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WRITTEN TESTIMONY OF
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BEFORE THE
Unite States House of Representatives Committee on Financial Services Subcommittee on Digital Assets, Financial Technology and Inclusion

IN A HEARING ENTITLED
Dazed and Confused: Breaking Down the SEC's Politicized Approach to Digital Assets

Chairman Hill, Ranking Member Lynch, and Esteemed Members of the Subcommittee:

Thank you for the opportunity to testify at today's hearing. My name is Teddy Fusaro and I am the President of Bitwise Asset Management, Inc., an asset management company that invests exclusively in the emerging digital asset industry.

Bitwise was founded in 2017 with the vision of providing Americans the opportunity to invest in bitcoin and other digital assets through traditional, regulated financial vehicles in order to provide them the benefits, protections and transparency afforded by our federal securities laws.

Today, Bitwise manages over $4.5 billion in assets globally. We are the sponsor of one of the largest bitcoin ETFs in America, a product that was first approved by the Securities and Exchange Commission ("SEC") in January of this year, and a project that we at Bitwise worked on for over six years to help make happen.

Bitwise is a company that began with a good idea. The same way many great American companies also began. The idea was that investors needed a better and safer way to access this emerging and volatile asset class through a traditional, regulated wrapper. Our collective experience at Bitwise in ETFs and traditional asset management strengthened our conviction that investors would benefit from having access to digital asset products offered with the investor protections that Americans have benefited from for nearly a century.

We also understood that financial investment professionals needed a partner to help them first understand, and then access for their clients, the opportunities available in this emerging asset class, and groundbreaking technological innovation.

We believed this could best be achieved by packaging bitcoin – and later other digital assets in this new asset class – in the well-understood and widely accessible format of an exchange traded fund (ETF). In this familiar format, bitcoin would be able to be offered within the regulatory perimeter, and investors would be able to participate in this emerging asset class using channels and platforms they currently access to manage their existing investments.

At the time of our founding, the primary way American investors were able to access exposure to an investment in bitcoin and other digital assets was through signing up for an account online using a website provided by a business familiarly known as an "cryptocurrency exchange." Investors would then send money directly to this type of digital asset trading platform, where they could then buy, sell, store, or transfer these new types of digital asset. Many of these platforms were operated and managed from offshore jurisdictions, and oftentimes, investors did not have the information about where these platforms were managed, or in fact who was managing them.

Some of these platforms have become large and successful, and have built a track record of safety despite having to operate in an ambiguous environment without clear oversight, or clear rules of the road with which to comply. They too have for many years pursued regulatory clarity for their own operations. But, in part because of this ambiguity, there are other unfortunate examples of investors being taken advantage of not having information needed to properly assess the investment.

Historically, the barriers to entry for creating one of these websites was low. There was no comprehensive or unified regulatory regime, limited specific registration requirements to gatekeep participation, and no coherent disclosure process organized around a clear understanding of the differences between digital assets and traditional investable assets. The investment and other risks inherent in the asset class have been compounded by the structural organization of these access points. Unfortunately, a unified and coherent regulatory framework for digital assets still does not exist today at a national level -- placing the United States behind many other nations and now in a position of playing catch up.

Without the benefit of a unified disclosure regime, Americans often did not know where these platforms were domiciled, who was managing them, and whether or not material conflicts of interest existed in their operations. Businesses that attempted to build at home were often stuck in attempting to build a business in our new industry while attempting to comply with rules that were difficult to interpret and hard to make sense of. Entrepreneurs often chose to start these types of businesses outside of the United States, whether or not they intended to offer services to our citizens here. Many investors signed up for these types of platforms, and did so without the types of consumer protections that investors enjoy and are protected by through our federal securities laws: transparency, full and fair disclosures, regular financial reporting, audited financial statements, mandated separation of key organizational functions and disclosures of significant contracts and material conflicts of interest, to name a few. Americans deserve the freedom to make investment decisions for themselves, and should have the right to choose which services they use to buy all different types of products and services. But the growth of digital assets and the proliferation of online platforms advertising the ability to buy, sell, and store them, calls for sensible regulation and guidance and clear oversight of those businesses, and should also be paired with approvals that are fit for purpose within existing regulatory frameworks in order to best serve investors who wish to seek these types of exposures. ETFs are one of those existing frameworks.

ETFs have been one of the most successful – and democratizing – financial products of the last 30 years.

Since the first ETF was launched in 1993, the industry at large has grown dramatically. It is estimated that 15.2 million Americas, or about 12 percent of all US households, own ETFs. There are over 3,000 ETFs in the US market today, and as of year-end 2023, there were over $8 trillion dollars of total net assets in those investment products[1].

There are many reasons that ETFs have become such popular investment vehicles. ETFs trade like stocks, offering investors intraday liquidity and the ability to purchase and sell investment exposure through a traditional brokerage account, while also dramatically increasing transparency by disclosing portfolio holdings daily, and significantly reducing costs due to this level of transparency and the increased competition brought to market by the proliferation of ETFs and ETF issuers. ETFs have allowed innovative asset management companies to package many types of exposures into an accessible, transparent, low cost, tax efficient vehicle that helps investors achieve their financial goals. ETFs have been one of the great equalizers in financial markets, leveling the playing field so that investors of all types have the ability to build wealth previously accessible to a smaller subset of the largest investors. The myriad types of financial exposures and investment strategies now available in this low cost, transparent packaging allows busy main street investors to access the same types of strategies available to large institutions, and has reduced costs to investors along the way. Thanks to this innovation, all types of investors now have access to strategies that include commodities, derivatives, fixed income, global equities, and more – including, as of 2024, spot bitcoin and spot Ethereum.

ETFs are a shining example of financial innovation and American ingenuity that reflect the best of what our dynamic capital markets can achieve.

Bitcoin and digital assets share certain similarities with ETFs, including the transparent nature of public blockchains and the daily liquidity and fungibility of the digital tokens that ride along blockchain rails. Bitcoin and digital assets are also historically very volatile and risky assets, that have experienced both significant increases in price and significant drawdowns since bitcoin was first introduced in 2009[2], highlighting the urgent need for investors to be made appropriately aware of the risks associated with such an investment position in order to fully assess whether this is an appropriate investment for them.

Believing that consumers would benefit from ability to access bitcoin through this popular financial structure, Bitwise filed its first registration statement for the Bitwise Bitcoin ETF in January of 2019[3].

In conjunction with our first filing, Bitwise also notably provided in depth research to the SEC highlighting certain problematic market behaviors within our nascent industry. Specifically, we found that, the self-reporting of volume and trading statistics was vastly exaggerated, a

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[1] Investment Company Institute (ICI) December 31, 2023
https://www.ici.org/faqs/faqs_etfs_market#:~:text=As%20of%20December%202023%2C%20the,companies%20at%20year%2Dend%202023.
[2] Bitcoin was first proposed by the pseudonymous publication of the Bitcoin Whitepaper in October 2008, and began operating as a network in 2009 https://bitcoin.org/bitcoin.pdf
[3] https://www.sec.gov/Archives/edgar/data/1763415/000149315219000408/forms-1.htm

phenomenon primarily driven by offshore trading platforms, highlighting significant flaws in the reporting infrastructure of the bitcoin market, which called into question the reliability of the reporting data then widely in use, and the general understanding of the size of the bitcoin market, and its operating efficiency. In short, certain digital asset trading platforms were inflating the reported volume of bitcoin trading on their exchanges[4] in order to attract more users to sign up for their services. Worse yet, we identified the fact that busy mainstream investors, without the ability to benefit from the consumer protections afforded by the ETF wrapper, were prime targets for these platforms, and could easily sign up for an account to trade and hold assets on these platforms. Yet there was no way to access bitcoin through the regulated and transparent ETF vehicle.

In contrast to the issues our research showed with these primarily offshore exchanges, our research also showed that the bitcoin market trading on primarily domestic and well-run platforms was efficient, liquid, operating effectively, and would be able to meet the standards previously applied to ETF approvals for other assets. When we compared what we identified as the accurately reported trading volume for bitcoin occurring on these platforms, we found that the regulated futures market (trading on the Chicago Mercantile Exchange ("CME") and the Chicago Board Options Exchange ("Cboe")) was a significant market for trading in bitcoin. While the existence of this mis-reported and inaccurate data was not a positive fact pattern generally, when deeply analyzed, it demonstrated that the remaining, accurately reported activity in the market was highly correlated with the regulated futures market, and was operating in an orderly and efficient manner. We believed that investors would benefit substantially from the protections of the ETF vehicle, and from the benefit of being able to access it in a regulated and transparent manner, and committed our business to pursing the goal of bringing a bitcoin ETF to the marketplace.

The research we presented was also a warning to our domestic regulators that investors were signing up for and sending their hard-earned money to non-US-based businesses masquerading as exchanges that presented significant risks to these investors who were unable to understand and evaluate these risks because they lacked the information needed to do so.

Our initial proposal in the form of a request for Rule Change under Rule 19b-4 of the Securities Exchange Act of 1934 ("Exchange Act") filed by NYSE Arca, Inc., in January 2019[5], was rejected by the SEC in October of 2019[6], and our subsequent proposal for a bitcoin ETF, proposed in October 2021[7], was again rejected in June of 2022[8].

During that period, we filed multiple amendments, proposals, and research studies and met with the Staff and Commissioners of the SEC more than 15 times, providing hundreds of pages of data and analysis to the division of Trading and Markets and Division of Economic and Risk Analysis demonstrating why we believed an approval would be appropriate.

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[4] https://www.sec.gov/comments/sr-nysearca-2019-01/srnysearca201901-5164833-183434.pdf
[5] https://www.sec.gov/files/rules/sro/nysearca/2019/34-85093.pdf
[6] https://www.govinfo.gov/content/pkg/FR-2020-11-19/pdf/2020-25504.pdf
[7] https://www.sec.gov/files/rules/sro/nysearca/2021/34-93445.pdf
[8] https://www.govinfo.gov/content/pkg/FR-2022-07-06/pdf/2022-14316.pdf

We worked jointly with the Staff to identify and evaluate data providers, run correlation studies, and produced academic whitepapers that demonstrated why we believed the SEC Staff's approval standards could be met. Our research more specifically conducted a detailed review of both academic and practitioner papers that focus on lead-lag relationships in financial markets, and concluded that CME bitcoin futures market led price discovery in a statistically significant manner when compared to spot bitcoin trading platforms.

As our journey continued, and our efforts continued to be denied, we became increasingly concerned that the lack of an approval order for bitcoin ETFs, combined with the massive and growing interest in digital assets by busy mainstream Americans, was creating an unsafe environment for American investors. This dynamic, in part, pushed investors to offshore trading platforms, to businesses that are not held to the same strict standard as ETFs are, and ultimately resulted in much pain and financial loss, culminating in the implosion of the unregulated, non-US-based digital asset trading platform FTX in November of 2022.

In mid 2023, 11 issuers, including Bitwise, submitted applications and registration statements once again seeking approval for bitcoin ETFs. We subsequently produced more research and rigorous academic analysis[9] supporting the case for approval and again concluding that the CME bitcoin futures market generally led price discovery when compared to the spot bitcoin market on digital asset exchanges. Later that year, in August of 2023, the Circuit Court upheld a position that the SEC violated the Administrative Procedures Act when it denied Grayscale Investments, LLC's application to convert a publicly traded bitcoin Trust into an ETF[10].

In January of 2024, about five months after that decision was upheld, the SEC approved Bitcoin ETFs[11].

Bitcoin ETFs were, when taken in the aggregate, the most successful ETF launch in the history of the ETF industry. The group of bitcoin ETFs that listed on January 11, 2024 gathered inflows of over $17.5 billion by mid August, the fastest such asset gathering feat in the history of a fast growing market (the prior fastest growing ETF, the Invesco QQQ Trust Series 1, gathered approximately $5 billion in its first year on the market)[12]. Of the approximately 400 ETFs that have been launched in the past year, the top four from an asset gathering perspective are all bitcoin ETFs. Furthermore, there have been no reports of either operational issues or challenges among this group of ETFs, underscoring both the latent consumer demand and consumer protection benefits of these products. American investors wanted these types of products, and invested in them at an historically significant pace. They are products the market needs and wants, and as the financial center of the world, we believe more of them belong here.

We believed then – and still believe today – that bitcoin ETFs, and digital asset ETFs more broadly, bring busy mainstream investors the opportunity to benefit from the traditions and

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9 https://www.sec.gov/files/rules/sro/nysearca/2023/34-97884.pdf
10 Grayscale Investments, LLC v. Sec. and Exch. Comm., No. 22-1142 (Aug. 29, 2023), at 2, available at https://www.cadc.uscourts.gov/internet/opinions.nsf/32C91E3A96E9442285258A1A004FD576/$file/22-1142-2014527.pd
11 https://www.sec.gov/files/rules/sro/nysearca/2024/34-99306.pdf
12 Source: Bloomberg

protections of the federal securities laws, benefits and protections that are not offered to investors through different avenues of accessing digital asset markets in other ways. Our views are strengthened by the magnitude of the success of the bitcoin ETFs in 2024.

A few months after the launch of bitcoin ETFs, in July of 2024, the SEC approved the listing and trading of spot Ethereum-based ETFs[13]. While these products did not launch with the same fanfare and public attention that was garnered by the launch of bitcoin ETFs, they were, nonetheless, met with significant demand, reflecting consumer desire for more digital assets packaged in the ETF vehicle. Three of the Ethereum ETFs that launched in July have already become among the top 25 asset gathering ETFs of all ETFs launched in the past year[14].

According to research reports and surveys, including those conducted by the United States Federal Reserve[15] somewhere between 7 and 12% of Americans have owned or traded bitcoin or digital assets over the past several years.

We believe these investors deserve the freedom of choice to invest in an ETF that offers the consumer protection benefits described herein for many different digital assets, not just bitcoin and Ethereum.

We encourage members of congress, the members of this subcommittee, the SEC Staff, and leadership of the SEC to consider ways in which we can continue to create an environment where buys mainstream investors can benefit from the unique protections, transparency, and disclosure protections of the ETF vehicle if they choose to make digital asset investments. Digital assets represent a new asset class, that pose unique risks and increased volatility when compared with other assets and other asset classes. We believe that this increases the need for investors to obtain the full protections and transparency that can be delivered through the offering of ETFs.

In foreign jurisdictions, there are much more well-developed regulatory environments that allow for the listing and trading of digital ETPs that hold many different assets and allow those funds to participate in more innovative and dynamic activities, such as the staking of assets in proof-of-reserve blockchain systems and the combination of multiple different digital assets into a single ETF. This regulatory clarity that exists in other countries is in part why Bitwise has chosen to expand its business to Europe through the acquisition of ETC Group, a UK-based company, where regulatory regimes allow for the production and issuance of exchange traded products investing in many different digital assets. Globally, there are over 200 digital asset ETPs listed on more than 20 exchanges in 16 countries[16].

Instead of falling behind, we believe that the United States should be the leader of global financial markets and financial innovation, and that investors should benefit from these products here the way that they do in other global financial centers in foreign jurisdictions.

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[13] https://www.sec.gov/files/rules/sro/nysearca/2024/34-100224.pdf
[14] Source: Bloomberg data
[15] https://www.federalreserve.gov/publications/files/2023-report-economic-well-being-us-households-202405.pdf
[16] https://etfgi.com/news/press-releases/2024/06/etfgi-reports-crypto-etfs-and-etps-listed-globally-gathered-net-inflows

ETFs do not present a comprehensive solution to the regulatory clarity that the bitcoin and digital asset industry needs to move forward and realize its full potential in the United States.

It is but one part of a broader set of needs that requires comprehensive and coherent set of rules for all market participants. The current manner in which the regulatory environment has evolved has been challenging for all participants – investors that seek to invest, companies that seek to build businesses in this emerging field, and developers that seek to pioneer the ways in which this technology can create our future. While we understand that new and novel types of assets that are now available in the digital age create complexities from a regulatory perspective, and we appreciate the need for businesses to comply with existing regulation, we also see much room for improvement and progress through thoughtful creation of new legislation and rulemaking with the participation of industry that will allow the industry to develop in a way that increases safety for all Americans.

We believe that the approval of more ETFs in the United States will bring important regulatory protections to many investors, and my colleagues and I look forward to continued engagement with the subcommittee and Subcommittee staff to advance this developing field and encourage the prioritization of legislation that facilitates the approval of more digital asset ETFs.