



December 14, 2021

Ms. Vanessa Countryman  
Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington, D.C. 20549-0609

RE: Notice of Filing of Proposed Rule Change to List and Trade Shares of Grayscale Bitcoin Trust (BTC) under NYSE Arca Rule 8.201-E  
File No.: SR-NYSEArca-2021-90  
Release No.: 34-93504

Dear Ms. Countryman:

### **Introduction**

We write in support of the proposal by NYSE Arca, Inc. (“Arca”) pursuant to Rule 19b-4 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), to list shares of Grayscale Bitcoin Trust (“GBTC”) under NYSE Arca Rule 8.201-E as an exchange-traded product (“ETP”). Our goal in this letter is to provide additional context for the Securities and Exchange Commission (the “Commission”) in reviewing Arca’s proposal, as we believe that the Commission should allow retail investors access to a spot Bitcoin ETP.

### **Coinbase Global, Inc.**

Coinbase started in 2012 with the radical idea that anyone, anywhere, should be able to easily and securely send and receive Bitcoin, the first crypto asset. Coinbase built a trusted platform for accessing Bitcoin and the broader crypto economy by reducing the complexity of the industry through a simple and intuitive user experience. Today, Coinbase is a leading provider of end-to-end financial infrastructure and technology for the crypto economy.

Coinbase’s mission is to create an open financial system for the world. Many customers around the world discover and begin their journeys with crypto through Coinbase. In the early days of the internet, Google democratized access to information through its user-friendly search engine, enabling virtually any user with an internet connection to discover the world’s information. Similarly, Coinbase is democratizing access to the crypto economy by enabling anyone with an internet connection to easily and securely invest in and use crypto assets. Customers that start with Coinbase grow with the company as they experience the benefits of the open financial system by using crypto-based products for staking, spending, saving, and borrowing. Today,

Coinbase’s platform enables approximately 73 million verified users, 10,000 institutions, and 185,000 ecosystem partners in over 100 countries to participate in the crypto economy.

### **Statement in Support of Arca’s Proposal**

We believe investors should have access to GBTC in an ETP format because it offers a tried and tested way for retail investors to gain exposure to Bitcoin at prices that closely reflect spot Bitcoin trading prices without holding it themselves. Shares of GBTC are currently offered to accredited investors within the meaning of Regulation D under the Securities Act of 1933, as amended (the “Securities Act”). Once such investors have held their shares for the requisite holding period pursuant to Rule 144 under the Securities Act, they have the ability to resell them through transactions on the OTCQX Best Market (“OTCQX”), an over-the-counter marketplace operated by OTC Markets Group (“OTCMG”) that is not registered with the Commission as a national securities exchange,<sup>1</sup> but is operated through OTCMG’s alternative trading system, OTC Link® ATS. GBTC shares are more broadly available through broker transactions and are held in more than 600,000 retail and institutional brokerage accounts in all 50 states.<sup>2</sup> In fact, in 2019, it was reported that GBTC was the fifth largest holding in millennial retirement accounts, ahead of companies like Berkshire Hathaway, Walt Disney, and Microsoft.<sup>3</sup>

Until recently, GBTC was the only product that retail investors could use to access Bitcoin through a traditional brokerage account. However, despite GBTC’s appeal and wide availability, it is not yet eligible to offer continuous share redemptions and creations, which is the mechanism ETPs employ to align share trading prices with underlying asset prices. As a result, GBTC shares can trade at premiums or discounts to its net-asset value (*i.e.*, the value of the Bitcoin it holds). Such premiums and discounts can be dramatic: GBTC has traded over-the-counter at a premium to its net-asset value that has ranged as high as 142% and a discount to its net-asset value of 21%.<sup>4</sup> If Arca’s proposal is approved, GBTC will be able to use the ETP mechanics that minimize the variations between its share trading prices and the net-asset value (“NAV”) of its Bitcoin holdings, and as a result, U.S. retail investors will be able to gain access to the Bitcoin market through the familiar ETP structure and at trading prices that stay more closely aligned

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<sup>1</sup> BTC 2020 Annual Report at 3, 66; see also Fast Answers, National Securities Exchanges, SEC (July 14, 2021), <https://www.sec.gov/fastanswers/divisionsmarketregmrexchangesshtml.html> (last visited Nov. 25, 2021) (not listing OTCQX on list of registered national securities exchanges).

<sup>2</sup> Broadridge Financial Solutions, Inc. share range analysis conducted by Grayscale for GBTC, finding approximately 630,000 account holders as of September 30, 2021, as cited in the Letter from Congressmen Tom Emmer and Darren Soto to Chair Gensler (Nov. 3, 2021) [https://emmer.house.gov/\\_cache/files/b/6/b6170d87-c56c-40a3-960a-60a619c02b65/63C9D652A62FF6119A2D0B117D655732.congressional-letter-tosec-on-bitcoin-etfs.pdf](https://emmer.house.gov/_cache/files/b/6/b6170d87-c56c-40a3-960a-60a619c02b65/63C9D652A62FF6119A2D0B117D655732.congressional-letter-tosec-on-bitcoin-etfs.pdf); see also SDBA Indicators Q3 2021 Report 4, Charles Schwab (Sept. 30, 2021), <https://workplacefinancialservices.schwab.com/resource/sdba-indicators-q3-2021-report>.

<sup>3</sup> “Schwab Report: Self-Directed 401(k) Balances Hold Steady; Millennials Allocate More to ETFs and Cash Than Gen X, Boomers,” Dec. 4, 2019,” <https://www.bloomberg.com/press-releases/2019-12-04/schwab-report-self-directed-401-k-balances-hold-steady-millennials-allocate-more-to-etfs-and-cash-than-gen-x-boomers> (last visited Dec. 14, 2021).

<sup>4</sup> See Grayscale Bitcoin Trust, Quarterly Report for the Quarter Ended Oct. 31, 2021 (Form 10-Q), at 19-20 (Nov. 5, 2021).

with spot Bitcoin trading prices.<sup>5</sup> The Commission's acceptance of a product that reduces significant discrepancies between trading market prices and the NAV is in the public interest and advances one part of the Commission's mission, protection of investors.

*Arca's proposal addresses the risks of fraud and manipulation*

The Commission's recent approval of the listing and trading of ETPs that hold Bitcoin futures contracts signifies a significant development in the Bitcoin ETP market space. We believe that the approval of a futures-based ETP, consistent with requirements of Section 6(b)(5) of the Exchange Act, should allow for the Commission to approve Arca's proposal because, among other things, both products ultimately rely on Bitcoin's underlying price in the spot markets. Section 6(b)(5), requires, *in relevant part*, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices [and] to protect investors and the public interest." As noted above, because a futures-based ETP and spot Bitcoin ETP are both reliant on Bitcoin's underlying price, we believe ETPs that invest in Bitcoin futures contracts present substantially similar risk of manipulation as a spot Bitcoin ETP. Moreover, Arca's proposal notes that although "Bitcoin is not itself inherently resistant to fraud and manipulation, the Index represents an effective means to prevent fraudulent and manipulative acts and practices."<sup>6</sup> As a result, the Commission's approval of a Bitcoin futures ETP leads us to believe that as a matter of public interest and protection of investors, the Commission was able to get comfortable that the underlying Bitcoin market is resistant to manipulation or at least that the Bitcoin market is subject to sufficient oversight by Commodities Futures Trading Commission ("CFTC") such that any manipulation would be addressed by the CFTC. For these same reasons, we believe that the Commission's concern with respect to fraud and manipulation have been adequately addressed for purposes of Arca's proposal. Moreover, and as research shows, introduction of an ETP with a robust create and redeem arbitrage process can improve the price efficiency of an underlying asset, and thus further increase the resilience of Bitcoin trading in the spot market.<sup>7</sup> As noted in Arca's proposal, trading in the shares of GBTC will be subject to the existing trading surveillance administered by Arca, as well as cross-market surveillance administered by FINRA on behalf of Arca, which are designed to detect violations of exchange rules and applicable federal securities laws. Accordingly, Arca believes that these procedures are adequate to properly-monitor exchange trading of the GBTC shares in all trading sessions and to deter and detect violations of exchange rules and federal securities laws applicable to trading on the exchange.

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<sup>5</sup> The authorized participant ("AP") can easily arbitrage any discrepancies between the ETP's market value and the NAV during the course of the trading day. If the market value is too high in comparison to the NAV based on underlying spot market prices, the AP can step in and buy the ETP's Bitcoin while simultaneously selling ETP shares. Such arbitrage activity helps reduce the discrepancies between the market value and the NAV during the course of the trading day.

<sup>6</sup> Notice of Filing of Proposed Rule Change to List and Trade Shares of Grayscale Bitcoin Trust (BTC) under NYSE Arca Rule 8.201-E, Securities and Exchange Act Release 93504 (Nov. 2, 2021), 86 Fed. Reg. 61,804, 61,805 at 45 (Nov. 8, 2021) (SR-NYSEArca-2021-90).

<sup>7</sup> Glosten, Lawrence R. and Nallareddy, Suresh and Zou, Yuan, ETF Activity and Informational Efficiency of Underlying Securities (December 1, 2016), Columbia Business School Research Paper No. 16-71, *available at* SSRN: <https://ssrn.com/abstract=2846157> or <http://dx.doi.org/10.2139/ssrn.2846157>.

*Spot Bitcoin ETPs should not be treated differently than futures-based ETPs*

Section 6(b)(5) forbids exchanges from maintaining rules that unfairly discriminate between issuers. We are of the view that a rejection of Arca's proposal would be in direct conflict with Section 6(b)(5) of the Exchange Act. As noted in Arca's proposal, the reference rate used to price Bitcoin contracts underlying futures-based ETPs is subject to the same pricing quality risks as the index used to price spot Bitcoin and calculate net-asset value in spot ETPs.<sup>8</sup> According to Arca, both products would pull data from largely-overlapping or identical trading platforms. However, while the Commission has concluded that Bitcoin futures ETPs use pricing data that is sufficiently protected from fraud and manipulation, to date, it has been unwilling to reach the same conclusion with respect to a spot ETP.<sup>9</sup> As conveyed below, the Commission's resistance to making such a conclusion with respect to a spot ETP does not appear warranted by public interest and investor protection policy considerations.

We are of the view that spot Bitcoin ETPs should be subject to the same regulatory standards as applied to futures-based ETPs. We submit that if the Commission, however, applies a standard for a futures contract Bitcoin ETP that is different from the standard applied to a spot Bitcoin ETP, such disparate treatment may undermine confidence in the Commission as a neutral administrator, a consequence that may stifle innovation in our securities markets. The Commission's three-part mission of: protecting investors; maintaining fair, orderly, and efficient markets; and facilitating capital formation, is best served when the Commission makes clear to the market that it welcomes innovation and that it will not impose unnecessary regulatory obstacles on market participants innovating within the Commission's regulatory framework. The Commission, however, will not satisfy its mission if it adopts standards that compel market participants to access innovative products anywhere but within markets under the Commission's purview.<sup>10</sup> Furthermore, the Commission would not promote fair, orderly, or efficient markets if for reasons not grounded in its mission it prevents market participants from bringing products to market that reflect their expertise and knowledge. Finally, the Commission fulfills its mission when it treats similar products consistently and advances competition. Today, when market participants compare the Commission's evaluation and approval of a futures-based Bitcoin ETP to its treatment of spot ETP proposals, they will see a lack of well-defined criteria and inconsistent application of the criteria. The lack of consistency in evaluating two competing products that are based on the same underlying market will not only deter future developments in the Bitcoin marketplace, but may result in lack of innovation in other areas subject to the Commission's oversight. Market participants should not be left guessing about what criteria the

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<sup>8</sup> Arca's proposal notes that ETPs that hold Bitcoin futures would be priced by referencing the CME CF Bitcoin Reference Rate ("BRR"), which itself references the Digital Asset Markets: Bitstamp, Coinbase, Gemini, itBit, and Kraken. Similarly, Bitcoin-based ETPs, would be "priced by referencing Digital Asset Markets included in the BRR, such as through the Index. As a result, the Sponsor believes that any potential fraud or manipulation in the underlying Digital Asset Market would impact both types of ETP proposals."

<sup>9</sup> See Order Disapproving a Proposed Rule Change to List and Trade Shares of the VanEck Bitcoin Trust under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 93559 (Nov. 12, 2021), 86 Fed. Reg. 64,539 (Nov. 18, 2021) (SR-CboeBZX-2021-019).

<sup>10</sup> See, e.g., Zhiyuan Sun, Fidelity Canada officially launches Bitcoin ETF and Bitcoin Mutual Fund, Cointelegraph (December 2, 2021),

<https://cointelegraph.com/news/fidelity-canada-officially-launches-bitcoin-etf-and-bitcoin-mutual-fund>.

Commission will employ when reviewing a specific product, nor should market participants be left in the dark with respect to what evidence is necessary to gather and present to the Commission when seeking approval for a novel product. This lack of consistency seems to us, unfair and is without policy justification.

*The Commission's mission does not include merit regulation*

In assessing Arca's proposal, we believe that the Commission's role is not to evaluate the characteristics and quality of the underlying Bitcoin market but instead to evaluate the ETP, and the role that Arca would play in monitoring trading in shares of the ETP. For the reasons outlined above, and in Arca's proposal, we believe that a spot Bitcoin ETP satisfies the criteria set out by the Commission in approving a futures-based ETP. We are further of the view that the Commission should look to Arca to establish the necessary protocols to protect investors and the public interest. We are of the view that Arca would exercise the responsibilities entrusted to it as a self-regulatory organization consistent with FINRA supervision. In exercising these responsibilities, Arca has powerful regulatory and business incentives to ensure the integrity of the products that it lists for trading on the exchange. Nothing in Arca's proposal suggests that Arca is unwilling or unable to fulfill its responsibilities under the Exchange Act. Furthermore, as a regulated exchange, Arca is subject to the Commission's regulatory oversight. As a result, we believe that Arca would play a critical role in the required regulatory oversight of GBTC and in doing so would satisfy the criteria set out in Section 6(b)(5) of the Exchange Act. In addition to Arca, the Commission should rely on the CFTC to exercise its traditional fraud authority to ensure the underlying bitcoin market is free of manipulation. As a result, just like with respect to a futures-based ETP, these safeguards should satisfy the Commission in its approval of Arca's proposal. We believe that a disapproval of Arca's proposal would lead to the Commission picking winners based on its preferential treatment of one product over another.<sup>11</sup>

**Conclusion**

We appreciate the Commission's attention to this important matter and for allowing us an opportunity to present our views.

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 Paul Grewal  
 Chief Legal Officer

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<sup>11</sup> The Commission appears to signal that it is currently comfortable with an ETP registered under the Investment Company Act of 1940, as amended ("Investment Company Act") because it believes that the Investment Company Act provides additional investor protections. See, Gary Gensler, Chair, SEC, Remarks Before the Aspen Security Forum, SEC (Aug. 3, 2021), <https://www.sec.gov/news/public-statement/gensler-aspensecurity-forum-2021-08-03>. We, however, are of the view that in this instance, the Investment Company Act would not afford additional protections to investors in an ETP registered under the Investment Company Act versus an ETP registered under the Securities Act. The reason for this view is because both products ultimately look to the underlying Bitcoin market and the Investment Company Act is not designed to address market manipulation and fraud in the underlying Bitcoin market.