

United States Senate

WASHINGTON, DC 20510

May 4, 2022

Abigail Johnson
CEO
Fidelity Investments
200 Seaport Blvd
Boston, MA 02210

Dear Ms. Johnson:

We write to inquire about the appropriateness of your company's decision to add Bitcoin to its 401(k) investment plan menu and the actions you will take to address "the significant risks of fraud, theft and loss" posed by these assets.¹ On April 26, Fidelity announced its workplace Digital Assets Account, "the industry's first offering that will enable individuals to have a portion of their retirement savings allocated to Bitcoin through the core 401(k) plan investment lineup."² This decision follows the Department of Labor's (DOL) recent warning to 401(k) plan fiduciaries to exercise "extreme care" before adding a cryptocurrency option to their investment menu due to the high levels of risk posed by digital assets.³

In March, DOL published a compliance assistance release reminding fiduciaries of their responsibilities under the Employee Retirement Income Security Act (ERISA) and highlighted the risks that cryptocurrency may pose to retirement accounts. Under ERISA, fiduciaries "must act solely in the financial interests of plan participants and adhere to a high standard of care when managing plan participants' retirement holdings."⁴ The Department expressed "serious concerns regarding the prudence of a fiduciary's decision to expose 401(k) plan's participants to direct investments in cryptocurrencies" and cited "the significant risks of fraud, theft and loss" presented by these digital assets.⁵ According to DOL, these risks stem from:

- Cryptocurrencies' extreme volatility and high speculation;

¹ Department of Labor, "Compliance Assistance Release No. 2022-01: 401(k) Plan Investments in "Cryptocurrencies," March 10, 2022, <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/compliance-assistance-releases/2022-01>.

² Fidelity, "Fidelity Investments Advances Leading Position as Digital Assets Provider With Launch of Industry's First-of-its-Kind Bitcoin Offering for 401(k) Core Investment Lineup," press release, April 26, 2022, <https://newsroom.fidelity.com/press-releases/news-details/2022/Fidelity-Investments-Advances-Leading-Position-as-Digital-Assets-Provider-With-Launch-of-Industrys-First-of-Its-Kind-Bitcoin-Offering-for-401k-Core-Investment-Lineup/default.aspx>.

³ Department of Labor, "Compliance Assistance Release No. 2022-01: 401(k) Plan Investments in "Cryptocurrencies," March 10, 2022, <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/compliance-assistance-releases/2022-01>.

⁴ Department of Labor, "Cryptocurrency Concerns: Why We're Working to Protect Retirement Savings from Volatile Digital Investments," Ali Khawar, March 10, 2022, https://blog.dol.gov/2022/03/10/cryptocurrency-concerns-why-were-working-to-protect-retirement-savings-from-volatile-digital-investments?_ga=2.3981236.501796348.1651200544-392574014.1651200544.

⁵ Department of Labor, "Compliance Assistance Release No. 2022-01: 401(k) Plan Investments in "Cryptocurrencies," March 10, 2022, <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/compliance-assistance-releases/2022-01>.

- The challenge for plan participants to make informed investment decisions given that “it can be extraordinarily difficult, even for expert investors, to evaluate these assets and separate the facts from the hype”;
- Custodial and recordkeeping concerns;⁶
- Concerns about how to reliably value cryptocurrencies, which are “compounded by the fact that cryptocurrencies are not typically subject to the same reporting and data integrity requirements that apply to more traditional investment products,”⁷ and;
- An evolving regulatory environment.⁸

In short, investing in cryptocurrencies is a risky and speculative gamble, and we are concerned that Fidelity would take these risks with millions of Americans’ retirement savings.

Bitcoin, the cryptocurrency your company has deemed sound enough for your customers’ retirement savings accounts, has a particularly volatile history. After reaching a high of nearly \$69,000 last November, the value of Bitcoin dropped down to \$33,000 just over two months later.⁹ Indeed, Bitcoin’s value has dropped as much as 30% in a single day.¹⁰ This volatility is not unusual. Last year, Bitcoin’s value swung more than two standard deviations from its average – a measure of volatility – 19 times.¹¹ Another analysis finds that “Bitcoin had five days in the last year where it plunged by at least 10%.”¹² By comparison, stocks in the S&P 500 had only two such drops in the last 50 years.¹³ According to one market analyst, Bitcoin’s volatility is “not a bug, it’s a feature.”¹⁴

Bitcoin’s volatility is compounded by its susceptibility to the whims of just a handful of influencers. Elon Musk’s tweets alone have led to Bitcoin value fluctuations as high as 8%.¹⁵ The high concentration of Bitcoin ownership and mining exacerbates these volatility risks. One study estimates that just 10% of Bitcoin miners are responsible for processing 90% of Bitcoin

⁶ Department of Labor, “Compliance Assistance Release No. 2022-01: 401(k) Plan Investments in “Cryptocurrencies,” March 10, 2022, <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/compliance-assistance-releases/2022-01>.

⁷ Department of Labor, “Cryptocurrency Concerns: Why We’re Working to Protect Retirement Savings from Volatile Digital Investments,” Ali Khawar, March 10, 2022, <https://blog.dol.gov/2022/03/10/cryptocurrency-concerns-why-were-working-to-protect-retirement-savings-from-volatile-digital-investments?ga=2.3981236.501796348.1651200544-392574014.1651200544>.

⁸ *Id.*

⁹ Forbes, “Why Is Bitcoin’s Price Falling?,” Taylor Tepper, Feb 3, 2022, <https://www.forbes.com/advisor/investing/cryptocurrency/why-is-bitcoins-price-falling/>.

¹⁰ Forbes, “Explaining Crypto’s Volatility,” Nicole Lapin, December 23, 2021, <https://www.forbes.com/sites/nicolelapin/2021/12/23/explaining-cryptos-volatility/?sh=26d0f2e47b54>.

¹¹ Bloomberg, “Bitcoin Went Mainstream in 2021. It’s Just as Volatile as Ever,” Vildana Hajric and Katherine Greifeld, December 21, 2021, <https://www.bloomberg.com/graphics/2021-bitcoin-volatility/>.

¹² NPR, “Fidelity will start offering bitcoin as an investment option for 401(k) accounts,” The Associated Press, April 26, 2022, <https://www.npr.org/2022/04/26/1094798564/fidelity-will-start-offering-bitcoin-as-an-investment-option-in-401-k-accounts>.

¹³ *Id.*

¹⁴ Bloomberg, “Bitcoin Went Mainstream in 2021. It’s Just as Volatile as Ever,” Vildana Hajric and Katherine Greifeld, December 21, 2021, <https://www.bloomberg.com/graphics/2021-bitcoin-volatility/>.

¹⁵ Vox, “When Elon Musk tweets, crypto prices move,” Rani Molla, June 14, 2021, <https://www.vox.com/recode/2021/5/18/22441831/elon-musk-bitcoin-dogecoin-crypto-prices-tesla>.

transactions and that 1,000 individuals control 3 million Bitcoins¹⁶ – about 15% of the current Bitcoin supply.¹⁷

We are also concerned about Fidelity’s potential conflicts of interest and the extent to which they may have affected the decision to offer Bitcoin. In 2017, you announced that Fidelity had been mining cryptocurrency, stating “We set up a small Bitcoin and Ethereum mining operation... that miraculously now is actually making a lot of money.”¹⁸ Following this announcement, Fidelity expanded its crypto activities, “add[ing] a link on retail customers’ accounts to Coinbase, the crypto exchange, to track their holdings” and “open[ing] its own crypto fund for wealthy customers.”¹⁹ Now, Fidelity has become “the first to offer employers exposure to Bitcoin for the core lineup of 401(k)s.”²⁰ Despite a lack of demand for this option – only 2% of employers expressed interest in adding cryptocurrency to their 401(k) menu – Fidelity has decided to move full speed ahead with supporting Bitcoin investments.²¹

In order to better understand how Fidelity arrived at the decision to expose retirement accounts to the risks inherent in Bitcoin and other cryptocurrencies, we request answers to the following questions by May 18, 2022:

1. Why did Fidelity ignore DOL’s “serious concerns regarding the prudence of a fiduciary’s decision to expose a 401(k) plan’s participants to direct investments in cryptocurrencies”²²?
2. What risks does Fidelity assess that Bitcoin presents to its customers?
 - a. What are the specific volatility and loss risks posed by Bitcoin, and how will Fidelity address these risks?
 - b. What are the specific fraud risks posed by Bitcoin, and how will Fidelity address these risks? What are the specific theft risks posed by Bitcoin, and how will Fidelity address these risks?
 - c. How will Fidelity address the additional Bitcoin risks identified by DOL, including the challenge for plan participants to make informed investment

¹⁶ National Bureau of Economic Research, “Blockchain Analysis of the Bitcoin Market,” Igor Makarov and Antoinette Schoar, October 2021, p. 4; 29, https://www.nber.org/system/files/working_papers/w29396/w29396.pdf.

¹⁷ Coindesk, “What Happens When All Bitcoin Are Mined?” Benedict George, January 26, 2022, <https://www.coindesk.com/learn/what-happens-when-all-bitcoin-are-mined/>.

¹⁸ Futurism, “Fidelity Investments Is Mining for Cryptocurrency,” Chelsea Gohd, September 30, 2017, <https://futurism.com/fidelity-investments-mining-cryptocurrency>.

¹⁹ Wall Street Journal, “Fidelity to Allow Retirement Savers to Put Bitcoin in 401(k) Accounts,” Anne Tergesen, April 26, 2022, <https://www.wsj.com/articles/fidelity-to-allow-retirement-savers-to-put-bitcoin-in-401-k-accounts-11650945661>.

²⁰ Fidelity, “Fidelity Investments Advances Leading Position as Digital Assets Provider With Launch of Industry’s First-of-its-Kind Bitcoin Offering for 401(k) Core Investment Lineup,” press release, April 26, 2022, <https://newsroom.fidelity.com/press-releases/news-details/2022/Fidelity-Investments-Advances-Leading-Position-as-Digital-Assets-Provider-With-Launch-of-Industrys-First-of-Its-Kind-Bitcoin-Offering-for-401k-Core-Investment-Lineup/default.aspx>.

²¹ Wall Street Journal, “Fidelity to Allow Retirement Savers to Put Bitcoin in 401(k) Accounts,” Anne Tergesen, April 26, 2022, <https://www.wsj.com/articles/fidelity-to-allow-retirement-savers-to-put-bitcoin-in-401-k-accounts-11650945661>.

²² Department of Labor, “Compliance Assistance Release No. 2022-01: 401(k) Plan Investments in “Cryptocurrencies,”” March 10, 2022, <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/compliance-assistance-releases/2022-01>.

decisions, custodial and recordkeeping concerns, valuation concerns, and the evolving regulatory environment?

3. What fees will your customers incur if they decide to invest in Bitcoin?
4. How much has Fidelity earned from cryptomining activities since the establishment of its mining operation?
5. When Fidelity made its decision to allow sales of Bitcoin in retirement accounts, how did the company address its own conflicts of interest, given that the company now is both a Bitcoin miner and a purveyor of Bitcoin?

Sincerely,



Elizabeth Warren
United States Senator



Tina Smith
United States Senator