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THE DECADE-LONG WAR FOR A SPOT BITCOIN ETP APPROVAL AND THE NEXT BATTLE

Prospective issuers have been seeking to launch a spot bitcoin exchange-traded product for over a decade. In January 2024, the U.S. Securities and Exchange Commission finally approved proposed rule changes to list and trade shares of a spot bitcoin exchange-traded product. But even now, as spot bitcoin exchange-traded products have begun trading, regulators have signaled that both the products themselves and the investment advisers and broker-dealers that recommend the products will be under intense scrutiny. In this article, the authors describe the long path to the approval of spot bitcoin exchange-traded products, the potential for other spot crypto exchange-traded products, and the enforcement risk for investment advisers and broker-dealers.

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Since spot bitcoin exchange-traded products (“ETPs”) first began trading in early January 2024, capital has flooded into the products, boosting the price of bitcoin to all-time highs.¹ BlackRock’s iShares Bitcoin ETF (“IBIT”) reached \$10 billion in assets on March 1, 2024, less than two months after its launch and faster than any ETP before it.²

While the ETPs only began trading in January 2024, prospective issuers have been seeking to launch a spot bitcoin ETP for over a decade.³ Cameron and Tyler Winklevoss first sought to register a public offering of the “Winklevoss Bitcoin Trust” in 2013 by filing an initial Form S-1, and Bats BZX filed the first proposed rule change to list and trade shares of the trust in 2016.⁴ The U.S. Securities and Exchange Commission, acting through authority delegated to the Division of Trading

¹ “Bitcoin surges after crypto ETPs notch record \$2.7B weekly inflows,” Cointelegraph (Mar. 12, 2024), <https://cointelegraph.com/news/bitcoin-price-surges-crypto-etfs-notch-record-weekly-inflows>.

² “BlackRock’s IBIT Hits \$10B Faster Than Any Other ETF,” Yahoo! Finance (Mar. 1, 2024), <https://finance.yahoo.com/news/blackrocks-ibit-hits-10b-faster-225127180.html>.

³ See, e.g., Winklevoss Bitcoin Trust, Form S-1 (July 1, 2013).

⁴ Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change to BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, To List and Trade Winklevoss Bitcoin Shares Issued by the Winklevoss Bitcoin Trust, 81 Fed. Reg. 45554 (Jul. 14, 2016).

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