



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
April 27, 2022

Dear Ms. Countryman:

Introduction

I 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 I believe that the Commission should allow retail investors access to a spot Bitcoin ETP.

Background and Solution:

With over 30 years’ experience of building financial products, with the last 25 year’s focused on ETFs globally, I feel I have both history and understanding on my side. In addition, I have held senior roles



within the ETF industry such as Global Head of ETFs for Invesco and most recently the managing director for Tactical (Levered, Inverse and now Bitcoin) ETFs at ProShares. In addition, I was fortunate to collaborate with Deutsche Bank in 2003 to develop some of the first exchange traded futures products, tickers DBC, DBO, DBM, etc. Further background, the first product I developed was as a CTA (Commodity Trading Advisor) in 1989.

My focus on futures has been driven by both the inefficiencies for investors to hold physical commodities and the price disparity that futures present due to being forward looking and the imbalance of access to commodities either seasonally or due to supply and demand imbalance. I have collaborated with many Commodity Index providers (Deutsche Bank, Jim Rogers, S&P, Research Affiliates and Bloomberg) to help devise methods to provide better access and higher returns by acknowledging the arbitrage presented by futures contracts that are typically in Contango. * I even wrote about this the week before the inaugural launch of the first futures-based Bitcoin ETF, BITO. **

My issue with a futures-based ETF is due to 3 reasons:

1. Bitcoin is easy to hold as a Physical in an ETF
2. US Investors should not be punished with inferior returns due unnecessary exposure to contango created by a regulatory stalemate
3. Bitcoin Futures contracts reflect emotion of the market, not the actual supply or demand of the market

Bitcoin is easy to hold

Frankly, I am frustrated that this even needs to be discussed. It is validity enough that Physical Backed Bitcoin ETFs are launching around the globe on a weekly basis. Huge progress has been made in the past few years with regards to liquidity, custody and execution process for funds. This has led to the manifestation of Physical Backed Bitcoin ETFs in many developed countries. The US should be the leader, not follower in this innovation since the global leadership in fund management still resides in the US, at least for now. Firms like Grayscale, ETC Group, 21Shares and Purpose have now successfully run funds, with most being ETFs.

Cost of contango in cash settled Bitcoin futures

Stating the obvious, the cost to roll the bitcoin futures monthly, at the current price, will be at a minimum a 5% cost to investors and historically it would be closer to 15% cost. This is ignoring any transaction cost or slippage. This is unacceptable! We would not allow another commodity based ETF that could hold a physical but instead opted to a futures contract to experience this type of performance reduction to investors. The risk/rewards of a known (approximate) 10% cost compared to the stalemate



of a decision if Bitcoin is liquid enough to remain. Perhaps if the cost was less, that is one thing. A \$4000 cost per Bitcoin, at current prices, is not American!

Bitcoin Futures reflect emotions not depth of market

One key to this point is that the goal of the Bitcoin futures contract is to replicate the price action of a point in time in the future. This may mean that the price of the futures is highly correlated to the spot Bitcoin, but it is not required to have the same daily pricing. Remember, Correlation does not equal Identical Returns. It is much like your reflection in unstill water, similar yet different. With a highly volatile commodity, the emotion of the market can be magnified or even worse, forgotten during a large market move. I was a young stockbroker during the 1987 market crash at a firm that had sold Portfolio Insurance products based on protection provided by index options and futures. The problem on October 19th was that the stock market ran away from the derivatives. So that day, Portfolio Insurance became obsolete from then on. If an investment vehicle cannot work at the worst of times, it should be redesigned. We have a chance to do this right by allowing investors to have access to the physical not the futures version of Bitcoin.

The SEC should approve GBTC for conversion to an ETF, avoid picking winners and losers and allow investors a choice over which product best meets their investment needs. To do otherwise would go against the SEC's core mission of protecting investors.¹

Thank you for your time and consideration.

Sincerely,

Benjamin T Fulton

CEO of Elkhorn Consulting, LLC

*-<https://www.investopedia.com/terms/c/contango.asp>

¹ Regarding the SEC's February 4, 2022 Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to List and Trade Shares of Grayscale Bitcoin Trust (BTC) under NYSE Arca Rule 8.201-E, I believe that NYSE Arca has provided sufficient support in GBTC's 19b-4 to allow for the SEC to approve GBTC.



ELKHORN

**<https://www.etf.com/sections/blog/secs-bitcoin-solution-problem?nopaging=1>