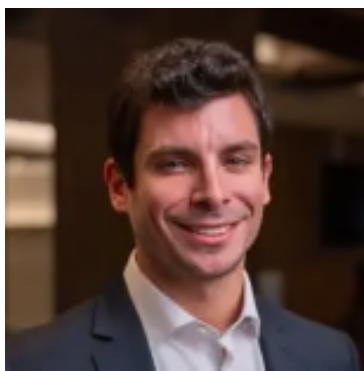

The RIA business can heave a sigh of relief as Grayscale beats the SEC in court and its GBTC fund soars in value

Firms like Charles Schwab & Co. and iCapital largely banked on Grayscale managers and mutual funds as a bridge solution only to get burned as discount to assets ballooned and Bitcoin plummeted in value -- a reversal that could continue to unwind

Author Brooke Southall August 29, 2023 at 11:54 PM



 **0 Comments**



Craig Salm: At Grayscale, we believe... all spot Bitcoin ETF applications should be approved simultaneously.

The Stamford, Conn., crypto-fund firm and maker of Grayscale Bitcoin Trust (GBTC) beat the Securities and Exchange Commission (SEC) and its Chairman, Gary Gensler in court, using their own legal and regulatory words against them,

Grayscale asserted that the SEC was “capricious” in denying its Bitcoin ETF application.



Gary Gensler court setback, clears the way for Grayscale crypto ETF.

“The court correctly noted that the SEC previously approved Bitcoin future ETFs very similar in nature to Grayscale’s proposed Bitcoin spot ETF – leaving the SEC with no real excuse for having issued a denial here,” says Ari Sonneberg, partner at Wagner Law Group in Boston.

RIAs who previously flocked to Grayscale closed-end funds on behalf of clients may have rued the choice.

Not only did clients end up paying a 200-basis-point-plus fee, many investors lost far more as shares traded at a vast and widening discount to their underlying crypto assets.

Up-hill battle

Wall Street is convinced Grayscale’s legal win is real. Though the price of Bitcoin itself jumped just 6.56% to \$27,662, Grayscale Bitcoin Trust soared 16.95% to \$20.56, up \$2.98 on the day.

Traders are betting that the GBTC discount to its net asset value, still near 15%, will vanish soon enough if it gets converted to an ETF. ETFs trade right at the NAV of their underlying shares.



Ari Sonneberg: ‘While an appeal by the SEC is possible, it would be an uphill battle.’

closed-end fund to an exchange traded fund, Sonneberg says.

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“I think Grayscale will be rewarded here in that its application will now ultimately be approved, whether it ends up being as a result of a court order to the SEC to approve it or through the SEC revisiting and then approving the application,” he says.

“While an appeal by the SEC is possible, it would be an uphill battle; I don’t think Gensler will suddenly pull a rabbit out of the hat by providing any ammunition that could support further denial that he hasn’t already utilized.”

RIAs have been among the big users of GBTC because it seemed like a safe, liquid and effective way to buy cryptocurrency, and still live in a normal brokerage environment--rather than opening accounts at Coinbase or other off-brands.

Soaring discount

Companies like Charles Schwab & Co., and [iCapital-guided clients](#) determined to have cryptocurrency, conservatively, use Grayscale. See: [Grayscale shreds the hype about Bitcoin's power to 'democratize' finance by showing that RIAs really want a dominant Wall Street middleman and are willing to pay hedge-fund-like fees for 'transparency' and an SEC-approved wrapper](#)

In October 2021, Schwab's access to crypto – according to its website-- consisted of five trusts and a large cap fund from Grayscale Investments; a trust from Osprey Funds and an index fund from Bitwise,

according to Financial Advisor IQ.

When Schwab CEO Walter Bettinger first signaled in April 2021 that his company might embrace cryptocurrency, it supported trades of Grayscale closed-end funds – like all stocks. See: [Charles Schwab & Co. is a budding cryptocurrency convert and will enter the market in a big, 'disruptive'](#)

looked questionable. GBTC shares traded near \$8 as recently as December.

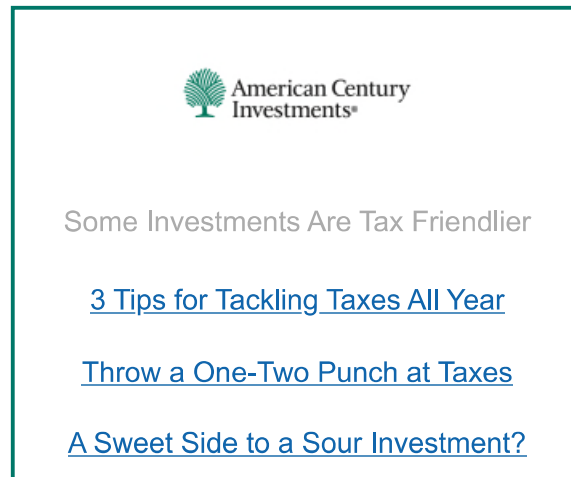
Yet legal experts from the start thought Grayscale likely had a good case against the SEC.

They surmised it was ruling more with its paranoia than its own legal and rulemaking principles – not necessarily evil or wrong, but maybe illegal and misguided, according to Sonneberg.

“We could try to give [SEC Chair Gary Gensler] the benefit of the doubt,” he says “We could assume that he takes his charge of protecting investors seriously, and despite no legal leg stand on, Gensler may have felt that he was, to the extent of his powers, protecting

investors from the very real uncertainty associated with cryptocurrency.”

Battle scars



Certainly, Grayscale can still suffer a setback, if the SEC not only fails to approve its Bitcoin ETF, but also approves its competitors first after Grayscale played the role of legal battering ram.

“As the only firm that chose to sue over its application rejection, its battle scars will likely have paved the way for many other competitors, like BlackRock and Fidelity, already in line seeking approval of their crypto spot ETFs to slide through with relative ease,” Sonneberg says. See: [BlackRock believes that 33 is the charm as it applies to sell a spot Bitcoin ETF, after 32 prior attempts met failure at the SEC -- part of a new gold rush of applications](#)

“Grayscale’s victory here won’t guarantee approval by the SEC of these other applications (nuanced differences could make a difference), but, one would hope that the SEC will be mindful that any decision to reject similar applications ought to have a firm legal basis.”

“Whether the SEC ultimately approves a spot Bitcoin ETF following a court mandate, or through an evolution in its position on the matter, they should do so in a way that’s fair for all investors and issuers,” he writes.

“At Grayscale, we believe that for the benefit of Bitcoin, the market, and investors, all spot Bitcoin ETF applications should be approved simultaneously.”

Brooke lives on a houseboat, works in an office and juggles calls across the five time zones and four countries his small team works. He's out to prove an economic major can make a living as a journalist and that articles need not be a loss leader if they are written well and geared to an intelligent readership. [@RIABiz](#)

Keith Girard contributed to the editing of this article.

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July 25, 2023 at 10:34 PM



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Charles Schwab & Co. is a budding cryptocurrency convert and will enter the market in a big, 'disruptive' way, says its CEO--but not before the SEC says it barks or quacks

The \$7-trillion Westlake, Texas brokerage previously said its RIAs were indifferent to digital assets ; now Schwab CEO Walt Bettinger admits clients are excited. .

Author Oisin Breen April 23, 2021 at 11:04 PM



🗨 3 Comments



Walt Bettinger: We recognize well what's going on

Facebook won't take them on anytime soon because of one word -- 'regulation.' Say what you like about the online brokers' technology, or lack thereof, but these

companies have a hard-earned core competency in reading what is doable in financial services, when every action is being policed. It's a lot to ask a Mark Zuckerberg or Jeff Bezos to freelance in that discipline. Even with its super stripped-down model, Robinhood is on a very steep learning curve with the SEC, never mind Massachusetts. Schwab and Fidelity leaders have taken divergent paths to provide cryptocurrency services. But Schwab is now inching toward Fido and even hinting it will leapfrog the pioneer. But, clearly, both firms are watching SEC Chair Gary Gensler like hawks to assure that their regulator-reading track records -- and brands -- remain untarnished.

Only 18 months ago, Charles Schwab & Co. said crypto was off its "radar." Now, CEO Walter Bettinger is a convert, but he's holding off on the zealotry just yet.

He told analysts the Westlake, Texas, company is ready to crash the cryptocurrency market in a "highly competitive" and "disruptive" way-- just as soon as federal regulators figure out how to define it.

Rewind to Sept. 2019, and Schwab was warning investors that cryptocurrencies were "purely a speculative instrument." See: [Schwab dismisses cryptocurrencies as 'speculative' and too insignificant for its RIA platform as rivals stake out turf for the coming boom... or is that bust?](#)

But during the firm's spring update call, Bettinger said he is ready to charge into the market in a way that is commensurate with its size and legacy.

"If the company decides to participate in the crypto market we will be highly competitive, we will be disruptive, and we will be client oriented," he said

Schwab's big change is presumably in response to its clientele. Before, it said clients were "indifferent" to crypto. Not so much now.

"We can certainly see some of the client excitement," Bettinger told analysts.

The company's approach, he said, is to look closely, but cautiously at the crypto market until the Securities and Exchange Commission (SEC) makes clear how it will regulate.



Gary Gensler: I think the bird's a duck.

Schwab currently has a help-wanted [advertisement on its jobs website](#) seeking a compliance director. The first qualification named in a series of bullet point is "establishing a virtual currency compliance program."

The job applicant must be "confident with ambiguity," it adds.

Fuzzy asset

The SEC's quandary is something akin to defining the number of angels that can dance on the head of a pin.

The agency is trying to come up with black-and-white regulations that can be applied to a fuzzy financial asset class.

"We recognize well what's going on. We would like to see more regulatory clarity, and if and when that comes, you should

expect Schwab to be a player in that space in the same way it has been in other investment opportunities across the spectrum," Bettinger said.

"Schwab has a massive client base and missteps could expose both the firm and its clients to greater risk," says independent wealth management consultant Greg O'Gara, via email.

Today the company custodies a record \$7.07 trillion, including \$3.1 trillion on behalf of RIAs. Its quarterly revenues also surged 80% to \$4.7 billion, up from \$2.6 billion in Q1 2020, according to its just-released earnings. See: [Defying merger doubters, Schwab adds staggering \\$1.1 trillion RIA assets.](#)



Dr. James Stroud: "The SEC has never given concrete guidelines."

"Additional clarity from regulators would be important before we would consider offering a retail type trading experience on crypto," Bettinger added.

Clarity lacking

Schwab's trepidation tracks to a core crypto issue -- whether they are foremost currencies or securities, says Dr. James Stroud, lead-developer of private cryptocurrency, Stealth, via email.

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"Schwab wants to be able to offer their clients the ability to invest in specific cryptocurrencies without worrying that the SEC will later declare these as securities," he explains.

"The SEC has never given concrete guidelines for how [it] determines which cryptocurrencies are securities," he adds.

The Securities Act of 1933 defines a security **quite broadly**, but the US Supreme Court has previously employed what's known as the **Howey test**. It defines a security as an "investment contract" leading to profits derived by the actions of a third party.

Discretion is the better part of valor if you are Schwab, says O'Gara.

"When the benefits and demand of having greater access to this asset class outweighs the risk of of uncharted territory, I would expect the company to move decisively. In Schwab's typical style, that move is likely to be disruptive," he explains.

Today, Schwab supports trading CME Bitcoin futures and limited trading of over-the-counter funds, including Grayscale's Ethereum fund (ETHE) and Bitcoin fund (GBTC). See: [Schwab dismisses crypto currencies as 'speculative' and too insignificant for its RIA platform as rivals stake out turf for the coming boom... or is that bust?](#)

But in a move that defines its risk-aversion, retail investors have no way to trade the asset on Schwab's platform.

Race to crypto

Yet caution has its own risk in cryptocurrency.



Brad Garlinghouse says the SEC's suit against XRP is a case "against crypto at large."

Schwab's chief rival, Fidelity Investments, moved fast and early on crypto, setting up a subsidiary



investment. See:



[blockchain-based currency.](#)

Today FDAC only supports Bitcoin, but it will add support for Ethereum later this year, the firm confirmed last week.

Salt Lake City, Utah rebalancing vendor AdvisorPeak also just gave RIAs, including those with assets custodied at Schwab, a means to buy, sell, trade and hold 100 different cryptocurrencies. See: [Envestnet, Orion and Schwab will all launch crypto capabilities soon enough, insiders say, but Damon Deru just beat them all to market with more than a hack.](#)

Top rebalancing vendors like Orion Advisor Technology and Envestnet | Tamarac will likely soon follow suit, sources state.

Other RIA crypto vendors include SMA vendor Eaglebrook Advisors, which has already brought in \$70 million in RIA crypto assets, and \$49.1 billion AUM crypto fund shop, Grayscale, which sells 15 crypto funds.

Meanwhile, Bettinger also hinted that Schwab could take ground as the SEC gives it -- if the SEC, for example, should greenlight crypto-based ETFs.

"We're keeping our eyes [on] ... whether there'll be an investor oriented product, ETF, or another that will deliver crypto investing to a larger part of the market than can get it today," he said.

At least eight firms have applied for permission to manage crypto ETFs, including WisdomTree, VanEck, and Fidelity Investments. But so far, the SEC has blocked over a dozen applications. See: [Brooke's Bits: Why Fidelity's Bitcoin ETF application might have a shot.](#)

Intensified scrutiny

Gary Gensler, President Joe Biden's pick for SEC chairman, who was confirmed only nine days ago (Apr. 14), is approaching cryptocurrency a lot like the Supreme Court's approach to pornography.

He can't define it, but he knows it when he sees it.

"When you quack like the duck, when you swim like the duck, when you walk like the duck ... I think the bird's a duck," he said, during a [2018 MIT blockchain conference](#).

Gensler is a notable cryptocurrency buff. He taught a course at MIT on blockchain, digital currency and innovation and as chair of the Commodity Futures

But he vowed during congressional hearings on his nomination to continue the agency's crackdown on cryptocurrency to protect consumers from fraud and manipulation, according to [CFO.com](#).

The SEC has intensified its scrutiny of digital assets since finding in 2017 that some tokens traded like securities, making them subject to federal laws.

Gensler said Bitcoin and other cryptocurrencies “have brought new thinking to financial planning and investor inclusion.” But as SEC chair, he would work with his fellow commissioners to “ensure investor protection.”

Gensler will likely have to deal with legacy thinking when he dives into the issue.



Greg O'Gara: Missteps could expose both the firm and its clients to greater risk.

Ripple row

Former SEC Chair Jay Clayton stated in 2019 that [Bitcoin was not a security](#). He noted instead that it was a legitimate and decentralized currency, but suggested many digital assets, such as Ripple ([XRP](#)), could easily meet the definition of an investment contract.



Hester Peirce has pressed for a three year "safe harbor" status for cryptocurrencies.



A Sweet Side to a Sour Investment?

The SEC filed an action last December against Ripple, one of the larger cryptocurrencies, with a market-cap of \$49 billion.

It claims XRP is an unregistered security, since it is created, distributed and traded by San Francisco-based Ripple Labs.

Three of five SEC commissioners approved the regulator's suit, and Gensler also supported defining XRP as a security in [2018](#).

Coinbase delisted Ripple after the SEC filed its suit, sparking a rout that reduced its value by more than 60%. Ripple holders filed to intervene in the SEC suit as a third-party defendant, [Apr. 19](#).

Uncertainty over the status of cryptocurrencies also extends to another SEC alumni.

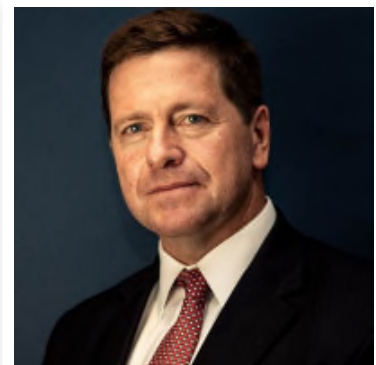
Where Gensler has suggested he sees XRP, for instance, as a security, Ripple defense attorney and former SEC Chair Mary Jo White says the SEC has got it utterly wrong.

"There's no way to sugarcoat it. They're dead wrong legally and factually," she told [Fortune](#).

Safe harbor

Judge Sarah Netburn, who presides over the XRP case, also added to the uncertainty surrounding the SEC's first major crypto suit, which Ripple CEO Brad Garlinghouse [calls](#) a case "against crypto at large."

Netburn recently noted that XRP has a "utility" beyond profit-seeking and provided Ripple [access](#) to internal SEC discussions in early April. She [blocked](#) the regulator's request for Ripple's



Jay Clayton first stated that Bitcoin was not a security in 2019.

banking records.

Industry observers expect Bitcoin will likely remain free from

That said, its non-security status has no formal basis in SEC rules.

SEC commissioner Hester Peirce has lobbied to grant cryptocurrencies "safe harbor" for a three-year period, limiting their oversight to the antifraud provisions contained in the 1933 Securities Act.

Market data

Today a Bitcoin trades at roughly \$49,000 giving the currency a \$917 billion market cap -- a surge in value of 644% in the past twelve months.

In April 2020, one Bitcoin traded at approximately \$6,877 -- a price that professionals, even then, considered high.

Bitcoin remains hugely volatile. In mid April, it traded around \$63,000, with a market-cap of \$1.2 trillion. In one week, it has fallen 24% from a record high of \$63,588.20.

Coinbase Global, Inc., which operates the largest cryptocurrency exchange platform, has also seen its stock gyrate widely.

Although its Apr. 14 IPO drew huge interest at \$250 a share opening price, the stock swiftly plummeted from a brief high of \$429.54 to its present level of \$291.02, which values the company at \$58.5 billion.

Today, the global cryptocurrency market capitalization stands at \$1.8 trillion, down 11.84% in the past 24 hours. It topped \$2 trillion earlier this month.

Dublin-native and Edinburgh-based Oisín Breen has spent seven years writing about finance, including five whirlwind years diving into the advisor world for RIABiz. A widely published and well regarded poet with two full collections under his belt, Breen is also an academic in English Literature with a deep fondness for his Scottish rabbit, Hessell. [@Breen](#)

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April 28, 2023 at 9:36 PM



Another RIA whisperer, Julian Lopez, has left Schwab Advisor Services after 24 years to join LPL, which he sees as more advisor-focused and 'entrepreneurial'

The Houston executive, like Kelly Smith in Chicago, was considered a key service talent for RIAs though Lopez says his circumstances differ.

February 23, 2023 at 3:14 AM



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BlackRock gets Kentucky coal in stocking, and Vanguard keeps skating; iShares inches above -- by

shareholder..

January 12, 2023 at 10:01 PM



Chuck Schwab reveals Part B, doubling-down on Walt Bettinger by making him co-chair, a day after Part A -- wagering \$15 billion from the Schwab corporate treasury on the CEO's future leadership

The 84 year-old founder's elevation of his 61-year-old protege may foretell bigger fireworks from Rick Wurster who recently took over many of Bettinger's CEO duties, one executive recruiter says.

July 29, 2022 at 8:41 PM

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cryptomato

April 24, 2021 — 3:10 AM

But Clayton has no authority to declare BTC a non-security. In fact, SEC has not declared BTC officially a non-security, neither is ETH a non-security. So please dear authors do your research before publishing - then you will find out that Clayton and his fellow SEC commissioner Hinman profited from BTC and ETH while in office and after leaving office. Of course it's a gigantic conflict of interest that's about to be discovered. U.S. courts won't look away.



April 24, 2021 — 2:48 PM

I believe we're talking about whether Gary Gensler will give guidance to about whether the SEC will treat bitcoin as a security for regulatory purposes.



Cryptonite

January 7, 2022 — 1:17 AM

I agree w/ Hester Peirce in that SEC should give a grace period for all cryptos to play the field. At the end, their behaviors will identify who's security or currency, and the office will then act accordingly with punishment or rewards as it sees fit.

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