2/15/22

Dear SEC Division of Trading and Markets,

I write as one of the hundreds of thousands of current and previous shareholders of Grayscale® Bitcoin Trust (OTCQX: GBTC) who is in favor of approving the Form 19b-4 that NYSE Arca filed with you to convert GBTC into a Bitcoin Spot ETF.

As it stands today, GBTC is trading at a 23.7% discount to its NAV. One of the effects of converting GBTC into an ETF is it would allow for shares to be arbitraged by authorized participants through simultaneous creations and redemptions. This would cause shares trading at a discount to better reflect NAV, and thus protect me, the investor. Currently an investor is being harmed by the GBTC trust not being redeemable which is seen in the overall increasing discount to NAV.

Importantly, earlier this year you also approved several futures-based Bitcoin ETFs. For the reasons elaborated on below, I believe that this inconsistency creates an unlevel playing field for Bitcoin ETFs — and I strongly believe that the SEC should approve a spot-based Bitcoin ETF, allowing investors, like myself, a choice over which product best meets their investment needs.

To do otherwise would go against the SEC's core mission of protecting investors like me.

I support approving GBTC's conversion to a Spot-Based ETF because it's consistent with past SEC guidance and because it would protect me, the investor

Previously you chose not to approve Bitcoin Futures ETFs or Bitcoin Spot ETFs like GBTC due to concerns about the perceived potential for fraud and manipulation in the Bitcoin markets. In fact, you clearly articulated that these concerns could be addressed by demonstrating the following: (1) that the underlying Bitcoin market is inherently resistant to fraud and manipulation (or that there are other means to prevent fraudulent and manipulative acts and practices); or (2) that a significant amount of trading took place on a regulated market (for instance, if the CME-traded Bitcoin futures market were to become the leading source of price discovery in the Bitcoin market). [i] It's important to note that neither of these requirements state a preference for Bitcoin Spot ETFs or Bitcoin Futures ETFs.

Furthermore, as of today, the of pricing of the CME CF Bitcoin Reference Rate (BRR), which is the pricing index that CME futures-based ETFs use, is made up of the spot Bitcoin exchanges including Bitstamp, Coinbase, Gemini, itBit, and Kraken. (https://www.cmegroup.com/trading/cryptocurrency-indices/cf-bitcoin-reference-rate.html)

Therefore, to the extent the SEC has been and is concerned about fraud and manipulation in pricing of the underlying spot Bitcoin markets, that concern would have to permeate across both spot-based and futures-based ETFs.

Since the SEC no longer has concerns with Bitcoin futures ETFs (given trading has begun for these products), then it presumably has changed its view about the underlying spot Bitcoin market because Bitcoin futures are, by definition, a derivative of the underlying Bitcoin spot market. For this reason, whether one, both, or none of these requirements has been met, the SEC should no longer have concerns with Bitcoin spot ETFs and should show a similar willingness to permit the trading of Bitcoin spot ETFs.

Spot-based ETFs have proven more efficient and are strongly preferred by investors, as evidenced by their commercial success; I believe the same will be true for Bitcoin exposure in an ETF wrapper. For example, today investors can gain exposure to gold through both the spot-based SPDR Gold Trust (GLD), which is registered under the Securities Act of 1933, or the futures-based Invesco DB Gold Fund

(DGL), which is registered under the Investment Company Act of 1940. In its 15 years trading in the U.S. public markets, GLD, the largest of all the commodity-based ETFs, has not experienced any material investor protection issues and holds $55.5 *billion* in assets compared to DGL's $50.4 *million* (less than 1% as much). Investors clearly prefer spot-based commodity ETFs over ones that hold futures.

Lastly, during the period in which the SEC has blocked approval of any Bitcoin ETFs, numerous spot Bitcoin investment vehicles have been offered. GBTC, specifically, has amassed more than $28.4 billion in assets under management, trades $100s millions daily on OTCQX and is held by hundreds of thousands of investors across the country. Furthermore, compared with global commodity ETPs, as of [September 30, 2021], GBTC would rank 3rd in assets under management and 3rd in notional trading volume.

In an effort to further protect investors like myself, GBTC has voluntarily registered under the Securities Exchange Act of 1934 to subject the fund to the same reporting standards as ETFs. However, because GBTC has been unable to register as an ETF, public trading typically occurs at a value that is not equivalent to NAV, and as noted above, GBTC has recently been trading at steep discounts to its NAV. Permitting futures-based ETFs while simultaneously continuing to deny spot-based ETFs would further perpetuate these discounts and clearly go against the SEC's core mission of protecting investors like me.

If the SEC is in a position to approve Bitcoin futures ETFs, it should also be in a position to approve Bitcoin spot ETFs like GBTC.

I also support approving GBTC's conversion to a Spot-Based ETF because of the arguments presented under the Administrative Procedure Act

More recently, Grayscale's attorneys at Davis Polk filed a letter with you arguing that the approval of Bitcoin Futures ETFs but not Bitcoin Spot ETFs, like GBTC, is "arbitrary and capricious," and therefore a potential violation of the Administrative Procedure Act (APA).

As a shareholder of Grayscale products, I strongly agree with this new argument, as it is reflective of the new market dynamics following the approval of several Bitcoin Futures ETFs, and subsequent rejection of another Bitcoin Spot ETF application.

The APA requires federal agencies like the SEC to treat *like* situations *alike* absent a reasonable basis for different treatment. This means the SEC must treat similarly situated investment products similarly.

Bitcoin ETF products — Bitcoin futures-based ETFs registered under the '40 Act and Bitcoin spot-based ETFs registered under the '33 Act — are an example of two like situations that should be treated alike.

Prior to this year, Bitcoin ETF applications were treated alike: You denied both futures-based and spot-based ETF applications, citing the potential for fraud and manipulation in the underlying spot Bitcoin market. Because both types of ETFs are priced based on the same underlying Bitcoin market, it's intuitive then that you would deny both types of ETFs, given their concerns.

For example:

- Today, Bitcoin futures-based ETFs are priced based on exchanges such as Coinbase, Kraken, Bitstamp, Gemini, and itBit.
- Today, Bitcoin spot-based ETF applications, like GBTC, are priced based on exchanges such as Coinbase, Kraken, Bitstamp, and LMAX.

Given the significant overlap, both offerings are therefore *alike* in the context of Bitcoin ETF approval.

As previously noted, earlier this year, your stance on these offerings shifted. While you had approved several futures-based ETFs, you have continued to disapprove spot-based ETF applicants – creating an example of two *like* situations *not* being treated *alike* – and resulting in an uneven playing field for investors like me.

There have been arguments that the ‘40 Act has more investor protections than the ‘33 Act, and that Chicago Mercantile Exchange (CME) Bitcoin Futures are more “regulated” than bitcoin, which makes these products *not* alike in the context of a Bitcoin ETF approval. I do not believe this to be the case in the context Bitcoin ETF approvals.

Regarding the claim that the ‘40 Act has increased investor protections, this law does not address fraud or manipulation in the assets or markets of assets that ETFs hold. Instead, the ’40 Act seeks “to remedy certain abusive practices in the *management* of investment companies” (i.e., ETFs), and places certain restrictions on ETFs and ETF sponsors. The ‘40 Act even explicitly lists out the types of abuses it seeks to prevent, and places certain restrictions on ETFs related to accounting, borrowing, custody, fees, and independent boards, among others. Notably, none of these restrictions address an ETF’s underlying asset or exchanges on which its pricing is derived (e.g., Coinbase or Kraken).

Regarding the claim that CME Bitcoin Futures are more “regulated” than bitcoin, I’d note that in each of the SEC’s previous spot-based Bitcoin ETF denials (including the latest), you counterintuitively stated that the CME Bitcoin Futures market is not “significant” enough to grant approval. What this implies is that someone could, in theory, manipulate bitcoin on a spot exchange and have it impact the regulated CME Bitcoin Futures and, therefore, the futures-based ETF too. (Again, assuming you believe fraud or manipulation exists in the first place). Notably, again, the ‘40 Act doesn’t address this concern either.

As it stands, the Bitcoin ETF landscape is unfair and discriminatory against GBTC shareholders like myself, and all of the other U.S. investors looking for an accessible and efficient way to gain their Bitcoin exposure.

While I certainly commend the efforts made toward approving the first Bitcoin Futures ETFs, as a GBTC shareholder, I also strongly encourage you to continue to fulfill your mandate of protecting investors, while promoting open, competitive markets, by approving GBTC as a Bitcoin Spot ETF.

Thank you for your time.

Sincerely,

Adam Kornfield