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December 28, 2023

Vanessa A. Countryman, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Via: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

**Re: Release No. 34-93504; File No. SR-NYSEArca-2021-90**

Dear Secretary Countryman,

On behalf of more than 500,000 members and supporters of Public Citizen across the country, we offer the following comment in opposition to the petition by Grayscale for a rule change enabling regulated exchange trading of its Bitcoin Trust ETF.

The Securities and Exchange Commission (SEC) relies on basic, well-established principles when determining whether to permit trading of certain products on regulated exchanges. Under 18 USC 78f (commonly referred to as 6(b)(5)), trading of products on regulated exchanges must be designed “to prevent fraudulent and manipulative acts and practices.” Further, the exchanges must “protect investors and the public interest.”<sup>1</sup>

We believe the Grayscale application fails both of these tests. First, and most importantly, we believe that Bitcoin specifically, and cryptocurrencies generally, do not serve the public interest and are, in fact, a trap for vulnerable investors.

The popularity of cryptocurrency has exploded in recent years. From the adoption of the first cryptocurrency, namely Bitcoin, which was introduced in 2008<sup>2</sup> and could initially be purchased for

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<sup>1</sup> 18 USC 78f, LEGAL INFORMATION INSTITUTE (website accessed Dec. 27, 2023)

<https://www.law.cornell.edu/uscode/text/15/78f>

<sup>2</sup> Satoshi Nakamoto, *Bitcoin: A Peer-to-Peer Electronic Cash System*, (2008) <https://Bitcoin.org/Bitcoin.pdf>

pennies, the market capitalization of all cryptocurrencies rose to a peak in 2022 at \$3 trillion, before falling back to around \$1 trillion.<sup>3</sup>

The crypto boom came with a proliferation of projects trying to draw in new investors with exited promises of riches, democratized finance, and transformational technologies. No doubt, real problems make the current U.S. payment system inefficient and expensive, and many understandably hold major banks in low regard. For many, the current economy truly is rigged against them. That said, crypto is not the answer to the problems with our banking system. The crypto crash reinforces the reality that many crypto projects are thinly veiled Ponzi schemes that use huge quantities of energy with few actual benefits or protections for retail investors or users. The failures of FTX, Celsius, Luna and TerraUSD attest to the false claims and Ponzi characteristics of this market.<sup>4</sup>

Cryptocurrency has failed in its initial promise of a decentralized, efficient, less costly, and more equitable financial system-- especially for those with less access to traditional banking. Instead, cryptocurrencies have served mainly as a source of speculation, a vehicle for funding illegal activity including tax evasion, and a massive use of energy that exacerbates climate change. Cryptocurrency's problems and clear and present dangers.

Cryptocurrencies gyrate wildly in price in a single day. In the last year, Bitcoin traded as high as \$60,000 per token and as low as \$19,000.<sup>5</sup> These swings undermine the case for digital assets as a means of exchange: A customer who believed that Bitcoin would rise in value would not rationally use one for a purchase on that day since they would be over-paying. They would only use the coin if they thought the price would fall. Conversely, a vendor who believed Bitcoin would fall would not accept the coin, since it would be an underpayment, and would only accept the token if they believed the price would rise. In other words, a fluctuating price stifles the use of Bitcoin as a vehicle of market exchange.

Stablecoins promised to answer the problem of volatility in pricing by pegging each token to a specific value, such as the U.S. dollar. However, many sponsors failed to fully back these tokens. The New York Attorney General fined Tether and Bitfinex for such failures.<sup>6</sup> Celsius promised high yields to those who purchased its stablecoin, but allegedly paid those yields with newer investors' money, a basic Ponzi scheme. Its bankruptcy filing noted it owed \$4.7 billion to some 1.7 million investors, and only had \$167 million in assets.<sup>7</sup> Voyager allegedly claimed its stablecoin was backed by FDIC insurance, according to the federal agencies.<sup>8</sup> Voyager declared bankruptcy.<sup>9</sup>

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<sup>3</sup> Emily Flitter, How Wall Street Escaped the Crypto Meltdown, New York Times (July 5, 2022)

<https://www.nytimes.com/2022/07/05/business/economy/wall-st-cryptocurrency-prices.html>

<sup>4</sup> Wayne Duggan, *What Is Celsius? Why Is It Crashing the Crypto Market?* FORBES (July 18, 2022)

<https://www.forbes.com/advisor/investing/cryptocurrency/what-is-celsius/>

<sup>5</sup> *Bitcoin*, COINDESK (website accessed June 11, 2021) <https://www.coindesk.com/price/Bitcoin>

<sup>6</sup> *Attorney General James Ends Virtual Currency Trading Platform Bitfinex's Illegal Activities in New York* NY ATTORNEY GENERAL, (Feb. 23, 2021) <https://ag.ny.gov/press-release/2021/attorney-general-james-ends-virtual-currency-trading-platform-bitfinexs-illegal>

<sup>7</sup> MacKenzie Sigalos, *Homeless, Suicidal, Down To Last \$1,000: Celsius Investors Beg Bankruptcy Judge For Help* CNBC (Aug. 2, 2022) <https://www.cnbc.com/2022/08/02/celsius-investors-owed-4point7-billion-beg-judge-to-recover-life-savings.html>

<sup>8</sup> FDIC, Federal Reserve, Letter to Voyager Digital, FEDERAL RESERVE \*July 28, 2022)

<https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20220728a1.pdf>

<sup>9</sup> Rohan Goswami, *Voyager CEO Made Millions In Stock Sales In 2021 When Price Was Near Peak*

CNBC (Aug. 3, 2022) <https://www.cnbc.com/2022/08/03/voyager-ceo-made-millions-in-stock-sales-in-2021.html>

The promise of cost-free transactions has also proven illusory. The cost of transactions for Bitcoin are substantial and vary greatly. At times, they have reached \$300 for each transaction.<sup>10</sup> This is hardly democratizing finance. Related to this, the same population that lacks a bank account, and who are most sensitive to financial fees, may also lack the technology to interact with digital currencies.

Many experts question the value of cryptocurrency. Berkshire Hathaway CEO Warren Buffett called cryptocurrency “rat poison squared.” His associate Charlie Munger labeled trading in this market as “dementia.”<sup>11</sup> Investor Mark Cuban said he’d prefer bananas to Bitcoin, “Because at least as food, bananas have intrinsic value.”<sup>12</sup> Bill Gates says cryptocurrencies are “100% based on greater fool theory,” or reliance on a rational assumption of one speculator finding another speculator willing to pay a higher price.<sup>13</sup> JPMorgan CEO Jamie Dimon said he’d fire any employee he found investing in Bitcoin. European Central Bank President Christine Lagarde says cryptocurrency is worth “nothing.”<sup>14</sup> Other skeptics include Allianz economist Mohamad El-Erian, economist Paul Krugman, and Oaktree Capital Management founder Howard Marks.<sup>15</sup> Nassim Taleb, who once considered Bitcoin promising, now says its ultimate worth is “zero.”<sup>16</sup> Other outspoken critics include Molly White, an independent observer,<sup>17</sup> as well as John Reed Stark (former chief of the SEC’s Office of Internet Enforcement).

If cryptocurrency does not seem useful as a currency, why did the market capitalization reach \$3 trillion? We believe, simply, perhaps obviously, that those who buy cryptocurrency hope to make money—they are speculators. (We address below those using cryptocurrency for illicit activities.) Presumably, most investors who might purchase stock in a jet manufacturer or pharmaceutical firm may have little personal expertise in aerospace technology or biochemistry. Similarly, few who purchase cryptocurrencies are likely familiar with Merkle Trees, nonces, or other technical features of blockchain. But these speculators can see that some who purchase stock in a jet maker have made money, and that’s been the case with cryptocurrency as well.

The sad reality is that about 46 million Americans have speculated with Bitcoin.<sup>18</sup> Why do so many people invest in Bitcoin and other cryptocurrencies? We assume, as with a stock or other traditional

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<sup>10</sup> *Bitcoin Average Cost Per Transaction*, YCHARTS (website accessed June 11, 2021)

[https://ycharts.com/indicators/Bitcoin\\_average\\_cost\\_per\\_transaction](https://ycharts.com/indicators/Bitcoin_average_cost_per_transaction)

<sup>11</sup> James Royal, *Warren Buffet Says to Avoid these Two Types of Hot Investments*, BANKRATE (May 6, 2019)

<https://www.bankrate.com/investing/warren-buffett-says-avoid-these-hot-investments/>

<sup>12</sup> Taylor Locke, *Mark Cuban: Bitcoin Is ‘More Religion Than Solution’ And Won’t Help In ‘Doomsday Scenarios*,

CNBC (Dec. 17, 2020) <https://www.cnn.com/2020/12/17/mark-cuban-bitcoin-is-a-store-of-value-that-is-more-religion.html>

<sup>13</sup> Ryan Browne, *Bill Gates Says Crypto And NFTs Are ‘100% Based On Greater Fool Theory’*, CNBC (June 14, 2022) <https://www.cnn.com/2022/06/15/bill-gates-says-crypto-and-nfts-are-based-on-greater-fool-theory.html>

<sup>14</sup> Ryan Browne, *Christine Lagarde Says Crypto Is Worth Nothing* CNBC (May 23, 2022)

<https://www.cnn.com/2022/05/23/ecb-chief-christine-lagarde-crypto-is-worth-nothing.html>

<sup>15</sup> Trisha Phillips, *Bill Gates and Other Powerful People Who Hate (or Love) Bitcoin*, SHOWBIZ CHEATSHEET (MAY 25, 2018)

<https://www.cheatsheet.com/money-career/powerful-people-love-or-hate-bitcoin.html/>

<sup>16</sup> Tanaya Macheel, *Black Swan’ Author Nassim Taleb Says Bitcoin Is Worth Zero And Fails As A Currency And A Hedge* CNBC (July 13, 2021) <https://www.cnn.com/2021/07/13/black-swan-author-nassim-taleb-says-bitcoin-is-worth-zero.html>

<sup>17</sup> Gerrit De Vynck, *First She Documented The Alt-Right. Now She’s Coming For Crypto*. WASHINGTON POST (May 29, 2022) <https://www.washingtonpost.com/technology/2022/05/29/molly-white-crypto/>

<sup>18</sup> *About 46 Million Americans Own Bitcoin*, NASDAQ (May 14, 2021) <https://www.nasdaq.com/articles/about-46-million-americans-now-own-bitcoin-2021-05-14>

asset, these speculators believe the price will rise and that they will profit. Speculators who purchased at lower prices are, indeed, sitting on a profit. Bitcoin sold for \$1,000 in 2017, before peaking at \$60,000 in 2021.<sup>19</sup> Would-be speculators saw these winnings and likely were attracted to the arena.

Bolstering the stories of success, mainstream institutions and public influencers are hawking the legitimacy of cryptocurrencies as investments. Cryptocurrency sponsors have spent extravagantly on advertising, relying conspicuously on influencers. Crypto.com spent \$15 million in advertising in November 2021.<sup>20</sup> CoinDesk reportedly mounted a \$100 million advertising campaign in 2021.<sup>21</sup> The cryptocurrency balloon has been inflated by influencers, many surreptitiously paid;<sup>22 23</sup> massive advertising campaigns that we now know were funded, in part, through crypto firms' misuse or theft of customer funds, such as FTX;<sup>24</sup> and a rogue's gallery of online crypto enthusiasts, some of whom may have a self-interest in elevating the price of tokens.

Well known brokers, including large firms catering to small investors such as Schwab, now offer cryptocurrencies.<sup>25</sup> Wells Fargo offers the product to its elite clients.<sup>26</sup> Fidelity Investments announced it would provide cryptocurrency options for sponsors of 401(k) plans.<sup>27</sup> Cryptocurrencies legitimized by large institutions naturally invites otherwise rational people to consider allocating at least some of their portfolio to this sector.

For those who believe there is little future as a currency, speculation may indeed be based on the "greater fool" theory.<sup>28</sup> Such sponsors are effectively promoting a Ponzi scheme, with new investors paying a higher price than previous investors.

Some cryptocurrency sponsors may be exploiting those who believe they've been shut out of the traditional financial system. We are especially dismayed by reports that of the U.S. individuals who own cryptocurrencies, 40 percent of people of color.

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<sup>19</sup> James Royal, *Best online brokers for buying and selling cryptocurrency in June 2021*, BANKRATE (June 1, 2021) <https://www.bankrate.com/investing/best-online-brokers-cryptocurrency-trading/>

<sup>20</sup> Jet Encela, *Crypto Companies Slash Ad Spending By 90% Amid Market Jitters*, BITCONIST (website visited July 15, 2022) <https://Bitcoinist.com/crypto-companies-slash-ad-spending/>

<sup>21</sup> Jamie Crawley, *Crypto.com Looks to Cash In on Bull Market With \$100M Advertising Campaign*, COINDESK (Oct. 2021) <https://www.coindesk.com/business/2021/10/28/cryptocom-looks-to-cash-in-on-bull-market-with-100m-advertising-campaign/>

<sup>22</sup> *SEC Charges NBA Hall of Famer Paul Pierce for Unlawfully Touting and Making Misleading Statements about Crypto Security*, SECURITIES AND EXCHANGE COMMISSION (Feb. 17, 2023) <https://www.sec.gov/news/press-release/2023-34>

<sup>23</sup> *SEC Statement Urging Caution Around Celebrity Backed ICOs* SECURITIES AND EXCHANGE COMMISSION (Nov. 1, 2017) <https://www.sec.gov/news/public-statement/statement-potentially-unlawful-promotion-icos>

<sup>24</sup> Tiffany Hsu, *Larry David Doesn't Get Crypto. That's Why He's the Perfect Pitchman*. NEW YORK TIMES (Feb. 13, 2022) <https://www.nytimes.com/2022/02/13/business/media/larry-david-super-bowl-ftx-crypto.html>

<sup>25</sup> James Royal, *Best online brokers for buying and selling cryptocurrency in June 2021*, BANKRATE (June 1, 2021) <https://www.bankrate.com/investing/best-online-brokers-cryptocurrency-trading/>

<sup>26</sup> *Wells Fargo: US Bank Set to Offer Crypto to Rich Clients*, BBC (May 19, 2021) <https://www.bbc.com/news/business-57147386>

<sup>27</sup> Rob Wile, *Fidelity Lets Companies Offer Bitcoin In A 401(K), But Financial Advisers Warn It's A Risky Bet* NBC (May 22, 2022) <https://www.nbcnews.com/business/consumer/Bitcoin-401k-fidelity-financial-advisers-warn-risk-cryptocurrencies-rcna29099>

<sup>28</sup> Nolan Whitcomb, *The Greater Fool Theory*, OXFORD BUSINESS REVIEW (Dec. 30, 2020) <https://oxfordbusinessreview.org/the-greater-fool-theory/>

According to one report, the average cryptocurrency trader is under 40 (mean age is 38) and does not have a college degree (55 percent). Forty-one percent are women. More than one-third (35 percent) have household incomes under \$60,000 annually.<sup>29</sup> After centuries of exploitation of people of color, after nefarious bankers targeted Black borrowers with abusive mortgages leading to the 2008 financial crisis,<sup>30</sup> it is tragic that predatory cryptocurrency sponsors may have targeted the Black community with this Ponzi scheme.

As opposed to their lack of utility when it comes to buying and selling typical goods, cryptocurrencies do serve as a medium of payment for illicit activities. One study found that “approximately one-quarter of Bitcoin users are involved in illegal activity” and that an estimated \$76 billion in illegal activity per year involve Bitcoin (46% of Bitcoin transactions),” which is close to the scale of the U.S. and European markets for illegal drugs.”<sup>31</sup> Senators Elizabeth Warren (D-Mass.) and Roger Marshall (R-Kan.) joined Rep. Sean Casten (D-Ill.) and 102 lawmakers in a bipartisan letter to national security leaders “raising grave concerns” about reports that in the months leading up to the October 7th terrorist attack on Israel, Hamas raised millions of dollars via crypto to help finance their invasion.<sup>32</sup>

Clearly, cryptocurrency does not serve the “public interest” as a currency, save for illicit finance.

In addition to failing the serving of the “public interest” test, Bitcoin and other cryptocurrency trading is rife with manipulation, a second test that the SEC must apply when deciding on whether to approve regulated exchange trading of a product. Investment scams involving cryptocurrencies abound. During a recent five-month period, the Federal Trade Commission (FTC) reported 7,000 cryptocurrency scams covering some \$80 million in reported losses. That is 12 times the number of scams reported during the same period a year earlier, with a 1000 percent greater estimated loss.<sup>33</sup> One review found some malicious actors created digital coins that can be purchased but not sold, while others promised enormous returns and then failed to deliver.<sup>34</sup> Highlighting these scams is perhaps one of the greatest thefts in history, namely, the heist by Sam Bankman-Fried and his co-conspirators of more than \$8 billion in customer accounts at his crypto exchange FTX. That’s roughly half of the total of \$16 billion in customer accounts at FTX.<sup>35</sup> Again, while the FTX theft may be the most outstanding, it is inescapable that fraud may be endemic to the business model of cryptocurrency.

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<sup>29</sup> *More Than One in Ten Americans Surveyed Invest in Cryptocurrencies* University of Chicago (July 22, 2021) <https://www.norc.org/NewsEventsPublications/PressReleases/Pages/more-than-one-in-ten-americans-surveyed-invest-in-cryptocurrencies.aspx>

<sup>30</sup> Ylan Q. Mui *Ex-Loan Officer Claims Wells Fargo Targeted Black Communities For Shoddy Loans*, WASHINGTON POST (June 12, 2012) [https://www.washingtonpost.com/business/economy/former-wells-fargo-loan-officer-testifies-in-baltimore-mortgage-lawsuit/2012/06/12/gJQA6EGtXV\\_story.html](https://www.washingtonpost.com/business/economy/former-wells-fargo-loan-officer-testifies-in-baltimore-mortgage-lawsuit/2012/06/12/gJQA6EGtXV_story.html)

<sup>31</sup> Sean Foley, et al, *Sex Drugs and Bitcoin*, THE REVIEW OF FINANCIAL ECONOMICS, (May 2019) <https://academic.oup.com/rfs/article/32/5/1798/5427781>

<sup>32</sup> Press Release, *Warren, Marshall on Letter*, OFFICE OF SEN. WARREN (Oct. 18, 2023) <https://www.warren.senate.gov/oversight/letters/warren-marshall-casten-100-lawmakers-ask-biden-administration-to-address-crypto-financed-terrorism-after-reports-of-hamas-raising-millions-in-crypto-to-fund-operations>

<sup>33</sup> Emma Fletcher, *Cryptocurrency Buzz Drives Record Investment Scam Losses*, FEDERAL TRADE COMMISSION (May 17, 2021) <https://www.ftc.gov/news-events/blogs/data-spotlight/2021/05/cryptocurrency-buzz-drives-record-investment-scam-losses>

<sup>34</sup> Alexis Goldstein, *Testimony*, HOUSE FINANCIAL SERVICES COMMITTEE (June 20, 2021) <https://financialservices.house.gov/uploadedfiles/hhrg-117-ba09-wstate-goldsteina-20210630-u1.pdf>

<sup>35</sup> Vicky Ge Huang, *FTX Tapped Into Customer Accounts to Fund Risky Bets, Setting Up Its Downfall*,

Several federal regulators, including the Consumer Financial Protection Bureau (CFPB), FTC, as well as the SEC, among others, have issued regular alerts warning consumers and investors about the prevalence of scams, hacks and manipulative activities found within the digital asset markets, and have collected data to back up these warnings. Numerous media articles, academic studies and even industry reports have documented the large sums of money lost through these scams and exploitative practices. For example, a recent study by crypto analytics firm Chainalysis found there were \$14 billion in losses in 2021 alone due to malfeasance, and that there had been a 79% increase in crypto-related crime during that same year.<sup>36</sup>

These scam-related losses may be the tip of the iceberg; a Better Business Bureau report profiling crypto schemes noted that the FTC claims that only about 5% of fraud victims end up reporting their losses or victimization.<sup>37</sup> Tellingly, the FTC has also historically found that Black and Hispanic or Latino Americans are more likely than white Americans to be victims of scams or fraud and are more likely to under-report such experiences as well.<sup>38</sup> This suggests that, even as digital assets are being promoted (via sophisticated marketing campaigns) as vehicles for financial inclusion for communities traditionally excluded from or exploited by traditional financial actors, these same communities may be bearing the brunt of the losses generated by fraud and scams.

Moreover, wash trading, where the buyer and the seller are the same, a manipulation intended to deceive the other traders into believing there is genuine interest in the market, proliferates. According to some reports, wash trading accounts for 70 percent of the volume in cryptocurrency.<sup>39</sup>

Grayscale discounts the problem of manipulation of Bitcoin by claiming that futures Bitcoin trading is already approved by regulators and being overseen by a regulated exchange correlates tightly with spot (direct) trading of the Bitcoin ETF (which now takes place on unregulated exchanges). We question this claim, noting that the SEC rightly states that there are no spot-based products listed on a regulated exchange, so it is not possible to conclude confidently that spot and futures trading correlate.<sup>40</sup><sup>41</sup>

In sum, with no utility as a currency, a Bitcoin ETF does not serve the “public interest.” With scams and manipulation rife, it will not be possible for a regulated exchange to prevent these and other

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WALL STREET JOURNAL (Nov. 11, 2022), <https://www.wsj.com/articles/ftx-tapped-into-customer-accounts-to-fund-risky-bets-setting-up-its-downfall-11668093732>

<sup>36</sup>The Chainalysis Crypto Crime Report, CHAINALYSIS (website accessed July 22, 2022)

<https://go.chainalysis.com/2022-Crypto-Crime-Report.html>

<sup>37</sup> Better Business Bureau, *Cryptocurrency Scams Study*, BETTER BUSINESS BUREAU (website accessed July 22, 2022) [https://www.bbb.org/all/scamstudies/cryptocurrency\\_scams/cryptocurrency\\_scams\\_study](https://www.bbb.org/all/scamstudies/cryptocurrency_scams/cryptocurrency_scams_study)

<sup>38</sup>Federal Trade Commission, *Combating Fraud in African America & Latino Communities*, FEDERAL TRADE COMMISSION (June 15, 2016) <https://www.ftc.gov/system/files/documents/reports/combating-fraud-african-american-latino-communities-ftcs-comprehensive-strategic-plan-federal-trade/160615fraudreport.pdf>

<sup>39</sup> Lin William Cong et al, *Wash Trading In Centralised Crypto Exchanges: The Need For Transparency And Accountability*, CENTER FOR ECONOMIC POLICY RESEARCH (April 17, 2023) <https://cepr.org/voxeu/columns/wash-trading-centralised-crypto-exchanges-need-transparency-and-accountability>

<sup>40</sup> Securities and Exchange Commission, *Grayscale v SEC*, GRAYSCALE.COM (Feb. 3, 2023)

<https://www.grayscale.com/globalassets/documents/gbtc-lawsuit/litigation-filings/22-1142-final-respondents-brief-as-filed.pdf>

<sup>41</sup> We attach testimony Public Citizen provided to U.S. congressional committees as well as to two New York state legislative committees.

“fraudulent” acts, as required under 18 USC 78f.<sup>42</sup> Thank you very much for the opportunity to provide comment on this application, as we believe it would threaten investors, including our members and supporters and we ask the SEC to reject the Grayscale application.

For questions, please contact Bartlett Naylor at [bnaylor@citizen.org](mailto:bnaylor@citizen.org).

Sincerely,

Public Citizen

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<sup>42</sup> 18 USC 78f, LEGAL INFORMATION INSTITUTE (website accessed Dec. 27, 2023)  
<https://www.law.cornell.edu/uscode/text/15/78f>