

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99353; File No. SR-NYSEARCA-2024-08)

January 17, 2024

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend a Representation Relating to the Grayscale Bitcoin Trust

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on January 16, 2024, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend a representation relating to the Grayscale Bitcoin Trust (BTC) (the “Trust”), shares of which are currently listed and traded on the Exchange pursuant to NYSE Arca Rule 8.201-E. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission approved the listing and trading of shares of the Trust (the “Shares”) on the Exchange pursuant to NYSE Arca Rule 8.201-E on January 10, 2024.⁴ NYSE Arca Rule 8.201-E governs the listing and trading of Commodity-Based Trust Shares, which are securities issued by a trust that represent investors’ discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust. The Shares are issued by the Trust, a Delaware statutory trust organized on September 13, 2013.⁵

The purpose of this rule filing is to amend a representation set forth in the Exchange’s previous rule filing to list and trade Shares of the Trust.⁶ Amendment No. 2 represented that, in connection with the creation and redemption of Shares pursuant to Cash Orders, the term “Cash Account” would mean “the account maintained by the Transfer Agent in the name of Grayscale Securities, LLC, designated as ‘Special Account for the Exclusive Benefit of Customers of

⁴ See Securities Exchange Act Release No. 99306 (January 10, 2024) (File Nos. SR-NYSEARCA-2021-90; SR-NYSEARCA-2023-44; SRNYSEARCA-2023-58; SR-NASDAQ-2023-016; SR-NASDAQ-2023-019; SR-CboeBZX-2023-028; SR-CboeBZX-2023-038; SR-CboeBZX-2023-040; SR-CboeBZX-2023-042; SRCboeBZX-2023-044; SR-CboeBZX-2023-072) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units) (the “Approval Order”).

⁵ On October 19, 2023, the Trust filed a registration statement on Form S-3 under the Securities Act (File No. 333-275079) (the “Registration Statement”). On November 22, 2023, the Trust filed Amendment No. 1 to the Registration Statement on Form S-3. On December 26, 2023, the Trust filed Amendment No. 2 to the Registration Statement on Form S-3. On January 2, 2024, the Trust filed Amendment No. 3 to the Registration Statement on Form S-3. On January 9, 2024, the Trust filed Amendment No. 4 to the Registration Statement. The descriptions of the Trust and Shares contained herein are based, in part, on the Registration Statement.

⁶ See Securities Exchange Act Release No. 99298 (January 9, 2024) (SR-NYSEARCA-2021-90) (Notice of Filing of Amendment No. 2 to a Proposed Rule Change to List and Trade Shares of Grayscale Bitcoin Trust under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares)) (“Amendment No. 2”).

Grayscale Securities, LLC,' for purposes of receiving cash from, and distributing cash to, Authorized Participants in connection with creations and redemptions pursuant to Cash Orders. For the avoidance of doubt, the Trust shall have no interest (beneficial, equitable or otherwise) in the Cash Account or any cash held therein.”⁷

The Exchange proposes to amend this representation to redefine Cash Account to remove reference to Grayscale Securities, LLC, such that the term Cash Account means the account maintained by the Transfer Agent for purposes of receiving cash from, and distributing cash to, Authorized Participants in connection with creations and redemptions pursuant to Cash Orders. This proposed change is intended to clarify that the Commission has not approved Grayscale Securities, LLC or any other broker-dealer to own or operate the Cash Account used to transfer cash to the entity purchasing Bitcoin as part of the creation process or receive cash from the entity that buys or sells Bitcoin as part of the redemption process. The purchase and sale of Bitcoin as part of the creation and redemption process will be undertaken by an entity that is not registered as a broker-dealer. The Exchange believes that this proposed change would promote clarity and transparency with respect to the operation of the Cash Account, to the benefit of all market participants.

Except for this change, all other representations in Amendment No. 2 remain unchanged and will continue to constitute continuing listing requirements. In addition, the Trust will continue to comply with the terms of the Approval Order and the requirements of Rule 8.201-E.

⁷ Amendment No. 2 at 56-57. Unless otherwise specified, capitalized terms used herein have the same meaning as in Amendment No. 2.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest because it would update a representation in Amendment No. 2 regarding the Cash Account used in connection with creation and redemption of Shares. The proposed change would add clarity to the description of the operation of the Cash Account, to the benefit of all market participants. Except for this change, all other representations made in Amendment No. 2 remain unchanged and will continue to constitute continuing listing requirements for the Fund. Accordingly, the Exchange believes that this proposed rule change raises no novel regulatory issues.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. As noted above, the proposed rule change is intended only to clarify a representation regarding the Cash Account and would facilitate the continued listing and trading of Shares of the Fund on the

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

Exchange, thereby promoting competition among various exchange-traded products, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6)¹³ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁴ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the proposed rule change is intended only to clarify a representation in Amendment No. 2 relating to the Cash Account. Except for this change, all other representations

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

made in Amendment No. 2 remain unchanged and will continue to constitute continuing listing requirements for the Shares of the Trust. According to the Exchange, the Trust also will continue to comply with the terms of the Approval Order and the requirements of NYSE Arca Rule 8.201-E. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal provides a clarification to a representation of the Exchange and does not raise any new or novel regulatory issues. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁵

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2024-08 on the subject line.

¹⁵ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSEARCA-2024-08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright

protection. All submissions should refer to file number SR-NYSEARCA-2024-08 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Sherry R. Haywood,

Assistant Secretary.

¹⁶ 17 CFR 200.30-3(a)(12), (59).