

VanEck
Canary Capital
21Shares

June 5, 2025

via electronic mail

The Honorable Paul Atkins
Chairman
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549

Dear Chairman Atkins:

We write to express concern about the Commission's recent failure to practice a "first-to-file" approach whereby the Commission grants approval of ETPs in the order in which the issuer filed for approval. The failure to follow this practice has frustrated the regulatory principles of innovation, fairness, and competition in financial markets. To that end, we respectfully request your prompt reinstatement of the Commission's longstanding first-to-file approval principle for registration statements. Simply put, when the Commission plays favorites, it costs ETP sponsors money and makes the ETP marketplace less fair.

For decades, the United States has been a leader in financial innovation by establishing predictable, transparent, and equitable regulatory processes. Historically, entrepreneurial firms, including many smaller enterprises, depended on the Commission to provide fair and predictable treatment. Firms filed the necessary paperwork with the Commission, followed the rules, and were rewarded. If multiple sponsors were working in parallel on similar ideas, those filing first were first in line to receive market approval. This has enabled the ETP industry to grow to \$15.4 trillion in investor assets. Newer, innovative companies like Wisdomtree have been able to become industry leaders; it's not necessarily established mutual fund companies that have gained high ETP market share.

In recent times, the troubling departure from the first-to-file approval principle toward simultaneous product approvals has drastically altered the competitive landscape, significantly diluting the advantage of first-mover investment and innovation. Under this model, larger, better-resourced firms strategically wait for smaller, pioneering firms to undertake initial, costly innovation processes, and then rapidly secure regulatory approval concurrently with these original innovators. Historically, the first to market ETPs have gained significantly more assets and market share. It is really the only way that smaller issuers can compete against firms with bigger brands. There are three examples of this departure from practice, oddly all affecting crypto ETPs.

The first case concerned Bitcoin futures funds in late 2021. Just a three-day head start allowed ProShares Bitcoin ETF to secure more than 90% market share. This case clearly shows how even a brief advantage can lead to an ETP dominating the market and significantly impact the financial success of ETP sponsors.

Despite the fact that several issuers filed for “spot” Bitcoin ETPs years before other issuers, they were all permitted to go forward on the same date, January 10, 2024. It is not surprising that the largest ETP firm has the largest market share despite being one of the last to file. What message does this send to smaller and mid-size ETP sponsors?

The same fact pattern held for Ethereum spot ETPs.

This significant regulatory shift away from a first-to-file approval principle adversely affects market dynamics in several critical ways. Firstly, it incentivizes replication rather than original innovation, thereby discouraging the considerable investment necessary to develop genuinely innovative products. Secondly, it fosters increased market concentration, as resources gravitate toward larger entities. Thirdly, this approach creates a competitive imbalance, neutralizing the inherent agility and creative capacity that historically allowed entrepreneurial firms to introduce transformative financial solutions.

Moreover, the reduced incentive for pioneering product development has broader implications. It diminishes investor choice, compromises market efficiency, and fundamentally undermines the Commission’s mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation.

We understand that the Commission may be concerned by the work associated with having a large number of filings that require staff review. This situation can cause the Commission to consume valuable staff resources. However, even if a “rule” or standardized treatment is adopted, this doesn't require a move away from first-to-file. The original time gaps of registration statement filings can be respected.

In fact, one can argue that abandoning first-to-file encourages more filings because there is no disincentive for issuers with large brands and distribution to hang back and file at the last minute. We believe this is what happened with the spot bitcoin ETF filings, when large issuers with brands who filed years after early filers launched their copycat products.


Moreover, there is no foreseeable inequity in reinstating the first to file principle for outstanding applications, such as those for a Solana ETF. The Commission would simply have to revert to respecting an issuer’s registration statement filing date. We understand that the Commission may want to expand rules to cover more types of funds and reduce the burdens of the on the staff in connection with the review process, but we don’t see how those can't be implemented while maintaining a first-to-file principle.

The continued global leadership of the United States in financial innovation is deeply connected to regulatory frameworks that actively support and reward entrepreneurship, creativity, and genuine innovation. We respectfully urge the Commission to reinstate the first-to-file approval

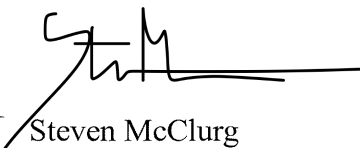
principle linked directly to the submission of registration statements, thereby affirming its commitment to nurturing a vibrant and competitive financial marketplace.

Thank you for your thoughtful consideration of this critical matter.


Respectfully,



Jan van Eck
CEO, VanEck



Steven McClurg
CEO, Canary Capital



Duncan Moir
President, 21Shares

cc: Commissioner Hester M. Peirce
Commissioner Caroline A. Crenshaw
Commissioner Mark T. Uyeda