weight in the Commission’s evaluation of crypto assets for ETP listing. A large free float market capitalization is strong *prima facie* evidence of resistance to market manipulation, as it indicates a broad and active market with significant participation. The definition of market capitalization should follow industry-accepted standards for “circulating supply,” explicitly excluding tokens that are subject to lock-up agreements or similar restrictions, as these do not contribute to the asset’s effective liquidity or tradability.

Unique Number of Wallets

The unique number of wallets holding a particular crypto asset can be instructive as a measure of market participation and distribution, but it should not be a dispositive factor. The ease and low cost of establishing new wallets means that this metric may not always correlate with genuine market activity or resistance to manipulation. While a higher number of unique wallets may suggest broader distribution, it is not a reliable standalone indicator of market health or integrity.

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Number of Spot Markets

The number of spot markets on which a crypto asset is traded should be weighted very highly. Diversity in trading venues is, after market capitalization, one of the most effective natural defenses against market manipulation. A greater number of independent spot platforms increases transparency, enhances price discovery, and allows for cross-market monitoring, making it more difficult for any single actor or group to manipulate prices. Multiple active spot markets also facilitate the detection and prevention of manipulative activity by providing more data points and surveillance opportunities.

Geographic Distribution of Spot Markets

Geographic distribution of spot markets should be considered as an instructive, but not decisive, factor. The global, 24/7 nature of crypto trading means that geographic dispersion is less critical than in traditional markets. However, a concentration of trading activity on U.S.-based exchanges should be viewed favorably, as these platforms are generally subject to higher regulatory standards and oversight. While geographic diversity can add resilience, it should not be overemphasized in the Commission's analysis.

Size and Frequency of Price Divergences

Price divergences between spot markets can occur for a variety of reasons, including local regulatory differences, exchange-specific operational factors, and the institutional or retail composition of market participants. As such, frequent or pronounced price divergences should not be a primary consideration in the approval of a proposed ETP. These divergences are often temporary and self-correcting, and do not necessarily indicate a lack of market integrity or susceptibility to manipulation.

Speed of Price Convergence/Arbitrage

The speed at which prices converge across different crypto exchanges, and between spot and derivatives markets for the same asset, should be a moderately high factor in the Commission's evaluation. Rapid price convergence is a strong indicator of healthy price discovery, robust trading volumes, and effective arbitrage mechanisms. Conversely, prolonged or persistent price discrepancies may signal market fragmentation or capital flow constraints, which could impact the effectiveness of an ETP's arbitrage program and the reliability of its pricing.

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Additional Considerations

- *Trading History:* The Commission should review the trading history of a crypto asset over an extended period, such as two years, to assess its stability, liquidity, and resilience to market shocks.
- *Decentralization:* The degree of decentralization, particularly the proportion of a token's free float held by insiders or concentrated entities, should be considered. A more decentralized distribution reduces the risk of coordinated manipulation and enhances market integrity.

Conclusion

In summary, the Commission should prioritize market capitalization and the number of active spot markets as the most significant factors in evaluating crypto assets for ETP listing. Other metrics, such as the unique number of wallets, geographic distribution of markets, and price divergence, should be considered as supplementary, but not determinative, factors. The speed of price convergence and the asset's trading history and decentralization profile should also inform the Commission's analysis. This balanced, multi-factor approach will help ensure that approved ETPs are based on assets with robust, liquid, and resilient markets, thereby protecting investors and supporting market integrity.

37. How should the Commission consider crypto asset-based ETPs that are investing in assets that are already referenced in crypto asset-based exchange-traded funds registered as investment companies under the Investment Company Act?

The historical track records of ETFs registered under the Investment Company Act that obtain exposure to the same assets as a proposed ETP should be highly instructive to the Commission. These track records provide valuable insights into how similar products have performed in terms of market behavior, liquidity, and the effectiveness of arbitrage mechanisms. By examining the performance and operational history of these ETFs, the Commission can gain confidence in the viability and stability of the proposed ETP.

One of the key metrics to consider is the average historical premium or discount to the net asset value (“NAV”) of these ETFs. This metric indicates how closely the market price of the ETF tracks its underlying asset value, which is a critical factor in assessing the efficiency of the arbitrage mechanisms in place. A consistently narrow premium/discount range suggests that the arbitrage mechanisms are functioning effectively, ensuring that the ETF's market price remains aligned with its NAV. This, in turn, provides confidence that an ETP with direct exposure to the

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same assets would have arbitrage mechanisms that perform as well or better than their ETF equivalents.

The existence of such ETFs also offers substantial evidence that an ETP would not dominate the market for any particular asset. ETFs that have been operating successfully without causing significant market disruptions or concentration issues demonstrate that the market can absorb additional products without adverse effects. This historical evidence can reassure the Commission that the introduction of a new ETP would not lead to market manipulation or dominance concerns.

In summary, the historical track records of ETFs that obtain exposure to the same assets as a proposed ETP provide valuable insights and confidence in the proposed product's viability. The average historical premium/discount to NAV is a critical metric that demonstrates the effectiveness of arbitrage mechanisms, ensuring market price alignment with NAV. Additionally, the existence of such ETFs provides substantial evidence that an ETP would not dominate the market for any particular asset. By considering these factors, the Commission can make informed decisions regarding the approval of crypto ETPs.

38. What factors should the Commission consider with respect to an SSA between an exchange listing an ETP on a crypto asset and a spot crypto market?

As discussed above in response to Question 35, we believe that an SSA between an exchange listing an ETP on a crypto asset and a spot crypto market should not be a requirement to listing such an ETP. However, such an SSA could be one of many factors taken into consideration for individual applications. When considering an SSA between an exchange listing a crypto ETP and a spot crypto market, the Commission should evaluate whether there are any material differences between such an agreement and a typical SSA between Intermarket Surveillance Group (“ISG”) members.

- *Information Sharing and Cooperation:* ISG SSAs typically provide for robust, reciprocal sharing of information regarding trading activity, customer identities, and other data necessary to detect and investigate potential market manipulation or other abusive practices. The Commission should evaluate whether SSA's involving a spot crypto market provides similar levels of information and cooperation.
- *Technological Infrastructure:* The technological sophistication of surveillance systems can differ significantly. Many leading crypto exchanges have developed advanced market monitoring and surveillance tools, but there is no uniform standard across the industry. The Commission should consider whether the spot crypto market's surveillance systems are comparable in effectiveness to those of ISG members.

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- *Enforceability and Jurisdiction:* The enforceability of an SSA may be more challenging when the spot crypto market is located outside the United States or is not subject to U.S. regulatory authority. The Commission should assess the practical ability to obtain timely and comprehensive information from the spot market in the event of an investigation.

In summary, while the core purpose of an SSA—facilitating the detection and investigation of fraud and manipulation—remains the same, there may be material differences in regulatory oversight, information sharing, technological infrastructure, and enforceability between SSAs with spot crypto markets and those between ISG members. The Commission should carefully evaluate these factors when considering the adequacy of any proposed SSA.

The Commission should also consider the extent to which the spot crypto market(s) that have entered into an SSA with the listing exchange represent the total trading volume for the relevant crypto asset.

- *Market Coverage:* If the SSA is with a spot market that accounts for only a small fraction of the total trading volume for the asset, the effectiveness of the agreement in detecting and deterring manipulation may be limited. Manipulative activity could simply migrate to other venues not covered by the SSA.
- *Thresholds for Adequacy:* The Commission should consider whether there is a minimum threshold of market coverage that would render an SSA effective. For example, an SSA with a spot market (or group of markets) that collectively accounts for a substantial percentage—such as 50% or more—of the total trading volume for the asset may be more likely to provide meaningful surveillance benefits.
- *Alternative Approaches:* Given the challenges of achieving comprehensive coverage through SSAs alone, the Commission may wish to consider alternative or supplemental measures, such as requiring that the underlying asset meet certain size and liquidity thresholds, or that the ETP's portfolio be sufficiently diversified to mitigate the risk of manipulation.

In conclusion, the Commission should assess both the qualitative aspects of the SSA—such as the comparability to ISG agreements and the enforceability of information sharing—and the quantitative aspect of how much of the total trading volume is covered by the agreement. Only by considering both dimensions can the Commission determine whether an SSA with a spot crypto market provides adequate protection against fraud and manipulation in the context of a crypto ETP listing.

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39. How should the Commission weigh the reliability, frequency, and dissemination of pricing information on the crypto assets underlying the ETP in its consideration?

Crypto assets, much like physical commodities, are not solely bought and sold for speculative purposes. They are also exchanged for goods and services and deployed in various useful enterprises. Additionally, crypto assets are frequently traded in over-the-counter (OTC) transactions, which is more common relative to other types of financial assets. Consequently, data from spot crypto exchanges will inherently be less comprehensive compared to markets for equities, where exchanges are the dominant means of trading.

Market information is crucial for several reasons, including the establishment of the ETP's daily NAV, the Intraday Indicative Value (“*IIV*”), and informing Authorized Participants (“*APs*”) about potential arbitrage opportunities. However, the digital asset industry currently lacks a uniform standard for market information reporting. Ultimately, the sufficiency of market information will be judged by the APs. These participants will decide whether to engage based on the quality of information available to them. Their participation will be influenced by the reliability, frequency, and dissemination of pricing information, ensuring that only those ETPs with adequate market information will attract and retain APs. This approach respects the unique characteristics of the crypto market and allows for the natural evolution of industry standards.

OTHER ETP ISSUES

In-Kind Creations and Redemptions

In-kind creations and redemptions represent the most efficient operational mechanism for ETPs and are the preferred method for Authorized Participants (“*APs*”). This process allows APs to deliver or receive the underlying crypto assets directly, rather than transacting in cash, which can introduce additional friction and costs. By facilitating in-kind transactions, the risk of price discrepancies—often referred to as “price breakage”—between the calculation of the ETP's NAV and the actual delivery or receipt of the asset basket is significantly reduced. This alignment ensures that the value of the assets being exchanged closely matches the NAV, thereby protecting both the ETP and its investors from unnecessary market risk.

Sponsors have proactively addressed broker-dealer (BD) related challenges associated with in-kind transactions. Proposed solutions include utilizing one or more non-broker-dealer liquidity providers to deliver crypto assets on behalf of APs, or permitting non-BD AP clients to deliver assets in-kind themselves. These approaches maintain the integrity and efficiency of the in-kind process while ensuring compliance with existing regulatory frameworks.

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Staking

Staking is an essential feature of many proof-of-stake (“*PoS*”) blockchain networks, and it offers ETP shareholders the opportunity to participate in the validation and consensus mechanisms that underpin these networks. Allowing ETPs to engage in staking activities can enhance returns for shareholders and more closely align the ETP’s operations with the underlying asset’s ecosystem.

ETPs should be permitted to participate in staking activities, provided that any possibility of risk of loss should be fully disclosed to investors. Furthermore, ETPs should have the flexibility to utilize a variety of staking methods, including:

- *Self-staking*: Establishing a validator node using the ETP’s own resources, which can provide greater control and transparency.
- *Segregated custodial staking services*: Engaging third-party custodians to provide staking services while maintaining asset segregation and security.
- *Liquid staking tokens*: Utilizing liquid staking solutions that allow the ETP to maintain liquidity while participating in staking rewards.

This flexibility will enable ETPs to optimize their staking strategies in accordance with their risk management policies and operational capabilities.

Custody

Clear and practical guidance from the SEC on acceptable custody solutions for ETPs is essential for the continued growth and safety of crypto-based ETPs. The definition of “custody” should focus primarily on the possession of cryptographic keys, rather than the broader concept of control. For example, when assets are committed to staking or decentralized finance (DeFi) protocols, as long as the ETP or its custodian retains possession of the private keys, such protocols should not be deemed to have custody of the ETP’s assets.

Additionally, self-custody should be permitted under certain circumstances, particularly where robust internal controls and security measures are in place. The SEC could look to the Advisers Act custody rule as a guide for establishing appropriate standards and safeguards for self-custody arrangements.

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Interaction with the Investment Company Act

The current regulatory framework under the Investment Company Act does not accommodate investment companies easily and directly holding significant positions in spot crypto assets. The Commission should consider recommending to Congress that the Act be amended to allow for such positions within investment company wrappers. Doing so would provide investors with the additional protections inherent in the investment company structure, such as enhanced disclosure, governance, and oversight, while also offering a clearer and more robust regulatory framework for crypto-based investment products.

By addressing these issues—operational efficiency through in-kind transactions, responsible participation in staking, clear custody standards, and modernized investment company regulations—the Commission can foster a more secure, efficient, and investor-friendly environment for crypto asset-based ETPs.

CONCLUSION

Based upon the foregoing, we respectfully request that the Commission develop a framework for approval of ETPs that satisfies the Commission’s duties to protect the investing public while still encouraging innovation in nascent digital asset industry.


TDC acknowledges the significant efforts of Jim Audette, Partner, Chapman and Cutler LLP towards the preparation of this letter. TDC also thanks the many members that contributed their time and expertise towards the development of this letter, including but not limited to Gregory S. Collett, General Counsel, Rex Financial, LLC, Katherine Dowling, General Counsel & Chief Compliance Officer, Bitwise Asset Management, Inc., Samir Kerbage, Chief Investment Officer, Hashdex Asset Management Ltd., Ryan Louvar, Chief Legal Officer and Head of Business and Legal Affairs, Wisdom Tree Digital Commodity Services, LLC, and Julia Castelo Branco Rocha, Legal Director, Hashdex Asset Management, Ltd.

If you have any comments or questions relating to the request or would like to arrange a meeting to discuss further, please do not hesitate to contact the undersigned at (312) 845-3484 or warren@chapman.com.

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Very truly yours,

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