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David B. Hennes


BY E-MAIL

U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: File No. SR-NYSEArca-2021-90

To Whom It May Concern:

We write on behalf of an interested investor to oppose the conversion of Grayscale Bitcoin Trust (“GBTC”) to a spot Bitcoin ETF, absent the prior implementation of certain remedial measures.¹

Grayscale Investments, LLC (together with its parent, Digital Currency Group, Inc., and their affiliates, “Grayscale”) has not allowed redemptions out of GBTC since 2014. At relevant times since then, there has been a significant depression—*e.g.*, a current discount of 24.88 percent—in the market value of GBTC’s publicly traded shares.² In 2016, GBTC was found to have violated Rule 101 of Regulation M because it redeemed shares in GBTC while simultaneously and continuously distributing shares thereof.³ Grayscale has not permitted GBTC redemptions since the SEC’s investigation culminating in that finding began.⁴ Regulation M, however, does *not* prohibit GBTC from redeeming shares as long as GBTC is not concurrently distributing shares.⁵ Thus, Grayscale could devise a redemption program for GBTC without running afoul of Regulation M. Indeed, per Grayscale’s own website, GBTC is *currently* not distributing any shares, and thus could currently, consistent with Regulation M, permit redemptions.⁶

¹ While this comment expresses no concerns with ETF conversions in general or in principle, the particular circumstances underlying the proposed conversion of GBTC warrant unique scrutiny.

² This figure reflects the discount as of March 1, 2022. *Grayscale Bitcoin Trust*, GRAYSCALE, <https://grayscale.com/products/grayscale-bitcoin-trust/> (last accessed Mar. 1, 2022).

³ Bitcoin Inv. Tr., Exchange Act Release No. 78282, 2016 WL 4363462, at *4-5 (July 11, 2016).

⁴ *See, e.g.*, Grayscale, Annual Report 22 (Form 10-K) (Feb. 25, 2022) <https://www.sec.gov/Archives/edgar/data/0001588489/000119312522053501/d289251d10k.htm> (“Subject to receipt of regulatory approval from the SEC and approval by the Sponsor in its sole discretion, the Trust may in the future operate a redemption program. The Trust has not sought such relief as of the date of this Annual Report.”).

⁵ *See* 17 C.F.R. § 242.102(a).

⁶ A pop-up on Grayscale’s website states: “The Grayscale Bitcoin Trust private placement is currently unavailable.

Grayscale receives a 2% annual management fee based on the value of the Bitcoin held by GBTC—not the publicly traded price of GBTC’s shares.⁷ Grayscale thus has a financial incentive not to permit redemptions so as to maintain the volume of Bitcoin held by GBTC (and to have that amount only increase to the extent new shares are issued).

Additionally, Grayscale is authorized to purchase up to \$1.2 billion worth of GBTC shares, and has already bought at least \$698 million of those shares at a significant discount to the value of the underlying Bitcoin.⁸ Should the current depression in the value of GBTC’s shares ever be reversed, Grayscale itself would stand to gain roughly \$200 million from those purchases.⁹

If the requested ETF conversion were approved, Grayscale’s stated basis for not permitting redemptions under Regulation M would be inapplicable, as ETFs are eligible for exceptions to Regulation M’s requirements.¹⁰ Grayscale could then begin allowing redemptions, the stock price of GBTC would likely increase to match the value of the underlying Bitcoin, and Grayscale could likely sell at a significant profit the \$700 million in GBTC shares it has purchased at a discount.

In sum, whether or not an ETF conversion is approved, by not allowing GBTC redemptions and by simultaneously buying GBTC stock at a substantial discount, Grayscale will obtain hundreds of millions of dollars in profit, in the form of either management fees or sales of GBTC stock at increased prices. The SEC should thus deny the conversion of GBTC into an ETF unless and until Grayscale first (a) initiates a redemption program for GBTC that complies with Regulation M; and (b) agrees to distribute to GBTC’s other shareholders on a pro rata basis any and all gains resulting from any Grayscale purchases of GBTC shares at a discount and corresponding sales of GBTC shares on an undiscounted basis.

Very truly yours,

/s/ David B. Hennes
David B. Hennes

Publicly quoted shares of Grayscale Bitcoin Trust can be bought and sold through your brokerage account.” *Grayscale Bitcoin Trust*, GRAYSCALE, <https://grayscale.com/products/grayscale-bitcoin-trust> (last accessed Mar. 1, 2022).

⁷ Fifth Amended and Restated Declaration of Trust and Trust Agreement of Bitcoin Investment Trust, Section 6.8(a)(i) (Sept. 12, 2018).

⁸ Grayscale, Annual Report *supra* note 4 at 69; *Digital Currency Group Announces \$250 Million Share Repurchase Program for . . . other Grayscale Products*, BUSINESSWIRE (Mar. 2, 2022, 8:30 AM), <https://www.businesswire.com/news/home/20220302005278/en/Digital-Currency-Group-Announces-250-Million-Share-Repurchase-Program-for-Grayscale%2%AE-Litecoin-Trust-OTCQX-LTCN-Grayscale%2%AE-Horizen-Trust-OTCQX-HZEN-Grayscale%2%AE-Zcash-Trust-OTCQX-ZCSH-and-other-Grayscale-Products>.

⁹ See *Grayscale Bitcoin Trust*, *supra* note 2.

¹⁰ 17 C.F.R. § 242.101(c)(4); 17 C.F.R. § 242.102(d)(4).