Strategy's Bitcoin Treasury Model: Corporate Omphaloskepsis, Polypharmacy of Risk, and Shareholder and Societal Welfare[¨]

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ABSTRACT

Strategy Inc (MSTR), formerly MicroStrategy Incorporated, styles itself as the first and largest "bitcoin treasury company" (BTCo). MSTR essentially produces no goods or services and generates no operating cash flow. Yet by early 2025, its share price had risen 27-fold in under five years, a 110% annualized return—exceeding that of every S&P 500 stock. Corporations worldwide began imitating its BTCo model. With 4% of all outstanding bitcoins, MSTR is the largest known institutional holder. In 2025 it issued more equity capital than any other U.S. company.

This Article is the first academic work on the law and economics of the MSTR model. It introduces two concepts: "corporate omphaloskepsis," which captures the model's ends and means, and "polypharmacy of financial risk," which frames some key consequences for shareholders. Together, they help characterize a fundamentally different kind of public company. MSTR's path to shareholder wealth maximization departs from longstanding financial and legal understandings. Where the animating engine of ordinary public companies rests on producing goods and services, MSTR's rests largely on repeatedly issuing shares at a premium over the per share net asset value (NAV) of its bitcoin holdings, with proceeds immediately deployed to buy more. Management focuses on these issuances and purchases, on sustaining and, ideally, expanding the share price premium, and on promoting bitcoin.

The Article calls this "corporate omphaloskepsis": the firm gazes inward at two numbers—bitcoin's price and its share price's premium over NAV—with the outside world mattering only insofar as it moves them. So long as the premium holds, each issuance is arithmetically accretive to NAV—an internal arbitrage in which new shareholders subsidize existing ones. MSTR's bitcoin advocacy works on two margins: it lifts its core asset's

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price and, by burnishing the case for the amplified bitcoin exposure MSTR shares offer, helps sustain the premium. Unlike ETFs, whose authorized participant mechanism tethers share prices to NAV, MSTR shares usually traded at a substantial premium—a deviation central to its animating engine.

A sharp break in crypto assets in late 2025 sent MSTR shares plunging from their all-time high, while the premium contracted markedly. Bitcoin, MSTR's share price, and the premium have recovered from their 2026 lows but remain far below prior peaks.

Beyond offering an analytical framework for dissecting a new kind of public company, the Article's contributions are threefold. First, it shows that MSTR's core ends and means are unique. Its ends are an extreme "financialization" of the shareholder wealth maximization contemplated by corporate law and corporate finance theory. It's essential means depart from ordinary public company logic: the animating engine runs on share price premiums and bitcoin purchases. Sustaining the premium also requires other sui generis managerial tasks: e.g., amplifying bitcoin exposure, promoting bitcoin, and catering to investor heterogeneity with unusual intensity. The Article also explores puzzles in identifying the share price at which the engine functions, including a "Fulcrum Ratio" concept and competing methods for calculating "mNAV" (multiple of share price to per share net asset value).

Second, the Article identifies novel shareholder protection and societal welfare concerns. Shareholders confront a "polypharmacy of financial risk" more complex and harder to assess than its medical namesake. A range of hazards—bitcoin's volatility, MSTR's status as a bitcoin whale, the amplified exposure embedded in its capital structure, and substantive, process, and regulatory risks associated with MSTR's animating engine—are reflexively coupled. Each hazard reshapes the others, so their interaction is endogenous and shifting rather than fixed. The composite risk exposure is profoundly idiosyncratic and may be closer to Knightian uncertainty than calculable risk. MSTR's unusually heavy retail ownership and the missives seemingly encouraging ill-diversification exacerbate the concerns. The societal concerns center on economic growth. MSTR's advocacy that public companies redirect securities issuance proceeds from product development to bitcoin accumulation cuts against the innovation on which long-run economic dynamism depends.

Third, the Article proposes responses. Its proposals are not predicated on MSTR or bitcoin being Ponzi-like, meme stock-like, or otherwise suspect. Instead, these proposals are grounded in a principle of neutrality between the MSTR model and the ordinary public company model. Existing private ordering and federal disclosure rules have inadvertently favored the former, boosting demand for MSTR shares. On the private ordering side, the MSCI Global Investable Market and Nasdaq-100 indexes—primarily meant to capture only operating companies—nonetheless include MSTR due largely to outmoded eligibility criteria and MSTR's legacy, relatively insignificant, software business. The inclusion forces purchases by every investor tracking these benchmarks. On the regulatory side, the Securities and Exchange Commission (SEC) "Management's Discussion and Analysis" (MD&A) requirements call for public companies to offer thoughtful management assessments of their prospects, including the risks and uncertainties associated with key business drivers. As drafted, it is unclear whether the MD&A reaches the mNAV driver of BTCos like MSTR. As for the indexes, moving toward neutrality warrants serious consideration. As for the SEC, it should determine the circumstances in which the MD&A applies to the mNAV.

An Afterword briefly outlines some of the changes to MSTR's functioning announced on May 5, 2026.

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INTRODUCTION

Strategy Inc functions differently from other public companies. At its core, the firm produces no goods or services, has no operating cash flow, and does not compete with other companies. Yet, by February 4, 2025, its share price had increased 27-fold since it began its transformation to a new corporate model less than five years earlier.[1] Its stock's annualized return of 110% was multiples higher than any S&P 500 stock.[2] In a *Financial Times* film released that spring, Michael Saylor, its chairman and co-founder, stated that the firm's stock market capitalization of $100 billion "can grow" 100-fold to $10 trillion by 2045[3]—i.e., the current combined market capitalization of Amazon, Apple, and Microsoft. His "thesis is that [the company is] going to be the number one publicly-traded equity in the entire market."[4] Corporations imitating its model started proliferating worldwide. In 2025, it issued $23.3 billion in equity, the most of any U.S. company, accounting for 8% of all equities sold.[5]

The path to shareholder wealth maximization taken by this company (MSTR, formerly MicroStrategy Incorporated)[6] is unique and departs from longstanding financial and legal understandings of the public company. For ordinary public companies, the animating engine of shareholder wealth maximization rests on the production of goods and services. Perhaps the foremost task of management is to produce new or better goods and services or ones at lower cost than competitors. Finance principles such as net present value would help guide investment decisions, and Modigliani-Miller and other theories would help guide financing decisions. The overarching pecuniary corporate end is to maximize the fundamental value of its shares, relying on a convergence of share price to fundamental value to maximize shareholder wealth.

MSTR essentially produces no goods and services, much less new or better ones or existing ones at lower cost. Nor does the firm even compete with other companies in the normal sense. For MSTR, at bottom, the animating engine rests on the repeated issuance of shares at a premium over the net asset value (NAV) of the company's bitcoin holding and the immediate purchase of bitcoins with the proceeds. Managerial focus is on these share issuances and bitcoin purchases, on sustaining and, ideally, expanding the share price premium, and on promoting bitcoin. Through its capital structure and other means, MSTR stock is intended to offer amplified exposure to bitcoin prices. The 27-fold share price

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1. STRATEGY INC, Q4 2024 FINANCIAL RESULTS 32 (Feb. 5, 2025) [hereinafter MSTR Q4 2024 PRESENTATION], https://assets.contentstack.io/v3/assets/bltf8d808d9b8cebd37/blt368a52561cca7449/67a6719e87c84dbb6c17c436/strategy-announces-fourth-quarter-2024-financial-results-presentation.pdf [https://perma.cc/9MRG-PN6Q].

2. *Id.* at 31.

3. *Michael Saylor's $40bn Bitcoin Bet*, FINANCIAL TIMES (May 13, 2025) [hereinafter *FT Film*], https://www.ft.com/video/4d1a1666-20d4-4930-ab80-eda742640f16 [https://perma.cc/5CB2-499V].

4. *Id.*

5. STRATEGY INC, Q4 2025 FINANCIAL RESULTS 22 (Feb. 5, 2026) [hereinafter MSTR Q4 2025 PRESENTATION], https://assets.contentstack.io/v3/assets/bltf8d808d9b8cebd37/blt0a7be22d534bb050/69850541eb19d52d260c103b/strategy-q4-2025-financial-results.pdf [https://perma.cc/2KMN-2BXX].

6. Press Release, Strategy Inc, Strategy Announces Legal Name Change from MicroStrategy Incorporated to Strategy Inc (Aug. 14, 2025), https://assets.contentstack.io/v3/assets/bltf8d808d9b8cebd37/blt05afe93745eed76c/689dd65267858b825f55b59c/strategy-announces-legal-name-change-from-microstrategy-incorporated-to-strategy-inc_08-14-2025.pdf [https://perma.cc/8FZJ-E2P5].

increase just referred to was nearly four times that of bitcoin.[7] MSTR's overarching end departs from that of ordinary public companies. It is to directly maximize its share price, not share fundamental value, and relies on divergence, not convergence, between share price and share fundamental value (as proxied by that per share NAV).

MSTR's ends and means can be characterized as based on **"corporate omphaloskepsis"**—an absorbed contemplation of its share price premium and the opportunities that the premium and increases in the bitcoin price can offer. The firm exists in a closed financial ecosystem. Except insofar as they affect the share price premium or the bitcoin price, happenings in the outside world are irrelevant be they related to customers, workers, suppliers, competitors, macroeconomic shocks or anything else. So long as the premium holds, each issuance is arithmetically accretive to per share NAV—an internal arbitrage in which new shareholders subsidize existing shareholders. MSTR's bitcoin advocacy works on two margins: it enhances the price of its core asset and, by burnishing the case for amplified bitcoin exposure that MSTR shares offer, helps sustain the premium.

This path to shareholder nirvana seems all too easy. A basic financial valuation impediment would seem to block this path. If a firm essentially engages in no real-world activities and merely holds the proceeds of sales of its shares in the corporate treasury, why would investors accord any premium to the shares over their NAV?

MSTR's breakthrough insight was that this path would be possible in the then nascent realm of bitcoins. It realized how this internal arbitrage could work if the proceeds were held and accumulated in the corporate treasury not in dollars but in bitcoins. The key did not lie in the fact that holding the proceeds in bitcoin would change the NAV of the shares. After all, the value of the proceeds is the same, whether held in the form of bitcoin or in the form of cash.

Instead, the key lay in MSTR management being able to convince investors to accord a share price premium to a company that (a) by holding bitcoins, provides a form of highly liquid exposure to bitcoin that investors, especially retail investors, would have difficulty obtaining; and (b) by, among other things, systematically issuing shares at premiums to successive generations of shareholders, can increase the share price independent of any increase in the bitcoin price.

Sustained managerial efforts and bitcoin market peculiarities resulted in sizable share price premiums existing for extended periods.[8] At MSTR's November 20, 2024 all-time closing high, its share price was nearly quadruple its NAV by one crude measure.[9]

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7. MSTR Q4 2024 PRESENTATION, *supra* note 1, at 32.

8. *See infra* Part IV.B.2 (Figure 6) (showing mNAVs over time). For convenience, the Article will refer to bitcoins as an asset because it has a market price. Nothing in the Article's analysis turns on the extent to which bitcoins actually have long term intrinsic value. Views vary wildly on bitcoin's intrinsic value, and it is unnecessary for me to take a position here. I have noted, however, that Federal Reserve Chairman Jerome Powell's reference to bitcoin as a form of digital gold is fundamentally flawed. *See* Interview by Michel Martin with Henry Hu, *Crypto's New Swagger: What's Driving Bitcoin's Surge Past $100,000?*, NPR: MORNING EDITION (Dec. 6, 2024), https://www.npr.org/2024/12/06/nx-s1-5217747/cryptos-new-swagger-whats-driving-bitcoins-surge-past-100-000 [https://perma.cc/2ZEN-UUKT]; *see also infra* Part III.A.2 (discussing idiosyncratic risks and uncertainties flowing from MSTR's bitcoin holdings and animating engine).

9. *See Strategy Inc (MSTR)*, YAHOO FIN.: HIST. DATA (Nov. 20, 2024), https://finance.yahoo.com/quote/MSTR/history/?period1=1730419200&period2=1732924800 [https://perma.cc/N2DK-D3GY] (showing MSTR with a stock price of $473.83); *see also mNAV Analysis based on Diluted Shares*, STRATEGY

In late 2024, MSTR began referring to itself as the "world's first and largest Bitcoin Treasury Company" (BTCo), roughly speaking, a company that uses bitcoins as its primary treasury asset.[10] By mid-2025, MSTR held 3% of all bitcoins ever to be mined.[11] The above-referenced 27-fold share price increase was not only greater than that of any S&P 500 stock but also nearly four times that of bitcoin.[12]

Material stresses appeared toward year-end 2025, marked by a sharp break in crypto assets on October 10. The price of bitcoins fell and that of MSTR shares fell harder.[13] On November 14, 2025, after MSTR shares had fallen 56% from their November 20, 2024 all-time closing high, Saylor tweeted an image of himself floating away from a sinking *Titanic* with a single word: HODL.[14] In the same period, bitcoin only fell a tenth as much, less than 5%.[15] MSTR's share price premium essentially disappeared.[16] But hope floats. In December 2025, Saylor said he thought that "[b]itcoin is going to go up about 30% a year for the next 20 years."[17]

As of the beginning of February 2026, MSTR's stock price was not cooperating. Its stock price was less than half that at the inauguration of President Trump—a President whose stated goal was to make the U.S. the "[b]itcoin superpower."[18] However, by its April 20 Form 8-K, its stock price and the bitcoin price had recovered somewhat.

INC, https://saylortracker.com/?tab=charts&charts=navPremium [https://perma.cc/J633-9G5X] (pointing to MSTR's share price from Nov. 19, 2024–Dec. 21, 2024 and the "diluted mNaV").

10. *See infra* Part I.B.2.a.

11. STRATEGY INC, Q2 2025 FINANCIAL RESULTS 4 (July 31, 2025) [hereinafter MSTR Q2 2025 PRESENTATION], https://assets.contentstack.io/v3/assets/bltf8d808d9b8cebd37/blt3758ba103764912f/688cf843a168ff712977f926/q2-2025-strategy-earnings-presentation.pdf [https://perma.cc/XY8P-3QJ4]; *infra* Part I.B.2; *see also MicroStrategy Bitcoin Holdings Chart & Purchase History*, BITCOIN TREASURIES BY BITBO, https://bitbo.io/treasuries/microstrategy/ [https://perma.cc/VZ6X-LAHY] (charting MSTR's bitcoin holdings over time).

12. MSTR Q4 2024 PRESENTATION, *supra* note 1, at 32.

13. MSTR has two classes of common stock, class A and class B. The class A shares are traded on the Nasdaq Global Select Market. There is no established market for the class B shares. Generally speaking, whenever the Article refers to MSTR shares, it is referring to the class A common stock. *See* Strategy Inc, Annual Report (Form 10-K) 41, 58 (Feb. 19, 2026) (covering fiscal year ended Dec. 31, 2025) [hereinafter MSTR 2025 10-K].

14. Michael Saylor (@saylor), X (Nov. 14, 2024, at 6:22 AM), https://x.com/saylor/status/1989308024817598534 [https://perma.cc/B5R9-VXUB]. The closing prices on November 20, 2024 and November 13, 2025 were $473.83 and $208.54, respectively.

15. *See* Bitcoin USD Price (BTC-USD), YAHOO FIN.: HIST. DATA, https://finance.yahoo.com/quote/BTC-USD/history/ [https://perma.cc/C97K-PQVE] (showing Bitcoin's adjusted closing price as $99,697.49 on Nov. 20, 2024 and $94,339.49 on Nov. 13, 2025).

16. *See infra* Part II.A.3. For a graphic showing the share price premium over time, *see infra* Part IV.B.2 (Figure 6).

17. Kurt Robson, *Michael Saylor Claims Bitcoin Will Grow '30% Every Year for Next 20 Years' — How Much Would BTC Be Worth?*, CRYPTO CITIZENS NETWORK (Dec. 11, 2025), https://www.ccn.com/news/crypto/michael-saylor-bitcoin-30-every-year-20-years-btc-worth/ (on file with the *Journal of Corporation Law*).

18. Siamak Masnavi, *Trump Says He Wants U.S. to be 'the Bitcoin Superpower,' Cites Competition from China*, COINDESK (Nov. 6, 2025), https://www.coindesk.com/policy/2025/11/06/trump-says-he-wants-u-s-to-be-the-bitcoin-superpower-cites-competition-from-china (on file with the *Journal of Corporation Law*); *see also* Parts II.B.2 & III.A (discussing the Trump family and MSTR matters).

MSTR held 4.07% of all outstanding bitcoins as of that date, more than that held by world's largest bitcoin ETF.[19] Indeed, while definitive evidence is lacking, MSTR appears to be the biggest known institutional holder. MSTR is a market-moving whale.[20]

There have been some suggestions that MSTR and bitcoin may carry the whiff of Ponzi schemes and meme stocks or are otherwise suspect. This Article does not adopt such negative characterizations, and nothing in its analysis or its proposals depends on or otherwise involves any such characterizations.

The Article argues that the MSTR model raises not only profound and idiosyncratic investor protection concerns but also vital societal concerns. It uses the concept of a **"polypharmacy of financial risk"** to frame some of the key aspects of the investor-related concerns. The Article also identifies implications of the MSTR model for long-term societal prosperity that appear not to have been previously raised. It offers steps to address both sets of concerns.

This Article is the first academic work on the law and economics of the MSTR model. It offers an analytical framework for dissecting a fundamentally different kind of public company. By introducing concepts such as "corporate omphaloskepsis" and "polypharmacy of financial risk," the framework helps structure the inquiry. Beyond this framework, its contributions are threefold.

First, the Article shows that MSTR's core functioning—its ends and means—is unique. MSTR's ends are an extreme **"financialization"** of the shareholder wealth maximization contemplated by corporate law and finance theory. Classic governance precepts mandate a managerial focus on maximizing the fundamental—the proverbial "long-term"—value of the firm's shares. The presumption is that the market price of the shares will tend to converge to their fundamental value. MSTR's overarching corporate objective is focused not on maximizing **share fundamental value** and relying on the share price *converging* to share value. Instead, the focus is on maximizing the **share price** and relying on share prices *diverging* (in a positive direction) from share value.

MSTR's means depart even more from the ordinary logic of public company functioning: fundamentally, the animating engine is driven by share price premiums and bitcoin purchases rather than by the production of goods and services. Sustaining and, ideally, expanding that premium also requires other *sui generis* managerial tasks such as amplifying bitcoin exposure, promoting bitcoin, and catering to investor heterogeneity with unusual intensity. The Article also explores complexities, ambiguities, and puzzles in identifying the precise share price at which the engine can function, including a "Fulcrum Ratio"

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19. *See Bitcoin Circulating Supply*, NEWHEDGE, https://newhedge.io/bitcoin/circulating-supply [https://perma.cc/4JR2-9USF] (showing that (a) MSTR holding 815,061 bitcoins as of April 19, 2026; and (b) the outstanding supply of bitcoins as of April 25, 2026 being 20,020,643.75 (979,356 bitcoins being left to mine)); *see also iShares Bitcoin Trust ETF*, ISHARES BITCOIN TRUST ETF: HOLDINGS, https://www.ishares.com/us/products/333011/ishares-bitcoin-trust- [https://perma.cc/4YLT-HT9L] (showing a holding of 811,981 bitcoins as of April 24, 2026).

20. *See, e.g.*, Omer Sheikh, *MicroStrategy Stock (MSTR) Buys 34,164 BTC for $2.54 B — Overtakes BlackRock IBIT*, TECHI (Apr. 20, 2026), https://www.techi.com/mstr-stock-strategy-34164-btc-overtakes-blackrock/ [https://perma.cc/P2X7-RU97] (noting MSTR's growing holdings of bitcoin); Ryan Kolbe, *Strategy Surpasses BlackRock as Largest Institutional Bitcoin Holder*, BLOCKSTER (Apr. 20, 2026), https://blockster.com/strategy-surpasses-blackrock-as-largest-institutional-bitcoin-holder [https://perma.cc/T9EZ-97WT] ("With the latest acquisition, Strategy now holds more Bitcoin than BlackRock's iShares Bitcoin Trust (IBIT), which had previously been the largest institutional vehicle for BTC exposure.").

concept and competing methods for calculating "mNAV" (multiple of share price to per share net asset value).

MSTR's ends and means depart as well from those of mutual funds and ETFs, entities primarily engaged in investing in assets on behalf of shareholders, entirely apart from the Investment Company Act of 1940 (1940 Act) dimension. Critically, unlike ETFs, whose authorized participant mechanism generally keeps share prices closely tethered to net asset values, MSTR shares tend to trade at substantial premiums—and that deviation is central to MSTR's animating engine.

Second, the Article shows that the MSTR model presents novel shareholder protection and societal welfare concerns. For shareholders, the concerns extend beyond the exceptional volatility of MSTR's stock.[21] Shareholders confront a "polypharmacy of financial risk"—but one whose composite risk exposure is more complex and difficult to assess than its medical namesake. A range of hazards—bitcoin's volatility, MSTR's status as a bitcoin whale, the amplified bitcoin exposure embedded in its capital structure, and substantive, process, and regulatory risks associated with MSTR's animating engine—interact like co-administered drugs, producing multiplicative rather than additive effects. This financial polypharmacy is, however, more unforgiving than its medical counterpart. First, viewed in isolation, most of these risk sources are less tractable to systematic analysis than their pharmacological counterparts—in part because established drug-safety protocols may have no clear analogues. Second, these risk sources are reflexively coupled. Each hazard not only interacts with the others but reshapes them. The composite risk exposure is profoundly idiosyncratic and may be closer to Knightian uncertainty than to calculable risk. MSTR's unusually heavy retail ownership and the missives seemingly encouraging ill-diversification exacerbate the concern.

The societal concerns here have nothing to do with ESG-related matters that have dominated academic and public discourse on non-stockholder aspects of the corporation. Here, the societal concerns relate to the nature of activities that contribute to economic growth. For example, MSTR's call for public companies to devote proceeds of securities issuances otherwise flowing to the development of new products to the purchase and accumulation of bitcoins cuts against the innovation modern economic dynamism requires.

Third, the Article proposes steps to help address such investor protection and societal concerns, all grounded in a principle of neutrality between the MSTR model and the ordinary public company model. Existing private ordering and Securities and Exchange Commission (SEC) disclosure rules have inadvertently favored the former, boosting demand for MSTR shares. On the private ordering side, the MSCI Global Investable Market and Nasdaq-100 indexes are both primarily meant to capture only operating companies, that is, producers of goods or services. However, a combination of outmoded eligibility criteria and the happenstance of MSTR having a legacy, relatively insignificant, software business has resulted in the firm's inclusion. This inclusion forces every passive fund tracking those benchmarks to buy MSTR shares. For its part, MSCI has expressed reservations about MSTR's continued inclusion and has launched a systematic review of the eligibility of non-operating companies generally. The review, which would encompass BTCos and similar

21. *See* MSTR Q4 2024 PRESENTATION, *supra* note 1, at 33 (noting that MSTR shares are more volatile than any S&P 500 stock).

crypto-related entities, is a welcome development. A searching reconsideration is also warranted for the Nasdaq-100.

On the regulatory side, the most important narrative disclosure the SEC requires flows from its "Management's Discussion and Analysis"[22] (MD&A) requirements. The MD&A contemplates a thoughtful assessment through the eyes of senior management of a firm's prospects and, notably, associated material risks and uncertainties. The ordinary public company is unquestionably required to offer a balanced and granular outlook for the drivers of its basic functioning.

For BTCos like MSTR, no driver is more basic than the share price premium. However, it is uncertain whether, as drafted, the MD&A requirements reach the mNAV. In the case of MSTR, one mNAV-related item is, in the Article's view, especially critical: what it will call the "2.5 mNAV Puzzle." The SEC could meaningfully improve investor understanding—and temper possible investor overenthusiasm—by determining that the MD&A calls for balanced and granular management analysis of the mNAV and associated risks and uncertainties. Such SEC clarification should include drawing "boundary" lines setting out which BTCos and similar crypto-related entities to cover.

Part I of the Article introduces the core ends and means of the MSTR model and how MSTR evolved from being a traditional operating company. This initial overview shows that the model's ends and means depart from those of other public companies and those of mutual funds and ETFs. Relying in part on simplifying assumptions and a set of Figures, this Part sets out the engine's basic operation.

Part II takes a closer look at the engine. We begin by discussing the model while it was in its full flower and then the stark changes that occurred in the wake of crypto stresses toward year-end 2025. **(Part II.A)** We show how the engine is, in effect, an extreme implementation of what is sometimes referred to as the "inefficient capital markets approach to finance." We discuss the dependence on the share price premium and the complexities and ambiguities associated with the Fulcrum Ratio and the mNAV, apart from the 2.5 mNAV Puzzle.

The balance of Part II discusses the manifold ways MSTR uses to try to ensure the existence of the share price premium fuel and to increase the fuel's octane, as well as the related matter of promoting bitcoin. **(Part II.B)**.

Part III shows certain troublesome implications of the MSTR model. The investor protection concerns, those flowing from the extreme form of polypharmacy of risk facing MSTR shareholders and from the nature of MSTR share ownership, are far different from those normally associated with public companies. **(Part III.A)** The societal concerns stemming from MSTR's bitcoin-related advocacy raise distinctive economic prosperity issues. **(Part III.B)**

Part IV offers private ordering and regulatory responses to the investor and societal concerns. It begins by showing what sponsors of the MSCI Global Investable Market and Nasdaq-100 indexes should consider doing with respect to their stock inclusion criteria. **(Part IV.A)** It then sets out the need for SEC to determine the applicability of MD&A requirements as to the mNAV with respect to certain BTCos and similar crypto-related vehicles. We use the 2.5 mNAV Puzzle to help illustrate this. **(Part IV.B)**

22. 17 C.F.R. § 229.303 (2026).

An **Afterword** offers a very brief and highly preliminary overview of some changes to MSTR's functioning announced in the firm's May 5, 2026 earnings call. The call occurred too late to be reflected in the Article.

I. ENDS AND MEANS: A FIRST ORDER COMPARATIVE OVERVIEW

A. Public Companies: Maximization of Fundamental Value and the Production of Goods and Services

What a corporation seeks and how it seeks it—the ends and means—are usually separable questions. Part I.A.1 focuses on the overarching pecuniary ends of the ordinary public company. It shows that corporate law and corporate finance theory alike call for the maximization of the fundamental value of its shares—an objective premised on share prices converging to share values. Part I.A.2 focuses on the means by which ordinary companies pursue that corporate objective: the production of goods and services.

Part I.B then turns to the MSTR model, where a clear separation between ends and means does not hold. Part I.B.1 sketches MSTR's corporate objective of maximizing share price rather than share value—an objective premised on share prices diverging from share values. But the concrete content of both aspects of MSTR's orientation emerges from the core means on which MSTR relies: its share price premium-based animating engine. Part I.B.2 offers an introduction to the engine and traces how MSTR came to adopt it. MSTR's distinctive ends and distinctive means are, in significant part, constitutive of each other.

1. Ends: Fundamental Value Maximization and Reliance on Convergence of Share Price to Share Value

Delaware has long adopted the shareholder primacy model of the corporate objective.[23] In Vice Chancellor Laster's meticulous 2024 decision, *McRitchie* v. *Zuckerberg*, he sought to assess the "proper orientation of directors' fiduciary duties" under current Delaware Supreme Court jurisprudence. The Vice Chancellor concluded that: "[t]he fiduciary duties owed by directors of a Delaware corporation require the directors to seek to maximize the value of the corporation over the long-term for the benefit of the stockholders as residual claimants to the value created by the specific firm that the directors serve."[24]

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23. As to this Part I.A.1 discussion of the corporate objective under Delaware law and as analyzed by corporate finance theorists, I am leaving aside special cases such as *Credit Lyonnais*/*North American Catholic* considerations and the *Revlon* mode as well as Delaware public benefit corporations. The author has also previously distinguished "*actual* shareholder wealth maximization" (maximization of share price) from "*blissful* shareholder wealth maximization" (maximization of "blissful" share price—roughly speaking, share intrinsic value), and the need to supplement such conceptions with the matter of shareholder expectations. *See generally*, Henry T. C. Hu & Jay Lawrence Westbrook, *Abolition of the Corporate Duty to Creditors*, 107 COLUM. L. REV. 1321 (2007); Henry T. C. Hu, *Behind the Corporate Hedge: Information and the Limits of 'Shareholder Wealth Maximization'*, 9 J. APP. CORP. FIN. 39 (Fall 1996); Henry T. C. Hu, *Hedging Expectations: 'Derivative Reality' and the Law and Finance of the Corporate Objective*, 71 TEX. L. REV. 985 (1995).

24. McRitchie v. Zuckerberg, 315 A.3d 518, 564 (Del. Ch. 2024).

The use of the phrase "value . . . over the long-term" is significant, as is the avoidance of any reference to the market price of shares. The conclusion was rooted in the "deep structure of Delaware corporate law" explaining why Delaware decisions "have long instructed directors to prioritize the long-term value of the corporation."[25] "[A] stockholder makes a presumptively permanent investment in a presumptively perpetual firm."[26] The court cited with approval a statement in a law review article by Leo Strine, Jr., former Delaware Supreme Court Chief Justice, in which he stated that "[p]romoting long-term corporate profitability is aligned with an outlook that is focused on maximizing shareholder welfare."[27]

McRitchie, read as a whole, suggests that Delaware law generally requires management of an ongoing enterprise to maximize fundamental share value and, in effect, to rely on the market price to converge to it. The opinion nowhere imposes a duty to maximize the current stock price or cater to short-term traders, arbitrageurs, or market speculators.

Corporate finance theory treats the matter of corporate ends similarly. The classic Brealey-Myers textbook notes that "[c]orporate finance is all about maximizing shareholder value."[28] Making clear that this statement was referring to intrinsic value, not share price, the book elaborates by saying that large company shareholders want financial managers to increase the value of the company: "in an efficient market, this will in turn increase its current stock price. . . . Thus, the secret of success in financial management is to increase value."[29] The authors recognize the possibility of an inefficient market, where the share price could deviate from share fundamental value—as where the stock market is myopic.[30] But in this situation, the treatise does not urge deviating from a focus on fundamental value. Instead, they suggest taking steps such as paying the manager in long-term shares so that the manager is less concerned with short-term stock price.

2. *Means: The Production of Goods and Services*

Public companies employ workers to produce goods and services, obtain revenue from such activities, and compete with other entities through innovation and otherwise. This is so obviously true that corporate efforts to elaborate on this can seem self-congratulatory and uninformative. Thus, the 2019 Business Roundtable's "Statement on the Purpose of a Corporation," signed by more than 181 CEOs, stated:

> Businesses play a vital role in the economy by creating jobs, fostering innovation, and providing essential goods and services. Businesses make and sell consumer products; manufacture equipment and vehicles; support the national defense; grow and produce food; provide health care; generate and deliver energy;

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25. *Id.* at 562.
26. *Id.*
27. *Id.* at n. 132.
28. RICHARD A. BREALEY ET AL., PRINCIPLES OF CORPORATE FINANCE 1 (14th ed. 2025).
29. *Id.*
30. *Id.* at 1–11. The author has previously explored the distinction between maximizing the share price and maximizing the share intrinsic value. *See supra* note 23.

and offer financial, communications and other services that underpin economic growth.[31]

B. The MSTR Model: Maximization of Share Price and the Share Price Premium-Based Animating Engine

1. Ends: Share Price Maximization and Reliance on Divergence of Share Price from Share NAV

MSTR's core ends, like those of other public companies, are directed at shareholder wealth maximization. At a more granular level, its ends depart materially.

The short version is that instead of focusing on the maximization of the **fundamental value** of its shares in the hopes that the share price will *converge* to value, MSTR focuses directly on the maximization of **share price** and relies on the share price *diverging* from a particular conception of share value.[32]

As to the share price focus element, Saylor stated at MSTR's May 1, 2025 earnings call that "[t]he first and the principal objective is to drive up the price of MSTR."[33] An accompanying presentation slide describes the share price as "the principal metric for shareholder value creation and company performance."[34] Similarly, MSTR's 2025 Proxy Statement stated that the cash compensation of certain principal executive officers was increased because of their bitcoin strategy contributions to "value generation" for the company, and identified a 340% increase in market capitalization as the measure of that "value generation."[35]

This share price focus element and, even more so, the share price/share value divergence element will be clearer once we consider how MSTR's reorientation is implemented. The implementation is the work of Part I.B.2. Part I.B.2.a discusses how MSTR evolved to its current model. Part I.B.2.b offers an introductory overview of the share premium-based animating engine itself.

2. Means: From Software Production to Share Price Premium-Animating Engine

a. Evolution to the "First and Largest Bitcoin Treasury Company" and the Duality in Relevance of MSTR's Current Software Business

MSTR's ends differ materially from those of ordinary public companies. The means by which MSTR pursues its ends depart even more significantly.

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31. *Statement on the Purpose of a Corporation*, BUS. ROUNDTABLE (Aug. 2019), https://s03.s3c.es/imag/doc/2019-08-19/Business-Roundtable.pdf [https://perma.cc/L5QH-X2BS].

32. Perhaps managements at some "momentum" stock companies are more directed at their share prices (and less at their share intrinsic values) than the usual public company.

33. *MicroStrategy Incorporated (NASDAQ:MSTR) Q1 2025 Earnings Call*, STOCK INSIGHTS (May 2, 2025) [hereinafter *MSTR Q1 2025 Earnings Call Transcript*], https://www.stockinsights.ai/us/MSTR/earnings-transcript/fy25-q1-cbaf [https://perma.cc/8HXU-6VS8].

34. STRATEGY INC, Q1 2025 FINANCIAL RESULTS 63 (May 1, 2025) [hereinafter MSTR Q1 2025 PRESENTATION], https://assets.contentstack.io/v3/assets/bltf8d808d9b8cebd37/bltf134a12423806bf1/681427785f6726700cbfa9a4/q1-2025-strategy-earnings-presentation.pdf [https://perma.cc/4B6A-BW4C].

35. Strategy Inc, 2025 Proxy Statement (Schedule 14A) 28–29 (Apr. 28, 2025).

In the main, MSTR produces no goods and services, has no operating revenue, and does not compete with other entities in the traditional sense. More precisely, the production of goods and services became largely immaterial to both MSTR management and investors from the standpoint of direct economic impact but has curious private ordering and regulatory relevance.

Some history on the firm's transformation may be helpful. MSTR began life in 1989 as a traditional operating company, offering enterprise analytics software. Its first foray into bitcoins was announced on August 11, 2020, when the firm stated that it had purchased $250 million of bitcoins. It said that the bitcoin purchase was based on bitcoins being a "dependable store of value and an attractive investment asset with more long-term appreciation potential than holding cash."[36] On September 11, 2020, the board adopted a new policy that treasury reserve assets will consist of "[(i)] bitcoin serving as the primary treasury reserve asset on an ongoing basis"; and "[(ii)] cash, cash equivalents, and short-term [instruments] . . . that exceed working capital needs."[37] On September 14, 2020, the company purchased an additional $175 million of bitcoins.[38] Later that year, the proceeds of a convertible debt issuance funded the purchase of yet more bitcoins. This issuance of debt caused MSTR's common stock to have leveraged exposure to bitcoin fluctuations.

MSTR realized that its common stock might trade at a substantial premium to the NAV of the underlying bitcoin. Its Form 10-K for 2020 noted that investors in the U.S. had "limited means" to gain exposure to bitcoin through traditional investment channels such as 401(k) retirement accounts. Instead, they generally must hold bitcoin through wallets that expose the investor to risks associated with loss or hacking of their private keys. Although investment vehicles existed that issued shares representing fractional undivided interest in their underlying bitcoin holdings, many U.S. investors had limited access to such vehicles. In connection with noting that no ETFs invested in bitcoins had been approved by the SEC,[39] MSTR stated, "[t]o the extent investors view the value of our class A common stock as providing such exposure, it is possible that the value of our class A common stock also includes a premium over the value of our bitcoin."[40]

Since retail access to bitcoins was limited, a share price premium over NAV was understandable. A standard academic explanation for the premiums over NAV that some closed end funds enjoy at issuance centers on how these funds offer investors easy exposure to illiquid securities.[41] In April 2022, when the necessary SEC approval had still not occurred, Saylor was promoting investing in MSTR stock as "kind of like your nonexistent

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36. *MicroStrategy Adopts Bitcoin as Primary Treasury Reserve Asset*, BUSINESSWIRE (Aug. 11, 2020) [hereinafter *MSTR Aug. 11, 2020 Press Release*], https://www.businesswire.com/news/home/20200811005331/en/MicroStrategy-Adopts-Bitcoin-as-Primary-Treasury-Reserve-Asset [https://perma.cc/RM4W-JTFT].

37. MicroStrategy Incorporated, Current Report (Form 8-K), Item 8.01 (Other Events) (Sept. 14, 2020).

38. MicroStrategy Incorporated, Current Report (Form 8-K) (Sept. 15, 2020).

39. MicroStrategy Incorporated, Annual Report (Form 10-K) 27–28 (Feb. 14, 2020) (covering fiscal year ended Dec. 31, 2020) [hereinafter MSTR 2020 10-K].

40. *Id*. at 28.

41. *See* Martin Cherkes, Jacob S. Sagi & Richard Stanton, *A Liquidity-Based Theory of Closed-End Funds*, 22 REV. FIN. STUD. 257, 257 (2009) (explaining closed-end fund premiums as compensation for illiquid security exposure).

spot ETF" in bitcoins.[42] Moreover, he noted, MSTR offered leveraged exposure to bitcoin.[43]

These bitcoin holdings, as well as the leveraged exposure, contributed to a large share price premium. But the share price premium from both would erode as easy alternative ways to gain straight or amplified exposure emerged. Indeed, the January 10, 2024 SEC approval of the spot bitcoin ETFs caused the trading price of MSTR stock to drop significantly relative to the value of bitcoin.[44]

In 2021, MSTR took the fateful step of issuing, for the first time, about $1 billion of common stock and investing the proceeds in bitcoin.[45] The issuance of stock at a premium over NAV opened the door to MSTR's animating engine, as will be shown in Part I.B.2.b.

MSTR's self-characterization evolved as the emphasis on bitcoins increased. In an August 11, 2020 press release marking the start of its transformation, MSTR stated that it "remains focused on its corporate strategy of operating a growing profitable business intelligence company."[46] In its 10-Q for the third quarter of 2023, MSTR referred to itself as "the largest independent publicly-traded analytics and business intelligence company."[47] In an August 1, 2024 press release, that changed to "the world's first Bitcoin development company."[48]

MSTR's current self-characterization is that it is "the world's first and largest Bitcoin Treasury company."[49] This BTCo moniker and the underlying concept of a BTCo are set out in its October 30, 2024 Form 8-K:

> MicroStrategy . . . is the world's first and largest Bitcoin Treasury Company. We are a publicly traded company that has adopted Bitcoin as our primary treasury reserve asset. By using proceeds from equity and debt financings, as well as cash flows from our operations, we strategically accumulate Bitcoin and advocate for its role as digital capital.[50]

MSTR's only reportable operating segment is what it refers to as its "Software Business," which is engaged in the design, development, marketing, and sales of the firm's enterprise analytics software platform and related services.[51] The segment's relevance has an interesting duality. In terms of the direct economic impact of its revenues and assets, the software business barely registers. In 2023, 2024, and 2025, its total revenue from the

42. MacKenzie Sigalos, *Michael Saylor Says Investing in MicroStrategy Is The Closest You'll Get to a Bitcoin Spot ETF*, CNBC (Apr. 21, 2022), https://www.cnbc.com/2022/04/21/bitcoin-spot-etf-michael-saylor-says-investing-in-microstrategy-is-closest-youll-get.html [https://perma.cc/A6E8-MAS6].

43. *Id.*

44. Strategy Inc, Annual Report (Form 10-K) 23 (Feb. 18, 2025) (covering fiscal year ended Dec. 31, 2024) [hereinafter MSTR 2024 10-K].

45. MicroStrategy Incorporated, Annual Report (Form 10-K) (Feb. 15, 2022) (covering fiscal year ended Dec. 31, 2021) [hereinafter MSTR 2021 10-K].

46. M*STR Aug. 11, 2020 Press Release*, *supra* note 36.

47. MicroStrategy Incorporated, Quarterly Report (Form 10-Q) (Nov. 1, 2023) (covering the quarterly period ended Sept. 30, 2023) [hereinafter MSTR Sept. 30 10-Q].

48. *MicroStrategy Announces Second Quarter 2024 Financial Results; Now Holds 226,500 BTC*, BUSINESSWIRE (Aug. 1, 2024), https://www.businesswire.com/news/home/20240801276948/en/MicroStrategy-Announces-Second-Quarter-2024-Financial-Results-Now-Holds-226500-BTC [https://perma.cc/AT9V-LBHY].

49. MSTR 2025 10-K, *supra* note 13, at 7.

50. Strategy Inc, Current Report (Form 8-K) 8 (Oct. 30, 2025).

51. MSTR 2025 10-K, *supra* note 13, at 134.

software business was $496 million, $463 million, and $477 million, respectively.[52] MSTR's net income from that segment was all of $9 million, $175 million, and $91 million, respectively.[53]

In contrast, MSTR's current stock market capitalization and the current value of its bitcoin holdings are two orders of magnitude greater than the highest of all those software business numbers. As of February 13, 2026, the market capitalization of MSTR's class A common stock was approximately $42 *billion*.[54] As of the same date, the company held about $49.3 billion of bitcoins, accounting for the "vast majority" of the company's assets.[55] The software business does generate cash flow that could be used to purchase bitcoins as well as to satisfy debt and cash obligations. However, the company purchases bitcoins primarily from its equity and debt offerings.[56]

On the other hand, due to artifacts of stock index company eligibility rules, the mere existence of this operating segment contributes to a material demand for MSTR shares. This will be explored in Part IV.A.

Moreover, the existence of an operating segment had, at least until March 2026, helped MSTR reduce the risk of being characterized as an "investment company" under the 1940 Act. As discussed in Part III.A.2.b, such a characterization would jeopardize the functioning of MSTR's animating engine.

b. MSTR's Share Price Premium-Based Animating Engine

As an arithmetic matter, any firm whose shares are trading at prices above their fundamental value can increase the fundamental value by issuing shares. Existing shareholders would benefit from the subsequent increase in the market price that would result. In the finance literature, this truism is relied on in what is sometimes referred to as the "inefficient capital markets approach to corporate finance." One important work along this line of research found that equity issuance indeed increased among overvalued stocks.[57] Broadly speaking, overvaluation and undervaluation could have opposite effects: managers could issue securities that are overvalued and repurchase securities that are undervalued. This approach would transfer value from the new or the outgoing investors to ongoing, long-run

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52. *Id.* at 134–137.

53. *Id.*

54. MSTR 2025 10-K, *supra* note 13, at 1, 41 (noting as of Feb. 13 2026, 314,112,458 of class A common stock outstanding; share price of $133.88 on Feb. 13, 2026, respectively).

55. *Id.* at 63 & 106.

56. Strategy Inc, Quarterly Report (Form 10-Q) 35 (Aug. 4, 2025) (covering quarter ended June 30, 2025).

57. The article is Ming Dong, David Hirshleifer & Siew Hong Teoh, *Overvalued Equity and Financing Decisions*, 25 REV. FIN. STU. 3645, 3645–46 (2012), which states:

> Because equity is more sensitive than debt to firm value, misvaluation effects should be stronger for equity than for debt issuance. Greater net issuance of overvalued equity allows the firm to maximize the profit it extracts from new securityholders. This is desirable both for existing shareholders, and for a manager who wishes to increase long-term stock price. Thus, the inefficient markets approach suggests that net equity issuance will be more positively sensitive than net debt issuance to overvaluation.

investors: the key is that transfers occur as prices correct in the long run.[58] Other scholars have also explored how share price overvaluation and undervaluation may affect decisions on the investment side.[59]

The MSTR model involves two major extensions of this approach. First, the kicker provided by the share price premium is not used spasmodically, in connection with specific financings or specific investment decisions. Instead, the kicker is at the heart of the ongoing functioning of the firm. Rather than mispricing providing ephemeral opportunities, mispricing on the overvaluation side routinely existed and was systematically acted on.

Second, the MSTR model does not contemplate simply holding the proceeds of share issuances in cash. Instead, the proceeds are invested in bitcoin. If investors are, in effect, willing to "overpay" for corporations with bitcoin holdings, those holdings contribute to a share price premium.

* * * *

For the purposes of this first order overview of the animating engine, we will follow longstanding scholarly tradition, SEC rules, and industry practice as to how to calculate the fundamental value of shares of investment vehicles like closed-end funds, mutual funds, and ETFs. Specifically, we will follow the governing methodology for calculating the per share NAVs.

De Long and Shleifer's classic analysis suggesting that the Standard & Poor's composite index was overvalued around the time of the 1929 crash was based on comparing the current market value of the securities of closed-end funds with their NAVs.[60] Although they stated that they relied on various cited publications for calculating discounts and premia, they did not disclose their precise NAV calculation methodology.

Dimson and Minio-Kozerski's 1999 survey of closed-end funds was specific, defining NAV as "the market value of the securities held *less the liabilities*, all divided by the number of [the] shares outstanding."[61]

Similarly, SEC requirements governing the reporting of mutual funds and most ETFs as to NAVs prescribe that indebtedness be deducted. Section 2(a)(41) of the 1940 Act specifies that for mutual funds and ETFs registered thereunder, "value" is the market value of securities for which market quotations are readily available and, for "other securities and assets," is the fair value as determined in good faith by the board of directors.[62] Rule 2a-4 thereunder provides further guidance, including as to adjustments for federal income taxes and dividends receivable.[63] The NAV is the fund's total assets minus its total liabilities.[64]

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58. Malcolm Baker, Richard S. Ruback & Jeffrey Wurgler, *Behavioral Corporate Finance: A Survey* 7 (Nat'l Bureau of Econ. Res. Working Paper No. 10863, 2024), http://www.nber.org/papers/w10863 [https://perma.cc/T3RM-5E5Q].

59. *See generally*, Christopher Polk & Paola Sapienza, *The Stock Market and Corporate Investment: A Test of Catering Theory*, 22 REV. FIN. STUD. 187 (2009) (exploring the impacts of investments due to misevaluations).

60. J. Bradford De Long & Andrei Shleifer, *The Stock Market Bubble of 1929: Evidence from Closed-End Mutual Funds*, 51 J. ECON. HIST. 675, 677 (1991).

61. Elroy Dimson & Carolina Minio-Kozerski, *Closed-End Funds: A Survey*, 8 FIN. MKTS., INSTS. & INSTRUMENTS. 1, n.3 (1999) (emphasis added).

62. 15 U.S.C. § 80a-2(a)(41)(A) (2025).

63. 17 C.F.R. § 270.2a-4 (2026).

64. *Net Asset Value*, U.S. SEC. & EXCH. COMM'N: INVESTOR.GOV [hereinafter *Net Asset Value*], https://www.investor.gov/introduction-investing/investing-basics/glossary/net-asset-value [https://perma.cc/NK6V-Y53G]. Fidelity calculates NAV's for mutual funds and ETFs identically and subtracts

As the SEC illustrated, "if an investment company has securities and other assets worth $100 million and has liabilities of $10 million, the investment company's NAV will be $90 million."[65] The "per share NAV" is the NAV divided by the number of shares outstanding.[66]

While closed-end funds are not subject to these 1940 Act mandates, industry practice similarly deducts indebtedness in NAV calculations. For this purpose, not only is debt incurred by the fund deducted, but the preferred stock issued is deducted as well. Fidelity offered an illustration of an existing closed-end fund with $500 million of assets and 50 million common shares outstanding (and thus an NAV per share of $10) that subsequently issues $250 million of preferred shares.[67] The total assets increased to $750 million, but the per share NAV remained at $10 because the $250 million is subtracted from the $750 million for the purposes of the numerator of the NAV calculation.

MSTR's bitcoin assets dwarf its cash and other assets. In this situation, we use the term "BTC NAV" as a measure of the fundamental value of a share of MSTR common stock. We calculate BTC NAV as follows:

$$BTC\ NAV = \frac{(Total\ Value\ of\ BTC\ Holdings - Amount\ of\ Debt\ and\ Preferred\ Stock)}{Number\ of\ Shares\ Outstanding}$$

If, in contrast, MSTR held material amounts of both bitcoins and cash (and nothing else)—as began to occur in late November 2025, as will be discussed—the numerator of its NAV would, of course, reflect the value of both its bitcoins and its cash.

When MSTR shares trade at a premium (discount) to the fundamental value, the MSTR stock price is higher (lower) than the BTC NAV. We will use the term "Fulcrum Ratio" to reference such premiums and discounts, and calculate it as follows:

$$Fulcrum\ Ratio = \frac{Stock\ Price}{BTC\ NAV}$$

Using the above terminology, the animating engine for MSTR involves (a) selling shares that are trading at a premium (i.e., the Fulcrum Ratio is over 1.0); and (b) using the issuance proceeds to buy bitcoin. The tipping point for when the issuance of shares is accretive is a Fulcrum Ratio of (just above) 1.0—irrespective of whether proceeds are simply held in cash or whether the proceeds fund the purchase of bitcoin. This is in line with the inefficient capital markets approach to finance: benefits flow to the existing generation of MSTR shareholders due to the overpayment by the new generation of shareholders.

The bitcoin component of this process is critical to the existence of the share price premium. We discussed in Part I.B.2.a why investors were willing to overpay for

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indebtedness. *See What is NAV?*, FIDELITY INV. (Aug. 6, 2025), fidelity.com/learning-center/smart-money/what-is-nav [https://perma.cc/4LK6-XJF5].

65. *Net Asset Value*, *supra* note 64.

66. *Id.*

67. *Leverage*, FIDELITY VIEWPOINTS, fidelity.com/learning-center/investment-products/closed-end-funds/leverage [https://perma.cc/3YRA-BQQC] (reprinting a work by Morningstar).

companies holding bitcoins in the early days of the bitcoin market and will discuss in Part II.B the mechanisms MSTR relies on to sustain and, ideally, expand the share price premium. Figures 1, 2, and 3 below illustrate the importance of the premium under simplifying assumptions.

Figure 1 below shows that if the Fulcrum Ratio is greater than 1.0, MSTR's share price should increase from issuances of shares/purchases of bitcoins even if the bitcoin price does not change.

Figure 2 shows, however, that if the Fulcrum Ratio is less than 1.0, MSTR's share price should *decrease* from issuances of shares/purchases of bitcoins even if the bitcoin price does not change.

Figure 3 shows that if the Fulcrum Ratio is 1.0, MSTR's share price would not change from issuance of shares/purchase of bitcoins if the bitcoin price does not change.

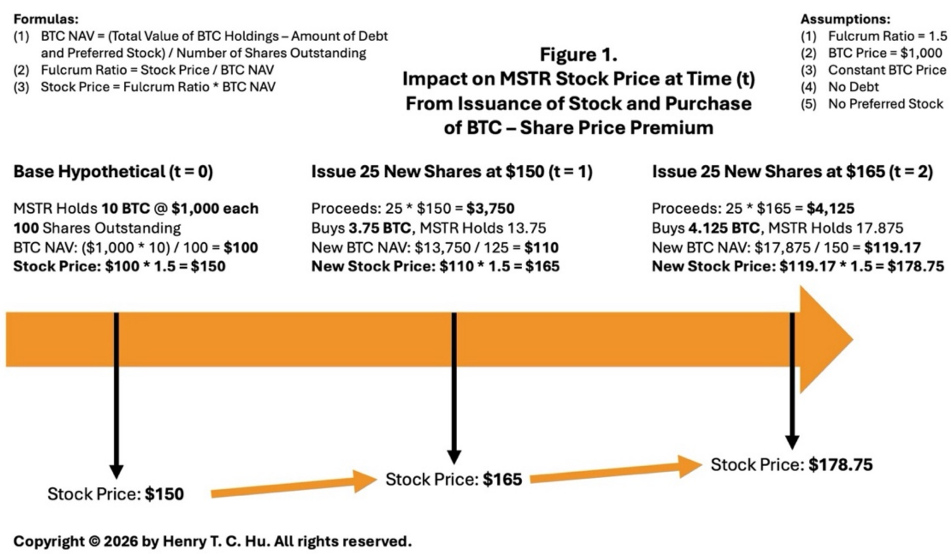

Figure 1. Impact on MSTR Stock Price at Time (t) From Issuance of Stock and Purchase of BTC – Share Price Premium

When MSTR's Fulcrum Ratio is greater than 1.0, any share issuance will increase MSTR's stock price, even if the price of bitcoin is static. The following chart illustrates this outcome:

Figure 1 assumes that: (1) the Fulcrum Ratio is static at 1.5; (2) the price of bitcoin is $1,000; (3) the price of bitcoin is static; and (4) MSTR has no debt or preferred stock.

At time 0, assume that MSTR holds 10 bitcoins and has 100 shares outstanding. This means that MSTR has a BTC NAV of $100 because 10 bitcoins, multiplied by the $1,000 bitcoin price, divided by 100 shares outstanding equals $100. This implies an initial stock price of $150 because the $100 BTC NAV multiplied by the 1.5x Ratio equals $150.

At time 1, MSTR issues 25 shares at a $150 stock price with total proceeds equaling $3,750. MSTR then uses those proceeds to buy 3.75 bitcoins, increasing its total bitcoin count to 13.75. MSTR would then have $13,750 in total bitcoin value and 125 shares outstanding. This means that MSTR has a BTC NAV of $110.

Thus, by issuing the shares at a share price premium, MSTR has increased the fundamental value of MSTR shares from $100 to $110. The stock price increases from $150 to $165: i.e., $110 BTC NAV multiplied by the 1.5 Fulcrum Ratio equals $165.

At time 2, MSTR issues another 25 shares but at the new $165 stock price. Total proceeds would then be $4,125, which MSTR uses to purchase 4.125 new bitcoins. MSTR's new bitcoin count is 17.875 and has $17,875 in total bitcoin value. With 150 shares outstanding, MSTR's new BTC NAV is $119.17. The $119.17 BTC NAV multiplied by the 1.5 Fulcrum Ratio equals a new stock price of $178.75.

MSTR can repeatedly benefit from the issuance of shares/purchase of bitcoin process ad infinitum so long as the Fulcrum Ratio is 1.5 or, indeed, anything above 1.0. This Figure 1 captures the essence of the animating force for MSTR shareholder wealth maximization.

MSTR cannot, however, increase its stock price in all cases by issuing new shares. When MSTR's Fulcrum Ratio is less than 1.0, any share issuance will decrease MSTR's stock price. Figure 2 below illustrates this outcome:

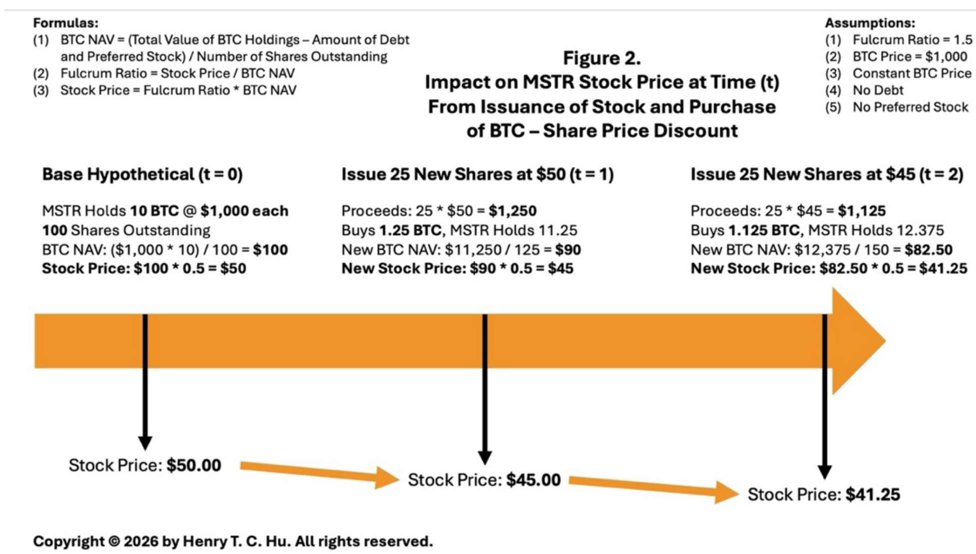

Figure 2. Impact on MSTR Stock Price at Time (t) from Issuance of Stock and Purchase of BTC – Share Price Discount

Figure 2 assumes that: (1) the Fulcrum Ratio is static at 0.5; (2) the price of bitcoin is $1,000; (3) the price of bitcoin is static; and (4) MSTR has no debt or preferred stock.

At time 0, assume that MSTR holds 10 bitcoins and has 100 shares outstanding. This means that MSTR has a BTC NAV of $100 because 10 bitcoins, multiplied by the $1,000 bitcoin price, divided by 100 shares outstanding equals $100. This implies an initial stock price of $50 because the $100 BTC NAV multiplied by the 0.5 Fulcrum Ratio equals $50.

At time 1, MSTR issues 25 shares at the $50 stock price with total proceeds equaling $1,250. MSTR then uses those proceeds to buy 1.25 bitcoins, increasing its total bitcoin count to 11.25. MSTR would then have $11,250 in total bitcoin value and 125 shares outstanding. This means that MSTR has a BTC NAV of $90. The BTC NAV multiplied by the 0.5 Fulcrum Ratio equals a new stock price of $45.

At time 2, MSTR issues another 25 shares but at the new $45 stock price. Total proceeds would then be $1,125, which MSTR uses to purchase 1.125 new bitcoins. MSTR's new bitcoin count is 12.375 and has $12,375 in total bitcoin value. With 150 shares outstanding, MSTR's new BTC NAV is $82.50. The $82.50 BTC NAV multiplied by the 0.5 Fulcrum Ratio equals a new stock price of $41.25.

MSTR has decreased its stock price, and diminished shareholder value, by issuing shares when its Fulcrum Ratio is less than 1.0. If MSTR continues this process, it will completely destroy the value of its equity as it is selling shares for less than they are worth.

The above two Figures imply that the Fulcrum Ratio has a "tipping point." The below Figure 3 shows the tipping point is a Fulcrum Ratio of 1.0. When it is above 1.0, the stock price will go up, when it is below 1.0, the stock price will go down, and when it is 1.0, the stock price does not change.

Formulas:
(1) BTC NAV = (Total Value of BTC Holdings – Amount of Debt and Preferred Stock) / Number of Shares Outstanding
(2) Fulcrum Ratio = Stock Price / BTC NAV
(3) Stock Price = Fulcrum Ratio * BTC NAV

Figure 3.
Impact on MSTR Stock Price From Stock Issuance and Purchase of BTC at Three Different Fulcrum Ratios

Assumptions:
(1) Fulcrum Ratio = 1.5
(2) BTC Price = $1,000
(3) Constant BTC Price
(4) No Debt
(5) No Preferred Stock

Base Hypothetical

MSTR Holds **10 BTC @ $1,000 each**
100 Shares Outstanding
BTC NAV: ($1,000 * 10) / 100 = **$100**

Fulcrum Ratio = 0.5

MSTR Issues **25 New Shares at $50**
Proceeds: 25 * $100 = **$1,250**
Buys **1.25 BTC**, MSTR Holds 11.25
New BTC NAV: $11,250 / 125 = **$90**

New Stock Price: 90 * 0.5 = $45

Fulcrum Ratio = 1.0

MSTR Issues **25 New Shares at $100**
Proceeds: 25 * $100 = **$2,500**
Buys **2.50 BTC**, MSTR Holds 12.50
New BTC NAV: $12,500 / 125 = **$100**

New Stock Price: 100 * 1.0 = $100

Fulcrum Ratio = 1.5

MSTR Issues **25 New Shares at $150**
Proceeds 25 * $100 = **$3,750**
Buys **3.75 BTC**, MSTR Holds 13.75
New BTC NAV: $13,750 / 125 = **$110**

New Stock Price: 110 * 1.5 = $165

Figure 3. Impact on MSTR Stock Price From Stock Issuance and Purchase of BTC at Three Different Fulcrum Ratios

Figure 3 assumes that: (1) the price of bitcoin is $1,000; (2) the price of bitcoin is static; and (3) MSTR has no debt or preferred stock.

In the base hypothetical, assume that MSTR holds 10 bitcoins and has 100 shares outstanding. This means that MSTR has a BTC NAV of $100 because 10 bitcoins, multiplied by the $1,000 bitcoin price, divided by 100 shares outstanding equals $100.

At a Fulcrum Ratio of 1.5, if MSTR issues 25 new shares at a $150 stock price, it will end up with a new stock price of $165. This was shown by Figure 1. At a Fulcrum Ratio of 0.5, if MSTR issues 25 new shares at a $50 stock price, it will end up with a new stock price of $45. This was shown by Figure 2.

At a Fulcrum Ratio of 1.0, however, if MSTR issues 25 new shares at a $100 stock price, its total proceeds will be $2,500. With those proceeds, MSTR purchases 2.5 bitcoins, increasing its total bitcoin count to 12.50 and total bitcoin value to $12,500. The $12,500 total bitcoin value divided by the 125 shares outstanding equals a BTC NAV of $100. A $100 BTC NAV multiplied by the 1.0 Fulcrum Ratio results in a $100 stock price.

In short, under simplifying assumptions, a Fulcrum Ratio above 1.0 is essential to the animating engine.

C. The MSTR Model versus Investment Companies

As just seen, the ends and means associated with the MSTR model differ significantly from those of other public companies. The MSTR model also differs significantly from those of mutual funds and ETFs, the two primary investment vehicles for pooled investments. The MSTR model is unique.

As for ends, the MSTR model, mutual funds, and ETFs all seek to maximize the wealth of shareholders (subject to the constraints of private ordering or governmental regulation). But a key difference stems from the fact that the MSTR model is focused on maximization of its share price, not its NAV, while with mutual funds and ETFs, the focus is on the NAV.

As a legal matter, mutual fund shares must be bought from, and sold to, mutual funds themselves at their NAV (apart from "loads" and similar fees).[68] All ETFs design their authorized participant creation/redemption mechanisms to try to minimize, if not almost completely eliminate, deviations between the trading price of their shares from their NAV.[69]

As for means, the animating engine for the MSTR model depends on the issuance of shares trading at a premium to their NAV. As just discussed, mutual funds cannot sell their shares at a premium, and ETFs do their best to avoid their share prices deviating from their NAVs.

Beyond differences in ends and means, the regulatory framework is wholly distinct. Unlike mutual funds and most ETFs, MSTR is not currently deemed to be subject to the array of substantive, governance, and disclosure strictures under the 1940 Act.[70] As acknowledged by MSTR, applicability of the 1940 Act could substantially change its functioning.[71]

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68. *See, e.g.*, JOSEPH A. FRANCO & KARL-OTTO HARTMANN, INVESTMENT MANAGEMENT REGULATION: AN INTRODUCTION TO PRINCIPLES AND PRACTICE 553–57 (2019).

69. Henry T. C. Hu & John D. Morley, *A Regulatory Framework for Exchange-Traded Funds*, 91 S. CAL. L. REV. 839, 851–63 (2018).

70. *Id.* at 867–72.

71. *See infra* Part III.A.2.b.

II. THE MSTR MODEL'S FUNCTIONING: A CLOSER LOOK

A. The Animating Engine

1. MSTR's Cornerstone Bitcoin Principle and the Animating Engine

MSTR's stated "BTC Principle" number 1 is: "Buy and Hold BTC indefinitely, exclusively, securely."[72] This embodies two concepts. First, all proceeds of MSTR securities sales would be invested in bitcoins. Second, it would never sell any bitcoins it has accumulated. This MSTR cornerstone bitcoin principle is analogous in status to *Star Trek*'s "prime directive" for the United Federation of Planets. (The analogy may be more apt than first appears in a respect Part II.A.3 takes up: Captain Kirk did not always observe the prime directive.)

MSTR's day-to-day functioning—the core activities undertaken to further its shareholder wealth maximization ends—centers on an animating engine in which shares are issued at premiums over their fundamental value and the proceeds are invested in bitcoins. Concomitantly, MSTR tries to ensure that the share price premium fuel is frequently available and that the octane is as high as possible.

The matter of when precisely the necessary share price premium exists or is deemed to exist is complex. We turn now to some of the complexities not addressed in the Part I introductory overview of the animating engine and its Figures 1, 2, and 3.

As a matter of terminology, MSTR suggests that an "mNAV" (i.e., multiple to net asset value) exceeding 1.0 is the tipping point, when the mNAV is calculated in a specified way. Unfortunately, in the BTCo space the "mNAV" moniker is often used loosely and calculation methodologies differ. We will discuss these matters in Part II.A.2.

The centrality of the securities issuance/bitcoin purchase process is illustrated by the nature of the only bitcoin-related performance measures set out in its Q2 2025 earnings presentation: "BPS," "BTC Yield," "BTC Gain," and "BTC $ Gain."[73] Each such measure, in MSTR's words, is intended "to help assess the performance of [our] strategy of acquiring bitcoin in a manner we believe is accretive to shareholders."[74] Consistent with this, the "BTC Guidance for 2025" appearing in the Q2 2025 earnings presentation and the "Reaffirming BTC Guidance for 2025" appearing in the Q3 2025 earnings presentation consist of MSTR's expectations for "BTC Yield" and "BTC $ Gain" based on an assumed 2025 year-end bitcoin price of $150,000.[75]

The type and amount of MSTR securities it would issue to purchase bitcoins—e.g., common stock, debt, or preferred stock—would depend on market conditions. Under the "MSTR Equity Guidance" provided in its Q2 2025 earnings presentation, if the share premium is extremely high, MSTR "will actively issue [MSTR common stock] to acquire [B]itcoin," if it is somewhat lower, MSTR "will opportunistically issue [MSTR common

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72. MSTR Q2 2025 PRESENTATION, *supra* note 11, at 112.

73. *Id.* at 124.

74. *Id.*

75. *Id.* at 94; STRATEGY INC, Q3 2025 FINANCIAL RESULTS 35 (Oct. 30, 2025) [hereinafter MSTR Q3 2025 PRESENTATION], https://assets.contentstack.io/v3/assets/bltf8d808d9b8cebd37/blt9b84fb10213f43b9/6903bc2de0bf2aa118a4627f/q3-2025-strategy-earnings-presentation.pdf [https://perma.cc/98ZH-JFX4].

stock] to acquire [B]itcoin," and if materially lower, MSTR "will not issue [MSTR common stock] except to (1) pay interest on debt obligations and (2) fund preferred equity dividends."[76] More colorfully, Saylor has stated "When the mNAV is expanding and when there's massive demand in the marketplace, then of course, we're looking to sell, and convert that into a BTC gain, a BTC yield and BTC income and BTC value over time."[77]

Interestingly, in the extreme case of the share price falling below an mNAV of 1.0, the equity guidance stated that MSTR "will consider issuing credit to repurchase [MSTR common stock]."[78] Considering the repurchase of stock in case of undervaluation is in accord with what the inefficient capital market approach financial literature would predict.

As will be analyzed in Part IV.B.2, the MSTR Equity Guidance was significantly changed within weeks of its release.

The performance of the animating engine would increase with the fuel's octane. Saylor emphasized the importance of the enhancement of the share price premium to shareholder wealth maximization as follows:

> The goal is to drive up the stock price, to drive [MSTR common stock] to the max and then to grow the company and reach its full potential. So, we will support mNAV, right? And we are seeking to drive it up over time. So, when you look at the mNAV and you're wondering what are we thinking? Well, we're thinking we want it to go up, not down.[79]

In Part II.A.2, we introduce some of the complexities in determining when in fact the share issuance/bitcoin purchase process would increase the share price. We defer to Part IV.B.2 complexities related to what the Article terms the "2.5 mNAV Puzzle." Part II.A.3 turns to MSTR's marked departures from its cornerstone BTC Principle amidst the travails of year-end 2025. Part II.B examines the methods MSTR relies on to increase the share price premium octane and to promote bitcoins.

2. The Share Price Premium: Some of the "Tipping Point" Complexities and Ambiguities

The mNAV moniker is often used loosely. That is, when a statement is made that a BTCo's mNAV is above 1.0 (below 1.0), it is sometimes merely to be indicative of the company's outlook being bright (not bright). The methodologies underlying such broad assertions are typically not offered.

"mNAV" is also used more precisely to set out the share price premium/discount for tipping point purposes. The underlying methodology is at times specified. When used in this more precise sense, mNAV has the role played by the Fulcrum Ratio in our simplified analysis.

The various mNAVs and the Fulcrum Ratio all involve the share price being divided by the per share fundamental value. The per share fundamental value flows, of course, from

76. MSTR Q2 2025 PRESENTATION, *supra* note 11, at 96. Elsewhere, MSTR has emphasized that the rate and mix of BTC securities issued would depend on such matters as what it defines as the "BTC Yield curve." *MSTR Q1 2025 Earnings Call Transcript*, *supra* note 33.

77. *Id.*

78. MSTR Q2 2025 PRESENTATION, *supra* note 11, at 96.

79. *MSTR Q1 2025 Earnings Call Transcript*, *supra* note 33.

the overall fundamental value in the numerator and the number of shares in the denominator.

In the real world, even what to plug in for the denominator—the number of shares—can be complex and can be determined in multiple ways. MSTR has both convertible debt and convertible preferred stock. For the purposes of the numerator, should one count: (1) the shares currently outstanding, (2) shares outstanding plus those that would result from full conversion of those securities, or (3) something in between?

The likelihood of an investor electing to convert will fluctuate with, among other considerations, changes in the share price and the maturity dates. For instance, prior to the redemption date for MSTR's $650 million 2025 convertible notes, holders had converted substantially all of the notes into shares because the notes were well in the money.[80] On the MSTR side of things, how should one reflect the firm's goal of trying to systematically reduce the overall senior convertible debt outstanding over time?[81]

Two major third-party websites tracking BTCos offer both an mNAV calculation based on shares outstanding and one based on shares on a diluted basis. Bitcointreasuries.net is a specialized website that aggregates and publishes data on bitcoin holdings by public companies, private firms, ETFs, and governments. It offers, among other mNAV calculations, a "Basic mNAV" ("Basic market cap divided by value of BTC holdings") and a "Diluted mNAV" ("Fully diluted market cap divided by value of BTC holdings").[82] Saylortracker.com offers both an mNAV number based on shares outstanding and an mNAV number based on "effective diluted shares."[83]

MSTR takes a simple approach. Its version of mNAV, set out on a real-time basis on a company website dashboard, uses what the dashboard refers to as "Basic Shares Outstanding"—i.e., the actual class A common stock and class B common stock outstanding.[84]

The approaches to the numerator—fundamental value—diverge in a more serious way. There is also at least one overarching conceptual issue that affects all mNAVs as well as the Fulcrum Ratio.

As to the numerator, Empery Digital *subtracts* debt from the total value of bitcoin holdings. This corresponds to the approach used in the Fulcrum Ratio, which involves deducting from the total value of holdings the amount of debt and preferred stock. Empery Digital states:

> The key component of the digital asset strategy is to optimize the Company's capital structure to increase BTC per share to drive shareholder value. This includes issuing equity when market conditions allow us to raise capital at a premium to net asset value (NAV), defined as the value of BTC holdings plus cash, minus debt divided by adjusted outstanding shares which includes common

80. Motley Fool Transcribing, *MicroStrategy (MSTR) Q2 2024 Earnings Call Transcript*, THE MOTLEY FOOL (Aug. 1, 2024) [hereinafter *MSTR Q2 2024 Earnings Call Transcript*], https://www.fool.com/earnings/call-transcripts/2024/08/01/microstrategy-mstr-q2-2024-earnings-call-transcrip/ [https://perma.cc/F9DF-G6J2].

81. MSTR Q2 2025 PRESENTATION, *supra* note 11, at 92.

82. *See generally Strategy*, BITCOINTREASURIES.NET, bitcointreasuries.net/public-companies/microstrategy [https://perma.cc/WA8B-MATL].

83. *See Financial Charts*, STRATEGY, saylortracker.com/?tab=charts [https://perma.cc/V3AN-LMH9].

84. At strategy.com, the mNAV is shown to depend on the "Enterprise Value," and "Enterprise Value" is shown to be calculated on the basis of "Basic Shares Outstanding." STRATEGY: DASHBOARD, https://www.strategy.com/ [https://perma.cc/F3S2-NVPX].

> stock outstanding plus all pre-funded warrants outstanding. The Company may repurchase shares when shares trade below NAV.[85]

The two mNAVs offered by bitcointreasuries.net and saylortracker.com referred to earlier *ignore* indebtedness, neither subtracting nor deducting it.

MSTR's approach is at the opposite end of the spectrum from Empery Digital's. MSTR *adds* the indebtedness and preferred stock. Specifically, MSTR defines its mNAV as "Enterprise Value" divided by the bitcoin NAV. "Enterprise Value" in turn is defined as "the sum of the current Market Cap of all Basic Shares Outstanding, our total Notional Debt, and our total Notional Pref, less our most recently reported cash balance."[86]

As a matter of general corporate finance, enterprise value is one of the factors used in the context of one firm acquiring another firm and comparing the valuation of the target firm with other potential targets. If firm A wants to buy firm B, it would have to buy all of firm B's shares (i.e., its market capitalization) and also pay off firm B's debt, but the cost of doing so would be reduced by the firm B's cash that firm A would acquire.[87]

The enterprise value version of NAV was considered in connection with Strive, Inc.'s acquisition of Semler Scientific. However, subsequent to the transaction, Strive's Chief Risk Officer suggested that the associated calculation proved so complicated that it was "difficult to say exactly what the mNAV was . . . "[88]

Unfortunately, I have been unable to find a clear explanation by MSTR of why the use of the enterprise value concept—adding the debt and preferred stock—would make its mNAV more useful for tipping point purposes. For instance, if debt is issued, how would the fundamental value of the common stock be necessarily affected (apart from the impact on investor demand for the increased leverage)?

What is clear, however, is that MSTR has explicitly stated that it considers the tipping point for share accretive issuances/purchases to be an mNAV of 1.0 calculated using: (a) the shares actually outstanding (without any adjustment for conversions); and (b) the addition of debt and preferred stock. In relation to a sale of shares to buy bitcoins in December 2025, Saylor stated that "above [1x] [m]NAV, the most efficient thing for a public company like ours to do is to sell the equity. Below [1x] [m]NAV, we just get lots of questions."[89] In the associated "Company Update," MSTR said that its sale of common stock at an average mNAV of 1.17 equated to a gain of $207 million.[90] Similarly, Phong Le,

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85. Empery Digital, Inc., Quarterly Report (Form 10-Q) 34 (Nov. 10, 2025) (covering quarter ended Sept. 30, 2025).

86. MSTR Q2 2025 PRESENTATION, *supra* note 11, at 117.

87. JONATHAN BERK & PETER DEMARZO, CORPORATE FINANCE 30, 692–93 (4th ed. 2017).

88. *See* Strive, Inc., Registration Statement (Form S–4) 135–36 (Oct. 10, 2025) (noting the use of an enterprise value-based NAV); Strive, Inc., Transcript of Appearance by Chief Risk Officer Jeff Walton on British HODL Interview (Form 425) 5 (Sept. 25, 2025), https://www.sec.gov/Archives/edgar/data/1554859/000095010325012223/dp234919_425-jeffhodlinter.htm [https://perma.cc/8CEM-7CU7] (noting that it is "difficult to say what the mNAV was" but that "both parties [were] happy").

89. *December 2025 Company Update*, STRATEGY INC [hereinafter *MSTR Dec. 2025 Update Transcript*], https://www.strategy.com/video/december-2025-company-update [https://perma.cc/3AST-JQJK].

90. STRATEGY INC, 2025 COMPANY UPDATE 8 (Dec. 1, 2025) [hereinafter MSTR 2025 COMPANY UPDATE], https://assets.contentstack.io/v3/assets/bltf8d808d9b8cebd37/blt04a5d2690a7b7788/692cee1149709b0805ebc891/dec-2025-company-update.pdf [https://perma.cc/6NHA-P4LR].

MSTR's CEO has said that "issuing equity anywhere above 1.0x mNAV is accretive to Bitcoin Yield and Bitcoin Gain."[91]

An important puzzle arises from MSTR's adoption of the 1.0 mNAV as the tipping point and the 2025 MSTR Equity Guidance. The key mNAV number set out in the guidance was not 1.0 but was instead 2.5, a far different number proffered without explanation. This "2.5 mNAV Puzzle" will be discussed as one of the major reasons for the Part IV.B proposal for an SEC determination that, with respect to certain BTCos, MD&A requirements should apply to the mNAV.

Investors should not care about numerator and denominator divergences if the divergences do not have a material effect on the final calculated numbers. Unfortunately, they do have a material effect. On January 3, 2026, bitcointreasuries.net reported mNAVs for MSTR when not adjusting for debt and preferred stock of 0.741 when using actual shares outstanding and of 0.825 on a diluted basis. The same day, bitcointreasuries.net also reported an mNAV of 0.961 using the "enterprise value" logic of adding debt and preferred stock, which was the highest of the mNAV numbers.[92]

What makes the matter of the mNAV yet more important to shareholders is that, irrespective of the methodology adopted, MSTR mNAVs have fluctuated wildly. Figure 6 in Part IV.B shows that, using the methodology favored by MSTR, the mNAV has fluctuated between over 6.0 and about 1.0 since MSTR began its transformation to becoming a BTCo.

Finally, there is an overarching conceptual complexity that affects all mNAVs and the Fulcrum Ratio. These ratios all implicitly attribute no fundamental value to MSTR apart from its bitcoin holdings. But MSTR does not merely hold bitcoins. MSTR's bitcoin-related financial engineering, including activities to be analyzed in Part II.B, also contributes to the value of MSTR shares. Saylor has suggested that the fundamental value of MSTR stock should reflect the superstructure, and that "BTC $ Gain" that flows from the superstructure should be treated analogously to earnings of ordinary public companies. MSTR believes that since shares of traditional public companies are assigned an earnings multiple of 10x to 40x, MSTR shares should be assigned a BTC $ Gain with a corresponding multiple.[93]

Whatever the merits of this notion of fundamental value, for tipping point purposes, MSTR and the BTCo industry contemplate, as does the Fulcrum Ratio, that fundamental value should only consider the value flowing from bitcoin holdings. For instance, in *FT Film*, Saylor characterizes the share issuance/bitcoin purchase process as follows: "[i]f our stock trades at a 200[%] premium to the underlying asset, we can sell a billion dollars of

91. *Earnings Call Transcript: Strategy Inc's Q2 2025 Results See Record EPS*, INVESTING.COM (Aug. 2, 2025), https://www.investing.com/news/transcripts/earnings-call-transcript-strategy-incs-q2-2025-results-see-record-eps-93CH-4321178 [https://perma.cc/6HYH-KENM].

92. *See Market to Bitcoin NAV (mNAV)*, BITCOINTREASURIES.NET, bitcointreasuries.net/glossary/market-cap-to-net-asset-value-mnav [https://perma.cc/RQ86-5N8P] (defining "enterprise value"). These 0.741, 0.825, and 0.961 are shown in the author's January 3 2026 screenshot of the pertinent bitcointreasuries.net webpage; this pdf is on file with the *Journal of Corporation Law*.

93. MSTR Q2 2025 PRESENTATION, *supra* note 11, at 110 (noting the "[h]ypothetical MSTR [v]aluation" and referring to a 10x to 40x multiple); *cf. MicroStrategy Incorporated (MSTR) Q3 2024 Earnings Call Transcript*, SEEKING ALPHA (Oct. 30, 2024) [hereinafter *MSTR Q3 2024 Earnings Call Transcript*], https://seekingalpha.com/article/4731304-microstrategy-incorporated-mstr-q3-2024-earnings-call-transcript [https://perma.cc/7UX9-Z4D4] (discussing the market for "common multiples of growth companies").

the stock, buy back the underlying asset, and make $666mn in that arbitrage of sorts, for the common stock shareholders in a week."[94]

3. *Departures from MSTR's Cornerstone Bitcoin Principle at 2025 Year-End*

With the dramatic late 2025 stresses in the crypto markets, MSTR departed from both components of its cornerstone bitcoin principle, to "buy and hold [BTC] indefinitely, exclusively, securely."[95]

On October 27, 2025, S&P Global Ratings assigned a "B-" issuer credit rating to MSTR—well into junk territory.[96] This was indicative of increasing concerns about the ability of MSTR to service its debt. S&P noted its narrow business focus and concentration in bitcoin. Debt maturities, interest on its debt, and dividends on its preferred securities are all due in dollars while MSTR held mostly bitcoin.

The matter of cash flow was important to the classification. S&P noted the firm's lack of operating cash flow generation. Cash flow from operations for the first six months of 2025 was negative $37 million. The health of bitcoin markets was critical to MSTR's servicing ability. S&P noted that MSTR could rely on the issuance of shares, preferred stock, and convertible debt but that its strong access to capital markets "could change in a severe bitcoin stress."[97]

The first departure from MSTR's prime directive was announced on December 1, 2025 when MSTR disclosed it had created a U.S. Dollar Reserve of $1.44 billion funded by the proceeds of sale of shares.[98] For the first time, securities proceeds were not invested in Bitcoin. This U.S. Dollar Reserve would be used to support payment of dividends on its preferred stock and interest on its debt. And this U.S. Dollar Reserve would grow over time, with the goal of ultimately covering 24 months or more of such periodic obligations. The U.S. Dollar Reserve policy could be changed at any time.

This departure was explicitly based on the need to "navigate short-term market volatility while delivering on our vision of being the world's leading issuer of Digital Credit."[99] There was an intraday decline in MSTR's share price of as much as 12.2%.[100]

The second departure occurred in connection with the December 1 announcement. In the associated December 1, 2025 "Company Update," MSTR stated that if its mNAV fell below 1x, it would sell bitcoins or sell bitcoin derivatives in order to fund the U.S. Dollar

94. *FT Film*, *supra* note 3.

95. *MSTR Q3 2024 Earnings Call Transcript*, *supra* note 93.

96. Diogenes Mejia & Michal Selbka, *Strategy Inc Assigned 'B-' Issuer Credit Rating; Outlook Stable*, S&P GLOBAL (Oct. 27, 2025), https://www.spglobal.com/ratings/en/regulatory/article/-/view/type/HTML/id/3466223 [https://perma.cc/UY88-DFDE].

97. *Id.*

98. Press Release, Strategy Inc, Strategy Announces Establishment of $1.44 Billion USD Reserve and Updates FY 2025 Guidance (Dec. 1, 2025), https://www.strategy.com/press/strategy-announces-establishment-of-1-44-billion-usd-reserve-and-updates-fy-2025-guidance_12-1-2025 [https://perma.cc/GR39-PP3C].

99. *Id.*

100. *MSTR, the Leading Bitcoin Concept Stock, Plunges up to 12% Intraday After First Signaling Possible 'Coin Selling'*, BITGET (Dec. 2, 2025), https://www.bitget.com/news/detail/12560605093613 [https://perma.cc/TY9L-QZP8].

Reserve.[101] Why? Saylor said it "would do that because that's in the best interest of the shareholders."[102]

B. Increasing the Share Price Premium, Promoting Bitcoin, and MSTR Stock as Trading Vehicle

The two main contributors to MSTR's share price are: (1) the value of its bitcoin holdings; and (2) the impact of the share issuance/bitcoin purchase animating engine. This Part II.B centers on MSTR's efforts to increase the persistence and magnitude of the share price premium and to promote bitcoins.

These bitcoin-related activities fall into three general categories. First, MSTR, through the issuance of convertible debt and preferred stock, has caused its common stock to offer amplified exposure to bitcoins. **(Part II.B.1**.) Second, MSTR has played a leading role in promoting demand for bitcoins. **(Part II.B.2)** These two categories overlap. For instance, if the bitcoin price increases due to such promotional efforts, the demand for the amplified exposure that MSTR shares offer will also increase.

Third, MSTR has engaged in massive securities offerings intricately tailored to the heterogeneity of investors. **(Part II.B.3)** These efforts go beyond customization for differences in investors and their preferences. Perhaps unique for a public company, MSTR is promoting its securities as trading vehicles for short-term arbitrageurs without any interest in the firm or in its core asset.

1. Amplification of Exposure to Bitcoin: The Miracle of the 5,000

When a closed-end fund has leverage (such as through indebtedness) or quasi-leverage (such as through preferred stock), that fund will exhibit magnified portfolio performance, whether positive or negative. That is, if the underlying portfolio's return is positive, a leveraged fund typically will have higher returns than an unleveraged fund with the identical portfolio.[103] If the underlying portfolio return is negative, a leveraged fund will likely have greater losses.

The presence of leverage tends to contribute to the premium investors may be willing to accord closed-end funds.[104] Some academics suggest the fact that closed-end funds can borrow, unlike the case with mutual funds, explains the continuing existence of closed-end funds, at least among bond funds.[105]

MSTR is well aware of both the amplification effect and the resulting price premium. MSTR refers to its common stock as "[a]mplified [b]itcoin" and states that its issuances of what it refers to as "Digital Credit . . . increase[s] [bitcoin] exposure and create[s]

101. *MSTR Dec. 2025 Update Transcript*, *supra* note 89.
102. *Id.*
103. *See, e.g.*, UNDERSTANDING LEVERAGE IN CLOSED-END FUNDS, NUVEEN, https://documents.nuveen.com/Documents/Nuveen/Default.aspx?uniqueid=aef688a3-5d7f-4ac4-b64d-5bb939d547f0 [https://perma.cc/VD8W-Z4SA].
104. Martin Cherkes, *Closed-End Funds: A Survey*, 4 ANN. REV. FIN. ECON. 431, 438 (2012).
105. *See generally* Edwin J. Elton et al., *Why Do Closed-End Bond Funds Exist? An Additional Explanation for the Growth in Domestic Closed-End Bond Funds*, 48 J. FIN. & QUANT. ANALYSIS 405 (2013).

shareholder value."[106] Saylor has made the direct connection between amplification and the share price premium as follows:

> [W]hy do people want to hold MSTR [stock]? What drives . . . the premium to NAV? What creates the magnetic appeal or the gravitational attraction of this asset? Well, one thing is the volatility, and we have a volatility which is higher than BTC. It is also higher than any of the S&P 500. *When you have that kind of volatility, you can generate yield by simply selling that volatility*.[107]

Similarly, in the face of reverses in the bitcoin market that began in late 2025, MSTR's CEO sought to rally the troops by stating, "now remember the fundamentals of why you bought into MSTR common [stock], because we are a levered and amplified Bitcoin. We're built to outperform Bitcoin over the long run."[108]

The amplification stems from the convertible debt and preferred stock in MSTR's capital structure. A recent earnings presentation showed that under the posited assumptions about, among things, future bitcoin prices, its common stock would perform 2.8 times better than bitcoin itself.[109]

Saylor's April 29, 2025 tweet, set out in Figure 4, may be telling as to the importance attached to amplification. The post, with the caption "Teach a man to Bitcoin" and an AI image of himself in a Jesus Christ-type robe holding a basket of bread with a crowd in a blurred background, is redolent of the miracle of feeding the 5,000.[110]

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106. MSTR Q3 2025 PRESENTATION, *supra* note 75, at 53.

107. *MSTR Q1 2025 Earnings Call Transcript*, *supra* note 33 (emphasis added).

108. *Earnings Call Transcript: Strategy Inc Q4 2025 Reveals Massive EPS Miss*, INVESTING.COM (Feb. 5, 2026) [hereinafter *MSTR Q4 2025 Earnings Call Transcript*], https://www.investing.com/news/transcripts/earnings-call-transcript-strategy-inc-q4-2025-reveals-massive-eps-miss-93CH-4489310 [https://perma.cc/ZKU3-FFQC].

109. MSTR Q3 2025 PRESENTATION, *supra* note 75, at 53 (disclosing a 2.8x "BTC Factor," as such term is defined in footnote 2).

110. Michael Saylor (@saylor), X (Apr. 29, 2025, 1:35 PM), https://x.com/saylor/status/1917196147979932130 [https://perma.cc/5FJP-BJTK].

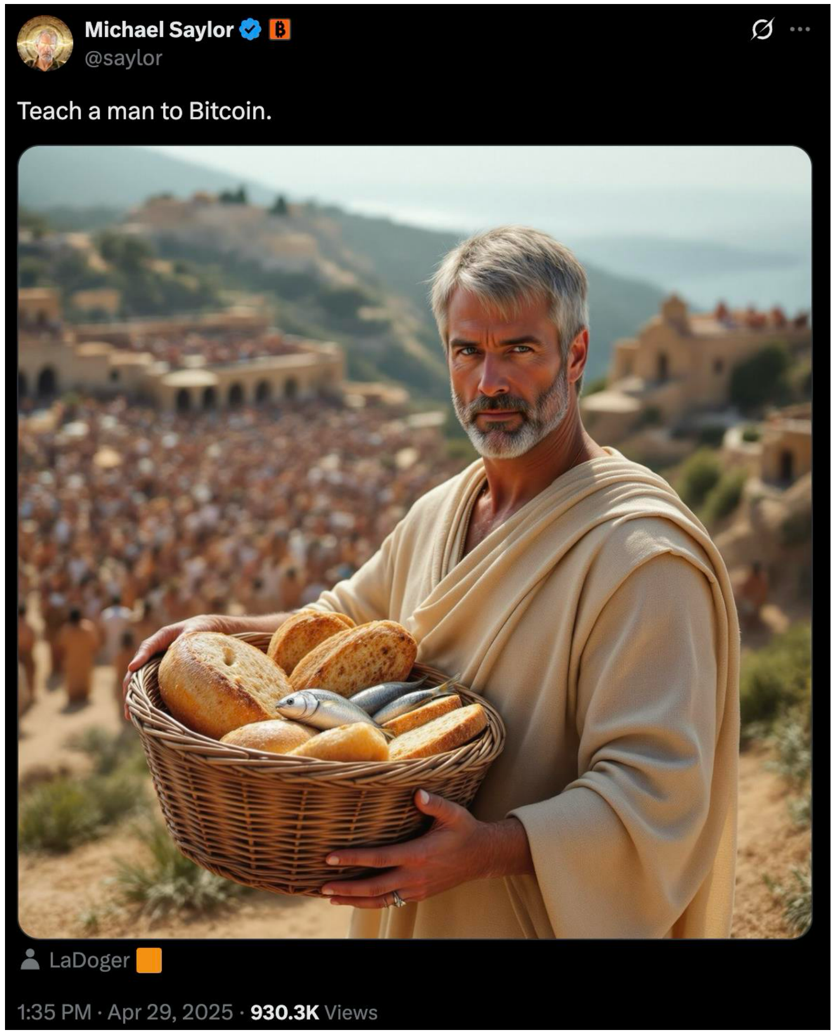


Figure 4. Screenshot of @saylor's April 29, 2025 tweet— "Teach a man to Bitcoin."

2. *Promotion of Bitcoin: "There is But One Path to Economic Immortality"*

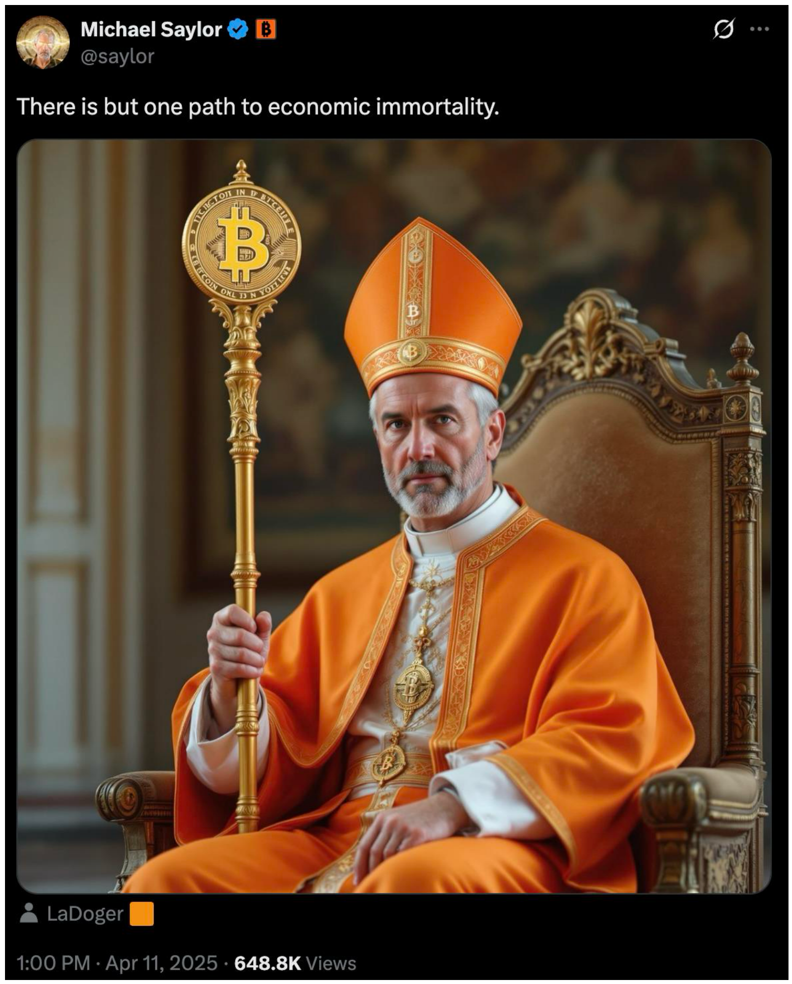
MSTR became a major force in promoting demand for bitcoin and thus its price. If investors believe in a bright outlook for bitcoin, all the more reason to accord MSTR stock a share premium for the amplified exposure the stock offers.

First, Saylor has been messianic about bitcoin. In connection with MSTR's October 31, 2024 earnings call, he expressed his "personal long-term view is that over 21 years, bitcoin is going to grow 29% ARR."[111] On June 21, 2025, when bitcoin was trading at a

111. *MSTR Q3 2024 Earnings Call Transcript*, *supra* note 93.

bit over $100,000, Saylor predicted that the price of bitcoin could reach $21 *million* in 2046.[112]

Saylor's list of "21 truths of Bitcoin" includes "1. Bitcoin is an Ideology. . . . 5. Bitcoin is Immaculate. . . . 12. Bitcoin is Perfect Money. . . . 16. Bitcoin is Immortal. . . . 17. Bitcoin is Digital Energy. . . . 21. Bitcoin is an Emerging Star System."[113] Saylor's below Figure 5 April 11, 2025 tweet of himself in bitcoin-festooned papal regalia has the caption: "There is but one path to economic immortality."[114]



112. *See Michael Saylor Predicts $21M Bitcoin Price by 2046*, BITBO (June 22, 2025), https://bitbo.io/news/saylor-bitcoin-21m-prediction/ [https://perma.cc/ZD5F-DWYV] (noting that Saylor "increased his long-term Bitcoin price forecast, predicting . . . Bitcoin could reach $21 million in 21 years).

113. Michael Saylor (@saylor), X (Apr. 17, 2025, 12:29 PM), https://x.com/saylor/status/1912921459619475912 [https://perma.cc/Z2TQ-CPYK].

114. Michael Saylor (@saylor), X (Apr. 11, 2025, 7:00 AM), https://x.com/saylor/status/1910664151849926957 [https://perma.cc/W9MQ-ERPQ] (citing Figure 5 image).

Figure 5. Screenshot of @saylor's April 11, 2025 tweet – "There is but one path to economic immortality."

Second, MSTR's core functioning, involving the repeated purchase and continual accumulation of bitcoins, boosts the bitcoin price. The impact of this is magnified because the supply of bitcoin is completely inelastic, being fixed at a maximum of 21,000,000. Every bitcoin that MSTR accumulates (and holds) effectively reduces the bitcoins available for purchase one-for-one.

Saylor has offered a soft quantification of the impact of MSTR on the bitcoin price. As will be detailed in Part III.A.2.a, on December 9, 2025—when bitcoin was trading at roughly $90,000—he claimed that, absent MSTR's equity and credit instruments, bitcoin would "probably" be trading at $10,000.[115]

Third, MSTR has promoted corporate copycats. One of its "BTC Principles" is to "promote global adoption of BTC as a treasury reserve asset."[116] MSTR published open source documents such as "*Key Considerations for Corporate Investment in Bitcoin*" to "shar[e] its learnings and methodologies" so that other organizations [could adopt] bitcoin as a treasury reserve asset."[117] Eric Trump, one of those that Saylor took under his wing, predicted that a single bitcoin would one day be worth as much as one billion dollars.[118] In the first five months of 2025, companies invested about $25 billion in bitcoin, representing 1.2% of the world's supply.[119] The late 2025 bitcoin rout changed matters. The number of BTCos that purchased bitcoins in November 2025 fell 83% from peak buying.[120]

3. *Capitalizing on Investor Heterogeneity: Catering Both Harrods Chocolate Hall and Arbitrageurs*

MSTR, like all public companies, is sensitive to the diverse needs and preferences of current and potential investors. MSTR not only offers amplified exposure to bitcoin through its common stock but also a vast array of fixed income securities tailored to the needs of different classes of investors (e.g., institutional versus retail) and a wide variety of risk/return, tax, and other preferences.

However, the impact and the nature of MSTR's catering to heterogeneity are vastly different. As to impact, at most public companies, heterogeneity is an aspect of their

115. Kurt Robson, *Michael Saylor Claims Strategy Will Drive Bitcoin Price to $10M, Says BTC Would Be at $10K Without Him*, YAHOO FIN. (Dec. 9, 2025), https://finance.yahoo.com/news/michael-saylor-claims-strategy-drive-084941753.html [https://perma.cc/C3UL-LM7H].

116. MSTR Q2 2025 PRESENTATION, *supra* note 11, at 112.

117. *Key Considerations for Corporate Investment in Bitcoin*, STRATEGY INC, https://www.strategy.com/software/bitcoin/documents/key-considerations-for-corporate-investment-in-bitcoin [https://perma.cc/Q6WD-Y7WV].

118. Joe Miller et al., *How The Trump Companies Made $1bn From Crypto*, FIN. TIMES (Oct. 15, 2025), https://www.ft.com/content/2ea2b35b-e009-42ed-b4d3-6b21aa9b2a13?syn-25a6b1a6=1 (on file with the *Journal of Corporation Law*).

119. Maximiliaan Michielsen, *Michael Saylor Started it But Now Everyone Wants a Slice of Bitcoin*, 21SHARES (May 12, 2025), https://www.21shares.com/en-us/insights/michael-saylor-started-it-but-now-everyone-wants-a-slice-of-bitcoin [https://perma.cc/RKH3-HPX5].

120. Pedro Solimano, *'Premium Era is Over' as All But One Bitcoin Treasury Firms Fail to Beat S&P 500*, YAHOO FIN. (Dec. 11, 2025), https://finance.yahoo.com/news/premium-era-over-one-bitcoin-203359056.html [https://perma.cc/B9U7-HZVW].

functioning but secondary. At MSTR, Saylor has gone so far as to refer to the issuance of precisely tailored securities as the most advantageous way to increase the all-important share price premium. He stated:

> So, the best way, of course, for us to generate to support the mNAV is maximize Intelligent leverage with STRIKE, with STRIKE and other fixed income instruments. We'll be educating the capital markets to build demand for every type of security we issue . . . . We will work to attract capital, new forms of capital by creating innovative securities for new classes of investors.[121]

As to the nature of catering: as far as I am aware, MSTR is the only public company that actively promotes its securities as trading vehicles for funds seeking arbitrage opportunities.

I turn first to the impact of MSTR's catering to investor heterogeneity.

* * * *

Much as the immersive lineup of delights to customers at the Chocolate Hall at Harrods increases the demand for chocolate, the line-up of delights available through MSTR increases demand for MSTR securities. This analogy, which I made in *FT Film*, seemed to resonate with MSTR.[122]

Both "[MSTR's] Strategy to Maximize Shareholder Value" and "[MSTR's] BTC Principles" emphasize this point.[123] The former refers to attracting "additional capital by creating innovative securities for new classes of investors" and the latter refers to the issuance of "innovative fixed income securities" backed by bitcoin.

MSTR's 2025 preferred stock issuances suggest the extent of customization and its impact on MSTR. In 2025, MSTR alone issued 33% of all preferred stock issued in the United States.[124] $7 billion was raised from five offerings,[125] one offering (with the ticker symbol "STRC") being the largest IPO in the United States that year. MSTR characterized these five securities and their investor clienteles as follows:

> STRK is Structured Bitcoin – Growth-oriented income investors seeking Bitcoin exposure with yield protection
>
> STRF is Long Duration Senior Credit – Income-focused investors seeking premium yield with enhance payment protection
>
> STRD is Long Duration High Yield Credit – Yield Focused investors seeking high yield with strong collateral coverage

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121. *MSTR Q1 2025 Earnings Call Transcript*, *supra* note 33.

122. On May 14, 2025, the day after *FT Film*'s release, MSTR tweeted the precise quote "Think of it as the chocolate hall at Harrods. You like chocolate? We have the perfect one for your taste," along with a Saylor post the same day highlighting the film. *See* @Strategy, X (May 14, 2025, 1:52 PM), https://x.com/Strategy/status/1922726687743115752 (on file with the *Journal of Corporation Law*).

123. MSTR Q1 2025 PRESENTATION, *supra* note 34, at 63; MSTR Q2 2025 PRESENTATION, *supra* note 11, at 112.

124. MSTR Q4 2025 PRESENTATION, *supra* note 5, at 22 (slide titled "Our Strategy to Maximize Share Value").

125. *Id.*

> STRC is Short Duration High Yield Credit – Short-duration investors seeking stable value with higher yield than money markets
>
> STRE is Long-Duration High-Yield Euro Credit – a Euro-denominated perpetual, preferred security offering a fixed 10% dividend[126]

MSTR customized not only for investor preferences, but for investor classes. The STRE initial public offering was only available to European institutional investors.[127] In contrast, MSTR has compared STRC to U.S. Dollar bank accounts and money market funds,[128] Saylor stated STRC was intended "to give everybody something that's competitive with the money market that pays you 10.4%."[129]

Saylor stated that MSTR is "transforming the preferred equity markets."[130] I agree. He also stated that MSTR "revolutionized and shook up" the convertible bond market.[131] We turn now to convertible arbitrage.

* * * *

Convertible arbitrage is an investment strategy that hedge funds and others use to profit from pricing inefficiencies in convertible securities.[132] Typically implemented through investing in convertible bonds while shorting the underlying common stock, the strategy is intended to be relatively insensitive to movements in that stock and equities generally.

MSTR expressly contemplates convertible arbitrageurs. The prospectus supplement for a series of convertible preferred stock with the ticker symbol STRK stated:

> We expect that holders of our STRK Stock . . . may seek to employ a convertible arbitrage strategy. Under this strategy, investors typically sell short a certain number of our class A common stock and adjust their short position over time while they continue to hold our STRK stock.[133]

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126. These MSTR characterizations of STRK, STRF, STRD, and STRC are from MSTR Q2 2025 PRESENTATION, *supra* note 11, at 43, 46, 49, and 52. That for STRE is from, INVESTOR PRESENTATION STRE ('STREAM'), STRATEGY INC 4 (Nov. 2025) [hereinafter MSTR STRE PRESENTATION], https://assets.contentstack.io/v3/assets/bltf8d808d9b8cebd37/bltb89544f1bca36ec5/69090e96f62d8c0b62c3043b/stre-investor-presentation.pdf [https://perma.cc/2W7N-JUR7].

127. *Id.*

128. MSTR Q2 2025 PRESENTATION, *supra* note 11, at 54.

129. *Strategy Inc (MSTR) Q3 2025 Earnings Call Transcript*, SEEKING ALPHA (Oct. 31, 2025), https://seekingalpha.com/article/4836032-strategy-inc-mstr-q3-2025-earnings-call-transcript [https://perma.cc/6YRF-THVE]. However, Strategy's website for STRC states that:

> . . . STRC is neither a bank deposit, nor FDIC insured, nor regulated in the same way, and does not have the same regulatory and other protections as bank accounts, money market funds, treasuries, or similar instruments and as a result may not be a comparable investment.

STRC – Short Duration High Yield Credit, STRATEGY INC: ANALYTICS, https://www.strategy.com/strc/learn [https://perma.cc/5CZ7-A6V5].

130. *MSTR Q4 2025 Earnings Call Transcript*, *supra* note 108.

131. *Id.*

132. *See, e.g.*, MITCH LIVSTONE, SETH GOLD & SLADJA CARTON, CONVERTIBLE ARBITRAGE: OFFERING NICHE ALPHA AND DIVERSIFICATION 2–3 (2026), https://institutional.fidelity.ca/content/dam/fci/en/articles/pdfs/tl-offering-niche-alpha-diversification.pdf [https://perma.cc/3KZD-MPWP].

133. Strategy Inc, Prospectus Supplement – Series A Perpetual Strike Preferred Stock Annex – Up to $2,100,000,000 8.00% Series A Perpetual Strike Preferred Stock SA-16 (Mar. 23, 2026),

Similarly, MSTR suggests that its stock price is supported because its convertible bonds "attract capital from a new class of arbitrageurs and hedge funds."[134] MSTR has noted that arbitrage is one of the investment strategies associated with its convertibles.[135]

Increasing share volatility could increase the possibility of arbitrage opportunities. One arbitrageur who held MSTR securities stated that "[c]onvertibles are a way to monetize the volatility of their stocks, and [MSTR] is an extreme example."[136] Saylor has referred to MSTR's "embrace" of volatility and how its monetization contributed to MSTR's share price:

> MicroStrategy is not just the number one performing stock out of the S&P 500. We're also the most volatile stock. And there's a conventional wisdom in finance, which is volatility is bad and you shouldn't take risk with your balance sheet . . . . MicroStrategy's approach is to embrace the volatility . . . . [*B*]*ecause we have the volatility, many of the things we do are actually selling the volatility*, recycling the proceeds of the volatility back into Bitcoin and then delivering that to our shareholders.[137]

MSTR caters to short-term traders in a yet more striking, perhaps unique, way. In 2024, MSTR created a live website that offers real-time information and investment analytics for its securities and derivatives directly relevant to the needs of traders. This even included, as Saylor put it, "metrics that aren't always easy for people to get like daily trading volume or daily trading volume as a percentage of market cap or give you every single day real-time performance of our convertible bonds versus bitcoin and our implied volatilities and our historic volatilities. . ."[138]

III. DISTINCTIVE IMPLICATIONS: INVESTOR AND SOCIETAL

The foregoing has been an account of how the MSTR model works. We now turn to some disquieting aspects of the model. The first set of concerns is for MSTR investors. They face an extreme form of polypharmacy of risk that conventional financial analysis is poorly equipped to assess—a problem made more acute by MSTR's unusual retail shareholder base and MSTR-related messaging on diversification. The second set of concerns is for the broader economy. Were other public companies to adopt the MSTR model in a significant way, the result would be a redirection of corporate resources away from the productive investment on which long-run societal welfare depends.

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https://assets.contentstack.io/v3/assets/bltf8d808d9b8cebd37/blt944806cf0e0a9f87/69c0a372b5128f68f230d675/form-424B5_03-23-2026_strk-annex.pdf.

134. MSTR Q1 2025 PRESENTATION, *supra* note 34, at 62.

135. *Id*. at 31.

136. Yiqin Shen, *Hedge Funds Make MicroStrategy Wall Street's Hottest Trade*, BLOOMBERG (Dec. 5, 2024), https://www.bloomberg.com/news/articles/2024-12-05/convertible-bond-arbs-are-making-microstrategy-wall-street-s-hottest-trade (on file with the *Journal of Corporation Law*).

137. *MSTR Q3 2024 Earnings Call Transcript*, *supra* note 93.

138. *MicroStrategy (MSTR) Q4 2024 Earnings Call Transcript*, THE MOTLEY FOOL (Feb. 5, 2025) [hereinafter *MSTR Q4 2024 Earnings Call Transcript*], https://www.fool.com/earnings/call-transcripts/2025/02/05/microstrategy-mstr-q4-2024-earnings-call-transcrip/ [https://perma.cc/2KBS-EA7Y]; *see also* MSTR Q4 2024 PRESENTATION, *supra* note 1, at 6 (slide titled "Introducing the New Strategy Website").

A. Investor Protection Concerns

1. MSTR's Unusual Retail Shareholder Base and "Sell a Kidney if You Must"

MSTR has unusually high retail investor ownership, and anecdotal evidence suggests that some of these retail investors are highly ill-diversified, placing much of their investable assets solely in MSTR securities.

According to FactSet Research Systems reports issued in mid-2025, institutional investors held 53% of MSTR shares. This is far lower than the 66% and 63% of NVIDIA and Apple, the two most highly-capitalized U.S. stocks.[139] An investing.com report dated February 7, 2026 pegged MSTR's non-institutional ownership at 54.58%,[140] far higher than six of the Magnificent Seven, which ranged from a low of 26.20% (Microsoft) to a high of 35.48% (Apple).[141]

MSTR actively cultivates this retail interest. The STRC 10.4% yield offering, which has been referred to as an alternative to money market funds, is one illustration.[142] Even the company's swag is part of the program. At one earnings call, an executive announced the launch of an official MSTR merchandise store as a "reflection of our commitment to our passionate retail shareholders who take pride in being part of our journey."[143] "Just as sports fans probably represent the favorite teams, our shareholders and employees and customers want to showcase their support for bitcoin and for us."[144]

Compounding the concern is anecdotal evidence that some individuals place substantially their entire equity portfolio in MSTR shares. This pattern flows in part from a combination of Saylor promoting a single-minded focus on bitcoin and MSTR shares being an attractive vehicle for that exposure. Mortgaging their homes to buy bitcoins is, according to Saylor, one possibility:

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139. FactSet Report Systems, MicroStrategy Incorporated Class A (MSTR)—Report as of June 18, 2025; FactSet Report Systems, NVIDIA Corporation (NVDA)—Report as of July 6, 2025; FactSet Report Systems, Apple Inc. (AAPL)—Report as of July 6, 2025.

140. *Strategy Inc (MSTR)*, INVESTING.COM, https://www.investing.com/equities/microstrategy-inc-ownership [https://perma.cc/3XAC-UNNB] (noting that 47.28% MSTR's outstanding shares were held by public companies or retail investors as of the market closing on May 5, 2026).

141. Perhaps not surprisingly, Tesla is the only Magnificent Seven with higher non-institutional ownership. On May 23, 2026, investing.com reported that Tesla's figure for shares held by "public companies or retail investors" and stood at 56.89% while MSTR's was 45.33%. *See Tesla Inc (TSLA)*, INVESTING.COM, https://www.investing.com/equities/tesla-motors-ownership (on file with the *Journal of Corporation Law*); *Strategy Inc (MSTR),* INVESTING.COM, https://www.investing.com/equities/microstrategy-inc-ownership (on file with the *Journal of Corporation Law*). The February 7, 2026 figures set out above for MSTR and those six Magnificent Seven stocks were MSTR (54.58%). *Id.*; *see also Alphabet Inc Class A (GOOGL)*, INVESTING.COM, https://www.investing.com/equities/google-inc-ownership [https://perma.cc/69VS-8M6D] (35.26%); *Amazon.com Inc (AMZN)*, INVESTING.COM, https://www.investing.com/equities/amazon-com-inc-ownership [https://perma.cc/8E44-S834] (34.90%); *Apple Inc (AAPL)*, INVESTING.COM, https://www.investing.com/equities/apple-computer-inc-ownership [https://perma.cc/W3YY-AGA2] (35.48%); *Meta Platforms Inc (META)*, INVESTING.COM, https://www.investing.com/equities/facebook-inc-ownership [https://perma.cc/J74V-BY46] (33.41%); *Microsoft Corporation (MSFT)*, INVESTING.COM, https://www.investing.com/equities/microsoft-corp-ownership [https://perma.cc/7THL-NB5H] (26.20%); *NVIDIA Corporation (NVDA)*, INVESTING.COM, https://www.investing.com/equities/nvidia-corp-ownership [https://perma.cc/Q8XB-HQZB] (32.14%).

142. See *infra* Part II.B.3.

143. *MSTR Q4 2024 Earnings Call Transcript*, *supra* note 138.

144. *Id.*

> The only use of time is: how do I buy more bitcoin? But take all your money buy bitcoin. Then take all your time figure out how to borrow more money to buy more bitcoin. Then take all your time and figure out what you can sell to buy bitcoin. And if you absolutely love the thing . . . that you don't want to sell it, go mortgage your house and buy bitcoin with it.[145]

Selling kidneys and teeth is another. In February 2025, he tweeted on X to his 4 million followers, "Sell a kidney if you must, but keep the Bitcoin."[146] Three months later: "Sell a tooth if you must, but keep the bitcoin."[147] Saylor reportedly even urged the Trump family to mortgage the Mar-a-Lago resort to invest in bitcoin.[148]

For many investors, that single-minded focus on bitcoin is implemented through the purchase of MSTR shares. As one MSTR executive put it:

> So, when I'm speaking at an investor conference and I'm telling everybody how great Bitcoin is, and I'm giving them 100 reasons why Bitcoin is great, it's not uncommon that they say, well, I decided to buy your stock. I don't have to ask them. They're like, well, I get it, the Bitcoin is great, but my prime broker doesn't handle Bitcoin and I just want to buy the security. It's quick, easy. It's marginable. I can buy it in 15 seconds and people care. It's like, why did Domino's Pizza get successful? Domino's Pizza was successful because people like pizza, and because anywhere in the country you could pick up the phone, call the operator and say, give me Domino's and say, hey, send a pizza. And you know that there's a Domino's Pizza somewhere close to you.[149]

Such ministrations may have an impact. In *FT Film*, one individual investor reported that 99% of his equity exposure was in MSTR shares.[150]

2. *The Extreme Form of Polypharmacy of Risk Facing MSTR Shareholders*

At bottom, MSTR's share price reflects the value of its bitcoin holdings together with the premium that the market assigns to its bitcoin-related financial engineering. Each of the generic and MSTR-specific risks associated with MSTR's bitcoin holdings (to be discussed in Part III.A.2.a) as well as of the substantive, process, and regulatory risks associated with MSTR's animating engine (to be discussed in Part III.A.2.b) is a source of risk. I first examine these risks in isolation, showing that several of them verge on Knightian

145. *Michael Saylor Video – Mortgage Your House to Buy Bitcoin*, M-PRIZE, https://mixprize.org/michael-saylor-video-mortgage-your-house-to-buy-bitcoin/ [https://perma.cc/MS9Y-FZVS].

146. Marco Quiroz-Gutierrez, *Michael Saylor Once Told People to Mortgage Their Home to Buy Bitcoin—Now the Cryptocurrency is Down So Much He Wants Them to Harvest a Kidney*, YAHOO FIN. (Feb. 28, 2025), https://finance.yahoo.com/news/michael-saylor-once-told-people-185617039.html [https://perma.cc/YPV5-AJHK].

147. Mehab Qureshi, *Michael Saylor's New Advice? 'Sell a Tooth If You Must'*, YAHOO FIN. (May 15, 2025), https://finance.yahoo.com/news/michael-saylor-advice-sell-tooth-202203046.html [https://perma.cc/LB8X-BCQ4].

148. Daniel Kuhn, *Eric Trump Says Michael Saylor Inspired Their Crypto Aspirations as President's Sons Predict Bitcoin Can 'Clear' $170,000*, THE BLOCK (May 28, 2025), https://www.theblock.co/post/356122/trump-don-jr-eric-bitcoin-cler-170000-by-end-2026 [https://perma.cc/6VW2-M6WA].

149. *MSTR Q1 2025 Earnings Call Transcript*, *supra* note 33.

150. *FT Film*, *supra* note 3.

uncertainty in their own right. I then turn in Part III.A.2.c to source-to-source interactions among them, where the polypharmacy framework does its principal analytical work.

a. Bitcoin Holdings: Generic and MSTR-Specific Risks and Uncertainties

The risks flowing from MSTR's bitcoin holdings have both generic elements—those affecting all bitcoin holders—and elements specific to MSTR. The generic elements are by now familiar and warrant only a brief sketch. The market value of bitcoin is highly volatile. In 2014-2024, Bitcoin's three largest drawdowns averaged an 80% decline [151] and its daily volatility in 2024 was 3.6 and 5.1 times that of gold and global equities, respectively.[152] By design, bitcoin generates no cash flow, leaving its intrinsic value indeterminate using conventional financial tools. As State Street Global Advisors recently noted to institutional investors, valuing bitcoin is "a unique challenge" and there is "no widely accepted model for determining its value."[153] Technological developments may pose existential threats. The threat from advances in quantum computing has Citigroup's Citi Institute concerned and, this year, prompted the global strategist at Jefferies to remove 10% of bitcoin from his model portfolio[154] Professor Campbell Harvey believes that a "51 percent attack," wherein a bad actor gains control of most of the network's computational power, would be low cost and "could destroy bitcoin's value."[155]

Two risks are specific to MSTR's bitcoin holdings. First, as the holder of 4% of the world's entire bitcoin supply, MSTR is a market-moving whale with wide discretion over bitcoin purchases and sales. Its repeated cycle of issuing securities and purchasing bitcoin has a material upward impact on bitcoin prices. When MSTR makes a billion dollar purchase, it may not merely be accepting the prevailing market price but moving it. Large departures from MSTR's cornerstone bitcoin principle beyond those that occurred at year-end 2025, such as a decision to sell bitcoins due to liquidity needs, may have a significant impact in the opposite direction. As noted, S&P assigned its junk rating in part over the possibility of MSTR bitcoin sales in stressed conditions, sales that may further accelerate price declines. The year-end departures confirm that nothing prevents it from engaging in large-scale selling of bitcoins.

Second, because of the convertible bonds and preferred stock in MSTR capital structure, MSTR shares offer amplified exposure to bitcoin, as MSTR emphasizes. MSTR has

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151. Jay Jacobs, *Bitcoin Volatility Guide: Trends & Insights for Investors*, ISHARES (July 11, 2024), ishares.com/us/insights/bitcoin-volatility-trends [https://perma.cc/VFK7-Z75R].

152. *Id.*

153. Altaf Kassam, *How to Value Bitcoin: Valuation Frameworks for Investors*, STATE ST. INV. MGMT (Feb. 4, 2026), https://www.ssga.com/us/en/intermediary/insights/how-to-value-bitcoin-valuation-frameworks-for-investors [https://perma.cc/5YYU-K87J].

154. CITI INSTITUTE, QUANTUM THREAT: THE TRILLION-DOLLAR SECURITY RACE IS ON 10 (2026), https://www.citigroup.com/rcs/citigpa/storage/public/Citi_Institute_Quantum_Threat.pdf [https://perma.cc/LGM6-WN8R]; Mikaia A., *Bitcoin Deemed Too Vulnerable: Jefferies Bets on Gold Against Quantum Threat*, COINTRIBUNE (Jan. 16, 2026), https://www.cointribune.com/en/bitcoin-deemed-too-vulnerable-jefferies-bets-on-gold-against-quantum-threat/ [https://perma.cc/8GC4-8BQG].

155. Campbell R. Harvey, *Gold and Bitcoin* 13 (Oct. 28, 2025), https://ssrn.com/abstract=5530719 [https://perma.cc/CQ6Y-2HRP]; *cf.* Alex Carchidi, *How Credible Is a State-Level Attack on Bitcoin?*, QUANTUM CANARY (Dec. 23, 2025), https://www.quantumcanary.org/insights/how-credible-is-a-state-level-attack-on-bitcoin [https://perma.cc/P365-CL7F] (discussing the "canonical threat" of a 51% attack from a determined government).

discretion over how much amplification to provide, subject only to market constraints. MSTR was the largest U.S. issuer of preferred stock in 2025, and nothing prevents it from increasing amplification with similarly large, preferred stock offerings in the future.

Saylor believes the impact of MSTR on the bitcoin price is massive. On December 9, 2025, Saylor stated that without MSTR's equity and credit instruments "providing institutional on ramps" through its securities offerings, "[b]itcoin would probably be trading at $10,000 a coin right now."[156] That day, bitcoin was trading at roughly $90,000.[157] Saylor characterized MSTR as a "motor": "We're driving the price of Bitcoin up from $10,000 to $100,000 or $1 million to $10 million."

b. MSTR's Animating Engine: Substantive, Process, and Regulatory Risks and Uncertainties

MSTR's animating engine raises profound and highly idiosyncratic risks of three kinds: substantive risks inherent in the engine itself, process risks arising from MSTR's discretion to alter the engine, and regulatory risks that could threaten the engine's very existence.

The core substantive risk is that the share price premium on which the engine depends is large in magnitude and difficult to forecast. Figure 6 in Part IV.B.2 illustrates the volatility. The mNAV under MSTR's methodology has ranged from over 6.0 to about 1.0 since August 11, 2020. A persistent positive share price premium is not a law of nature, yet MSTR's animating engine requires that premium as fuel. A persistent share price discount would threaten the engine's core functioning. As of February 14, 2026, MSTR reported an mNAV of 1.18.

Investors in bitcoin ETFs, which like MSTR, offer straight and leveraged exposures to bitcoin are not as subject to this share price premium fluctuations. Through the use of the authorized participant creation/redemption system, the ETFs seek to minimize deviations between the trading prices of their shares and their NAVs.[158] The average 52-week premium associated with the BlackRock's iShares Bitcoin Trust, the largest bitcoin ETF, is all of 0.02%,[159] a far cry from the round number multiples sometimes seen with MSTR shares. Moreover, unlike with MSTR shares, the SEC and FINRA have engaged in a variety of strategies to inform investors of the risks of ETFs with amplified exposures and to address associated brokerage sales practice issues.

Forecasting what premium investors will assign depends in part on how willing they will be to "overpay." Estimating future "overpayment" is also central to the market price of certain "momentum" stocks and there is no dependable methodology for doing so. With income-producing "value stocks," by contrast, intrinsic value is likely a more important determinant of share prices. Present value-based methods such as the Gordon growth model

156. Kurt Robson, *Is Michael Saylor Behind Bitcoin Price Decline? Critics Blame Slowing Strategy Purchases as Saylor Refuses to Back Down*, YAHOO FIN. (Feb. 4, 2026), https://finance.yahoo.com/news/michael-saylor-behind-bitcoin-price-133715866.html [https://perma.cc/P8GU-M27Z].

157. *See* Bitcoin USD Price (BTC-USD), YAHOO FIN.: HIST. DATA, https://finance.yahoo.com/quote/BTC-USD/history/?period1=1764547200&period2=1765324800 [https://perma.cc/3SWD-V7VM] (showing Bitcoin's adjusted closing price on Dec. 9, 2025).

158. Hu & Morley, *supra* note 69, at 851–63.

159. *iShares Bitcoin Trust ETF*, BLOOMBERG, https://www.bloomberg.com/quote/IBIT:US (on file with the *Journal of Corporation Law*).

could be applied to informed estimates of future cash flow and dividends. In this respect, MSTR's share price premium presents Knightian uncertainties.

Process risks also exist. The premium investors are willing to pay depends on what MSTR's animating engine is and on how investors perceive its potential. As a legal matter, MSTR—like ordinary public companies, and unlike investment companies subject to the 1940 Act—has largely unfettered discretion to change its investment and financing decisions. MSTR has shown itself willing to depart suddenly and unexpectedly from prior guidance about core elements of the animating engine. The most striking example occurred in the stress conditions of December 2025, when MSTR departed from both components of its cornerstone bitcoin principle to "Buy and Hold BTC indefinitely, exclusively, securely," as described in Part II.A.3. A second example: within weeks of setting out, for the first time in its history, "Equity Guidance" specifying the circumstances in which it would sell shares to purchase bitcoins, MSTR changed that guidance to authorize share issuances it deemed advantageous. This episode is discussed in Part IV.B.2.

Regulatory developments can pose an existential threat to MSTR's animating engine. Political and regulatory direction in the crypto area is consequential and difficult to predict, and BTCos face an idiosyncratic regulatory vulnerability. The political and regulatory stakes are signaled by the first two slides Saylor used at MSTR's Q4 2025 earnings call.[160] The first showed a photo of President Trump and a statement that he is "the Bitcoin President" and had the intent of making America: "1. The Bitcoin Superpower; 2. The Crypto Capital of the World. 3. The Leader in Digital Assets." The second observed that "the U.S. Government has embraced Bitcoin" and included photos of a dozen Administration officials, including those of the Vice President, Treasury Secretary, SEC Chairman, CFTC Chairman, and the next Federal Reserve Chairman.

One key regulatory uncertainty had long loomed over MSTR's animating engine. If bitcoin is a "security" for federal securities law purposes, MSTR and other BTCos might be classified as an "investment company" under the 1940 Act. Under that statute, an "investment company" generally includes any company that either (a) is "engaged . . . in the business of investing … in securities" **and** owns investment securities exceeding 40 percent of the company's total assets; or (b) is "engaged primarily" "in the business of investing, reinvesting, or trading in securities …"[161] Apart from certain exemptions, such classification would entail extensive regulation, including limitations on transactions with affiliated entities, on capital structure, and on investment policies. As MSTR acknowledged, such classification "could have a material adverse effect on our ability to execute on our bitcoin strategy, and our business and operations, and may also require us to substantially change the manner in which we conduct our business."[162] To mitigate this threat, practitioners advise BTCos retain an operating segment (as MSTR has done with its legacy software business) so as to assert that they are operating companies, not investment companies.[163]

160. *MSTR Q4 2025 Earnings Call Transcript*, *supra* note 108.

161. *See* 15 U.S.C. § 3(a)(1)(C) (2025) (commonly known as the "40 percent test"); 15 U.S.C. § 3(a)(1)(A) (commonly known as the "primary business test").

162. MSTR 2025 10-K, *supra* note 13, at 33.

163. Patrick Daugherty & J. Michael Bresnahan, Jr., *Digital Asset Treasury Companies: Structure and Regulation*, FOLEY & LARDNER (Nov. 3, 2025), https://www.foley.com/p/102lrx8/digital-asset-treasury-companies-structure-and-regulation/ [https://perma.cc/U5QB-NL3L].

This particular uncertainty has been at least temporarily reduced. In March 2026, the SEC and CFTC jointly issued an interpretive release that bitcoins, ether, and other "digital commodities" are not securities.[164] Both the "primary business" test and the "40 percent" test for investment company status are predicated on the presence of a "security." While senior SEC officials (including former Chairman Gary Gensler) had previously expressed the view that bitcoins were not a "security," the 2026 release represented a Commission-level position adopted by vote of the Commissioners.[165]

This uncertainty has not, however, been eliminated, even under the current Administration. The release expressly stated that the SEC may refine, revise, or expand upon the interpretation based on public comment that it receives.[166] And the next Administration may not be as crypto-friendly.

c. Interactions Among the Risk Sources: An Extreme Form of Polypharmacy

In medicine, the concurrent administration of multiple drugs to the same individual—"polypharmacy"—has been a source of increasing concern.[167] The danger of a drug cocktail is not necessarily the sum of each drug's individual side effects. A drug that is safe in isolation can become treacherous in combination with another. The classic example involved Seldane, a widely used antihistamine, which, as it turned out, could cause cardiac emergencies without warning when taken with a common antifungal drug. Drug-drug interactions can be difficult to predict, and the more drugs in the cocktail, the greater the combinatorial complexity. Ascertaining a patient's composite risk exposure can be quite difficult.

MSTR shareholders face a form of financial polypharmacy: the risk source-risk source interactions yield exposures that are profoundly idiosyncratic, and extremely challenging to assess. Moreover, the polypharmacy at play in the MSTR context is more unforgiving than its medical analogue in at least four major ways.

In this Part III.A.2 thus far, we have considered each of the sources of risk associated with MSTR's bitcoin holdings and each of those associated with MSTR's animating engine in isolation. What makes the situation more dangerous from the standpoint of the composite risk exposure faced by MSTR shareholders is that these distinct risk sources interact with one another in unfortunate ways. This is the central work the polypharmacy framework performs.

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164. *See* Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, SEC Interpretive Letter, 91 FR 13714, 13718 (Mar. 23, 2026) [hereinafter SEC 2026 Digital Interpretive Release] (announcing guidance on the regulation of digital securities).

165. Gary Gensler, Chairman, Sec. Exch. Comm'n, Statement on the Approval of Spot Bitcoin Exchange-Traded Products (Jan. 10, 2024), https://www.sec.gov/newsroom/speeches-statements/gensler-statement-spot-bitcoin-011023 [https://perma.cc/V2KE-YV6E];

166. SEC 2026 Digital Interpretive Release, *supra* note 164, at 13716.

167. As to polypharmacy and the Seldane example, *see, e.g.*, Nattawut Leelakanok et al., *Association Between Polypharmacy and Death: A Systematic Review And Meta-Analysis*, 57 J. AM. PHARM. ASSOC. 57 (2017); Nashwa Masnoon et al., *What is Polypharmacy? A Systematic Review of Definitions*, 17 BMC GERIATRICS 1 (2017); *Preventable Adverse Drug Reactions: A Focus on Drug Interactions*, U.S. FOOD & DRUG ADMIN. (Mar. 6, 2018), https://web.archive.org/web/20260321083142/https://www.fda.gov/drugs/drug-interactions-labeling/preventable-adverse-drug-reactions-focus-drug-interactions [https://perma.cc/E2E7-4F44].

Within that framework, bitcoin's high price volatility is a foundational risk source from which many of the other risks in the MSTR animating engine propagate. A sharp drop in the bitcoin price will produce an even sharper drop in the MSTR share price through the amplification effects of MSTR's debt and preferred stock alone. But the bitcoin price drop may result in the realization of a major substantive risk: the drop may well compress, if not eliminate, the share price premium because the willingness of investors to pay a premium depends in part on their expectation of bitcoin appreciation.

A compressed premium, as well as the absence of a premium, in turn reduces MSTR's ability to issue equity at favorable prices—precisely the fuel the animating engine needs. Given MSTR's status as a market-moving whale, if MSTR thereby reduces its purchases of bitcoin, the bitcoin price may tend to fall further, opening a new cycle of depressed premium, reduced bitcoin purchases, and possibly still lower bitcoin prices.

Alternatively, MSTR may respond to a lower bitcoin price and share price premium by continuing to purchase bitcoins funded by issuance of debt or preferred stock. In bear market conditions, however, the increased leverage may tend to make MSTR shares less attractive, and the premium may likely drop further, opening a different but equally toxic cycle.

Beyond these price-mediated cycles, a second channel of interaction runs through MSTR's discretion over the animating engine's configuration and through the regulatory environment for the BTCo form. The process risks that MSTR may abruptly alter the engine's configuration and that regulatory changes may threaten the animating engine are not independent of the bitcoin price stress just described. A material price decline is an environment in which management is more likely to depart from prior guidance—as MSTR did in December 2025 by abandoning the "exclusively" and "indefinitely" components of its cornerstone bitcoin principle. Material departures may themselves further compress the premium to the extent that investors, on balance, value stability in the model. And it is in periods of acute stress that political and regulatory tolerance of the BTCo form is more likely to come under pressure.

The polypharmacy at play with the MSTR model is more unforgiving than with pharmaceuticals in at least four major ways. First and foremost, MSTR's risk sources are not merely concurrent, but reflexively coupled. In medical polypharmacy, interactions typically occur among fixed pharmaceutical agents. Drugs do not generally rewrite one another's chemistry. With MSTR, the risk sources reshape each other. A bitcoin price decline alters the premium; a compressed premium curbs the engine's functioning; curbed functioning may prompt management to reconfigure the engine; and the reconfiguration may alter the premium and may invite regulatory attention.

Second, the possibility of "unpacking" as a solution to polypharmacy effects in the MSTR context is limited. In the medical context, an unfortunate cocktail may leave the option of cessation. At times, the offending drug can be identified and removed from the cocktail. The interaction can be broken and, with the use of some alternate drug, there is the possibility of equilibrium being restored. The MSTR shareholder does not have the option of removing any of the risk sources. They are all inherent to the MSTR model. Fancy financial engineering aside, that shareholder's options are limited to reducing MSTR holdings or avoiding MSTR shares altogether.

Third, the opportunity to address polypharmacy effects in the MSTR context is reduced by the nature of the decisionmaker. In the pharmaceutical context, the composite risk exposure is considered by doctors and if it turns out to be unacceptable, medical professionals will generally step in. With MSTR shares, apart from the few who have investment advisors or benefit from recommendations provided in full-service brokerage accounts, retail shareholders have no professionals to rely on or who can help them. As discussed in Part III.A.1, MSTR has an unusually large retail shareholder base.

Fourth, the nature of the risk sources in the MSTR context and perhaps their sheer number may be more troublesome than in the typical medical context. As Parts III.A.2.a and III.A.2.b have shown, many of these hazards, viewed in isolation, are likely less amenable to established evaluation protocols than individual drugs. The high number of risk sources contributes to combinatorial complexity.

In short, the extreme form of polypharmacy that confronts MSTR shareholders make the task of assessing the pertinent risks and uncertainties more challenging still.

B. Societal Concerns: Economic Growth

The core functioning of the MSTR model raises uncomfortable questions as to the role of the public corporation as the basic economic engine of our society. MSTR's path to shareholder wealth maximization does not rest primarily on the production of goods or services, but rather on the share issuance/bitcoin purchase and accumulation process and associated matters. In connection with its $21 billion October 2024 securities offering, MSTR urged that other public companies also plough proceeds from their share offerings into bitcoin:

> Here's the big idea, the reason that this is the largest ATM equity offering to, and it is to buy bitcoin, is because any other company that announced a $21 billion ATM would be expected to invest the capital in something dilutive. . . .
>
> If you sold $21 billion of equity and you went and bought another company, it's a risky acquisition. . . . I can tell you, as a public company CEO for 30 years of my life. . . I can tell you that 90% to 95% of acquisitions all failed dismally. . . .
>
> [S]o then what are you going to do? You're going to buy up real estate, build a building for five years, or you're going to build a new product? Are you going to hire 10,000 people? The problem in the market is most people don't have a good use of proceeds. *Bitcoin is the best use of proceeds, maybe in the history of the capital markets.*[168]

That is, Saylor was suggesting that companies not apply securities proceeds to developing new products, hiring workers, or making acquisitions. Instead, they should buy bitcoin and hold it. That said, Saylor was not suggesting that companies abandon their basic businesses. The "100%" in the following statement is informative as to his stance: "If you do it with a big tech company, they'll never be 100% bitcoin because they've got too much other stuff in their enterprise."[169]

Two questions immediately arise. The first relates to the social value of some of these alternate uses. For instance, would sales proceeds that would have gone into R&D to

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168. *MSTR Q3 2024 Earnings Call Transcript*, *supra* note 93 (emphasis added).
169. *Id.*

develop new products but be instead used to purchase and accumulate bitcoins contribute to social welfare?

Saylor even made a presentation for Microsoft's board urging that the company's cash flows, dividend payouts, and stock buybacks be used to purchase bitcoins.[170] Failing to integrate bitcoin in such ways could leave Microsoft behind in the next wave of technological innovation. While Microsoft rejected Saylor's entreaties, the prospect of other companies following the MSTR model to any material extent would be troubling.

The question of which economic activities contribute to a society's long-term growth and welfare has a venerable history. The French "physiocrats" of the 18th century, considered to be the founders of modern political economy, believed that wealth flowed from the production of agricultural goods.[171] Economic growth would be possible, in their view, only if the agricultural product obtained is greater than necessary to reconstruct the means of production and to support agricultural producers themselves.

In the modern era, the primary focus is on the role of technological innovation. Simon Kuznets's 1971 Nobel lecture posited that the modern epoch of economic growth that began in the late 18th century flowed from the "evolution of science . . . [producing] a potential for technology far greater than existed previously."[172] With the continuing discovery of new ideas, Paul Romer's 2018 Nobel lecture proclaimed that we "no longer have to assume that Malthus wins."[173] Focusing on how market economies develop new technologies through corporate research and development (R&D),[174] his fundamental contribution was that the discovery of new ideas is at the heart of economic growth.[175]

The second immediate question relates to the social value of a transfer of ownership of bitcoins from the existing bitcoin holders to MSTR. By design, the number of bitcoins is limited to 21 million. Whatever bitcoins a corporation buys must come from the existing holders. Bitcoins neither generate any cash nor can be used in the production of goods or services, so it is not obvious how the bitcoins are being put to higher and better use by being in the hands of MSTR. By what mechanism would this contribute to social welfare?

The foregoing analysis leaves aside the matter of the MSTR model's impact on promoting the use of bitcoins. Questions as to the social value of bitcoins net of their possible impact on, for instance, financial institution and systemic risk and efforts to curtail money laundering, criminal activities, and tax evasion are beyond the scope of the Article.

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170. Gino Matos, *Microsoft Shareholders Oppose Bitcoin Treasury Allocation in Preliminary Vote*, CRYPTOSLATE (Dec. 10, 2024), cryptoslate.com/microsoft-shareholders-oppose-bitcoin-treasury-allocation-in-preliminary-vote [https://perma.cc/Q6UU-8Z7V].

171. Maxime Menuet & Patrick Villieu, *The Physiocratic Analysis of Money: A Reappraisal*, 55 HIST. POL. ECON. 869, 872 (2023); LEONARDO BECCHETTI, LUIGINO BRUNI & STEFANO ZAMAGNI, THE MICROECONOMICS OF WELLBEING AND SUSTAINABILITY 22–23 (2019).

172. Simon Kuznets, *Modern Economic Growth: Findings and Reflections*, THE NOBEL PRIZE (Dec. 11, 1971), https://www.nobelprize.org/prizes/economic-sciences/1971/kuznets/lecture/ [https://perma.cc/7QQB-82RQ].

173. *Nobel Lecture: On the Possibility of Progress*, PAUL ROMER (Feb. 5, 2019), https://paulromer.net/prize/ [https://perma.cc/YY5Y-FFZH].

174. THE ROYAL SWEDISH ACAD. OF SCIS., ECONOMIC GROWTH, TECHNOLOGICAL CHANGE, AND CLIMATE CHANGE 3 (2018), https://www.nobelprize.org/uploads/2018/10/advanced-economicsciencesprize2018.pdf [https://perma.cc/A4SA-SVKZ].

175. *Id.* at 3; Charles I. Jones, *Paul Romer: Ideas, Nonrivalry, and Endogenous Growth*, 121 SCAND. J. ECON. 859, 859 (2019).

IV. PROPOSED RESPONSES: TOWARD MODEL NEUTRALITY

The Article's proposed responses center on a single principle: model neutrality. Key aspects of existing private ordering as to stock indexes and of the core regulatory framework for public companies have the inadvertent effect of tilting the playing field toward the MSTR model and away from the archetypal operating company model. The result is a boost in demand for MSTR shares, untethered to any deliberate policy choice to favor the BTCo form.

Two proposals follow. Part IV.A addresses private ordering. The MSCI Global Investable Market and Nasdaq-100 indexes are both primarily intended to track ordinary public companies—producers of goods and services—and to exclude investment vehicles. MSTR produces almost no goods and services and is largely an investment vehicle. Yet, primarily due to two artifacts in the indexes' eligibility criteria, MSTR is included.

Part IV.B addresses the core regulatory framework for public companies: the SEC disclosure system. In particular, the SEC's key piece of narrative disclosure—the MD&A—requires senior management to provide granular, thoughtful assessments of the basic drivers of the company's functioning together, notably, with associated risks and uncertainties. It is not clear whether the MD&A requirements reach the mNAV, even though the mNAV is at the core of what drives MSTR's functioning..

A. Neutrality as to Stock Index Inclusion

1. Overview

Inclusion in a major index can significantly increase demand for a company's shares. All mutual funds, ETFs, and other investors tracking the index typically must buy the shares of all constituent companies, irrespective of their merits. In 2020, Tesla's shares jumped 53.5% between announcement of its inclusion in the S&P 500 and the effective date.[176] Not surprisingly, Elon Musk's SpaceX, expected to soon initiate the largest-ever U.S. IPO, is trying to ensure early inclusion in, for example, the MSCI indexes and the Nasdaq-100.[177] Correspondingly, being dropped from an index can decrease demand.

A 2025 academic study found that in 2020, the year of Tesla's inclusion, the average increase in price on inclusion was 5.49% and removal from the index was -2.70%.[178] The same 2025 academic study found average increases and decreases of 7.4% and -16.1% in the 1990s and 5.2% and -12.4% in the 2000s.[179]

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176. Robin M. Greenwood & Marco Sammon, *The Disappearing Index Effect*, 80 J. FIN. 657, 676–77 (2024).

177. Kate Clark & Corrie Driebusch, *SpaceX Seeks Early Index Entry as It Prepares Massive IPO*, WALL ST. J. (Feb. 4, 2026), https://www.wsj.com/finance/stocks/spacex-seeks-early-index-entry-as-it-prepares-massive-ipo-8445ed59 (on file with the *Journal of Corporation Law*).

178. Greenwood & Sammon, *supra* note 176, at 667.

179. *Id.* at 665–68. Overall, however, in the 2010s, the impact of inclusion was less than 1% and deletion was 0.1%. *Id.* This decline is not as relevant to the MSTR situation as might first appear. This is because one of the major reasons for the decline in impact in the 2010s was the increase in "index migration"—a migration occurs when the stock moves from the S&P MidCap Index to the S&P 500 or vice versa due to changing market capitalizations. *Id.* at 673–76. In the 1990s and 2000s, proportionately more stocks were "direct" inclusions in the S&P 500 than in the 2010s. In the 2010s, proportionately more stocks "migrated" to the S&P 500 from S&P Midcap indexes. These migrating stocks were already held by index-tracking investors and thus inclusion in the

Such inclusion and exclusion effects flow from the rise of indexed investing. In 2024, total assets in U.S. passive mutual funds and ETFs surpassed those in active ones for the first time.[180] The gap has accelerated: as of October 2025, passively managed assets grew to over $19.1 trillion while actively managed funds stood at $16.2 trillion.[181] From a longer and global perspective, equity index fund assets as a fraction of global market capitalization have grown steadily since 1990.[182]

MSTR is currently included in the MSCI indexes and the Nasdaq-100. It is not included in the S&P 500.[183] Of MSTR's then-market capitalization of $59 billion, JPMorgan Chase estimated in November 2025 that $2.8 billion in assets were tracking the MSCI indices and an additional $6.2 billion were tracking other indices.[184] That is, about 15% of MSTR shares were held by index-forced buyers.

Nasdaq started including MSTR common stock in the Nasdaq-100 beginning December 2024.[185] One analysis had suggested that this inclusion would prompt the purchase of about $7 billion of shares.[186]

MSTR has emphasized the importance of its inclusion in the MSCI indexes and the Nasdaq-100. First, MSTR has pointed to how inclusion in various MSCI indexes, the

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S&P 500 would have less of an impact. Such index migration effects may be less relevant to MSTR situation because a decision to include or exclude MSTR would likely be more categorical in nature.

180. Bryan Armour, Eugene Gorbatikov & Maciej Kowara, *Active vs. Passive Fund Performance: When Do Active Managers Win?*, MORNINGSTAR (Apr. 1, 2026), https://www.morningstar.com/business/insights/blog/funds/active-vs-passive-investing#active-versus-passive-fund-flows [https://perma.cc/M4Y2-Y5BP].

181. *Id.*

182. JAMES J. ROWLEY, STEPHEN LAWRENCE & OLLIE RYDER-GREEN, SETTING THE RECORD STRAIGHT: THE TRUTHS ABOUT INDEX FUND INVESTING 6, 8–10 (2025), https://corporate.vanguard.com/content/dam/corp/research/pdf/setting_the_record_straight_the_truths_about_index_fund_investing.pdf [https://perma.cc/VMM6-MZDE].

183. On September 5, 2025, S&P Dow Jones Indices announced that RobinHood Markets, AppLovin, and Emcor Group would be included in the S&P 500. *See* Press Release, S&P Global, AppLovin, Robinhood Markets and Emcor Group Set to Join S&P 500; Others to Join S&P 100, S&P MidCap 400 and S&P SmallCap 600 (Sept. 5, 2025), https://press.spglobal.com/2025-09-05-AppLovin,-Robinhood-Markets-and-Emcor-Group-Set-to-Join-S-P-500-Others-to-Join-S-P-100,-S-P-MidCap-400-and-S-P-SmallCap-600 [https://perma.cc/5JF4-XDMJ]. To the surprise of many, the pertinent committee exercised its discretion and did not include MSTR shares but did not provide an explanation. In November 2025, MSTR again failed to be included, again without explanation. Tatevik Avetisyan, *MicroStrategy Passed Over Again for S&P 500 Despite Meeting Rules*, CRYPTORANK (Nov. 29, 2025), https://cryptorank.io/news/feed/1e6f4-micro-strategy-passed-over-again-for-s-and-p-500-despite-meeting-rules [https://perma.cc/PP8U-7TJH].

184. *See e.g.*, Katie Greifeld, *How Much Does MSCI Matter to Michael Saylor's Strategy?*, BLOOMBERG (Nov. 21, 2025), https://www.bloomberg.com/news/newsletters/2025-11-21/why-msci-s-proposal-is-hurting-shares-of-michael-saylor-s-strategy (on file with the *Journal of Corporation Law*); Judy Lagrou, *Michael Saylor's Strategy Risks Losing Billions in Index Flows*, BLOOMBERG (Nov. 20, 2025), https://www.bloomberg.com/news/articles/2025-11-20/michael-saylor-s-strategy-risks-losing-billions-in-index-flows (on file with the *Journal of Corporation Law*).

185. *MicroStrategy Secures Nasdaq-100 Inclusion After Bitcoin-Fueled Stock Surge*, REUTERS (Dec. 13, 2024), https://www.reuters.com/technology/microstrategy-secures-nasdaq-100-inclusion-after-bitcoin-fueled-stock-surge-2024-12-14/ [https://perma.cc/NFW2-CQZE].

186. *Nasdaq-100 Shakeup: Palantir, Axon, and MicroStrategy Join the Index, While Moderna, Illumina, and Super Micro Computer Exit*, ORTEX (Dec. 11, 2025), https://public.ortex.com/nasdaq-100-shakeup [https://perma.cc/77CV-VVNA].

Nasdaq-100 and crypto indexes "drives superior passive capital flows."[187] Second, it pointed to MSTR's "brand recognition and scale" driving "superior investor interest."[188] MSTR branded its stock as "the World's Most Widely Held Bitcoin Proxy," attributing it in part to the stock's inclusion in the MSCI World Index, the Nasdaq-100, and Russell 1000.[189]

2. *Eligibility Drift: The Two Textual Artifacts Contributing to MSTR's Inclusion*

a. *MSCI Global Investable Market Indexes*

MSCI claims that, for over 50 years, the MSCI Global Investable Market Indexes have been the most widely used international equity indexes for institutional investors.[190] As of June 30, 2025, approximately $18.3 trillion in assets under management were linked to MSCI indexes, of which $2 trillion were accounted for by equity ETFs.[191]

As matters currently stand, the MSCI indexes are intended to: (1) capture operating companies whose shares represent claims on real productive activity—the production of goods and services—and; (2) to screen out investment wrappers such as closed-end funds and ETFs, whose returns derive from the assets they hold rather than from any output of their own. There is both an inclusion element and an exclusion element.

As to the inclusion element, the latest (November 2025) MSCI methodology notes that the MSCI indexes have maintained their standing because they have evolved to continue to "appropriately reflect the international investable opportunity set of equities while addressing the changing and expanding investment interests of cross-border investors."[192] These indexes are intended to provide "[e]xhaustive coverage of the investable opportunity set [of equities] with non-overlapping size and style segmentation."[193]

However, this inclusion element was modified and the longstanding exclusion element was confirmed on January 6, 2026. In connection with announcing a preliminary determination not to exclude MSTR and similar BTCos from such indexes, MSCI stated that it was opening a consultation on "the treatment of non-operating companies generally." This broader review was stated to be intended to ensure consistency and continued alignment with the overall objectives of the MSCI Indexes, which seek to measure the performance of operating companies and exclude entities whose primary activities are investment-oriented in nature.[194]

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187. MSTR Q1 2025 PRESENTATION, *supra* note 34, at 62.

188. *Id.*

189. *Id*. at 37.

190. MSCI, MSCI GLOBAL INVESTABLE MARKET INDEXES METHODOLOGY 12 (2025) [hereinafter MSCI METHODOLOGY], https://app2.msci.com/eqb/methodology/meth_docs/MSCI_GIMIMethodology_Nov2025.pdf [https://perma.cc/V72L-GM3Z].

191. *MSCI Indexes: Bringing Clarity to Global Markets*, MSCI, https://www.msci.com/indexes [https://perma.cc/QN8Q-T32Z]; *Global ETF Assets Tracking MSCI Equity Indexes Exceed $2 Trillion*, MSCI (July 16, 2025), https://www.msci.com/discover-msci/media-room/global-etf-assets-tracking-msci-equity-indexes-exceed-2-trillion [https://perma.cc/A34Z-9HGZ].

192. MSCI METHODOLOGY, *supra* note 190, at 12.

193. *Id.*

194. *MSCI Announces Results of the Consultation on the Treatment of Digital Asset Treasury Companies*, MSCI (Jan. 6, 2026) [hereinafter *MSCI Announces Results*], https://app2.msci.com/webapp/index_ann/DocGet?pub_key=DD3Olh5uInk%3D&lang=en&format=html [https://perma.cc/257E-EMMU].

MSCI had not previously explicitly stated that its indexes were to track operating companies. This was because it had a longstanding exclusion from eligibility that, at least in the past, had this effect.

That is, in pertinent part, MSCI Methodology Rule 2.1.1 provides that "[a]ll listed equity securities" are eligible for inclusion in the "Equity Universes" pertinent to the various indexes. However, conversely, mutual funds, ETFs, equity derivatives, and most investment trusts are not eligible for inclusion in the Equity Universe.[195]

Mutual funds and ETFs, unlike operating companies, do not produce goods or services. Their activities lie in maximizing returns from assets in their portfolios, subject to constraints imposed by private ordering. And, as noted before, they are generally subject to requirements flowing from the 1940 Act.

The Rule's use of the term "investment trusts" is less clear. A supporting footnote provides that the "Global Industry Classification Standard Methodology" (GICS Classification Standard) may be considered in determining the eligibility of mutual funds/investment trusts in the MSCI equity universe. The GICS Classification Standard, while not defining "investment trusts," does include a classification for asset managers and custody banks, such as those companies that sponsor "mutual funds, closed-end funds and unit investment trusts."[196] Reading Rule 2.1.1 and the GICS Classification Standard together, mutual funds, ETFs, closed-end funds, and unit investment trusts are all ineligible.

In effect, the eligibility criteria assumed that substantially all listed companies produce goods and services. To the extent some did not, exclusion of the specified investment vehicles would result in the indexes being focused on such producers.

The bottom line is that the MSCI indexes are expressly intended to include producers of goods and services and exclude most investment vehicles. Yet MSTR, a leveraged bitcoin holding vehicle that produces almost no goods and services, clears both elements of MSCI's eligibility criteria.

This curious eligibility largely stems from two textual artifacts.

The first relates to the drafting of the criteria as to what constitutes an operating company. MSTR has a legacy software business. The GICS Classification Standard has classified MSTR as a company in the "Information Sector," specifically in the "Sub-industry" of "Applications Software."[197] The sub-industry often consists of "[c]ompanies engaged in developing and producing software designed for specialized applications for the business or consumer market."

MSTR's software business unquestionably does undertake such activities.

But due to a textual artifact, the fact that the software business is economically insignificant is of marginal relevance. The GICS Classification Standard prescribes that "[a]s a

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195. MSCI METHODOLOGY, *supra* note 190, at 14.

196. MSCI, GLOBAL INDUSTRY CLASSIFICATION STANDARD (GICS) METHODOLOGY: GUIDING PRINCIPLES AND METHODOLOGY FOR GICS 43 (2024) [hereinafter GICS CLASSIFICATION STANDARD], https://www.msci.com/indexes/documents/methodology/1_MSCI_Global_Industry_Classification_Standard_GICS_Methodology_20240801.pdf [https://perma.cc/9REN-RL5G].

197. GICS CLASSIFICATION STANDARD, *supra* note 196, at 11 (setting out code 45103010 for "Applications Software" Sub-industry); S&P Dow Jones Indices, *S&P Select Industry Indices GICS Impact Analysis*, (Nov. 9, 2022), https://www.spglobal.com/spdji/en/documents/additional-material/sp-select-industry-indices-gics-impact-analysis11-9-2022.xlsx (on file with the *Journal of Corporation Law*) (citing MSTR as having code 45103010 at cell D131 of the Excel spreadsheet for "Software").

general rule," a company is classified in the Sub-Industry whose definition most closely describes the business activities "that generate more than 60% of the company's revenues."[198] The breakdown of earnings and "market perception" are only of secondary importance to the 60% of revenues test.[199]

This revenue-based standard for classification makes sense in the case of the ordinary public company, one that produces goods and services. It also has the virtues of transparency and easy implementation.

But with MSTR, this textual artifact has strange results. At MSTR, literally 100% of its $477 million in total revenues for 2025 came from its only reportable operating segment, MSTR's legacy "Software Business."[200] The bitcoin treasury operations generated no revenue. As was shown in Part I.B.2.a., this software business is a mere economic sideshow. As of February 13, 2026, the market capitalization of MSTR's class A common stock was $42 billion and MSTR's bitcoins accounted for the "vast majority" of its assets.[201]

The other textual artifact that runs in favor of MSTR's inclusion relates to the drafting of the investment vehicle exclusion. MSTR is not a mutual fund, ETF, closed-end fund, or unit investment trust. Nor is it currently deemed to be subject to the 1940 Act. MSTR is a publicly held Delaware corporation.

b. Nasdaq-100

As of September 30, 2025, over $500 billion of assets under management were tracking the Nasdaq-100 Index via listed ETFs, second only to the S&P 500.[202] Launched in 1985, the index consists of a subset of the "global community of innovators and disruptors listed on the Nasdaq Stock Market."[203] It is Nasdaq's flagship index, directed at "new economy" stocks "and established industry stocks "that have always exhibited innovation in their lifeblood."[204]

Nasdaq's "Product Guide" summarizes the core goal as follows: "By tracking many of the world's most influential companies including global leaders in technology and other major innovation-driven industries, the index provides a clear view of how the 21st century economy is performing."[205] Elsewhere, Nasdaq explains that "the Nasdaq-100 reflects where innovation-driven economic growth has been concentrated in the 21st century, and where it will likely continue to be in the foreseeable future."[206]

As matters currently stand, the Nasdaq-100 is, at its core, intended to: (1) capture operating companies producing goods and services—particularly those at the intersection of technology, innovation, and economic growth; and (2) screen out investment vehicles.

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198. GICS CLASSIFICATION STANDARD, *supra* note 196, at 15.

199. *Id.*

200. MSTR 2025 10-K, *supra* note 13, at 134–135; *supra* Part I.B.2.a..

201. See *supra* Part I.B.2.a..

202. *Nasdaq-100 Index: The Benchmark of the 21st Century*, NASDAQ, Nasdaq.com/nasdaq-100 [https://perma.cc/28NS-JNFD].

203. *Id.*

204. *Id.*

205. NASDAQ, PRODUCT GUIDE NASDAQ-100 INDEX: BENCHMARK OF THE 21ST CENTURY 4 (2025), https://www.nasdaq.com/docs/nasdaq-100-index-product-guide?utm [https://perma.cc/ME8G-TYNP].

206. NASDAQ, NASDAQ-100: THE BENCHMARK FOR THE 21ST CENTURY 3 (2025), https://indexes.nasdaqomx.com/docs/Benchmark%20of%20the%2021st%20Century.pdf [https://perma.cc/327R-8VMS].

As with the MSCI indexes, the drafting of the investment vehicle exclusion as to Nasdaq-100 criteria does not exclude MSTR.

As to this exclusion element, Nasdaq's "Index Methodology" states that the index is "designed to measure the performance of 100 of the largest Nasdaq-listed *non-financial* companies."[207] In determining whether a firm is "non-financial," Nasdaq relies on the firm not being classified in the "Financial Industry" under the Industry Classification Benchmark (ICB Benchmark), a product of FTSE International Limited.[208] The Financial Industry classification captures a wide range of investment vehicles, explicitly including "closed end investments" such as "investment trusts" and "open end and miscellaneous investment vehicles" such as ETFs and "open-ended investment companies."[209]

MSTR does not fall into any of these categories. The closed end investments category only applies to entities "identified under distinguishing legislation such as investment trusts and venture capital trusts."[210] MSTR is organized under Delaware corporate law and is not a 1940 Act investment company. And it is neither an open-end investment company nor an ETF.

As to the inclusion element, the ICB Benchmark classifies MSTR as a "Technology" company in the "Software & Computer Services Sector."[211] This characterization, as with the MSCI indexes, stems from using revenues as the determining factor.[212]

3. Moving to Stock Index Inclusion Neutrality

Inclusion of MSTR in the MSCI indexes and the Nasdaq-100 is arguably inconsistent with their core objective: to track the performance of public companies that produce goods and services. Investor reliance on these indexes is shaped by expectations that index components are consistent with those objectives.[213] Thus, investors seeking exposure to a portfolio of high technology operating companies may choose to invest in funds tracking the Nasdaq-100. Inclusion of other kinds of companies would undermine the Nasdaq-100.

The SEC's reliance on these indexes is also undermined. The "pay for performance" requirements mandate that proxy statements include a table showing the relationship

207. NASDAQ, NASDAQ INDEX METHODOLOGY 1 (2025) (emphasis added), https://indexes.nasdaq.com/docs/Methodology_NDX.pdf [https://perma.cc/PNJ7-D6QK].

208. *Id.* at 2.

209. FTSE RUSSELL, GROUND RULES: INDUSTRY CLASSIFICATION BENCHMARK (EQUITY) 8, 14–15, 27 (Dec. 2024), https://www.lseg.com/content/dam/ftse-russell/en_us/documents/ground-rules/icb-ground-rules.pdf [https://perma.cc/6CJ7-6GPE].

210. *Id.* at 14.

211. FTSE RUSSELL, 2024 RUSSELL US INDEXES RECONSTITUTION: SUMMARY OF PRELIMINARY CHANGES 2 (May 2024), https://www.lseg.com/content/dam/ftse-russell/en_us/documents/other/2024-russell-recon-recap-preliminary.pdf [https://perma.cc/7MDC-JNEQ].

212. Specifically, under ICB Ground Rule 4.2.3, provides that (apart from the collective investment rules just discussed), a company's classification would be based on the extent to which its revenue arises from its dominant industry or sector rather than any factors relating to the functioning of the enterprise.

213. As a general matter, investor and governmental reliance on stock indexes is likely excessive as shown by Adriana Robertson. *See e.g.*, Adriana Z. Robertson, *The (Mis)uses of the S&P 500*, 2 U. CHI. BUS. L. REV. 137 (2023). Scott Hirst and Kobi Kastiel offer a thoughtful argument against using stock index inclusion rules for corporate governance purposes. *See generally* Scott Hirst & Kobi Kastiel, *Corporate Governance by Index Exclusion*, 99 BOS. U. L. REV. 1229 (2019). This Article's proposal does not seek to change corporate governance but instead to remove the inadvertent promotion of demand for the MSTR model by existing stock index rules.

between the compensation of specified executives and the company's total shareholder return, as well as the return of the firm's peer group.[214] The value of benchmarking a high-tech operating company's shareholder returns against the returns from the Nasdaq-100 would be undermined by inclusion of other types of entities.

MSTR stock's bitcoin correlation and market capitalization offer additional considerations militating against inclusion.

ETFs that invest in single assets such as gold or silver bullion are not included in these indexes. Including proxies for bitcoin, gold, and silver would turn these indexes into something that is neither fish nor fowl. They would reflect neither the performance of operating companies nor the fluctuations, sometimes wild, in the prices of those assets. And MSTR shares are even more volatile than bitcoins: they are "amplified bitcoin," to use MSTR's characterization.[215]

These indexes are largely market capitalization weighted. If MSTR were to realize its aspirations to become the most highly capitalized stock in the country, it would presumably be the most important determinant of index performance.

There are signs of discomfort with MSTR's inclusion in stock indexes, at least at MSCI. On October 10, 2025, MSCI announced that it was considering a proposal to exclude companies "whose primary business involves bitcoin or other digital asset treasury activities" from the MSCI Global Investable Market Indexes if digital asset holdings accounted for 50% or more of their total assets.[216] MSTR's common stock was by far the most important on the preliminary list: its $84 billion in float-adjusted market capitalization was ten-fold that of the next highest stock. Some observers attributed the sharp decline in bitcoin prices that day to the MSCI announcement.[217] On January 6, 2026, MSCI announced that it had determined "at this time" not to implement the proposal as part of its February 2026 index review.[218] MSTR's shares immediately surged 6% in after-hours trading.[219]

This January determination to allow continued inclusion of MSTR was not an unalloyed victory for the firm. First, the determination emphasized the interim nature of the decision and announced that it would undertake a broader consultation on the treatment of non-operating companies.

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214. 17 C.F.R. § 229.402(v) (2025); 17 C.F.R. § 240.14a–101 (2025) (Schedule 14A).

215. *See* Utkarsh Shetti & Federico Maccioni, *Strategy's Saylor in Talks with MSCI as Index Exclusion Threat Looms*, REUTERS (Dec. 3, 2025), https://www.reuters.com/business/saylors-strategy-engaging-with-msci-potential-index-exclusion-2025-12-03/?utm [https://perma.cc/U62J-KTRT] (detailing MSTR's negotiations with MSCI on possible index exclusion).

216. MSCI, CONSULTATION ON DIGITAL ASSET TREASURY COMPANIES 2 (2025), https://www.msci.com/downloads/web/msci-com/indexes/index-resources/consultation-on-digital-asset-treasury-companies-2025.pdf [https://perma.cc/9XKL-J9F4].

217. Deniz Saat, *Strategy Counters MSCI FUD Tied to October 10th Bitcoin Crash*, BTC TIMES (Nov. 22, 2025), btctimes.com/strategy-counters-msci-fud-tied-to-october-10th-bitcoin-crash [https://perma.cc/79JA-WA47].

218. *MSCI Announces Results*, *supra* note 194.

219. Stephen Alpher, *Strategy Surges 6% on MSCI Decision Not to Exclude DATs from Indexes*, COINDESK (Jan. 6, 2026), https://www.coindesk.com/markets/2026/01/06/strategy-surges-6-on-msci-decision-not-to-exclude-digital-asset-treasury-firms-from-indexes [https://perma.cc/P9D7-R7YL].

Second, the determination imposed a condition designed to dampen MSTR's influence on the MSCI indexes.[220] The condition, in effect, ensured that new share issuances by MSTR — including those generated by routine operation of its animating engine — will not increase MSTR's weight in the indexes, even as those issuances expand its market capitalization.

There is some modest evidence that Nasdaq may be increasingly uncomfortable as well. In December 2025, one investment house went so far as to assess the passive fund outflows that would occur if MSTR were dropped from the Nasdaq-100.[221]At least one prediction market suggests exclusion is a possibility.[222] The discomfort goes beyond index issues. Rule 5635(a) of the Nasdaq Stock Market's listing standards requires shareholder approval prior to the issuance of securities in connection with "the acquisition of the stock or assets of another company" under certain circumstances."[223] In September 2025, Nasdaq "clarified" that this Rule's shareholder approval requirement could cover the acquisition of digital assets, such as cryptocurrencies.[224]

Neutrality between the MSTR model and the public company model would thus point in favor of stock index sponsors seriously considering excluding companies that, relative to their other assets and activities, are heavily invested in bitcoins or other crypto currencies. Comprehensive, systematized consideration of this issue is needed. This review could be in the context of BTCos and other crypto-treasury structures or, as with the MSCI approach, in the context of non-operating companies in general. Such a searching review is also warranted with respect to the Nasdaq-100.

If the path ultimately taken is that of exclusion, it is critical to set out the precise criteria that would trigger exclusion. The Article does not necessarily endorse the 50% of assets test that MSCI had advanced in October 2025. One possibility would be, as with the 1940 Act determinations as to when an entity is an "investment company," to exclude entities that either had more than a specified percentage of assets in specified crypto currencies or held themselves out as primarily engaged in holding such assets.

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220. *See* Erlin, *MSCI Holds DATCO Decision, MicroStrategy Remains on Index*, HOKANEWS.COM (Jan. 7, 2026), https://www.hokanews.com/2026/01/msci-holds-datco-decision-microstrategy.html [https://perma.cc/ACN4-7WV4] (discussing conditions imposed by the determination).

221. Shashwat Chauhan, *Analysts Flag Risks for Strategy at Nasdaq 100 Index Reshuffle*, REUTERS (Dec. 12, 2025), https://www.reuters.com/business/finance/analysts-flag-risks-strategy-nasdaqs-100-index-reshuffle-2025-12-12/ [https://perma.cc/6D3T-K6X2].

222. Bruno J., *Will MicroStrategy ($MSTR) Be Excluded from the Nasdaq 100 in 2026?*, MANIFOLD (Dec. 31, 2026), https://manifold.markets/BrunoJ/will-microstrategy-mstr-be-excluded [https://perma.cc/95Q4-HYPQ].

223. *See 5600. Corporate Governance Requirements*, NASDAQ, listingcenter.nasdaq.com/rulebook/Nasdaq/rules/nasdaq-5600-series [https://perma.cc/NE7P-ZEF5] (explaining Rule 5635(a)).

224. *See* Tuo Wang, *Nasdaq's Shareholder Approval Requirement for Public Companies Seeking to Adopt Digital Asset Treasury Strategies*, BEVILACQUA PLLC (Sept. 25, 2025), https://www.bevilacquapllc.com/blog_/nasdaqs-shareholder-approval-requirement-for-public-companies-seeking-to-adopt-digital-asset-treasury-strategies [https://perma.cc/WL9Z-D8V8] ("This Nasdaq requirement means public companies listed on Nasdaq could have to secure shareholder approval before issuing new shares for the purpose of buying cryptocurrencies such as Bitcoin.").

B. Neutrality as to MD&A

1. Overview: MD&A's Operating Company Premise and the MSTR Model

The MD&A is the centerpiece of narrative disclosure under the federal securities laws. Set out in Regulation S-K Item 303,[225] the MD&A is sweeping in its scope, requiring "an assessment of the financial condition and results of operations," including both "short term results as well as future prospects."[226] It is also a serious management exercise. What Item 303 contemplates is not some neutral recitation, but candid, judgment-laden analysis rendered "through the eyes of management."[227]—the underlying premise being that "management is in the best position to know" the factors specific to the registrant's business.[228]

Thus, as noted by Commissioner Hester Peirce, the MD&A is "rooted in a simple and straightforward purpose: to provide a narrative explanation of a company's financial statements that allows investors to view the registrant from the management's perspective."[229]

The MD&A is also the central locus for the disclosure of risks and uncertainties, notably including those relating to the basic drivers of the company's functioning. Item S-K 303(a) provides that the MD&A "must focus specifically on material events and uncertainties known to management that are reasonably likely to cause reported financial information not to be necessarily indicative of future operating results or of future financial condition."

The basic business drivers are captured. The SEC's 1989 Interpretive Release stated that management must "identify and address those key variables and other qualitative and quantitative factors which are peculiar to and necessary" to understand and evaluate the firm.[230] In particular, Item S-K 303(b)(2) requires that, when financial statements reflect material changes, the company must "describe the underlying reasons for these material changes in quantitative and qualitative terms."

Thus, as noted by then Commissioner Elisse Walter, some of the questions that investors want to know the answer to after reading an MD&A are:

> What is the company's business today? How did it perform? Where is the cash? What are the company's key business drivers? What are the risks and uncertainties? How flexibly can the company respond to change? What do the company's future prospects look like?[231]

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225. 17 C.F.R. § 229.303 (2026).

226. Management's Discussion and Analysis, Selected Financial Data, and Supplementary Financial Information, Exchange Act Release 33-10890, 86 Fed. Reg. 2080, 2089 (Jan. 11, 2021) [hereinafter 2021 SEC MD&A Amendments].

227. *Id.* at 2089 (stating that Item 303(a) requires that these disclosures allow investors "to view the registrant from management's perspective").

228. *Id.*

229. Commissioner Hester M. Peirce, *Statement on Proposed Amendments to Modernize and Enhance Financial Disclosures*, SEC. & EXCH. COMM'N (Jan. 30, 2020), https://www.sec.gov/newsroom/speeches-statements/peirce-mda-2020-01-30 [https://perma.cc/ZTU5-MZCJ].

230. Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures, Securities Act Rel. No. 33-6835, 54 FED. REG. 22,427, 22,428 (May 24, 1989).

231. Commissioner Elisse B. Walter, *Corporate Disclosure: The Stage, the Audience and the Players*, SEC. & EXCH. COMM'N (June 25, 2013), https://www.sec.gov/newsroom/speeches-statements/2013-spch062513eb-whtm [https://perma.cc/32GZ-2GZ8].

The MD&A was designed with the ordinary public company in mind. In that context, the drafting works. The thoughtful managerial assessments of the prospects for the firm's basic drivers and associated risks and uncertainties it clearly requires provide valuable insights to investors.

As a public company, MSTR is subject to the MD&A. As we have seen in Part III.A, the risks and uncertainties are not only unusually complex but also unusually large. Moreover, the unique nature of MSTR's animating engine, together with the breadth of managerial discretion over that engine, makes MSTR's management especially likely to have a significant edge over outside observers in assessing those risks and uncertainties. The MD&A, especially if interpreted broadly, can play a vital role for MSTR investors.

Unfortunately, the operating company premise that guided the drafting of Item 303 results in genuine legal uncertainty whether the MD&A reaches the mNAV driver central to its animating engine. MSTR does not interpret the MD&A as reaching the mNAV. MSTR makes no mention of its mNAV metric in any of its most recent MD&A disclosures.[232] The result is that, in the MSTR context, the MD&A is arguably not meeting its full and intended role in informing investors. This Article shows that there are legal and policy reasons for the SEC to take a public position that the MD&A does reach the mNAV at certain BTCos and similar crypto vehicles.

The particular insights intended to be most useful to investors—those relating to the past results and future prospects, and the risks and uncertainties associated with the company's key drivers—stem from the "results of operations" requirements set out in S-K Section 303(b)(2). The textual case for this claim is direct. Item (b)(2) houses each of these analytical strands. Subsection b(2)(i) requires discussion of "unusual or infrequent events or transactions or any significant economic changes" that materially affected past income—the past results component. Subsection b(2)(ii) requires disclosure of "known trends or uncertainties" reasonably likely to have a material favorable or unfavorable impact on revenues or operating income going forward—the future prospects and risk-and-uncertainties components. And subsection (b)(2)(iii) requires that material changes in revenue be decomposed into their underlying drivers—price, volume, and the introduction of new products or services—the basic drivers component. Each strand of the claim is, by regulatory design, a (b)(2) strand.

Concrete support for the centrality of the results of operations subtopic within MD&A comes from data on SEC staff comment letters. Ernst & Young found that for the year ended June 30, 2024, comments on "results of operations" were raised in the majority of letters (56%), nearly double comments on "liquidity" (30%), the next most referenced subtopic.[233]

This all presupposes a particular kind of issuer. Item 303(b)(2) was drafted with an ordinary public company in mind—one that produces goods or services and finances itself

232. *See* MSTR 2025 10-K, *supra* note 13, at 61–83; Strategy Inc, Quarterly Report (Form 10-Q) 36–57 (Nov. 3, 2025)) (covering quarter ended Sept. 30, 2025); Strategy Inc, Quarterly Report (Form 10-Q) 35–53 (Aug. 4, 2025) (covering quarter ended June 30, 2025); Strategy Inc, Quarterly Report (Form 10-Q) 31–47 (May 5, 2025) (covering quarter ended Mar. 31, 2025).

233. SEC REPORTING UPDATE: HIGHLIGHTS OF TRENDS IN 2024 SEC COMMENT LETTERS, ERNST & YOUNG 3 n. 3 (Sept. 2024), https://www.ey.com/content/dam/ey-unified-site/ey-com/en-us/technical/accountinglink/documents/ey-secru24439-241us-09-12-2024.pdf [https://perma.cc/RL7W-FHAD].

out of the revenue and income those operations generate. Subsection (b)(2)(i) pivots on "reported income from continuing operations." The forward-looking trigger of Subsection (b)(2)(ii) is calibrated to "net sales or revenues or income from continuing operations." Ther driver-decomposition requirement of Subsection (b)(2)(iii) asks management to attribute material changes in net sales or revenues to changes in price, in the volume of goods or services sold, or in the introduction of new products or services.

But MSTR, at its core, produces no goods or services and has zero sales and revenue, as was just discussed in Part IV.A. MSTR's only operating segment is its economically insignificant legacy software business, and that accounts for 100% of MSTR's revenue. When MSTR's animating engine is run through the (b)(2) elements, the result is a near-empty exercise. There are no material changes in net sales to decompose into price and volume; no operating margins whose compression by input costs warrant discussion, no product mix whose trends and uncertainties are reasonably likely to bend an operating trajectory that does not exist. The scaffolding of the "results of operations" requirement—the centerpiece of the MD&A regime and the regulatory locus of the management insights most useful to investors—simply does not really engage MSTR's animating engine.

The "liquidity" and "capital resources" requirements set out at Section 303(b)(1) do not directly support an argument that the MD&A reaches the mNAV driver, though they touch on related matters.[234] The MD&A would call for consideration of the availability of cash to meet current and prospective interest payments on its debt and dividends on its preferred stock, as well as its animating engine's reliance on issuance of shares and preferred stock. However, these (b)(1) requirements, unlike the "results of operations" requirements, do not directly address the key drivers of the company's functioning.

The MD&A's "critical accounting estimates" category requires information on estimates made in accordance with GAAP that involve a significant level of estimate uncertainty and are reasonably likely to affect the "financial condition or results of operations"[235] to the extent the information is material. Investor decisions as to MSTR depend in large part on the bitcoin price and the prospects for MSTR's animating engine, neither of which are likely to turn on such estimate uncertainty issues.

Other MD&A requirements come closer to mandating that MSTR management disclose information pertaining to the mNAV but they are subject to legal ambiguity. First, Item S-K 303(a) refers to information that would enhance the reader's understanding of the registrant's "financial condition, cash flows and other changes in financial condition."[236] It is arguable that the term "financial condition" refers not only to matters relating to solvency and other aspects of creditworthiness but also to the prospects for the animating engine to function. Second, "[w]here the financial statements reflect material changes from period-to-period in one or more line items," the registrant must "describe the underlying reasons for these material changes in quantitative and qualitative terms."[237] Matters relating to mNAV may cause such material line-item changes.

In short, based on the wording of Item 303 itself, it is not clear whether the MD&A reaches the mNAV driver for the MSTR animating engine. An argument that the MD&A

234. *See generally* 17 C.F.R. § 229.303(b)(1), (b)(1)(i)–(ii) (2026).
235. *Id.* § 229.303(b)(3).
236. *Id.* § 229.303(a).
237. *Id.* § 229.303(b).

should be interpreted as applying to that driver would be better grounded on the longstanding SEC interest in key performance indicators and on the strong policy grounds in the MSTR situation. We turn to these matters.

2. *SEC Metrics Guidance and mNAV – The 2.5 mNAV and Pre-Existing Puzzles*

In 2020, "Staff Guidance" was issued by the SEC on the key performance indicators and metrics to be used in MD&A disclosures.[238] The Staff Guidance noted that in proposing the current MD&A framework, the SEC had in 1980 observed that "[f]or each business, there is a limited set of critical variables which presents the pulse of the business."[239] And in 2003, the SEC had noted that in preparing the MD&A, registrants "should consider whether disclosure of all key variables and other factors that management uses to manage the business would be material to investors, and therefore required."[240]

In disclosing key performance metrics, the Staff Guidance indicated that it "would generally expect" registrants to also disclose:

> * A clear definition of the metric and how it is calculated;
>
> * A statement indicating the reasons why the metric provides useful information to investors; and
>
> * A statement indicating how management uses the metric in managing or monitoring the performance of the business.[241]

The Staff Guidance referred to variables that present "the pulse of the business."[242] It is at least arguable that MSTR's mNAV sits at the beating heart of the company. The animating engine cannot run unless there is the requisite share price premium. And when the mNAV is high, the benefits from share issuance/bitcoin purchase can skyrocket. The fact that, as a historical matter, MSTR's mNAV has fluctuated wildly underscores the importance of a thoughtful analysis of how precisely the animating engine is supposed to work, how it has worked at various mNAV levels, and how it may work under prospective mNAVs. Figure 6 below shows that MSTR mNAV has ranged from a high of over 6.0 to approximately 1.0.

238. *See generally* Commission Guidance on Management's Discussion and Analysis of Financial Condition and Results of Operations, Exchange Act Release 33-10751, 85 Fed. Reg. 10568 (Feb. 25, 2020).

239. *Id.* at 10569.

240. *Id.*

241. *Id.* at 10570.

242. *Id.* at 10569.

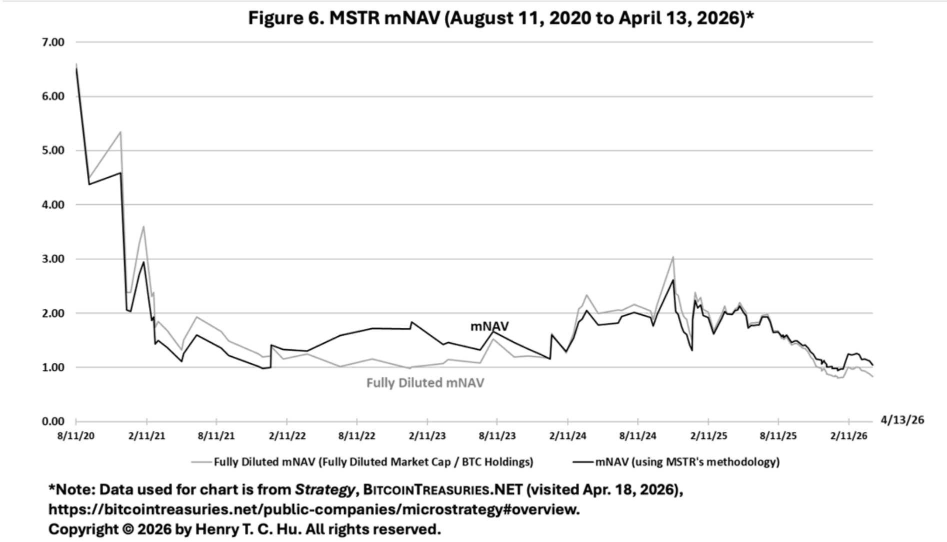

Figure 6. MSTR mNAV (August 1, 2020 to April 13, 2026)

If disclosure at the MD&A level were deemed to apply to the mNAV, one aspect of the pertinent disclosures would be the "clear definition" contemplated by the Staff Guidance. This would be particularly helpful in view of the disparate methodologies used to calculate mNAV in the BTCo industry. In particular, the mNAV calculation used by MSTR departs in significant respects from, for instance, that of Empery Digital, and the rationale for that calculation has not been offered.

Similarly, a "statement indicating why the metric provides useful information to investors" would also be helpful. This would serve as a starting point for an MD&A-level discussion as to the essential logic of the animating engine and how that relates to the overall prospects of the firm.

The statement contemplated by the Staff Guidance as to how management uses the metric in managing or monitoring the performance of the business could also be useful. MSTR would discuss the relationship between current and prospective levels and actual or prospective share issuances/bitcoin purchases—or, if the mNAV is low enough, share purchases. A thoughtful analysis of material real world complexities and challenges to the share price premium-based animating engine described in Part II.B.2 would outline associated material risks and uncertainties.

While MSTR fails to include discussion of the mNAV in the MD&A, beginning with the Form 10-Q for the third quarter of 2025, MSTR began providing an extensive discussion of various other bitcoin-related metrics—MSTR-defined metrics like "BPS," "BTC Yield," "BTC Gain," and "BTC $ Gain"—within the MD&A.[243] MSTR explained that it

243. Strategy Inc, Quarterly Report (Form 10-Q) 41–43, 55–57 (Nov. 3, 2025) (covering quarter ended Sept. 30, 2025).

uses these bitcoin KPIs to "help assess the performance of [MSTR's] strategy of acquiring bitcoin in a manner [MSTR] believes is accretive to shareholders."[244] However, these metrics, unlike mNAV, do not guide when and how MSTR would activate its animating engine. In contrast to the prominence accorded mNAV on the MSTR website's dashboard, these KPIs do not even appear.

The information MSTR does provide about the mNAV driver—the closest it comes to the narrative that the Staff Guidance and Item 303 contemplate for a key driver of an ordinary public company—appeared first not in an MD&A but as a matrix in a slide from its July 31, 2025 earnings presentation.[245] In oral remarks introducing that matrix, MSTR's CEO said that, on a going-forward basis, MSTR would be "more disciplined" about when it would issue shares to buy bitcoins, and that the matrix would create "more transparency" so that shareholders "don't have to guess" when MSTR would do so.[246] The matrix, while providing valuable insights into managerial thinking, also falls short of what would be set out were MD&A standards deemed to apply. Moreover, MSTR actions mere weeks after the introduction of the matrix cuts against investor willingness to rely on this kind of guidance for long-run planning purposes.

The matrix is set out in slide 96 and titled "MSTR Equity Guidance." The matrix set out four possible mNAV ranges, and one or two lines of text describing what MSTR will do in response to mNAVs in those ranges. Two ranges and associated responses are particularly significant. "Between 2.5x and 4.0x mNAV", MSTR "will opportunistically issue MSTR to acquire Bitcoin." "Below 2.5x mNAV", MSTR will not issue stock except in two circumstances: (1) to pay interest on debt; and (2) fund preferred stock dividends.

As of August 18, 18 days later, the mNAV was well below 2.0 and so per its Equity Guidance, MSTR was limited in its ability to issue common stock. That day, MSTR filed a Form 8-K that added a third circumstance: "when otherwise deemed advantageous to the company," thus giving MSTR wide discretion to issue common stock.[247] The following week, MSTR took the controversial step of issuing $310 million of common stock not to pay interest or fund dividends, but to purchase bitcoins. Effectively, the revision of its Equity Guidance disposed of the 2.5x mNAV constraint on issuing shares to buy bitcoin, and MSTR acted accordingly.

If the subject matter of the Equity Guidance were subject to MD&A-level disclosure, investors would have insights as to at least three critical matters. One matter relates to what can be called the "2.5 mNAV Puzzle." The Equity Guidance, as initially presented, noted that if the mNAV were below 2.5, MSTR would issue shares to buy bitcoins only in exceptional circumstances (i.e., to pay debt or fund preferred stock dividends)

But this is puzzling. As shown in Part II.A.2, MSTR has consistently maintained that it considers an mNAV of 1.0 to be the Fulcrum Ratio, the tipping point for share accretive share issuances. In discussing the Equity Guidance on August 2, 2025, MSTR's CEO stated that "issuing equity anywhere above 1.0 mNAV is accretive" but "if you see our mNAV below 2.5x mNAV, you would expect" that the issuance would not be to fund purchases

244. *Id.* at 56.

245. MSTR Q2 2025 PRESENTATION, *supra* note 11, at 96.

246. *MicroStrategy Incorporated (MSTR) Q2 2025 Earnings Call Transcript*, SEEKING ALPHA (Aug. 2, 2025) [hereinafter *MSTR Q2 2025 Earnings Call Transcript*], https://seekingalpha.com/article/4808095-microstrategy-incorporated-mstr-q2-2025-earnings-call-transcript [https://perma.cc/EK6Y-PWA3].

247. Strategy Inc, Current Report (Form 8-K) 5 (Aug. 18, 2025).

of bitcoin but instead only to "pay interest on our debt obligations, our convertible notes and also to fund preferred equity holdings."[248]

But if anything above 1.0 mNAV is accretive, why would MSTR foreclose or severely limit issuances between 1.0 and 2.5 mNAV? I have been unable to find in any later MSTR SEC filings, earnings presentation slides, or earnings presentation transcripts any discussion of the rationale for the 2.5x mNAV equity issuance constraint. A thoughtful MD&A-level assessment would help provide an answer.

A second matter is its sudden August 18, 2025 revision of the initial Equity Guidance, one which effectively removed the 2.5x mNAV equity issuance constraint. MD&A-level disclosure would involve thoughtful managerial assessments of the logic underlying the original 2.5x mNAV constraint as well as that of the revision.

Third, there is a matter of disclosure and substantive continuity with respect to the Equity Guidance and the broader issue of reliance on share issuances to fund bitcoin purchases. MSTR did not refer to the Equity Guidance in either its Q3 2025 or its Q4 2025 earnings presentation slides. As a substantive matter, media reports suggest that MSTR bought more than $200 million worth of bitcoins between February 23 and March 1 primarily through the issuance of shares rather than preferred stock, contrary to investor expectations.[249]

All the foregoing specific concerns aside, a slide in a one-time earnings presentation consisting of four sentences is no substitute for an MD&A that would be provided systematically across filing periods. No recent Form 10-Q or Form 10-K appears to have discussed the mNAV in the MD&A. MD&A assessments benefit not only from thoughtful managerial assessments (including those relating to material risks and uncertainties) but also from expert consideration by lawyers. Earnings presentations may not always be subject to such intensive scrutiny. In addition, MD&A disclosures are generally far more likely to reach investors than earnings presentations and associated oral remarks. Moreover, applying MD&A-level standards to mNAV-related discussions would facilitate industry-wide cross-firm comparisons and promote greater standardization of terminology. The cost of compliance would be low: the required assessment would consist of elements drawn from the core day-to-day functioning of companies like MSTR.

3. The Case for SEC Clarification: Asymmetric Disclosure and Investor Protection

The preceding analysis reveals a troubling asymmetry in the disclosure regime as applied to MSTR and similar bitcoin treasury companies. The MD&A was designed to ensure that investors receive thoughtful, management-level assessments of the key drivers of a company's functioning—its operational pulse—together with the material risks and uncertainties associated with those drivers. For ordinary public companies, this mandate is unambiguous.

The ability of MSTR's animating engine to run depends on the existence of the requisite mNAV. Moreover, how well it runs—how much the share issuance/bitcoin purchase process will benefit MSTR—depends on the magnitude of mNAV. MD&A-grade

248. *MSTR Q2 2025 Earnings Call Transcript*, *supra* note 246.

249. Melos Ambaye, *Saylor's Strategy Steps Up Bitcoin Buys by Using Common Shares*, BLOOMBERG (Mar. 2, 2026), https://www.bloomberg.com/news/articles/2026-03-02/saylor-s-strategy-mstr-steps-up-bitcoin-btc-buys-by-using-common-shares?embedded-checkout=true (on file with the *Journal of Corporation Law*).

management assessments of the outlook for the mNAV and the associated risks and uncertainties would be welcomed by both institutional and retail investors.

As matters stand, it is legally uncertain whether the MD&A requirements reach these critical MSTR functioning matters the same way they unambiguously reach the critical functioning matters of ordinary public companies. The absence of symmetry can lead to a systematically sunnier picture of prospects, one without MD&A-level content on the risks and uncertainties. Moreover, the reach and impact of the MD&A exceed those of earnings presentations and episodic 8-K filings. This asymmetry is particularly concerning given the composition of MSTR's investor base. The asymmetry is further compounded by the complexities and ambiguities relating to MSTR's model, including those noted in Part II.A.2 and as illustrated by the 2.5 mNAV Puzzle.

An SEC determination that the MD&A reaches the mNAV in the case of certain BTCos and similar crypto vehicles would be appropriate. The reasons go beyond the text and purposes of the MD&A and Staff Guidance, their usefulness to investors, and the relatively low costs of compliance already discussed.

There is precedent for this kind of move. On October 7, 2021, the SEC's Division of Corporation Finance sent a letter to the President of MSTR directing the company to include in future filings a tabular presentation in the MD&A disclosing certain statistical information on bitcoin holdings and transactions, sources of capital used to purchase bitcoin, and highs, lows, and closing prices for its bitcoin holdings.[250] The clarification proposed here would extend that precedent to the metric that matters most: the mNAV.

SEC clarification—whether in the form of an industry guide, an interpretive release, or something else—is called for. Drawing boundary lines, starting with which BTCos and similar crypto entities to cover, would be a critical component of the clarification. Moving toward MD&A neutrality between the MSTR model and the public company model as to their key drivers could serve to temper investor over-enthusiasm for MSTR shares flowing from failure to understand the logic and limitations of the mNAV-driven animating engine.

CONCLUSION

The homepage of a public company, its root domain, typically showcases its goods and services—The Walt Disney Company's entertainment brands, Microsoft Corporation's software and cloud products, JPMorgan Chase & Co.'s banking and investment services.[251] MSTR's root domain presents what amounts to a securities trading dashboard: its share price, stock market capitalization, the implied volatility and 30-day and 1-year historical volatility of its shares, and the mNAV, as well as the bitcoin price and the number and value of bitcoins held.[252] There are no customers, no products, no competitors. Share prices and stock market capitalizations do not appear in the root domains of Disney, Microsoft, or JPMorgan Chase.

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250. Letter from Div. of Corp. Fin. & Office of Tech., U.S. Sec. & Exch. Comm'n, to Phong Le, President & Chief Fin. Officer, MicroStrategy Inc. (Oct. 7, 2021), https://www.sec.gov/Archives/edgar/data/1050446/000000000021012200/filename1.pdf [https://perma.cc/B89W-U3TA].

251. *See generally* THE WALT DISNEY CO., https://thewaltdisneycompany.com/ [https://perma.cc/3RR8-Y7VZ]; MICROSOFT CORPORATION, https://www.microsoft.com/en-us [https://perma.cc/NW37-MSQ2]; JPMORGAN CHASE & CO., https://www.jpmorganchase.com/ [https://perma.cc/8FDQ-D6NY].

252. *See generally* STRATEGY INC, https://www.strategy.com/ [https://perma.cc/2TZ6-DM86].

The contrast reflects the essence of what the Article has shown: the extreme financialization of ends and means in the MSTR model, and that model's dependence on an mNAV fueled animating engine and the bitcoin price. MSTR, unlike the typical public company, is not primarily focused on the production of goods and services. Although ours is a market economy, MSTR does not compete with other companies in the conventional sense. Its primary tasks are altogether different from those of other public companies as well as those of ETFs and mutual funds.

Classic understandings of the ends and means of the corporate form are upended. Understanding how this occurs—and its implications for investors and for society as a whole—warrants sustained attention. For shareholders, beyond MTSR's headline volatility lies a financial polypharmacy of risk—a wide range of complex hazards interacting multiplicatively and reflexively coupled in ways no typical drug cocktail is. The composite risk exposure resists conventional analysis and perhaps sits closer to Knightian uncertainty than calculable risk. MSTR's heavy retail ownership and its diversification messaging exacerbate these concerns.

For society, MSTR's call to redirect securities issuance proceeds from product development into bitcoin purchase and accumulation cuts against the technological innovation on which long-term economic dynamism depends.

Corporate omphaloskepsis—centered on one's own stock price and the price of bitcoin—does not necessarily lead to long-term private and social well-being. Yet the Article's proposals to help address certain investor protection and societal concerns do not rest on a value judgment that the MSTR model or bitcoin is somehow undesirable or suspect.

Rather, they rest on the principle that existing private ordering and regulation should not inadvertently favor the MSTR model over the archetypal public company model. As the Article has shown with respect to certain stock index inclusions and legal uncertainties about whether the MD&A requirements apply to the mNAV driver, that is what is occurring. If the MSTR model can thrive on a level playing field, that is a matter for investors and markets to determine. But there is no justification for the inadvertent advantages it currently enjoys.

MSTR is a fundamentally different public company, The questions this new model raises are numerous and foundational. The analytical framework the Article offers, and the steps it proposes toward model neutrality, may be useful starting points.

AFTERWORD

This Article was substantially complete well before MSTR's May 5, 2026 earnings call that, among other things, announced certain changes to the firm's functioning.[253]

253. *See generally Earnings Call Transcript: MicroStrategy's Q1 2026 Earnings Miss Forecasts, Stock Rises*, INVESTING.COM (May 5, 2026) [hereinafter *MSTR Q1 2026 Earnings Call Transcript*], https://www.investing.com/news/transcripts/earnings-call-transcript-strategy-incs-q1-2026-earnings-miss-forecasts-stock-rises-93CH-4661542 [https://perma.cc/DJA3-GDQ4]; STRATEGY INC, Q1 2026 FINANCIAL RESULTS (May 5, 2026) [hereinafter MSTR Q1 2026 PRESENTATION], https://assets.contentstack.io/v3/assets/bltf8d808d9b8cebd37/bltb120ca8ac738e134/69fa4a3250829712e58cb255/strategy-q1-2026-financial-results.pdf [https://perma.cc/6NYV-RR3B].

Because the event occurred too late to permit integration into the Article's analysis, this Afterword offers a very brief and highly preliminary overview of some of the changes.

(1) MSTR's Cornerstone "Bitcoin Principle"

One set of changes relates to MSTR's cornerstone "Bitcoin Principle" as set out in its Q2 2025 Presentation: "Buy and Hold BTC indefinitely, exclusively, securely." As Part II.A.3 discussed, with the stresses in the crypto market in late 2025, MSTR departed from both the "exclusively" invest in bitcoin component of the principle and the "indefinitely" hold all its bitcoins component. However, both departures were confined to the context of a new "U.S. Dollar Reserve" established to fund payments on dividends on its preferred stock and interest on its debt.

On May 5, 2026, Phong Le, MSTR's President and CEO, made what he referred to as "a big sort of statement."[254] He stated that "our ability to sell [b]itcoin either to buy US dollars or sell [b]itcoin to buy debt, if it's accretive to [bitcoin] per share" is "something that we would consider doing, going forward." Later in the same call, Le stated that "we will sell bitcoin when it's advantageous to the company" and that "[w]e're not going to sit back and just say, 'We'll never sell the bitcoin.'" A slide in the associated earnings presentation titled "Capital Market Principles" stated as a principle, "Sell BTC when advantageous to the Company."[255]

However, MSTR's core focus on increasing its bitcoin holdings over the long term remained unchanged. The first "Capital Market Principle" set out was to "[c]reate long-term value for MSTR [stock] by increasing Bitcoin Per Share . . . "[256]

(2) MSTR's Fulcrum Ratio and the Role of mNAV

A second set of changes relates to the "tipping point" and mNAV's role in relation to MSTR's animating engine.

Part II.A.2 showed that MSTR repeatedly emphasized that an mNAV of 1.0 was the tipping point for accretive share issuance/bitcoin purchase. In contrast, the May 5, 2026 earnings call made clear that the number was currently 1.22 and that the number would vary with the changing capital structure. A presentation slide stated that "mNAV breakeven for accretive MSTR issuance to purchase BTC is ~ 1.22x; "breakeven changes with capital structure changes."[257] In the earnings call, Le attributed the change to 1.22 to an increase in debt and preferred stock in its capital structure.

Part IV.B.2 discussed how MSTR introduced its July 2025 "Equity Guidance" matrix so that shareholders would not have to guess what MSTR would do in relation to share issuances/bitcoin purchases in a variety of mNAV scenarios. Part IV.B.2 also discussed what it referred to as the "2.5 mNAV Puzzle," the curious significance the matrix attached to a 2.5 mNAV when the firm's stated tipping point was 1.0. The modification of the Equity Guidance within weeks of its adoption, the Article argued, was one of the reasons for the

254. *MSTR Q1 2026 Earnings Call Transcript*, *supra* note 253.
255. MSTR Q1 2026 PRESENTATION, *supra* note 253, at 63.
256. *Id.*
257. MSTR Q1 2026 PRESENTATION, *supra* note 253, at 59.

need for the SEC to clarify whether and how its MD&A requirements applied to mNAV-related matters.

The May 5, 2026 earnings call made clear that the role of the mNAV with respect to the animating engine has materially diminished. The slide illustrating the ~1.22 mNAV breakeven is titled "BPS [bitcoin per share] is primary goal, *with mNAV as one input*."[258] In none of the slides is there a reference to the relevance of a 2.5 mNAV.

(3) The Role of Preferred Stock

A third set of changes involves the greater reliance on preferred stock financing. Part II.B.3 noted MSTR's remarkable success in the design and issuance of preferred stock, and the impact of this on the share price premium.

At the May 5, 2026 earnings call, MSTR disclosed that the notional value of STRC, one of its classes of preferred stock, had grown to $8.5 billion in nine months and had by far the largest market capitalization of any tradable preferred stock in the world.[259] This year, the reliance on the issuance of preferred to fund bitcoin purchases increased dramatically.[260] In January, the percentages accounted for by preferred stock issuances and common stock issuances were 12% and 88%, respectively. By April, the percentages had essentially flipped: from 83% from preferred and 17% from common. Relying on STRC holdings as a proxy for retail ownership, MSTR estimated that retail investors held roughly 80% of what it refers to as "digital credit."[261]

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In sum, the MSTR bitcoin treasury model is evolving. The corporate omphaloskepsis and polypharmacy of risk remain.

258. *Id.* (emphasis added).
259. *Id.* at 41–42.
260. *Id.* at 29.
261. *Id*. at 75.